

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2023
First Extraordinary Session, 2023
Third Extraordinary Session, 2022
Fourth Extraordinary Session, 2022

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WEST VIRGINIA HOUSE OF DELEGATES
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SPEAKER OF THE HOUSE

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FOREWORD

These volumes contain the Acts of the First Regular Session and the 2023 First Extraordinary Session of the 86th Legislature, and the 2022 Third and Fourth Extraordinary Sessions of the 85th Legislature.

First Regular Session, 2023

The First Regular Session of the 86th Legislature convened on January 11, 2023. The Constitutional sixty-day limit on the duration of the session was March 11, 2023. The Governor issued a proclamation on March 8, 2023, extending the session for a period not to exceed one day for the purpose of considering the Budget Bill. The Legislature adjourned *sine die* on March 11, 2023.

Bills totaling 2,317 were introduced in the two houses during the session (1,558 House and 759 Senate). The Legislature passed 333 bills, 203 House and 130 Senate.

Six bills became law without the Governor's signature, **S. B. 128**, Clarifying authority of Governor and Legislature to proclaim and declare state of emergency and preparedness; **Com. Sub. for H. B. 2820**, To provide HOPE Scholarship recipients with the ability to play sports; **Com. Sub. for H. B. 3012**, To encourage economic development regarding rare earth elements and critical minerals, as defined, by providing temporary severance tax relief; **H. B. 3199**, Relating to removing the requirement that an ectopic pregnancy be reported; **Com. Sub. for H. B. 3270**, To amend the deliberate intent statute to limit noneconomic damages to \$500,000; and **H. B. 3340**, To revise the West Virginia Tax Increment Financing Act.

The Governor vetoed 1 bill **Com. Sub. for S. B. 667**, Requiring periodic performance audits of WV Secondary School Activities Commission, leaving a net total of 332 bills, 203 House and 129 Senate, which became law.

There were 112 Concurrent Resolutions introduced during the session, 84 House and 28 Senate, of which 30 House and 14 Senate were adopted. Twenty-eight House Joint Resolutions, and 10 Senate Joint Resolutions were introduced, proposing amendments to the

State Constitution, none of which were adopted. The House introduced 23 House Resolutions and the Senate introduced 50 Senate Resolutions, of which 14 House and 48 Senate were adopted.

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First Extraordinary Session, 2023

The Proclamation calling the Legislature into Extraordinary Session on August 6, 2023, contained 44 items for consideration.

The Legislature introduced 88 bills during the Extraordinary Session, (44 House Bills, and 44 Senate Bills). The Legislature passed 35 bills, 9 House and 26 Senate.

One bill became law without the Governor’s signature, **S. B. 1020**, Authorizing Mercer County Commission to levy special district excise tax for Ridges Economic Opportunity Development District.

The Senate introduced and adopted 1 Senate Resolution.

The Legislature adjourned *sine die* on August 8, 2023.

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Third Extraordinary Session, 2022

The Proclamation calling the Legislature into Extraordinary Session on July 25, 2022, contained 2 items for consideration. Subsequent amendment to the proclamation added an item for a total of 3 items for consideration.

The Legislature introduced 5 bills during the Extraordinary Session, (4 House Bills and 1 Senate Bill). The Legislature passed 1 House Bill.

There was 1 Senate Concurrent Resolution introduced and adopted. The House introduced 2 House Resolutions and the Senate introduced 6 Senate Resolutions, of which 1 House and 6 Senate were adopted.

The Legislature adjourned *sine die* on September 13, 2022.

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Fourth Extraordinary Session, 2022

The Proclamation calling the Legislature into Extraordinary Session on September 12, 2022, contained 3 items for consideration.

The Legislature introduced 6 bills during the Extraordinary Session, 3 House Bills and 3 Senate Bills. The Legislature passed 3 Senate Bills.

The Senate introduced and adopted 4 Senate Resolutions.

The Legislature adjourned *sine die* the same day.

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The rules of the House of Delegates authorize the Clerk to correct errors and omissions, and make stylistic and technical changes to legislative documents or publications, including the Acts of the Legislature and the official bound Journal of the House to conform to legislative action.

Please also note that throughout these Acts are various footnotes for informational purposes, some of which relate to bills which amended the same statute. Language in Enrolled House Bill 3432 (Chapter 303), which was enacted during the 2023 Regular Session, stipulated that, “*When two or more bills amending the same statute are passed during the same session of the Legislature, the form of the statute in the enrolled bill passed latest in time shall control.*”

The text of resolutions, and of bills which did not become law, can be found by visiting the West Virginia Legislature’s website (www.wvlegislature.gov) and going to the Bill Status page.

STEPHEN J. HARRISON

*Clerk of the House and
Keeper of the Rolls.*

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2023

OFFICERS

Speaker: Roger Hanshaw - Wallback
Clerk: Stephen J. Harrison - Cedar Grove
Sergeant-at-Arms: Marshall Clay - Fayetteville
Doorkeeper: Robert W. Stewart - Cross Lanes

<u>Name</u>	<u>District</u>	<u>City</u>	<u>Occupation</u>	<u>Term</u>
Adkins, David (R)	30th	Hamlin	Retired	86th
Anderson, Bill (R)	10th	Williamstown	Educator	71st - 86th
Barnhart, Trenton (R)	9th	St. Marys	Community Banker	Appt. 9/17/2019, 84th; 85th - 86th
Bridges Jordan (R)	33rd	Logan	Coal Miner	85th - 86th
Brooks, Eric (R)	45 th	Mount Hope	Retired	86th
Burkhammer, Adam (R)	64th	Horner	Business Owner	85th - 86th
Butler, Jim	18th	Henderson	Excavating Contractor	81st-84th; 86th
Cannon, Jarred	21st	Hurricane	Business Owner	Appt. 6/15/2022, 85th; 86th
Capito, Moore (R)	55th	Charleston	Attorney	83rd - 86th
Chiarelli, Geno (R)	78th	Morgantown		86th
Clark, Wayne (R)	99th	Charles Town	Business Owner	85th - 86th
Cooper, Roy (R)	40th	Wayside	Retired	81st - 86th
Coop-Gonzalez, Elias (R)	67th	Elkins	College Student	86th
Criss, Vernon (R)	12th	Parkersburg	Executive	69th; 83rd - 86th
Crouse, Kathie Hess (R)	19 th	Buffalo		Appt. 12/1/21, 85th; 86th
Dean, Mark (R)	34th	Verner	Home Health Executive	83rd - 86th
DeVault, Mike (R)	74 th	Fairmont	Fence Co.; Tire Service	86th
Dillon, Henry C. (R)	29th	Naugatuck	Educator	86th
Dittman, Lori (R)	63rd		Teacher/Small Business Owner	86th
Ellington, Joe (R)	38th	Princeton	Physician	80th - 86th
Espinosa, Paul (R)	98th	Charles Town	Public Affairs Manager	81st - 86th
Fast, Tom (R)	51st	Fayetteville	Attorney	82nd - 86th
Fehrenbacher, Bob (R)	11th	Vienna	Retired	86th
Ferrell, Dana (R)	60th	Charleston	Business Owner	85th - 86th
Fluharty, Shawn (D)	5th	Wheeling	Attorney	82nd - 86th
Foggini, Dave (R)	14th	Belleville	Physics Teacher	86th
Forsht, Don (R)	91st	Gerrardstown	Construction and Property Management	85th - 86th
Foster, Geoff (R)	20th	Winfield	Construction Supply	82nd - 86th
Garcia, Joey (D)	76th	Fairmont	Attorney	85th - 86th
Gearheart, Marty (R)	37th	Bluefield	Businessman	80th - 83rd; 85th - 86th
Griffith, Ric (D)	27th	Kenova	Pharmacist	85th - 86th
Hall, Anita (R)	36th	Welch	Small Business Owner	86th
Hall, Walter (R)	58th	St. Albans	Licensed Insurance Agent	86th
Hanna, Caleb (R)	48th	Richwood	Director of Public Relations	84th - 86th
Hansen, Evan (D)	79th	Morgantown	Company President	84th - 86th
Hanshaw, Roger (R)	62nd	Wallback	Attorney	82nd - 86th
Hardy, John (R)	97th	Shepherdstown	Businessman	84th - 86th
Heckert, Scot (R)	13th	Parkersburg		86th
Hillenbrand, Rick (R)	88th	Romney	Retired	86th
Hite, Michael (R)	92nd	Martinsburg	Business Owner	86th
Holstein, Josh (R)	32nd	Ashford		85th - 86th
Honaker, Mike (R)	46th	Lewisburg	County Office Director	Appt. 12/21/2021, 85th; 86th
Hornbuckle, Sean (D)	25th	Huntington	Financial Advisor	82nd - 86th
Hornby, Michael (R)	93rd	Martinsburg	CEO	86th
Horst, Charles K. "Chuck" (R)	95th	Falling Waters	Business Owner	85th - 86th
Hott II, John Paul (R)	85th	Petersburg	Insurance/Disposal Service	84th - 86th
Householder, Eric L. (R)	96th	Martinsburg	Small Business Owner	80th - 86th
Howell, Gary G. (R)	87th	Keyser	Business Owner/Mail Order Auto Parts	80th - 86th
Jeffries, Dean (R)	61st	Elkview	Insurance Agent	Appt. 9/5/2018, 83rd; 84th - 86th
Jennings, D. "Buck" Rolland (R)	84th	Thornton	Self-Employed	Appt. 10/10/2017, 83rd; 84th - 86th

MEMBERS OF THE HOUSE OF DELEGATES - Continued

Keaton, N. Riley (R)	15th	Spencer	Youth Camping Ministry	85th – 86th
Kelly, David L. (R)	8th	Sistersville	Pastor	84th – 86th
Kimble, Laura (R)	71st	Bridgeport	Homemaker	85th – 86th
Kirby, Todd (R)	44th	Beckley	Assistant Prosecuting Attorney	86 th
Kump, Larry (D)	94th	Falling Waters	Retired	80th – 81st; 84th; 86th
Linville, Daniel (R)	22nd	Milton	IT Director	Appt. 8/1/2018, 83rd; 84th – 86th
Longanacre, Todd (R)	47th	Alderson	Retired	85th – 86th
Lucas, Patrick (R)	24th	Barboursville	Real Estate Broker	86th
Mallow, Phil (R)	75th	Kingmont	Retired	85th – 86th
Marple, Keith (R)	69th	Lost Creek	Retired	86th
Martin, Carl “Robbie” (R)	65th	Buckhannon	Business Owner	84th – 86th
Maynor, Jordan (R)	41st	Beaver		Appt. 8/19/21, 85th; 86 th
Mazzocchi, Margitta (R)	31st	Chapmanville	Business Owner	85th-86th
McGeehan, Pat (R)	1st	Chester	Business Management; Author	79th; 82nd – 86th
Miller, George A. (R)	90th	Berkeley Springs	Retired	85th – 86th
Nestor, William “Ty” (R)	66th	Elkins	Lawyer	85 th – 86th
Petitto, Mickey (R)	70th	Clarksburg	Accountant; Real Estate Broker and Appraiser	86th
Phillips, Chris (R)	68th	Buckhannon	President, CPG Foods, Inc.	84th – 86th
Pinson, Jonathan Adam (R)	17th	Point Pleasant	Pastor	85th – 86th
Pritt, Chris (R)	53rd	Charleston	Lawyer	85th – 86th
Pritt, David “Elliott” (R)	50th	Oak Hill	Teacher	86th
Pushkin, Mike (D)	54th	Charleston	Taxi Driver/Musician	82nd – 86th
Reynolds, Charlie (R)	6th	Moundsville	Railroad Terminal Manager	85th – 86th
Ridenour, Bill (R)	100th	Harpers Ferry	Retired	86th
Riley, Clay (R)	72nd	Shinnston	Professional Engineer	85th – 86th
Rohrbach, Matthew (R)	26th	Huntington	Physician	82nd – 86th
Ross, Mark (R)	28th	Prichard	Retired	Appt. 1/18/2000, 75th; 86th
Rowe, Larry L. (D)	52nd	Malden	Attorney	73rd - 74th (House); 75th - 76th (Senate); 82nd - 86th (House)
Shamblin, Andy (R)	59th	Nitro	Teacher; Minister; City Council	86th
Sheedy, Charles (R)	7th	Cameron	Retired	86th
Skaff, Doug (D)	57th	South Charleston	Business Owner	79th-81st; 84th-85th
Smith, Doug (R)	39th	Princeton	Retired	85th – 86th
Stattler, Joe (R)	77th	Core	Retired	82nd – 83rd; 85th – 86th
Steele, Brandon (R)	42nd	Beckley	Attorney	84th – 86th
¹ Storch, Erika (R)	4th	Wheeling	Financial Officer	80th – 86th
Street, George (R)	83rd	Masontown	Explosive Ordinance Technician; Farmer	86th
Summers, Amy (R)	73rd	Flemington	Registered Nurse	82nd – 86th
Thorne, Darren J. (R)	89th	Romney	Farmer	86th
Toney, Christopher Wayne (R)	43rd	Beckley	School Bus Operator	84th – 86th
Tully, Heather (R)	49th	Summersville	Family Nurse Practitioner	Appt. 6/17/2020, 84th; 85th – 86th
Vance, Adam (R)	35th	Brenton	Underground Coal Miner	86th
² Walker, Danielle (D)	81st	Morgantown	Direct Care Worker	84th – 86th
Ward, Bryan C. (R)	86th	Fisher	Retired	85th – 86th
Warner, Debbie (R)	82nd	Morgantown	Real Estate Agent	86th
Westfall, Steve (R)	16th	Ripley	Insurance Agent	81st – 86th
Williams, John (D)	80th	Morgantown	Financial Advisor	83rd – 86th
Willis, Jimmy (R)	3rd	Wellsburg		86th
Worrell, Evan (R)	23rd	Salt Rock	Chief Operating Officer, In-Home Care Agency	84th – 86th
Young, Kayla (D)	56th	South Charleston	Entrepreneur	85th – 86th
Zatezalo, Mark (R)	2nd	Weirton	Hydrogeologist	82nd – 83rd; 85th – 86th

¹Dianna Winzenreid appointed June 5, 2023 to fill the vacancy created by the May 12, 2023 resignation of Erika Storch.

²Anitra Hamilton appointed April 26, 2023 to fill the vacancy created by the April 10, 2023 resignation of Danielle Walker.

MEMBERS OF THE SENATE

REGULAR SESSION, 2023

OFFICERS

President: Craig P. Blair - Martinsburg
Clerk: Bruce Lee Cassis, Jr. - Charleston
Sergeant-at-Arms: David Lavender - Hurricane
Doorkeeper: Jeffrey L. Branham - Cross Lanes

Name	District	City	Occupation	Term
Azinger, Michael T. (R)	3rd	Vienna	Manager	82nd (House); 83rd - 86th
Barrett, Jason (R)	16th	Martinsburg		81st - 82nd (House); 86th
Blair, Craig (R)	15th	Martinsburg	Businessman	76th - 79th (House); 81st - 86th
Boley, Donna J. (R)	3rd	St. Marys	Retired	Appt. May 14, 1985, 67th; 68th - 86th
Caputo, Mike (D)	13th	Rivesville	Union District Vice President	73rd - 84th (House); 85th-86th
Chapman, Laura (R)	1st	Wheeling	Attorney	86th
Clements, Charles H. (R)	2nd	New Martinsville	Retired	77th (House); Appt. Jan. 28, 2017, 83rd; 84th-86th
Deeds, Vince (R)	10th	Renick	Retired	86th
Grady, Amy N. (R)	4th	Leon	Teacher	86th
Hamilton, Bill (R)	11th	Buckhannon	Retired	76th-83rd (House); 84th - 86th
Hunt, Mark (R)	8th	Charleston	Attorney	81st - 82nd (House); 86th
Jeffries, Glenn D. (R ¹)	8th	Red House	Businessman	83rd - 86th
Kames, Robert L. (R)	11th	Helvetia		82nd - 83rd; 86th
Maroney, Michael J. (R)	2nd	Glen Dale	Physician	83rd - 86th
Martin, Patrick (R)	12th	Jane Lew	Business Owner	83rd - 84 th (House); 86th
Maynard, Mark R. (R)	6th	Wayne	Automobile Dealer	82nd - 86th
Nelson, Eric (R)	17th	Charleston	Financial Consultant	80th - 84th (House); 85th-86th
Oliverio II, Michael A.	13th	Morgantown	Life Insurance Agent	71st (House); 2nd - 78th; 86th
Phillips, Rupert W., Jr.	7th	Lorado	Sales Manager	80th - 83rd (House); 86th
Plymale, Robert H. (D)	5th	Huntington	Businessman	71st - 86th
Queen, Ben (R)	12th	Bridgeport		83rd - 84th (House); 86th
Roberts, Rollan (R)	9th	Beaver	Minister	84th - 86th
Rucker, Patricia Puertas (R)	16th	Harpers Ferry	Home Schooling Mother	83rd - 86th
Smith, Randy E. (R)	14th	Thomas	Coal Miner	81st - 82nd (House); 83rd - 86th
Stover, David (R)	9th	Maben	Circuit Clerk	86th
Stuart, Mike (R)	7th	South Charleston		86th
Swope, Chandler (R)	6th	Bluefield	Retired	83rd-86th
Takubo, Tom (R)	17th	Charleston	Physician	82nd - 86th
Tarr, Eric J. (R)	4th	Scott Depot		84th - 86th
Taylor, Jay (R)	14th	Grafton	Prosecuting Attorney Clerk	86th
Trump IV, Charles S. (R)	15th	Berkeley Springs	Attorney	71st - 77th (House); 82nd - 86th
Weld, Ryan W. (R)	1st	Wellsburg	Attorney	82nd (House); 83rd - 86th
Woelfel, Michael A. (D)	5th	Huntington	Lawyer	82nd - 86th
Woodrum, Jack David (R)	10th	Hinton	Funeral Director	86 th

¹ Changed party affiliation from Democrat to Republican on December 1, 2022.

HOUSE OF DELEGATES COMMITTEES

COMMITTEES OF THE HOUSE OF DELEGATES

As of February 17, 2023

AGRICULTURE AND NATURAL RESOURCES

Horst (Chair, *Natural Resources*), Nestor (Chair, *Agriculture*), Nestor (Vice Chair, *Natural Resources*), Miller (Vice Chair, *Agriculture*), Hansen (Minority Chair, *Natural Resources*), Griffith (Minority Chair, *Agriculture*), Bridges, Burkhammer, Cooper, DeVault, Dillon, Dittman, Foggin, Hornby, Longanacre, Marple, Phillips, Ross, Smith, Statler, Street, Thorne, Vance, Walker, Ward, Worrell

BANKING AND INSURANCE

Barnhart (Chair, *Banking*), Westfall (Chair, *Insurance*), Hott (Vice Chair, *Banking and Insurance*), Rowe (Minority Chair, *Banking and Insurance*), Williams (Minority Vice Chair, *Banking and Insurance*), Cannon, Capito, Coop-Gonzalez, Criss, Crouse, Ellington, Espinosa, Fehrenbacher, Foggin, Garcia, Hall, W., Hardy, Hornby, Householder, Jeffries, Linville, Pritt, C., Riley, Storch, Thorne

EDUCATION

Ellington (Chair), Statler (Vice Chair), Toney (Vice Chair), Hornbuckle (Minority Chair), Pritt, E., (Minority Vice Chair), Chiarelli, Clark, Dillon, Dittman, Ferrell, Foggin, Hall, A., Hornby, Jennings, Kimble, Longanacre, Lucas, Mazzocchi, Ridenour, Ross, Smith, Thorne, Tully, Walker, Willis

ENERGY AND MANUFACTURING

Anderson (Chair), Zatezalo (Vice Chair), Hansen (Minority Chair), Young (Minority Vice Chair), Barnhart, Bridges, Cooper, Coop-Gonzalez, Crouse, DeVault, Dillon, Fehrenbacher, Foggin, Heckert, Holstein, Horst, Hott, Reynolds, Rowe, Sheedy, Street, Vance, Warner, Westfall, Worrell

HOUSE OF DELEGATES COMMITTEES

ENROLLED BILLS

Jeffries (Chair), Westfall (Vice Chair), Ferrell, Shamblin, Pushkin

FINANCE

Criss (Chair), Hardy (Vice Chair), Rowe (Minority Chair), Williams (Minority Vice Chair), Anderson, Barnhart, Ellington, Espinosa, Ferrell, Gearheart, Hite, Horst, Hott, Howell, Jeffries, Linville, Mazzocchi, Reynolds, Riley, Rohrbach, Skaff, Statler, Storch, Summers, Toney

FIRE DEPARTMENTS AND EMERGENCY MEDICAL SERVICES

Mallow (Chair), Riley (Vice Chair), Pritt (Minority Chair), Garcia (Minority Vice Chair), Burkhammer, Chiarelli, Dean, DeVault, Dillon, Ferrell, Heckert, Honaker, Jennings, Pinson, Ross, Shamblin, Statler, Thorne, Tully, Vance, Walker, Ward, Warner, Willis, Worrell

GOVERNMENT ORGANIZATION

Phillips (Chair), McGeehan (Vice Chair), Young (Minority Chair), Pushkin (Minority Vice Chair), Adkins, Bridges, Brooks, Chiarelli, Crouse, Dean, Fast, Forsht, Griffith, Heckert, Hillenbrand, Honaker, Longanacre, Mallow, Martin, C. Pritt, Ross, Shamblin, Smith, Vance, Worrell

HEALTH AND HUMAN RESOURCES

Summers (Chair), Tully (Vice Chair), Pushkin (Minority Chair), Griffith (Minority Vice Chair), Barnhart, Cannon, Cooper, Dittman, Foggin, Forsht, Hardy, Heckert, Hite, Jeffries, Jennings, Kelly, Miller, Petitto, Reynolds, Rohrbach, Shamblin, Sheedy, Toney, Walker, Westfall

JAILS AND PRISONS

Kelly (Chair), Hott (Vice Chair), Garcia (Minority Chair), Pritt, E. (Minority Vice Chair), Bridges, Brookes, Burkhammer, Dittman, Fast, Forsht, Hanna, Honaker, Horst, Jennings, Mazzocchi, Miller, Petitto, Phillips, Pushkin, Reynolds, Smith, Steele, Street, Toney, Zatezalo

HOUSE OF DELEGATES COMMITTEES

JUDICIARY

Capito (Chair), Fast (Vice Chair), Garcia (Minority Chair), Fluharty (Minority Vice Chair), Foster, Hansen, Hillenbrand, Honaker, Kelly, Kimble, Kirby, Kump, Mallow, Marple, Martin, Nestor, Phillips, C. Pritt, Ridenour, Shamblin, Steele, Ward, Warner, Westfall, Zatezalo

PENSIONS AND RETIREMENT

Storch (Chair), Pritt, C. (Vice Chair), Hornbuckle (Minority Chair), Pritt E. (Minority Vice Chair), Anderson, Kump, Marple

POLITICAL SUBDIVISIONS

Martin (Chair), Forsht (Vice Chair), Williams (Minority Chair), Hansen (Minority Vice Chair), Anderson, Barnhart, Brooks, Clark, Coop-Gonzalez, Dean, Foster, A. Hall, W. Hall, Hanna, Hardy, Hite, Holstein, Howell, Maynor, Mazzocchi, Miller, Phillips, Pritt, Rowe, Shamblin

RULES

Hanshaw (Chair), Householder (Vice Chair), Skaff (Minority Chair), Fluharty (Minority Vice Chair), Anderson, Capito, Criss, Ellington, Espinosa, Gearheart, Hardy, Howell, Kelly, Linville, Phillips, Riley, Rohrbach, Storch, Summers, Westfall

SENIOR, CHILDREN, AND FAMILY ISSUES

Mazzocchi (Chair), Petitto (Vice Chair), Griffith (Minority Chair), Rowe (Minority Vice Chair), Adkins, Bridges, Chiarelli, Dean, Dillon, A. Hall, W. Hall, Hanna, Hite, Holstein, Keaton, Kimble, Kirby, Lucas, Martin, Pinson, Rohrbach, Sheedy, Toney, Tully, Walker

SUBSTANCE ABUSE, PREVENTION AND TREATMENT

Rohrbach (Chair), Fehrenbacher (Vice Chair), Butler, Ellington, Gearheart, Hanna, Holstein, Keaton, Kelly, Maynor, Pushkin

HOUSE OF DELEGATES COMMITTEES

TECHNOLOGY AND INFRASTRUCTURE

Linville (Chair), Cannon (Vice Chair), Williams (Minority Chair), Garcia (Minority Vice Chair), Adkins, Brooks, Burkhammer, Butler, Capito, Espinosa, Fehrenbacher, Gearheart, A. Hall, Hillenbrand, Hite, Keaton, Marple, Maynor, Petitto, Ridenour, Riley, Ward, Willis, Young

VETERANS' AFFAIRS AND HOMELAND SECURITY

Cooper (Chair, *Veterans' Affairs*), Jennings (Chair, *Homeland Security*), Longanacre (Vice Chair, *Veterans' Affairs*), Honaker (Vice Chair, *Homeland Security*), Pushkin, (Minority Chair, *Homeland Security*), Griffith (Minority Chair, *Veterans' Affairs*), Anderson, Barnhart, Butler, Coop-Gonzalez, Crouse, Fluharty, Heckert, Hillenbrand, Jeffries, Kimble, Kirby, Mazzocchi, McGeehan, Nestor, Reynolds, Ridenour, Sheedy, Smith, Steele

WORKFORCE DEVELOPMENT

Worrell (Chair), Reynolds (Vice Chair), Young (Minority Chair), Hornbuckle (Minority Vice Chair), Adkins, Butler, Cannon, Clark, Crouse, DeVault, Dittman, Ellington, Fast, Fehrenbacher, Ferrell, Forsht, Foster, Gearheart, Hansen, Horst, Mallow, Miller, Nestor, Warner, Zatezalo

SENATE COMMITTEES

COMMITTEES OF THE SENATE

As of February 17, 2023

AGRICULTURE AND NATURAL RESOURCES

Hamilton (Chair), Stover (Vice Chair), Deeds, Grady, Jeffries, Karnes, Phillips, Smith, Stuart, Swope, Taylor, Woelfel, Woodrum

BANKING AND INSURANCE

Azinger (Chair), Oliverio (Vice Chair), Barrett, Boley, Clements, Maroney, Nelson, Plymale, Queen, Tarr

CONFIRMATIONS

Boley (Chair), Chapman (Vice Chair), Azinger, Caputo, Martin, Phillips, Takubo, Tarr, Weld

ECONOMIC DEVELOPMENT

Jeffries (Chair), Martin (Vice Chair), Chapman, Hamilton, Hunt, Nelson, Oliverio, Plymale, Queen, Roberts, Stover, Stuart, Swope, Tarr

EDUCATION

Grady (Chair), Clements (Vice Chair), Azinger, Boley, Chapman, Deeds, Maynard, Oliverio, Plymale, Roberts, Stover, Taylor, Trump

ENERGY, INDUSTRY AND MINING

Smith (Chair), Queen (Vice Chair), Barrett, Boley, Caputo, Karnes, Martin, Nelson, Oliverio, Phillips, Stover, Stuart, Swope, Taylor

SENATE COMMITTEES

ENROLLED BILLS

Woodrum (Chair), Roberts (Vice Chair), Jeffries, Maynard, Woelfel

FINANCE

Tarr (Chair), Phillips (Vice Chair), Barrett, Boley, Clements, Jeffries, Maroney, Nelson, Oliverio, Plymale, Queen, Roberts, Smith, Swope, Takubo, Woodrum

GOVERNMENT ORGANIZATION

Woodrum (Chair), Barrett (Vice Chair), Hamilton, Hunt, Jeffries, Maroney, Phillips, Queen, Smith, Stuart, Swope, Weld, Woelfel

HEALTH AND HUMAN RESOURCES

Maroney (Chair), Takubo (Vice Chair), Azinger, Chapman, Deeds, Grady, Hamilton, Hunt, Jeffries, Plymale, Roberts, Rucker, Tarr, Weld

JUDICIARY

Trump (Chair), Weld (Vice Chair), Azinger, Caputo, Chapman, Deeds, Hamilton, Hunt, Martin, Maynard, Rucker, Stover, Stuart, Taylor, Woelfel

MILITARY

Weld (Chair), Deeds (Vice Chair), Caputo, Chapman, Clements, Maroney, Smith, Taylor

OUTDOOR RECREATION

Maynard (Chair), Taylor (Vice Chair), Caputo, Chapman, Deeds, Grady, Martin, Rucker, Smith, Stover, Stuart

SENATE COMMITTEES

PENSIONS

Nelson (Chair), Hunt (Vice Chair), Azinger, Barrett, Clements, Grady, Hamilton, Oliverio, Plymale, Queen

RULES

Blair (Chair), Takubo (Vice Chair), Azinger, Boley, Grady, Maroney, Nelson, Tarr, Trump, Weld, Woelfel, Woodrum

SCHOOL CHOICE

Rucker (Chair), Maynard (Vice Chair), Boley, Deeds, Karnes, Roberts, Woelfel, Woodrum

TRANSPORTATION AND INFRASTRUCTURE

Clements (Chair), Stuart (Vice Chair), Barrett, Hunt, Jeffries, Karnes, Oliverio, Phillips, Plymale, Roberts, Swope

WORKFORCE

Roberts (Chair), Jeffries (Vice Chair), Caputo, Karnes, Maroney, Martin, Nelson, Smith, Stover, Tarr, Weld

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST REGULAR SESSION, 2023

CHAPTER 1

(Com. Sub. for H. B. 2605 - By Delegates Zatezalo, Anderson, Fehrenbacher, Reynolds, Barnhart, Cooper, Nestor, Riley, Linville, Howell and Gearhart)

[Passed March 6, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §55-7-15 and §55-7-17 of the Code of West Virginia, 1931, as amended, all relating to actions for injuries; providing that certain persons or an entity who in good faith render or provide emergency care or assistance to a person at the scene of an accident, emergency, or disaster, voluntarily and without remuneration, are not liable for civil damages for acts or omissions at the scene; providing that persons trained in a qualified program of emergency services who in good faith render or provide advice, assistance, equipment, or materials at the scene of an actual or threatened accident, emergency, or disaster, voluntarily and without remuneration, are not liable for civil damages for acts or omissions at the scene; allowing reimbursement for out-of-pocket expenses for equipment and materials without losing immunity; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-15. Aid to victim of accident, emergency, or disaster; immunity from civil liability, definitions.

(a) A person, including, without limitation, trained, licensed, or certified professionals, or an entity who in good faith renders or provides emergency care, or assistance at the scene of an accident, emergency, or disaster, voluntarily and without remuneration, may not be liable for any civil damages as the result of any act or omission at the scene in rendering, or providing emergency care or assistance.

(b) For purposes of this section, the term "emergency" means any instance where a person suffers from a medical condition requiring immediate treatment due to natural causes, accident, or crime.

(c) For purposes of this section, "disaster" has the same meaning as that term is defined in §15-5-2 of this code.

§55-7-17. Aid by trained emergency services personnel; entities, immunity from civil liability; definitions.

(a) A person trained in a qualified program of emergency services or an entity, who voluntarily and in good faith renders or provides advice, assistance, equipment, or materials at the scene of an actual or threatened accident, emergency, or disaster, and receives no remuneration for rendering or providing the advice, assistance, equipment, or materials is not liable for any civil damages as the result of any act or omission at the scene in rendering or providing advice, assistance, equipment, or materials: *Provided*, That the exemption from liability for civil damages of this section shall be extended to any person who receives reimbursement for out-of-pocket expenses incurred in rendering or providing the advice, assistance, equipment, or materials or compensation from his or her regular employer for the time period during which he or she was actually engaged in rendering or providing advice, assistance, equipment, or materials, but is not extended to that person or an entity who by his, or her, or its act or omission caused or contributed to the cause of the actual or threatened accident, emergency, or disaster.

(b) For purposes of this section, the term "emergency" includes, without limitation, any instance where a person suffers

from a medical condition requiring immediate treatment due to natural causes, accident, or crime.

(c) For purposes of this section, the term "disaster" has the same meaning as that term is defined in §15-5-2 of this code and temporally includes the imminent threat of disaster as well as its occurrence.

(d) For purposes of this section, the term "emergency services" means any mine rescue response services, hazardous substance response services, chemical substance and materials response services, hazardous waste response services and further has the meaning as the term is defined in §15-5-2 of the code.



CHAPTER 2

(S. B. 533 - By Senator Nelson)

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §19-4-1 of the Code of West Virginia, 1931, as amended, relating to limitations on motor vehicles used by nonprofit cooperative recycling associations for the collection and transportation of recyclable goods.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COOPERATE ASSOCIATIONS.

§19-4-1. Definitions.

As used in this article:

(a) "Agricultural products" means horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any farm products in their natural form or processed.

(b) "Goods and services" means food and beverages, arts and crafts, woodworking and furniture-making, and recycling, composting and repurposing materials.

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

(d) "Cooperative association" or "association" means any corporation organized under this article. Each association shall also comply with the requisite business corporation provisions of chapter 31D or 31F of this code, or the nonprofit corporation provisions of chapter 31E of this code.

Except within a 35 mile radius of a facility that has been permitted and classified by the West Virginia Department of Environmental Protection as a mixed waste processing resource recovery facility, a recycling cooperative association may be organized as a nonprofit corporation pursuant to chapter thirty-one-e of this code. The recyclable goods must be generated by members of the recycling cooperative association and shall be limited to recyclable goods not collected by a certified waste motor carrier as defined pursuant to §24A-1-2 of this code in the same area the recycling cooperative is located. If a motor carrier receives a certificate of need to serve the same area with the same services as the cooperative, then the cooperative shall cease providing those services.

(e) "Qualified person" means a person who is engaged in the producing, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling, utilizing, marketing, financing, selling, distributing, shipping, procuring or providing of agricultural products, or other goods and services, or the by-products thereof.

(f) "Qualified activity" means those engaged in the producing, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling, utilizing, marketing, financing, selling, distributing, shipping, procuring or providing of agricultural products, or other goods and services, or the by-products thereof.



CHAPTER 3

(H. B. 3560 - BY DELEGATE HOWELL)

[Passed March 10, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §19-25-5 of the Code of West Virginia, 1931, as amended, relating to expanding the definitions of “land” and “recreational purposes” to include rock climbing, rope related, and bouldering activities and to make certain technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§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 Recreation Authority or activities sponsored on the Hatfield-McCoy regional recreational authority; (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, rocks, boulders, caves, 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, a 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, rock climbing, bouldering, caving, rappelling, slacklining 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, 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.



CHAPTER 4

(Com. Sub. for S. B. 534 - By Senators Trump, Takubo, and Maroney)

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §8-12-26 and §8-12-27; to amend and reenact §11-16-3, §11-16-6, §11-16-6a, §11-16-6d, §11-16-6f, §11-16-8, §11-16-9 of said code; to amend and reenact §60-3A-3a, and §60-3A-8 of said code; to amend and reenact §60-4-3a and §60-4-3b of said code; to amend and reenact §60-7-2, §60-7-2a, §60-7-6, and §60-7-8a of said code; to amend said code by adding thereto a new section designated §60-7-8g; to amend said code by adding thereto a new section, designated §60-8-6g; to amend and reenact §60-8A-5 of said code; and to amend and reenact §61-8-27 of said code; all relating to nonintoxicating beer, nonintoxicating craft beer, hard cider, wine, and liquor license requirements; defining terms; authorizing municipalities to create private outdoor designated areas by ordinances; creating special permit for Class A licensees who apply to be qualified permit holders to operate in private outdoor designated areas, setting forth requirements, and setting fees; providing municipalities may not impose additional license fees on any state licensee; promoting tourism in the state by permitting authorized brewers, resident brewers, wineries, farm wineries, distilleries, mini-distilleries, and micro-distilleries a limited off-site retail privilege for off-premises consumption sales for nonintoxicating beer manufactured by them and permitting limited complimentary samples at private fair and festivals; providing requirements for the conduct of the sales at private fairs and festivals; requiring payment of taxes, fees and markups, and no license fee; clarifying the

nonintoxicating beer growler requirements for contents and sealing; allowing brewer and resident brewer to have additional places of manufacture under one license and based on manufacturing volume capacity; reducing fees and limiting additional places of manufacture under one license; forbidding the commissioner from considering licenses in other state as a criterion when evaluating applications for licensure in this state; providing that any applicant for licensure in this state must meet all requirements, must be in good standing in all other states and must never had a license revoked in any other state in which it is licensed; providing, that persons licensed as resident brewers in this state are limited to producing 25,000 barrels of non-intoxicating beer and limited to self-distribution rights of 10,000 barrels of non-intoxicating beer; providing that such production and distribution limits shall apply, in the aggregate, whether produced in another state or West Virginia, as to all non-intoxicating beer produced by a person licensed as a resident brewer in West Virginia; providing a licensed brewer or resident brewer may enter into contract brewing services agreements with another licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia for purposes of sharing brewing equipment or facilities as part of the manufacture of nonintoxicating beer or nonintoxicating craft beer; requiring any such contract brewing services agreement shall be provided to the West Virginia Alcohol Beverage and Control Administration and contain enumerated terms and conditions: removing limit on nonintoxicating beer or nonintoxicating craft beer which may be included with an order, sale or delivery of multiple meals; allowing commissioner to refuse a license if applicant or manager is not a suitable applicant; increasing number and size of liquor samples that are permitted; requiring manager to be suitable applicant and of good moral character; reducing and modifying food inventory required for private cigar shop, private club bars, private food truck, private manufacturer club, private hotel, private resort hotel, private farmers market in a private club restaurant, private multi-sport complex, and private food court; allowing a private manufacturer club to have operating food truck or other portable kitchen in lieu of on-premises food

preparation facilities; removing acreage requirement for private wedding venue or barn license; clarifying nonintoxicating beer license requirements for persons, fairs and festivals; clarifying retail liquor outlet license requirements for applicants; clarifying that the statute applying to distilleries and mini-distilleries also applies to micro-distilleries; clarifying manufacturing limitations on distilleries, mini-distilleries, and micro distilleries; permitting dually licensed events, and a license fee; creating a private coliseum or center license and specifying license requirements; authorizing private coliseum or center license to conduct a temporary event in conjunction with a private fair and festival licensee and setting forth requirements; setting fees; creating a private food court license and specifying license requirements; clarifying dual licensing requirements and authorization for private fair and festivals, requirements, and no license fee; permitting private fairs and festivals to conduct on-premises consumption sales with certain requirements; permitting private fairs and festivals to allow authorized brewers, resident brewers, wineries, farm wineries, distilleries, mini-distilleries, and micro-distilleries to conduct limited off-premises consumption retail sales with certain requirements from the private fair and festival's licensed premises; permitting a private wine restaurant to operate a separately licensed but connected wine specialty shop; clarifying unlawful admission to dance hall; and exempting permit holder operating a private outdoor designated area, private coliseum or center licensee, or private food court from prohibition on admitting persons under the age of 18.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-26. Authorizing municipalities to create private outdoor designated areas.

(a) In addition to all other powers and duties conferred by law upon municipalities, municipalities are empowered and authorized pass an ordinance establishing private outdoor designated areas as described in §60-7-8g of this code.

(b) The municipality shall include in the ordinance, at a minimum, all of the following:

(1) Requirements for the purpose of ensuring compliance with all state and municipal laws, and public health and safety within a private outdoor designated area;

(2) The proposed outdoor designated area or proposed licensed premises shall be indicated on a submitted map or survey in sufficient detail to identify the boundaries of the area, subject to the limitations in subsection (b) of this section;

(3) A general statement of the nature and types of qualified permit holders that may operate within the proposed outdoor designated area;

(4) That certain public property that is legally demarcated by the ordinance is within the proposed private outdoor designated area and such area is in compliance with the comprehensive plan or zoning ordinances of the municipality, if the municipality has so adopted, for the consumption of liquor, wine, nonintoxicating beer and nonintoxicating craft beer;

(5) The specific boundaries of the private outdoor designated area, including street addresses;

(6) The number, spacing, and type of signage designating the private outdoor designated area;

(7) The days and hours of operation for the private outdoor designated area which may not be greater than, authorized by §11-16-1 *et seq.* and chapter 60 of this code, but may be less than;

(8) The estimated number of personnel needed to ensure public safety and efficient operations in the private outdoor designated area;

(9) A sanitation plan that will help maintain the appearance and public health of the private outdoor designated area, including the number of restrooms and trash receptacles.

(10) A requirement that liquor, wine, nonintoxicating beer, and nonintoxicating craft beer be served in non-glass containers, not greater than 18 fluid ounces, approved by the municipality and the commissioner as set forth in §60-7-8g of this code; and

(11) Public health and safety measures, and requirements to meet compliance with current health permitting and zoning requirements.

(c) The municipality shall provide to the commissioner notice of the approval of the private outdoor designated area and identify the qualified permit holders that will be applying for permits set forth in §60-7-8g of this code.

(d) The municipality shall be responsible for ensuring compliance with its ordinances and compliance with all criminal laws associated with the operation of a private outdoor designated area. The municipality shall provide the commissioner copies of all non-compliance and violations. The commissioner shall ensure all qualified permit holders operate in accordance with requirements set forth in §11-16-1 *et seq.* and chapter 60 of this code.

(e) The municipality shall have the authority to dissolve a private outdoor designated area by ordinance and further may suspend a private outdoor designated area immediately when in the interest of public safety.

§8-12-27. Prohibiting municipalities from imposing additional alcohol licensure fees.

Notwithstanding any provision of this code to the contrary, any person licensed under §11-16-1 *et seq.* of this code, shall not be charged any additional alcohol licensure fee by a municipality.

CHAPTER 11. TAXATION.**ARTICLE 16. NONINTOXICATING BEER.****§11-16-3. Definitions.**

For the purpose of this article, except where the context clearly requires differently:

(1) "Brand" means a nonintoxicating beer product manufactured, brewed, mixed, concocted, blended, bottled, or otherwise produced, imported, or transshipped by a brewer or manufacturer, the labels of which have been registered and approved by the commissioner, that is being offered for sale or sold in West Virginia by a distributor who has been appointed in a valid franchise agreement or a valid amendment thereto.

(2) "Brewer" or "manufacturer" means any person manufacturing, otherwise producing, importing, or transshipping nonintoxicating beer or nonintoxicating craft beer for sale at wholesale to any licensed distributor. Brewer or manufacturer may be used interchangeably throughout this article. A brewer may obtain only one brewer's license for its nonintoxicating beer or nonintoxicating craft beer.

(3) "Brewpub" means a place of manufacture of nonintoxicating beer or nonintoxicating craft beer owned by a resident brewer, subject to federal and state regulations and rules, a portion of which premises is designated for retail sales of nonintoxicating beer or nonintoxicating craft beer by the resident brewer owning the brewpub.

(4) "Class A retail license" means a retail license permitting the retail sale of liquor at a freestanding liquor retail outlet, licensed pursuant to §60-1-1 *et seq.* of this code.

(5) "Class B retail license" means a retail license permitting the retail sale of liquor at a mixed retail liquor outlet licensed pursuant to §60-1-1 *et seq.* of this code.

(6) "Commissioner" means the West Virginia Alcohol Beverage Control Administration Commissioner.

(7) "Distributor" means and includes any person jobbing or distributing nonintoxicating beer or nonintoxicating craft beer to retailers at wholesale and whose warehouse and chief place of business is within this state. For purposes 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 §11-16-1 *et seq.* of this code notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

(8) "Franchise agreement" means the written agreement between a brewer and a distributor that is identical as to terms and conditions between the brewer and all its distributors, which has been approved by the commissioner. The franchise agreement binds the parties so that a distributor, appointed by a brewer, may distribute all the brewer's nonintoxicating beer products, brands, or family of brands imported and offered for sale in West Virginia, including, but not limited to, existing brands, line extensions, and new brands all in the brewer's assigned territory for the distributor. All brands and line extensions being imported or offered for sale in West Virginia must be listed by the brewer in the franchise agreement or a written amendment to the franchise agreement. A franchise agreement may be amended by mutual written agreement of the parties as approved by the commissioner with identical terms and conditions for a brewer and all its distributors. Any approved amendment to the franchise agreement becomes a part of the franchise agreement. A brewer and a distributor may mutually agree in writing to cancel a franchise agreement. A distributor terminated by a brewer as provided in this article and the promulgated rules no longer has a valid franchise agreement. If a brewer has reached an agreement to cancel a distributor or has terminated a distributor, then a brewer may appoint a successor

distributor who accedes to all the rights of the cancelled or terminated distributor.

(9) "Franchise distributor network" means the distributors who have entered into a binding written franchise agreement, identical as to terms and conditions, to distribute nonintoxicating beer products, brands, and line extensions in an assigned territory for a brewer. A brewer may only have one franchise distributor network: *Provided*, That a brewer that has acquired the manufacturing, bottling, or other production rights for the sale of nonintoxicating beer at wholesale from a selling brewer, as specified in §11-16-21(a)(2) of this code, shall continue to maintain and be bound by the selling brewer's separate franchise distributor's network for any of its existing brands, line extensions, and new brands.

(10) "Freestanding liquor retail outlet" means a retail outlet that sells only liquor, wine, beer, nonintoxicating beer, and other alcohol-related products, as defined pursuant to §60-3A-4 of this code.

(11) "Growler" means a container or jug that is made of glass, ceramic, metal, 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 used by an authorized licensee for purposes of off-premise sales only of nonintoxicating beer or nonintoxicating craft beer for personal consumption not on a licensed premise and not for resale. The nonintoxicating beer or nonintoxicating craft beer served and sold in a sealed growler may include ice or water mixed with the nonintoxicating beer or nonintoxicating craft beer to create a frozen nonintoxicating beer or nonintoxicating craft beer beverage. Any frozen nonintoxicating beer or nonintoxicating craft beer beverage machine used for filling growlers shall be sanitized daily, shall be under the control of the licensee in the secure area, and served to the patron by the licensee from the secure area. Notwithstanding any other provision of this code to the contrary, a securely sealed growler is not an open container under federal, state, and local law. A growler with a broken seal is an open container under federal, state, and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. The

secure sealing of a growler requires the use of a tamper-evident seal, security tape, or other material, as approved by the commissioner, placed on or over the growler's opening, which seal, security tape or other material is clearly marked with the date of the secure sealing by the authorized licensee who is selling the growler.

(12) "Line extension" means any nonintoxicating beer product that is an extension of a brand or family of brands that is labeled, branded, advertised, marketed, promoted, or offered for sale with the intent or purpose of being manufactured, imported, associated, contracted, affiliated, or otherwise related to a brewer's existing brand through the use of a brewer, its subsidiaries, parent entities, contracted entities, affiliated entities, or other related entities. In determining whether a nonintoxicating beer product is a line extension, the commissioner may consider, but is not limited to, the following factors: Name or partial name; trade name or partial trade name; logos; copyrights; trademarks or trade design; product codes; advertising promotion; or pricing.

(13) "Manager" means an individual who is the applicant's or licensee's on-premises employee, member, partner, shareholder, director, or officer who meets the licensure requirements of §11-16-1 *et seq.* of this code and rules promulgated thereunder who actively manages, conducts, and carries on the day-to-day operations of the applicant or licensee with full and apparent authority or actual authority to act on behalf of the applicant or licensee. Duties include but are not limited to: Coordinating staffing; reviewing and approving payroll; ordering and paying for inventory, such as nonintoxicating beer, wine, and liquor, as applicable; and managing security staff, security systems, video, and other security equipment; and any further acts or actions involved in managing the affairs of the business, on behalf of owners, partners, members, shareholders, officers, or directors.

(14) "Nonintoxicating beer" means all natural cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale, and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers with no caffeine infusion or any

additives masking or altering the alcohol effect containing at least one half of one percent alcohol by volume, but not more than 11.9 percent of alcohol by weight, or 15 percent alcohol by volume, whichever is greater. The word "liquor", as used in §60-1-1 *et seq.* of this code, does not include or embrace nonintoxicating beer nor any of the beverages, products, mixtures, or preparations included within this definition.

(15) "Nonintoxicating beer floor plan extension" means a temporary one-day extension of an existing Class A licensee's floor plan to a contiguous, adjoining, and bounded area, such as a parking lot or outdoor area, which shall for the temporary period encompass the licensee's licensed premises; further the license shall be endorsed or approved by the county or municipality where the license is located; the license shall be in good standing with the commissioner, and further the temporary event shall cease on or before midnight of the approved temporary one-day event.

(16) "Nonintoxicating beer sampling event" means an event approved by the commissioner for a Class A retail licensee to hold a nonintoxicating beer sampling authorized pursuant to §11-16-11a of this code.

(17) "Nonintoxicating beer sampling day" means any days and hours of the week where Class A retail licensees may sell nonintoxicating beer, pursuant to §11-16-11a and §11-16-18(a)(1) of this code, and who are approved, in writing, by the commissioner to conduct a nonintoxicating beer sampling event.

(18) "Nonintoxicating craft beer" means any beverage obtained by the natural fermentation of barley, malt, hops, or any other similar product or substitute and containing not less than one half of one percent by volume and not more than 15 percent alcohol by volume or 11.9 percent alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol effect.

(19) "Original container" means the container used by a resident brewer or brewer at the place of manufacturing, bottling, or otherwise producing nonintoxicating beer or nonintoxicating craft beer for sale at wholesale.

(20) "Person" means and includes an individual, firm, partnership, limited partnership, limited liability company, association, or corporation.

(21) "Private club" means a license issued pursuant to §60-7-1 *et seq.* of this code.

(22) "Resident brewer" means any brewer or manufacturer of nonintoxicating beer or nonintoxicating craft beer whose principal place of business and manufacture is located in the State of West Virginia; which may also have multiple manufacturing locations located in West Virginia as set forth in §11-16-9 of the code; and which does not brew or manufacture more than 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer annually at all manufacturing locations in the aggregate and does not self-distribute more than 10,000 barrels thereof in the State of West Virginia annually from all manufacturing locations in the aggregate.

(23) "Retailer" means any person selling, serving, or otherwise dispensing nonintoxicating beer and all products regulated by this article, including, but not limited to, malt coolers at his or her established and licensed place of business.

(24) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or the commissioner's designee.

§11-16-6. License in one capacity only; no connection between different licensees; when brewer may act as distributor; credit and rebates proscribed; brewer, resident brewer, and brewpub requirements.

(a) A person shall not be licensed in more than one capacity under the terms of this article, and there shall be no connection whatsoever between any retailer, distributor, resident brewer, or brewer, and a person shall be interested, directly or indirectly, through the ownership of corporate stock, membership in a partnership, or in any other way in the business of a retailer, if the person is at the same time interested in the business of a brewer, resident brewer or distributor. A resident brewer may act as

distributor in a limited capacity for his or her own product from the resident brewery or place of manufacture or bottling, but a resident brewer, is not permitted to act as a distributor as defined in §11-16-3 of this code: *Provided*, That nothing in this article may prevent a resident brewer from using the services of licensed distributors as specified in this article. A resident brewer or distributor may sell to a patron 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. A resident brewer who also has a brewpub license may sell nonintoxicating beer or nonintoxicating craft beer produced by the resident brewer in cans, bottles, or sealed growlers, pursuant to §11-16-6b of this code, for personal consumption off of the brewpub's licensed premises and not for resale.

In order to promote the state's hospitality and tourism industry, as well as promoting economic development within the state by supporting the development of local breweries, including the application for licensure of brewery owners seeking licensure as a resident brewer in this state while licensed in other states, the commissioner may not consider licensure in such other states as a limiting factor or as the basis of licensure denial when evaluating applications for licensure as a resident brewer in this state. Any applicant seeking licensure as a resident brewer in this state (1) must meet all requirements for licensure as a resident brewer in this state, (2) must be in good standing in all other jurisdictions wherein the applicant is licensed as a brewer or resident brewer as such terms are defined in the licensing jurisdiction and, (3) must never have had a license revoked in any other state; *Provided*, that persons licensed as resident brewers in this state are limited to producing 25,000 barrels of non-intoxicating beer and limited to self-distribution rights of 10,000 barrels of non-intoxicating beer, and such production and distribution limits shall apply, in the aggregate, whether produced in another state or West Virginia, as to all non-intoxicating beer produced by a person licensed as a resident brewer in West Virginia.

(b) It is unlawful for any brewer, resident brewer, manufacturer, or distributor to assist any retailer or for any retailer

to accept assistance from any brewer, manufacturer, or distributor, accept any gifts, loans, forbearance of money or property of any kind, nature, or description, or other thing of value, or give any rebates or discounts of any kind whatsoever, except as permitted by rule, or order promulgated by the commissioner in accordance with this article.

(c) Notwithstanding subsections (a) and (b) of this section, a brewpub may offer for retail sale nonintoxicating beer or nonintoxicating craft beer so long as the sale of the nonintoxicating beer or nonintoxicating craft beer is limited to the brewpub's licensed premises, except as provided in §11-16-6b of this code.

(d) A brewer or resident brewer licensed under this section may also be licensed under §60-4-1 *et seq.* of this code: *Provided*, That the holder of the license meets all the requirements for the additional licenses required by the commissioner and pays all fees related to the license: *Provided, however*, That the licensee maintains all the rights and privileges associated with the license.

§11-16-6a. Brewer and resident brewer license to manufacture, sell, and provide complimentary samples.

(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 nonintoxicating beer and nonintoxicating craft beer and its industry in this state in order 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 brewer or resident brewer with its principal place of business and manufacture located in this state to have certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft beer manufactured in this state for the benefit of the citizens of this state, the state's growing brewing industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of nonintoxicating beer.* — A licensed brewer or resident brewer with its principal place of business and

manufacture located in the State of West Virginia may offer only nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident brewer for retail sale to customers from the brewer's or resident brewer's licensed premises for consumption off of the licensed premises only in the form of kegs, bottles, cans, or growlers for personal consumption and not for resale. A licensed brewer or resident brewer may not sell, give, or furnish nonintoxicating beer for consumption on the premises of the principal place of business and manufacture located in the State of West Virginia, except for the limited purpose of complimentary samples as permitted in subsection (c) of this section.

(c) *Complimentary samples.* — A licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia may only offer complimentary samples of nonintoxicating beer or nonintoxicating craft beer brewed at the brewer's or resident brewer's principal place of business and manufacture located in the State of West Virginia. The complimentary samples may be no greater than two ounces per sample per patron, and a sampling shall not exceed 10 complimentary two-ounce samples per patron per day. A licensed brewer or resident brewer providing complimentary samples shall provide complimentary food items to the patron consuming the complimentary samples; and prior to any sampling, verify, using proper identification, that the patron sampling is 21 years of age or over and that the patron is not visibly intoxicated.

(d) *Retail sales.* — Every licensed brewer or resident brewer under this section shall comply with all the provisions of this article as applicable to nonintoxicating beer retailers when conducting sales of nonintoxicating beer or nonintoxicating craft beer and shall be subject to all applicable requirements and penalties in this article. In the interest of promoting tourism throughout the state, every licensed brewer or resident brewer manufacturing nonintoxicating beer or nonintoxicating craft beer in this state is authorized, with a limited off-site retail privilege at private fair and festivals, for off-premises consumption sales of only the brewer or resident brewer's sealed nonintoxicating beer or nonintoxicating craft beer. At least five days prior to an approved private fair and

festival, an authorized brewer or resident brewer shall provide a copy of a written agreement to sell only nonintoxicating beer or nonintoxicating craft beer manufactured by the brewer or resident brewer at the private fair and festival's licensed premises. If approved, an authorized brewer or resident brewer may conduct off-premises consumption sales of their nonintoxicating beer or nonintoxicating craft beer from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved brewers or resident brewers conducting the off-premises consumption sales shall comply with all retail requirements in §11-16-1 *et seq.* of this code, and specifically with respect to all markups, taxes, and fees. Additionally, an authorized brewer or resident brewer may provide complimentary samples to patrons who are 21 years of age or over and who are not intoxicated in the amounts set forth in subsection (c).

(e) *Payment of taxes and fees.* — A licensed brewer or resident brewer under this section shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(f) *Advertising.* — A licensed brewer or resident brewer under this section may advertise a particular brand or brands of nonintoxicating beer or nonintoxicating craft beer produced by the licensed brewer or resident brewer and the price of the nonintoxicating beer or nonintoxicating craft beer subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance.

(g) *Growler requirements.* — A licensed brewer or resident brewer under this section shall fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensed brewer or resident brewer under this section shall sanitize, fill, securely seal, and label any growler prior to its sale. A licensed brewer or resident brewer under this section may only offer for retail sale growlers no larger than 128 fluid ounces of nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident brewer for personal consumption off of the licensed premises and not for resale. A licensed brewer

or resident brewer under this section may refill a growler subject to the requirements of this section. A licensed brewer or resident brewer shall visually inspect any growler before filling or refilling it. A licensed brewer or resident brewer may not fill or refill any growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.

(h) *Growler labeling.* — A licensed brewer or resident brewer under this section selling growlers shall affix a conspicuous label on all sold and securely sealed growlers listing the name of the licensee selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer in the growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating craft beer in the growler, and the date the growler was filled or refilled, and, further, all labeling on the growler shall be consistent with all federal labeling and warning requirements.

(i) *Growler sanitation.* — A licensed brewer or resident brewer authorized under this section shall clean and sanitize all growlers he or she fills or refills in accordance with all state and county health requirements prior to its sealing. In addition, the licensed brewer or resident brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipelines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under §11-16-23 of this code.

(j) *Fee.* — There is no additional fee for a licensed brewer or resident brewer authorized under this section to sell growlers.

(k) *Limitations on licensees.* — To be authorized under this section, a licensed brewer or resident brewer may not produce more than 25,000 barrels per calendar year at the brewer's or resident brewer's principal place of business and manufacture located in the State of West Virginia. No more than one brewer or resident brewer license may be issued to a single person or entity and no person may hold both a brewer and a resident brewer license. A licensed brewer or resident brewer under this section may only conduct tours, give complimentary samples, and sell growlers during the hours of operation set forth in §11-16-18(a)(1) of this code. A

licensed brewer or resident brewer authorized under this section shall be subject to the applicable penalties under §11-16-23 of this code for violations of this section.

(1) (1) *Contract Brewing Services Agreements.* - A licensed brewer or resident brewer may enter into contract brewing services agreements with another licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia for purposes of sharing brewing equipment or facilities as part of the manufacture of nonintoxicating beer or nonintoxicating craft beer. Any such contract brewing services agreement shall be provided to the West Virginia Alcohol Beverage and Control Administration and set forth the following terms and conditions:

(A) The licensed brewer or resident brewer serving as the brewer of record and retaining ownership, rights, title, and interest in the nonintoxicating beer or nonintoxicating craft beer recipe and brand;

(B) The licensed brewer or resident brewer who will be responsible for executing any brew of nonintoxicating beer or nonintoxicating craft beer;

(C) The location of the facilities to be utilized for the manufacture of the nonintoxicating beer or nonintoxicating craft beer;

(D) Specifications regarding the packaging of all nonintoxicating beer or nonintoxicating craft beer manufactured under the contract brewing services agreement; and

(E) The manner of payment of any and all federal and state excise taxes associated with the manufactured nonintoxicating beer or nonintoxicating craft beer.

(2) The licensed brewer or resident brewer serving as the brewer of record is responsible for the transportation of the finished and packaged product to their licensed facility, where it must come to rest and be tax determined. Any nonintoxicating beer or nonintoxicating craft beer manufactured pursuant to a contract

brewing services agreement shall be credited to the specified brewer of record for purposes of the barrel limitations set forth in §11-16-6a(k) of this code, and not the licensed brewer or resident brewer responsible for executing any brew on behalf of the brewer of record.

(m) *Rules.* — The commissioner, in consultation with the Bureau for Public Health concerning sanitation, may propose rules for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

§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 nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older, may 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) 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 \$20 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 this code, or craft cocktail growler delivery as set forth in §60-7-8f of this code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler may not exceed \$5.

(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 may 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;

(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 and delivery shall be subject to legal identification verification;

(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 and delivery shall be subject to legal identification verification;

(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 shall 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 is 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.

§11-16-6f. 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 by a telephone, a mobile ordering application, or 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 a telephone order, a mobile ordering application, or 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 shall 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 person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older, may 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; and

(4) A third-party delivery licensee may 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 \$20 per delivery order. For any third-party licensee also licensed for wine delivery, as set forth in §60-8-6f of this code, the total convenience fee for any order, sale, and delivery of sealed wine may not exceed \$20.

(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 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;

(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 and delivery shall be subject to legal identification verification;

(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 and delivery shall be subject to legal identification verification;

(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.

§11-16-8. Form of application for license; fee and bond; refusal of license.

(a) A license may be issued by the commissioner to any person who submits an application, accompanied by a license fee and, where required, a bond, and states under oath:

(1) The name and residence of the applicant, the duration of the residency, and that the applicant is 21 years of age. If the applicant is a firm, association, partnership, limited partnership, limited liability company, or corporation, the application shall include the residence of the members or officers. If a person, firm, partnership, limited partnership, limited liability company, association, corporation, or trust applies for a license as a distributor, the person, or in the case of a firm, partnership, limited partnership, limited liability company, association, or trust, the members, officers, trustees, or other persons in active control of the activities of the limited liability company, association, or trust relating to the license, shall include the residency for these persons on the application. All applicants and licensees shall include a manager on the applicant's license application, or a licensee's renewal application, who shall meet all other requirements of licensure. The applicant shall be a United States citizen or a naturalized citizen, pass a background investigation, be at least 21 years of age, be a suitable applicant, and meet other requirements, all as set forth in this article and the rules promulgated hereunder, all in the interest of protecting public health and safety and being a suitable applicant or licensee. In order to maintain licensure, a licensee shall notify the commissioner immediately of a change in managers. If the applicant is a trust or has a trust as an owner, the trustees, or other persons in active control of the activities of the trust relating to the license, shall provide a certification of trust as described in §44D-10-1013 of this code. This certification of trust shall include the excerpts described in §44D-10-1013(e) of this code and shall further state, under oath, the names, addresses, Social Security numbers, and birth dates of the beneficiaries of the trust and certify that the trustee and beneficiaries are 21 years of age or older. If a beneficiary is not 21 years of age, the certification of trust shall state that the beneficiary's interest in the trust is represented by a trustee, parent, or legal guardian who is 21 years of age and who will direct all actions on behalf of the beneficiary related to the trust with respect to the distributor until the beneficiary is 21 years of age. Any beneficiary who is not 21 years of age or older shall have his or her trustee, parent, or legal guardian include in the certification of trust and state under oath his or her name, address, Social Security number, and birth date;

(2) The place of birth of the applicant, that he or she is a citizen of the United States and of good moral character and, if a naturalized citizen, when and where naturalized. If the applicant is a corporation organized or authorized to do business under the laws of the state, the application shall state when and where incorporated, the name and address of each officer, and that each officer is a citizen of the United States and a person of good moral character. If the applicant is a firm, association, limited liability company, partnership, limited partnership, trust, or has a trust as an owner, the application shall provide the place of birth of each member of the firm, association, limited liability company, partnership or limited partnership and of the trustees, beneficiaries, or other persons in active control of the activities of the trust relating to the license and that each member or trustee, beneficiary, or other persons in active control of the activities of the trust relating to the license is a citizen of the United States, and if a naturalized citizen, when and where naturalized, each of whom shall qualify and sign the application;

(3) The particular place for which the license is desired and a detailed description thereof;

(4) The name of the owner of the building and, if the owner is not the applicant, that the applicant is the actual and bona fide lessee of the premises;

(5) That the premises or building in which the applicant proposes to do business conforms to all applicable laws of health, fire, and zoning regulation; is a safe and proper place or building; and is not within 200 feet of a school or church measured from front door-to-front door, along the street or streets. This requirement does not apply to a Class B license or to a place occupied by a beer licensee so long as it is continuously so occupied. The prohibition does not apply to a college, university, or church that has notified the commissioner, in writing, that it has no objection to the location of a proposed business in a place or building within 200 feet of the college, university, or church;

(6) That the applicant is not incarcerated and has not, in the previous five years before application: (A) Been convicted of a

felony; (B) been convicted of a crime involving fraud, dishonesty, or deceit; or (C) been convicted of a felony for violating alcohol-related distribution laws;

(7) That the applicant is the only person in any manner pecuniarily interested in the business to be licensed and that no other person is in any manner pecuniarily interested during the continuance of the license; and

(8) That the applicant has not during five years preceding the date of the application had a nonintoxicating beer license revoked.

(b) In the case of an applicant that is a trust or has a trust as an owner, a distributor license may be issued only upon submission by the trustees or other persons in active control of the activities of the trust relating to the distributor license of a true and correct copy of the written trust instrument to the commissioner for his or her review. Notwithstanding any provision of law to the contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this section is confidential, is not a public record, and is not available for release pursuant to the West Virginia Freedom of Information Act codified in §29B-1-1 *et seq.* of this code.

(c) The provisions and requirements of subsection (a) of this section are mandatory prerequisites for the issuance of a license and, if any applicant fails to qualify, the commissioner shall refuse to issue the license. In addition to the information furnished in any application, the commissioner may make any additional and independent investigation of each applicant, manager, and of the place to be occupied as necessary or advisable and, for this reason, all applications, with license fee and bond, shall be submitted with all true and correct information. For the purpose of conducting the independent investigation, the commissioner may withhold the granting or refusal to grant the license for a 30-day period or until the applicant has completed the conditions set forth in this section. If it appears that the applicant and manager meet the requirements in the code and the rules, including, but not limited to, have not been convicted of a felony in the previous five years before application, have not been convicted of a crime involving fraud, dishonesty, or deceit in the previous five years before application,

have not been convicted of a felony for violating any alcohol-related distribution laws; have not made any false statements or material misrepresentations; involving no hidden ownership; and having no persons with an undisclosed pecuniary interest contained in the application; and if there are no other omissions or failures by the applicant to complete the application, as determined by the commissioner, the commissioner shall issue a license authorizing the applicant to sell nonintoxicating beer or nonintoxicating craft beer.

(d) The commissioner may refuse a license to any applicant under the provisions of this article if the commissioner is of the opinion:

(1) That the applicant or manager has, within the previous five years before application: (A) Been convicted of a felony within the previous five years; (B) been convicted of a crime involving fraud, dishonesty, or deceit; or (C) been convicted of a felony for violating any state or federal alcohol- laws; and (D) that the applicant or the manager is not a suitable applicant;

(2) That the place to be occupied by the applicant is not a suitable place; or is within 200 feet of any school or church measured from front door to front door along the street or streets. This requirement does not apply to a Class B licensee or to a place now occupied by a beer licensee so long as it is continuously so occupied. The prohibition does not apply to a college, university, or church that has notified the commissioner, in writing, that it has no objection to the location of any such place within 200 feet;

(3) That any manager, owner, employee, or other person in a contractual relationship to provide goods or services to the applicant is an active employee of the commissioner; or

(4) That the license should not be issued for reason of conduct declared to be unlawful by this article.

§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, 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 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 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 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 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 Class B license 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 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 \$250 for each place of manufacture, and no more than three places of manufacture are permitted for licensure;

(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, and no more than five places of manufacture are permitted for licensure;

(C) More than 25,001 barrels of nonintoxicating beer or nonintoxicating craft beer, the license fee is \$1,500 for each place of manufacture.

(D) A brewer or resident brewer licensed under paragraph (A) or (B) of this subdivision shall receive one license for use at all places of manufacture; each place of manufacture shall meet all licensing requirements in this article and the rules; and all places of manufacture shall be noted on the one brewer or resident brewer license in compliance with §11-16-5 and §11-16-6a(k) of this code.

(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), 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), 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 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 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 other sites of 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, and the fee may not be prorated or refunded. A licensee shall submit an application, certification that the event meets certain requirements in this code and rules, and any other information

required by the commissioner, 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 municipal government or county commission in the which the licensee operates. The Class A retail dealer shall submit to the municipal government or county commission, 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. For private outdoor street dining, or private 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 temporary private outdoor dining or temporary private outdoor street dining area set forth in §60-7-8d of this code and temporary private wine outdoor dining or temporary 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.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-3a. Liquor sampling.

(a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee may conduct a liquor sampling event on a designated sampling day.

(b) At least five business days prior to the liquor sampling, the Class A retail licensee shall submit a written proposal to the commissioner informing the Commissioner that the Class A licensee will hold a liquor sampling event, including:

- (1) The day of the event;
- (2) The location of the event;
- (3) The times for the event; and

(4) The specific brand and flavor of the West Virginia product to be sampled.

(c) Upon approval by the commissioner, a Class A retail licensee may serve a complimentary liquor sample of the approved brand and flavor of the West Virginia product that is purchased by the Class A retail licensee from the commissioner.

(d) The complimentary liquor samples on any sampling day shall not exceed:

(1) Three separate and individual samples serving per customer verified to be 21 years of age or older; and

(2) One and one-half ounces in total volume. Samples may be mixed with each other or with non-alcoholic liquids as long as the

total amount of the liquor sampled does not exceed one and one-half ounces.

(e) Servers at the liquor sampling event shall:

- (1) Be employees of the Class A retail licensee; and
- (2) Be at least 21 years of age or older.

(f) All servers at the liquor sampling event shall verify the age of the customer sampling liquor by requiring and reviewing proper forms of identification. Servers at the liquor sampling event may not serve any person who is:

- (1) Under the age of 21 years;
- (2) Intoxicated.

(g) A liquor sampling event shall:

- (1) Occur only inside the Class A retail licensee's licensed premises; and
- (2) Cease on or before 9:00 p.m. on any approved sampling day.

(h) Any liquor bottle used for sampling must be from the inventory of the licensee, and clearly and conspicuously labeled "SAMPLE, NOT FOR RESALE". If the seal is broken on any liquor bottle or if any liquor bottle is opened, then that liquor bottle must be removed from the licensed premises immediately following the event.

(i) Violations of this section are subject to the civil and criminal penalties set forth in §60-3A-24, §60-3A-25a, §60-3A-26, and §60-3A-27 of this code;

§60-3A-8. Retail license application requirements; retail licensee qualifications.

(a) Prior to or simultaneously with the submission of a bid for a retail license or the payment of a purchase option for a Class A

retail license, each applicant shall file an application with the commissioner, stating under oath, the following:

(1) If the applicant is an individual, his or her name and residence address;

(2) If the applicant is other than an individual, the name and business address of the applicant; the state of its incorporation or organization; the names and residence addresses of each executive officer and other principal officer, partner, or member of the entity; a copy of the entity's charter or other agreement under which the entity operates; the names and residence addresses of any person owning, directly or indirectly, at least 20 percent of the outstanding stock, partnership, or other interests in the applicant; and all applicants and licensees must list a manager on the applicant's license application, or a licensee's renewal application. The manager shall meet all other requirements of licensure, including, but not limited to, United States citizenship or naturalization, passing a background investigation, being at least 21 years of age, being a suitable applicant, and being of good moral character, and meet other requirements, all as set forth in the code and the legislative rules, in order for the manager to be able to meet and conduct any regulatory matters, including, but not limited to, licensure or enforcement matters related to the applicant or licensee all in the interest of protecting public health and safety. In order to maintain active licensure, any change by a licensee in any manager listed on an application must be made immediately to the commissioner, in order to verify that the new manager meets licensure requirements;

(3) That the applicant and manager have not: (A) Been convicted in this state or any other state of any felony in the five years preceding the date of application; or (B) been convicted of any other crime involving fraud, dishonesty, or deceit in the five years preceding the date of application; or (C) been convicted of any felony in this or any other state court or any federal court for a violation of state or federal alcohol laws. If the applicant is other than an individual, that none of its executive officers, other principal officers, partners, or members, or any person owning, directly or indirectly, at least 20 percent of the outstanding stock,

partnership, or other interests in the applicant, has been convicted; and

(4) That the applicant and the manager, each is a United States citizen of good moral character and, if a naturalized citizen, when and where naturalized; and, if a corporation organized and authorized to do business under the laws of this state, when and where incorporated, with the name and address of each officer; that each officer is a citizen of the United States and a person of good moral character; and if a firm, association, partnership, or limited partnership, that each member is a citizen of the United States and, if a naturalized citizen, when and where naturalized, each of whom must sign the application.

(b) An applicant and manager shall provide the commissioner any additional information requested by the commissioner including, but not limited to, authorization to conduct a criminal background and credit records check.

(c) Whenever a change occurs in any information provided to the commissioner, the change shall immediately be reported to the commissioner in the same manner as originally provided.

(d) The commissioner shall disqualify each bid submitted by an applicant under §60-3A-10 of this code and an applicant shall not be issued or eligible to hold a retail license under this article, if the applicant:

(1) Has been, within the five years preceding the date of application: (A) Convicted in this state of any felony; or (B) convicted of a crime involving fraud, dishonesty, or deceit; or (C) convicted of any felony in this or any other state court or any federal court for a violation of state or federal alcohol laws; or

(2) Any executive officer or other principal officer, partner, or member of the applicant, or any person owning, directly or indirectly, at least 20 percent of the outstanding stock, partnership, or other interests in the applicant, has been, within the five years preceding the date of application: (A) Convicted in this state of any felony; or (B) convicted of a crime involving fraud, dishonesty, or

deceit; or (C) convicted of any felony in this or any other state court or any federal court for a violation of state or federal alcohol laws.

(e) The commissioner shall not issue a retail license to an applicant which does not hold a license issued pursuant to federal law to sell liquor at wholesale.

ARTICLE 4. LICENSES.

§60-4-3a. Distillery, mini-distillery, and micro-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 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 by this subsection when alcoholic liquors are manufactured by that licensed distillery, mini-distillery, or micro-distillery for consumption on the licensed premises. 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. In the interest of promoting tourism

throughout the state, every licensed distillery, mini-distillery, or micro-distillery manufacturing liquor in this state is authorized, with a limited off-site retail privilege at private fair and festivals, for off-premises consumption sales of only the licensed distillery, mini-distillery, or micro-distillery's sealed liquor. At least five days prior to an approved private fair and festival, an authorized distillery, mini-distillery, or micro-distillery shall provide a copy of a written agreement to sell only liquor manufactured by the licensed distillery, mini-distillery, or micro-distillery at the private fair and festival's licensed premises. If approved, an authorized distillery, mini-distillery, or micro-distillery may conduct off-premises consumption sales of their liquor from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved distilleries, mini-distilleries, and micro-distilleries' off-premises consumption sales shall comply with all retail requirements in §60-3A-1 *et seq.* of this code, and specifically §60-3A-17 of this code with respect to all markups, taxes, and fees. Additionally, every authorized distillery, mini-distillery, and micro-distillery may provide complimentary samples to patrons who are 21 years of age and older and who are not intoxicated. The complimentary liquor samples of the licensed distillery, mini-distillery, or micro-distillery's product on any sampling day shall not exceed:

(1) Three separate and individual samples serving per customer verified to be 21 years of age or older; and

(2) One and one-half ounces in total volume. Samples may be mixed with each other or with non-alcoholic liquids as long as the total amount of the liquor sampled does not exceed one and one-half ounces.

(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 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 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 submit to the commissioner is \$15,000 per annum.

(e) *Limitations on licensees.* — A distillery, mini-distillery, or micro-distillery may not produce more than 50,000 gallons per calendar year. The commissioner may issue more than one distillery, mini-distillery, or micro-distillery license to a single person or entity and a person may 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 complimentary samples 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 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 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 of wine manufactured by that licensed winery or farm winery for consumption on the premises only on Sundays beginning at 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 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 multi-capacity 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 the wine is subject to the excise tax or if the purchase is delivered outside this state.

(4) A liter tax shall not 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 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. The price of the wine is subject to federal requirements or restrictions.

(i) A winery or farm winery shall maintain separate winery or farm winery supplier, retailer, and direct shipper licenses when acting in one or more of those capacities and shall pay all associated license fees, unless 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 this code. All wineries shall use a distributor to distribute and sell their wine in the state, except for farm wineries. 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.

(k) For purposes of this section, terms 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.

(m) In the interest of promoting tourism throughout the state, every licensed winery or farm winery manufacturing wine in this state is authorized, with a limited off-site retail privilege at private fair and festivals, for off-premises consumption sales of only the winery or farm winery's sealed wine. At least five days prior to an approved private fair and festival, an authorized winery or farm winery shall provide a copy of a written agreement to sell only wine manufactured by the licensed winery or farm winery at the private fair and festival's licensed premises. If approved, an authorized licensed winery or farm winery may conduct off-premises consumption sales of their wine from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved wineries and farm wineries' off-premises consumption sales shall comply with all retail requirements in §60-8-1 *et seq.* of this code, and specifically with respect to all markups,

taxes, and fees. Additionally, an authorized winery or farm winery may provide complimentary samples to patrons who are 21 years of age and older and who are not intoxicated in the amounts set forth in subsection (b).

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-2. Definitions; authorizations; requirements for certain licenses.

Unless the context in which used clearly requires a different meaning, as used in this article:

(1) "Applicant" means a private club applying for a license under the provisions of this article.

(2) "Code" means the official Code of West Virginia, 1931, as amended.

(3) "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner.

(4) "Licensee" means the holder of a license to operate a private club granted under this article, which remains unexpired, unsuspended, and unrevoked.

(5) "Private club" means any corporation or unincorporated association which either:

(A) 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 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;

(B) 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 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;

(C) 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

(D) 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 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.

(6) "Private bakery" means an applicant for a private club or licensed private club license that has a primary function of operating a food preparation business that produces baked goods, including brownies, cookies, cupcakes, confections, muffins, breads, cakes, wedding cakes, and other baked goods where the

applicant or licensee desires to sell baked goods infused with liquor, wine, or nonintoxicating beer or nonintoxicating craft beer, either: (A) In the icing, syrup, drizzle, or some other topping; (B) as an infusion where the alcohol is not processed or cooked out of the baked goods; or (C) the alcohol can be added by the purchaser from an infusion packet containing alcohol no greater than 10 milliliters. This applicant or licensee may not sell liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for on or off-premises consumption. The applicant or licensee may sell the baked goods with alcohol added as authorized for on and off-premises consumption. Further, the applicant or licensee shall:

(i) Have at least 50 members;

(ii) Operate a kitchen that produces baked goods, as specified in this subdivision, including at least: (I) A baking oven and a four-burner range or hot plate; (II) a sink with hot and cold running water; (III) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (IV) baking utensils and pans, kitchen utensils, and other food consumption apparatus as determined by the commissioner; and (V) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(iii) Maintain, at any one time, a food inventory capable of being prepared in the private bakery'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, pre-packaged foods, baking items such as flour, sugar, icing, and other confectionary items, or canned prepared foods;

(iv) Use an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private bakery are not sold items containing alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, or wine. A person under 21 years of age may enter the shop and purchase other items not containing alcoholic liquors; and

(v) Meet and be subject to all other private club requirements.

(7) "Private cigar shop" means an applicant for a private club or licensed private club licensee that has a primary function of operating a cigar shop for sales of premium cigars for consumption on or off the licensed premises. Where permitted by law, indoor on-premises cigar consumption is permitted with a limited food menu, which may be met by using a private caterer, for members and guests while the private club applicant or licensee is selling and serving liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for on-premises consumption. Further, the applicant or licensee shall:

(A) Have at least 50 members;

(B) Operate a cigar shop and bar with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (iv) kitchen utensils and other food consumption apparatus as determined by the commissioner; and (v) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(C) Maintain, at any one time, not less than a food inventory capable of being prepared in the private club bar's kitchen or have on hand at least \$150 in food provided by a private caterer. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Use an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private club bar are accompanied by a parent or legal guardian, and if a person under 21 years of age is not accompanied by a parent or legal guardian, that person may not be admitted as a guest; and

(E) Meet and is subject to all other private club requirements.

(8) "Private caterer" means a licensed private club restaurant, private hotel, or private resort hotel 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 nonintoxicating beer and nonintoxicating 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:

(A) Have at least 10 members and guests attending the catering event;

(B) Have obtained an open container waiver or have otherwise been approved by a municipality or county in which the event is being held;

(C) Operate a private club restaurant on a daily operating basis;

(D) 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;

(E) Provide to the commissioner, at least seven days before the event is to take place:

(i) The name and business address of the unlicensed private venue where the private caterer is to provide food and alcohol for a catering event;

(ii) The name of the owner or operator of the unlicensed private venue;

(iii) A copy of the contract or contracts between the private caterer, the person contracting with the caterer, and the unlicensed private venue;

(iv) 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 and 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;

(F) 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;

(G) Submit to the commissioner, evidence that any noncontiguous area of an unlicensed venue is within 150 feet of the private caterer's submitted floorplan and may submit a floorplan extension for authorization to permit alcohol and food at an outdoor event;

(H) Meet and be subject to all other private club requirements; and

(I) Use an age verification system approved by the commissioner.

(9) "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 and wine when licensed for those sales, while providing a limited food menu for members and guests, and meeting the criteria set forth in this subdivision which:

(A) Has at least 100 members;

(B) Operates a bar with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (iv) kitchen utensils and other food consumption apparatus as determined by the commissioner; and (v) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(C) Maintains, at any one time, a 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;

(D) 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. 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

(E) Meets and is subject to all other private club requirements.

(10) "Private food truck" means an applicant for a private club, licensed private club licensee, or licensed private manufacturer's club licensee that has a primary function of operating a food preparation business using an industrial truck, van, or trailer to prepare food and meals for sale at various locations within the state while using a propane or electric generator powered kitchen. The

private food truck applicant shall obtain county or municipal approval to operate for food and liquor, wine, hard cider, and nonintoxicating beer or nonintoxicating craft beer sales and service, while providing a food menu for members and guests. The private food truck applicant shall:

(A) Have at least 10 members;

(B) Operate with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) at least a 10 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; and (iv) plastic or metal kitchen utensils and other food consumption apparatus as determined by the commissioner;

(C) Maintain, at any one time, not less than \$200 of food inventory that is fit for human consumption and capable of being prepared and served from the private food truck's kitchen during all hours of operation;

(D) Is sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private food truck is to be located and operated. Each location shall have a bounded and defined area and set hours for private food truck operations, sales, and consumption of alcohol that are not greater than a private club's hours of operation;

(E) Provide the commissioner with a list of all locations, including a main business location, where the private food truck operates, and is approved for sales pursuant to subsection (D) of this section, and immediately update the commissioner when new locations are approved by a county or municipality;

(F) Require all nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served pursuant to the license created by this section to be purchased from the licensed distributor where the private food truck has its home location or from a resident brewer acting in a limited capacity as a distributor, all in accordance with §11-16-1 *et seq.* of this code.

(G) Require wine or hard cider sold, furnished, tendered, or served pursuant to the license created by this section to be purchased from a licensed distributor, winery, or farm winery in accordance with §60-8-1 *et seq.* of this code.

(H) Require 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 food truck has its main business location, all in accordance with §60-3A-1 *et seq.* of this code.

(I) A licensee authorized by this section shall use bona fide employees to sell, furnish, tender, or serve the nonintoxicating beer or nonintoxicating craft beer, wine, or liquor.

(J) A brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery may obtain a private food truck license;

(K) Licensed representatives of a brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor broker representatives may attend a location where a private food truck is located and discuss their respective products but may not engage in the selling, furnishing, tendering, or serving of any nonintoxicating beer or nonintoxicating craft beer, wine, or liquor.

(L) Use an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private club bar are not permitted to be served any alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, or wine but may be permitted to purchase food or other items;

(M) Obtain all permits required by §60-6-12 of this code; and

(N) Meet and be subject to all other applicable private club requirements.

(11) "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 shall be met by the restaurant area. The applicant for a private club restaurant license is an applicant which:

(A) Has at least 100 members;

(B) Operate a restaurant and full kitchen with at least: (i) Ovens and four-burner ranges; (ii) refrigerators or freezers, or some combination of refrigerators and freezers greater than 50 cubic feet, or a walk-in refrigerator or freezer; (iii) other kitchen utensils and apparatus as determined by the commissioner; and (iv) freshly prepared food fit for human consumption available to be served during all hours of operation on the licensed premises;

(C) Maintains, at any one time, fresh food 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, pre-packaged foods, or canned prepared foods;

(D) 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:

(E) 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;

(F) Has 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 may a private club restaurant have less than one restroom; and

(G) Meets and is subject to all other private club requirements.

(12) "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:

(A) Has at least 100 members;

(B) Offers tours, may offer complimentary samples, and may offer space as a conference center or for meetings;

(C) 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: *Provided*, That a licensee required by the provisions of this code to serve food on premises in order to lawfully serve alcoholic liquors, beer, wine,

or hard cider may meet the requirement of having on-premises food preparation facilities by, during all hours alcoholic liquors, beer, wine, and hard cider are offered for sale or sampling, having on-site an operating food truck or other portable kitchen: *Provided, however,* That the approval of the commissioner and the appropriate health department is required to operate as allowed by subsection (a) of this section;

(D) Maintains, at any one time fresh food 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, pre-packaged foods, or canned prepared foods;

(E) Owns or leases, controls, operates, and uses space which is contiguous, bounded, or fenced real property sufficient to safely operate the licensed premises 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;

(F) Lists the entire property from paragraph (E) of this subdivision 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 sale, 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;

(G) Identifies a person, persons, an entity, or entities who or which have the right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

(H) Uses an age verification system approved by the commissioner; and

(I) Meets and is subject to all other private club requirements.

(13) "Private fair and festival" means an applicant for a private club or a licensed private club licensee meeting the requirements of §60-7-8a of this code for a temporary event, and the criteria set forth in this subdivision which:

(A) Has at least 100 members;

(B) 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 in which the festival, fair, or other event is to be conducted;

(C) Prepares, provides, or engages a food 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 to the commissioner prior to approval;

(D) Does not use third-party entities or individuals to purchase, sell, furnish, or serve alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer;

(E) 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;

(F) 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;

(G) Uses an age verification system approved by the commissioner; and

(H) Meets and is subject to all other private club requirements.

(14) "Private hotel" means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(A) Has at least 2,000 members;

(B) 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;

(C) 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;

(D) Maintains, at any one time, fresh food capable of being prepared in the private hotel's full kitchen. In calculating the food inventory, the commissioner may not include microwavable, frozen, or canned foods;

(E) 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;

(F) Lists the entire property from paragraph (E) of this subdivision 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;

(G) 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;

(H) Uses an age verification system approved by the commissioner;

(I) Meets and is subject to all other private club requirements; and

(J) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have secure access via key or key card to an in-room mini-bar in their rented short-term accommodation; the mini-bar may be a small refrigerator not in excess of 1.6 cubic feet for the sale of nonintoxicating beer or nonintoxicating craft beer, wine, hard cider, and liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 72 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding 750 ml of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, and 200 ml, with any combination of those liquor bottles not exceeding 750 ml; and (iv) any combination of canned or packaged food valued at least \$50. All markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, wine, liquor, and hard cider. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased from the licensed distributor in the area where licensed. All wine or hard cider available for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the market zone of the licensed premises. The mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

(15) "Private resort hotel" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 5,000 members;

(B) Offers short term, daily rate accommodations or lodging for members and their guests amounting to at least 50 separate bedrooms;

(C) 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;

(D) Maintains, at any one time, fresh food capable of being prepared in the private resort hotel's full kitchen. In calculating the food inventory, the commissioner may not include microwavable, frozen, or canned foods;

(E) 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;

(F) Lists the entire property from paragraph (E) of this subdivision and all adjoining buildings and structures on the private resort hotel's floorplan comprising 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;

(G) 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;

(H) Uses an age verification system approved by the commissioner;

(I) Meets and is subject to all other private club requirements;

(J) 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; and

(K) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have

access via key or key card to an in-room mini-bar in their rented short-term accommodation. The mini-bar may be a small refrigerator not in excess of 3.2 cubic feet for the sale of nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, and liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 144 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding one and a half liters of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, 200 ml, and 375 ml with any combination of such liquor bottles not exceeding one and a half liters; and (iv) any combination of canned or packaged food valued at least \$100. All markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, hard cider, wine, and liquor. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased from the licensed distributor in the area where licensed. All wine or hard cider available for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the market zone of the licensed premises. The mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

(16) "Private golf club" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 100 members;

(B) 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;

(C) 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;

(D) 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;

(E) Lists the entire property from paragraph (D) of this subsection and all adjoining buildings and structures on the private golf club's floorplan comprising 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;

(F) 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;

(G) Uses an age verification system approved by the commissioner; and

(H) Meets and is subject to all other private club requirements.

(17) "Private nine-hole golf course" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 50 members;

(B) Maintains at least one nine-hole golf course with separate and distinct golf playing holes;

(C) 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;

(D) 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;

(E) Lists the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private nine-hole golf course's floorplan comprising 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;

(F) 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;

(G) Uses an age verification system approved by the commissioner; and

(H) Meets and is subject to all other private club requirements.

(18) "Private tennis club" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 100 members;

(B) Maintains at least four separate and distinct tennis courts, either indoor or outdoor, and a clubhouse or similar facility;

(C) Has a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises which is capable of serving freshly prepared food;

(D) 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;

(E) Lists the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private tennis club's floorplan comprising 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;

(F) 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;

(G) Meets and is subject to all other private club requirements; and

(H) Uses an age verification system approved by the commissioner.

(19) "Private college sports stadium" means an applicant for a private club or licensed private club licensee that operates a college or university stadium or coliseum for Division I, II, or III and what involves a college public or private or university that is a member of the National Collegiate Athletic Association, or its successor, and uses the facility for football, basketball, baseball, soccer, or other Division I, II, or III sports, 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 sell alcoholic liquors when conducting or temporarily hosting non-collegiate sporting events. This 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. All alcohol sales shall take place within the confines of the college or university stadium: *Provided*, That any outside area approved for alcohol sales 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 alcohol sales area is closed in order to prevent entry and access by the general public. Further the applicant shall:

(A) Have at least 100 members;

(B) Maintain an open-air or enclosed stadium or coliseum venue primarily used for sporting events, such as football, basketball, baseball, soccer, or other Division I, II, or III sports, and also weddings, reunions, conferences, meetings, or other events where parties shall reserve the college stadium venue in advance of the event;

(C) Operate a restaurant and full kitchen with ovens and equipment that is equivalent or greater than a private club restaurant, as determined by the commissioner, on the licensed premises that is capable of serving freshly prepared food or meals to its stated members, guests, and patrons who will be attending the event at the private college sports stadium;

(D) Own or lease, control, operate, and use acreage amounting to at least two contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private college stadium's floorplan and could be used for contracted-for temporary non-collegiate sporting events, group-type weddings, reunions, conferences, meetings, or other events;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private college sports stadium'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 college sports stadium's licensed premises and as noted on the private college sports stadium's floorplan;

(F) 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;

(G) Meet and be subject to all other private club requirements;
and

(H) Use an age verification system approved by the commissioner.

(20) "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 the 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:

(A) Have at least 1,000 members;

(B) Maintain an open-air or enclosed 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 reserve the stadium venue in advance of the event;

(C) Operate a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises which is 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;

(D) Own or lease, control, operate, and use acreage amounting to at least three 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;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private professional sports stadium's floorplan comprising 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;

(F) 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;

(G) Meet and be subject to all other private club requirements; and

(H) Use an age verification system approved by the commissioner.

(21) "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 6:00 a.m. to 6:00 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. All businesses that are members of the association shall agree in writing to be liable and responsible for all sales, service, furnishing, tendering, and consumption of alcoholic liquors, nonintoxicating beer, nonintoxicating craft beer, wine, and hard cider occurring on the entire licensed premises of the private farmer's market, including indoor and outdoor bounded areas, and further the applicant shall:

(A) Have at least 100 members;

(B) 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 a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serve freshly prepared food at least 15 hours per week;

(C) Have one or more members operating who maintain, at any one time, fresh food capable of being prepared for events conducted at the private farmers market 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, pre-packaged foods, or canned prepared foods;

(D) 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;

(E) 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;

(F) 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;

(G) 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;

(H) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer or nonintoxicating craft beer;

(I) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private farmers market;

(J) 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;

(K) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members', patrons', and guests' ages, to verify whether a member, patron, or guest is intoxicated, and to provide for the public health and safety of members, patrons, and guests;

(L) Use an age verification system approved by the commissioner; and

(M) Meet and be subject to all other private club requirements.

(22) "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:

(A) Has at least 25 members;

(B) Maintains a venue, facility, barn, or pavilion primarily used for weddings, reunions, conferences, meetings, or other events where parties reserve or contract for the venue, facility, barn, or pavilion in advance of the event;

(C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises that is capable of serving freshly prepared food, or engages 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;

(D) Owns or leases, controls, operates, and uses space sufficient to safely operate the licensed premises. The applicant or licensee shall verify that, the property is not 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;

(E) Lists the entire property from paragraph (D) of this subdivision 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;

(F) 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;

(G) Meets and is subject to all other private club requirements; and

(H) Uses an age verification system approved by the commissioner.

(23) "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:

(A) Has at least 100 members;

(B) Maintains an open-air multi-sport complex primarily for use for sporting events, such as baseball, soccer, basketball, tennis, frisbee, or other sports, but may also conduct weddings, concerts,

reunions, conferences, meetings, or other events where parties reserve the parts of the sports complex in advance of the sporting or other event;

(C) Operates a restaurant and full kitchen with ovens in the licensee's main facility, as determined by the commissioner, on the licensed premises which is 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 multi-sport complex. 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;

(D) Maintains, at any one time, fresh food 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;

(E) Owns or leases, controls, operates, and uses acreage amounting to at least 50 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;

(F) Lists the entire property from paragraph (E) of this subdivision 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, nonintoxicating beer, nonintoxicating craft beer, and hard cider 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 and nonintoxicating beer or nonintoxicating craft beer 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;

(G) 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;

(H) Meets and is subject to all other private club requirements; and

(I) Uses an age verification system approved by the commissioner.

(24) "Private coliseum or center" means an applicant for a private club or licensed private club licensee that is open for various events including, but not limited to, musical concerts, bands, sporting events, monster trucks, sports entertainment events, circuses, expos, hobby events, tradeshow, health events, reserved weddings, reunions, retreats, conventions, conferences, meetings, or other special events. The licensee may not sell alcoholic liquors, nonintoxicating beer or wine when conducting or hosting events focused on patrons who are less than 21 years of age, and further the applicant shall:

(A) Have at least 5,000 members;

(B) Maintain an enclosed coliseum or center venue with at least 80,000 square feet of event space primarily used for events as noted above, where parties reserve the coliseum or center venue in advance of the event;

(C) Operate a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and be capable of serving freshly prepared food or meals to its stated members, guests, and patrons who will be attending events at the private coliseum or center;

(D) Own or lease, control, operate, and use acreage amounting to at least two contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private coliseum or center's floorplan and could be used for contracted-for events, as noted above, or a private fair and festival, as authorized by the commissioner per dual licensing requirements as set forth in §60-7-2a of this code;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private coliseum or center's floorplan comprising 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 private coliseum or center's licensed premises;

(F) 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;

(G) Meet and be subject to all other private club requirements; and

(H) Use an age verification system approved by the commissioner.

(25) "Private food court" means an applicant who qualifies for a private club restaurant or licensed private club restaurant licensee that operates in a facility within a licensed premises with one licensed floorplan that includes an association of other interconnected licensed private club restaurants or unlicensed restaurants that operate legally without alcohol sales, where all businesses that are licensed 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 food court, and further the applicant shall:

(A) Have at least 100 members;

(B) Have at least one member of its association who qualifies for a private club restaurant containing a 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 be capable of serving freshly prepared food at least 15 hours per week in the private food court;

(C) Have at least one member of its association who qualifies for a private club restaurant who maintains, at any one time, fresh food capable of being prepared 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, pre-packaged foods, or canned prepared foods;

(D) Have an association that owns or leases, controls, operates, and uses a facility that meets requirements of this article, and the entire facility is listed on the licensee's floorplan as its licensed premises;

(E) Have an association that lists in the application for licensure the entire facility and any inter-connected and adjoining structures on the private food court's floorplan which would compromise the licensed premises, and 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 while on the private food court's licensed premises and as noted on the private food court's licensed floorplan;

(F) 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;

(G) Have at least one separate and unrelated business applying for the license and certifying that all licensed businesses in the association have agreed to the liability responsibility associated with a private food court license;

(H) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer or nonintoxicating craft beer;

(I) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private food court;

(J) Provide a copy of a written agreement between all the vendors of the association that is executed by all businesses stating that each licensed vendor is jointly and severally liable for any violations of this chapter committed on the licensed premises;

(K) Provide a security plan indicating all businesses who will be selling and serving alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer, list non-licensees who will be selling and serving food, list all entrances, and list all exits, provide a plan to verify the ages of members, patrons, and guests, a plan to verify whether a member, patron, or guest is intoxicated, and a plan to provide for the public health and safety of members, patrons, and guests;

(L) Use an age verification system approved by the commissioner; and

(M) Meet and be subject to all other private club requirements.

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 park or airport to any corporation or unincorporated association for the establishment of a private club pursuant to this article.

§60-7-2a. Dual licensing permitted; conditions.

(a) A private coliseum or center may permit a private fair and festival licensee to conduct the temporary special event, authorized by that license, within, or on the private coliseum or center licensee's licensed premises in order to create tourism opportunities that will promote brewers, resident brewers, wineries, farm wineries, distilleries, mini-distilleries, and micro-distilleries in this state.

(b) A private coliseum or center licensee may host a special event for a private fair and festival licensee on the licensee's licensed premises if both licensees are in good standing with the commissioner and submit to the commissioner the temporary floorplan revisions of the private coliseum or center in which the special event would be held to comprise the special event's lawful premises, which shall only include spaces in buildings or rooms of the private coliseum or center's licensed premises. By contractual agreement between the private coliseum or center licensee and the private fair and festival licensee, the parties shall agree that the private coliseum or center maintains control of its licensed premises, but for a set contracted rental time period. The private fair and festival licensee shall safely account for the ingress and egress of the stated members and guests who will be attending the special event at the licensed premises. During the contracted rental time period, the private fair and festival licensee is wholly responsible and liable for the proper sale and serving of alcoholic liquors and nonintoxicating beer in the area designated as the private fair and festival's temporary floorplan, as set forth in this section. The private fair and festival's temporary floorplan shall comprise the private fair and festival's licensed premises for the temporary special event, which is authorized for the lawful sale, service, and consumption of alcoholic liquors and nonintoxicating beer throughout the private fair and festival's licensed premises during this dually licensed temporary special event: *Provided*, That the private fair and festival's licensed premises dually shared and licensed with the private coliseum or center shall:

- (1) Have facilities to prepare and serve food and alcohol;
- (2) Have adequate restrooms and sufficient building facilities for the expected number of members and guests attending the event;
- (3) Comply with all other requirements of its license in this article; and
- (4) Comply with health, fire, safety, and zoning requirements.

(c) There is no limit on the number of private fair and festivals that may be held at a private coliseum or center.

§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 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 is \$1,000 if the private club bar or restaurant has fewer than 1,000 members; \$1,000 for a private club restaurant, private hotel, or private resort hotel to be licensed as a private caterer as defined in §60-7-2 of this code; \$500 if the private club is a private bakery; \$1,500 if the private club is a private wedding venue or barn or a private cigar shop; \$2,000 if the private club is a private nine-hole golf course, private farmers market, private food truck, private college sports stadium, 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; and \$2,000 if the private club is a private hotel with three or fewer designated areas, a private golf club as defined in §60-7-2 of this code, a private coliseum or center as defined in §60-7-2 of this code, or a private food court as defined in §60-7-2 of this code. If the private club is a private resort hotel as defined in §60-7-2 of this code, the private resort hotel may designate areas within the licensed premises for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer and nonintoxicating craft beer as provided for by this article. The annual license fee for a private resort hotel with five or fewer designated areas is \$7,500 and the annual license fee for a private resort hotel with at least six, but no more than 10 designated areas is \$12,500. The annual license fee for a private resort hotel with at least 11, but no more than 15 designated areas is \$17,500. The annual license fee for a private resort hotel with no fewer than 15 nor more than 20 designated areas is \$22,500. A private resort hotel 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 license issued following January 1 of any year that expires on June 30 of that year 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 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) The commissioner shall pay the fees to the State Treasurer for deposit into the General Revenue Fund of the state.

(f) 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. Accordingly, the fees set forth in subsections (a) and (b) of this section are temporarily modified as follows;

(1) 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;

(2) 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

(3) License fees for the license period beginning July 1, 2023, and beyond, shall be as set forth in subsections (a) and (b) of this section.

§60-7-8a. Special license for a private fair and festival; licensee fee and application; license fee; license subject to provisions of article; exception.

(a) There is hereby created a special license designated Class S2 private fair and festival license for the retail sale of alcoholic liquors and nonintoxicating beer, and nonintoxicating craft beer for on-premises consumption.

(b) To be eligible for the license authorized by subsection (a) of this section, the private 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 fair and festival or other event is located;

(2) Make application with the commissioner at least 15 days prior to the private fair, festival, or other event;

(3) Pay a nonrefundable non-prorated license fee of \$500; and

(4) Be approved by the commissioner to operate the private fair, festival, or other event. (c) A private fair and festival license under this section shall be for a duration of no more than 10 consecutive days.

(d) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served for on-premises consumption by the private fair and festival pursuant to the license created by this section shall be purchased from licensed distributors that service the area in which the private fair and festival is held or from a resident brewer acting in a limited capacity as a distributor, all in accordance with §11-16-1 *et seq.* of this code. Sealed containers of nonintoxicating beer or nonintoxicating craft beer may be sold for off-premises consumption if the nonintoxicating beer and nonintoxicating craft beer is being sold by an authorized brewer or resident brewer, as set forth in §11-16-6a(d) of this code, who manufactures the nonintoxicating beer or nonintoxicating craft beer in this state. The off-premises consumption sales shall be made pursuant to a written agreement between the private fair and festival and an authorized brewer or resident brewer. Prior to the

start of the private fair or festival, an authorized brewer or resident brewer who agrees to offer off-premises consumption sales of their nonintoxicating beer or nonintoxicating craft beer from a booth or other facility on the private fair and festival's licensed premises must meet the requirements of §11-16-6a(d) of this code. The written agreement with each authorized brewer or resident brewer shall account for lawful sales of nonintoxicating beer and nonintoxicating craft beer sold for off-premises consumption as set forth in §11-16-1 *et seq.* of this code. The authorized and approved brewer, resident brewer, or its licensed representatives may give or sell approved promotional items to private fair and festival members and guests, but not to the private fair and festival's volunteers, independent contractors, or employees.

(e) Wine or hard cider sold, furnished, tendered, or served for on-premises consumption by the private fair and festival pursuant to the license created by this section shall be purchased from a licensed wine or hard cider distributor or farm winery in accordance with §60-8-1 *et seq.* of this code and §60-8A-1 *et seq.* of this code, as applicable. Sealed containers of wine or hard cider may be sold for off-premises consumption if the wine or hard cider is being sold by an authorized winery or farm winery, as set forth in §60-4-3b(m) and §60-8A-5(c) of this code, who manufactures that wine or hard cider in this state. The off-premises consumption sales shall be made pursuant to a written agreement between the private fair and festival and an authorized winery or farm winery. An authorized winery or farm winery who agrees to offer their wine or hard cider for off-premises consumption sales from a booth or other facility on the private fair and festival's licensed premises prior to the start of the private fair or festival shall meet the requirements of §60-4-3b(m) and §60-8A-5(c) of this code, as applicable. The written agreement with each authorized winery or farm winery shall account for lawful sales of wine or hard cider sold for off-premises consumption as set forth in §60-8-1 *et seq.* of this code and §60-8A-1 *et seq.* of this code, as applicable. The authorized and approved winery, farm winery or its licensed representatives may give or sell approved promotional items to private fair and festival members and guests, but not to the private fair and festival's volunteers, independent contractors, or employees.

(f) Liquor sold, furnished, tendered, or served for on-premises consumption by the private fair and festival 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 fair or festival is occurring, all in accordance with §60-3A-1 *et seq.* of this code. Sealed containers of liquor may be sold for off-premises consumption if the liquor is being sold by an authorized distillery, mini-distillery, or micro-distillery, as set forth in §60-4-3a of this code, who manufactures their liquor in this state. Off-premises consumption sales shall comply with §60-3A-17 of this code and §60-4-3a(c) of this code shall not apply to these sales. The off-premises consumption sales shall be made pursuant to a written agreement between the private fair and festival and an authorized distillery, mini-distillery, or micro-distillery. An authorized licensed distillery, mini-distillery, or micro-distillery who agrees to offer off-premises consumption sales of their manufactured liquor from a booth or other facility on the private fair and festival's licensed premises prior to the start of the private fair, festival, or other event must meet the requirements as set forth in §60-4-3a of this code. The written agreement with each authorized distillery, mini-distillery, or micro-distillery shall account for lawful sales of liquor sold for off-premises consumption as set forth in §60-3A-1 of this code. An authorized and approved distillery, mini-distillery, micro-distillery or its licensed representatives may give or sell approved promotional items to private fair and festival members and guests, but not to the private fair and festival's volunteers, independent contractors, or employees.

(g) A licensee authorized by this section may use bona fide employees, volunteers or in limited circumstances licensed representatives to sell, furnish, tender, or serve the nonintoxicating beer, nonintoxicating craft beer, wine, liquor, or hard cider.

(h) Licensed representatives of an authorized and approved brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor broker representatives may attend a private fair and festival and discuss their respective products but shall not

engage in the selling, furnishing, tendering, or serving of any nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor. However, licensed representatives of a brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery that has agreed in writing to conduct sampling and off-premises consumption sales of their respective licensee's products at the private fair and festival, may discuss their respective products and engage in the limited giving of complimentary samples in accordance with §11-16-6a (c) and (d), §60-4-3a (a) and (b), and §60-4-3b (b) and (m) of this code; and the selling of sealed bottles or cans of their respective nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor products for off-premises consumption. All taxes and fees must be paid on lawful sales.

(i) A license issued under this section and the licensee are 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 the circumstances of each private fair and festival require, including without limitation, the right to 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.

(j) Dual licensing is permitted for private fairs and festivals pursuant to §60-7-2a of this code.

(k) A private fair and festival licensee who executes a written agreement with a licensed brewer, resident brewer, winery, farm winery, distillery, mini-distillery, micro-distillery, or their licensed representatives is jointly liable and responsible for any violations of this article.

(l) A private fair and festival licensee who executes a written agreement with a licensed brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery to conduct limited off-premises consumption sales shall not have any

pecuniary interest, share, or percentage in any sales of sealed nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor.

(m) A private fair and festival licensee who executes a written agreement with a licensed brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery to conduct limited off-premises consumption sales may charge them a flat booth rental fee.

(n) A private fair and festival licensee, licensed brewer, resident brewer, winery, farm winery, distillery, mini-distillery, micro-distillery, or their licensed representatives who permits members or guests to consume, on the private fair and festival's licensed premises, any nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor, that was purchased as an off-premises consumption sale, shall have their respective license immediately suspended, and that conduct is grounds for revocation of their license.

§60-7-8g. Special permit for a qualified permit holders in a private outdoor designated area; license fee and application; license subject to provisions of article.

(a) There is hereby created a special permit designated Class S4 for a qualified permit holder operating in a private outdoor designated area approved by a municipality as set forth in §8-12-26 of this code for the consumption of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer for on-premises consumption at a certain public property designated as a private outdoor designated area where multiple private club license type licensees who apply and obtain a qualified permit holder permit shall share liability and responsibility. Each qualified permit holder may sell, furnish, or serve liquor, wine, nonintoxicating beer, and nonintoxicating craft beer as provided in this section.

(b) Definitions:

(1) "Private outdoor designated area" means public property that has become a legally demarcated area established by a

municipal ordinance as set forth in §8-12-26 of this code for the consumption of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer.

(2) "Qualified permit holder" means the holder of a Class A license issued under §60-7-1 *et seq.* of this code.

(c) To be eligible for the license authorized by subsection (a) of this section, the qualified permit holder shall:

(1) Operate in a private outdoor designated area created by municipal ordinance as set forth in §8-12-26 of this code, and provide the commissioner a copy of the certified ordinance from the municipality;

(2) Apply to the commissioner for the special permit prior to operating in an approved private outdoor designated area on an application provided by the commissioner;

(3) Pay a nonrefundable non-prorated annual license fee of \$100 to the commissioner;

(4) Be in compliance with all state and federal laws and be in good standing with the commissioner;

(5) Be approved by the municipality to operate in the private outdoor designated area;

(6) Provide the days and hours of operation in the private designated area which cannot exceed the stated private club hours of operation;

(7) Provide, in conjunction with the municipality, adequate restroom facilities, whether permanent or portable, to serve the members and guests who will be attending the private outdoor designated area;

(8) Provide an executed agreement between all qualified permit holders stating that each qualified permit holder is jointly and severally liable for any improper acts or conduct committed in the

operation of the private outdoor designated area in conjunction with operation of their Class A license;

(9) Provide a security plan for the private outdoor designated area indicating: All qualified permit holders' licensed premises where alcohol will be served in approved non-glass containers; all entrances and exits in order to verify members', patrons', and guests' ages, and to assess whether a member, patron, or guest is under 21 years of age or intoxicated; and a plan to provide for the public health and safety of members, patrons, and guests;

(10) Provide a floorplan for the private outdoor designated area indicating a legally demarcated area that is bounded or utilizes signage to safely account for the ingress and egress of members, patrons, and guests who will be within the private outdoor designated area and also be permitted to carry liquor, wine, nonintoxicating beer, and nonintoxicating craft beer on and off of the qualified permit holders' licensed premises and within the private outdoor designated area when contained in an approved non-glass container. The private outdoor designated area's floorplan does comprise a separate licensed premises authorized only for the lawful consumption of liquor, wine, nonintoxicating beer, or nonintoxicating craft beer throughout the licensed premises when lawfully purchased from a qualified permit holder;

(11) Meet and be subject to all other private club license type requirements;

(12) Provide a plan to prevent members, guests, and patrons from bringing, consuming, or selling alcohol not in an approved non-glass container in the private outdoor designated area; and

(13) Use an age verification system approved by the commissioner.

(c) As set forth in §8-12-26 of this code a municipality may, by ordinance, establish a private outdoor designated area where the municipality may zone, set requirements and establish conditions for safe operation of private outdoor designated area by qualified permit holders.

(d) A municipality shall be responsible for the enforcement of any criminal violations occurring in a private outdoor designated area and shall report such violations to commissioner for a determination of any violation of §11-16-1 *et seq.* and chapter 60 of this code.

(e) The commissioner shall enforce any violations of §11-16-1 *et seq.* and chapter 60 of this code committed by qualified permit holders against their permit and their Class A license.

(f) A qualified permit holder that is separately authorized for an outdoor dining area or sidewalk dining area may continue to operate those areas in conjunction with the private outdoor designated area subject to the commissioner's requirements.

(g) A licensee permitted 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 for the operation of qualified permit holders in each private outdoor designated area. The commissioner may revoke or suspend immediately any permit 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.

ARTICLE 8. SALE OF WINES.

§60-8-6g. Special privilege of Class A private wine restaurant license to operate separate, but connected, Class B wine specialty shop license.

A Class A private wine restaurant licensee may, in the commissioner's discretion, operate Class B wine specialty shop license for the off-premises sale of nonintoxicating beer and wine in a connected but separately operated area of the Class A private wine restaurant is licensed premises: *Provided*, That each business is licensed separately and operates separate cash registers and

maintains separation barriers between the different licensed operations. A licensee who fails to license two inner-connected businesses subjects the licensee to the penalties under this article.

ARTICLE 8A. MANUFACTURE AND SALE OF HARD CIDER.

§60-8A-5. Winery or farm winery licensee's authority to manufacture, sell, and provide complimentary samples; growler sales; advertisements; taxes; fees; rulemaking.

(a) *Sales of hard cider.* — A licensed winery or farm winery with its principal place of business or manufacturing facility located in the State of West Virginia may offer hard cider manufactured by the licensed winery or farm winery for retail sale to customers from the winery's or farm winery's licensed premises for consumption off of the licensed premises only in approved and registered hard cider kegs, bottles, or cans, or also sealed wine growlers for personal consumption and not for resale. A licensed winery or farm winery may not sell, give, or furnish hard cider for consumption on the premises of the principal place of business or manufacturing facility located in the State of West Virginia, except for the limited purpose of complimentary samples as permitted in subsection (b) of this section. "Wine Growler" has the meaning set forth in §60-8-6c(g) of this code.

(b) *Complimentary samples.* — A licensed winery or farm winery with its principal place of business or manufacturing facility located in the State of West Virginia may offer complimentary samples of hard cider manufactured at the winery's or farm winery's principal place of business or manufacturing facility located in the State of West Virginia. The complimentary samples may be no greater than two fluid ounces per sample per patron, and a sampling shall not exceed six complimentary two-fluid ounce samples per patron per day. A licensed winery or farm winery providing complimentary samples shall provide complimentary food items to the patron consuming the complimentary samples; and prior to any sampling, verify, using proper identification, that the patron sampling is 21 years of age or older and that the patron is not noticeably or visibly intoxicated.

(c) *Retail sales.* — Every licensed winery or farm winery under this section shall comply with all the provisions applicable to wine retailers when conducting sales of hard cider and is subject to all applicable requirements and penalties. In the interest of promoting tourism throughout the state, every licensed winery or farm winery manufacturing cider in this state is authorized, with a limited off-site retail privilege at private fair and festivals, for off-premises consumption sales of only the winery or farm winery's sealed hard cider. At least five days prior to an approved private fair and festival, an authorized winery or farm winery shall provide a copy of a written agreement to sell only hard cider manufactured by the licensed winery or farm winery at the private fair and festival's licensed premises. If approved, an authorized winery or farm winery may conduct off-premises consumption sales of their hard cider from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved wineries and farm wineries' off-premises consumption sales of hard cider shall comply with all retail requirements in §60-8-1 *et seq.* of this code and §60-8A-1 *et seq.* of this code, and specifically with respect to all markups, taxes, and fees.

(d) *Payment of taxes and fees.* — A licensed winery or farm winery under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by law and by rule of the commissioner.

(e) *Advertising.* — A licensed winery or farm winery may advertise a particular brand or brands of hard cider produced by the licensed winery or farm winery and the price of the hard cider subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(f) *Growler requirements.* — A licensed winery or farm winery, if offering wine growler filling services, shall meet the filling, labeling, sanitation, and all other wine growler requirements in §60-8-6c of this code.

(g) *Fee.* — There is no additional fee for a licensed winery or farm winery authorized under §60-8-6c of this code, to sell wine

growlers, if a winery or farm winery only desires to sell hard cider in the wine growler, and no other wine, then the annual non-prorated and nonrefundable license fee is \$50.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-27. Unlawful admission of children to dance house, etc.; penalty.

Any proprietor or any person in charge of a dance house, concert saloon, theater, museum, or similar place of amusement, or other place, where wines or spirituous or malt liquors are sold or given away, or any place of entertainment injurious to health or morals who admits or permits to remain therein any minor under the age of 18 years, unless accompanied by his or her parent or guardian, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding \$200: *Provided*, That there is exemption from this prohibition for: (a) A private bakery, private cigar shop, private caterer, private club restaurant, private manufacturer club, private fair and festival, private resort hotel, private hotel, private golf club, private food truck, private nine-hole golf course, private tennis club, private wedding venue or barn, private outdoor dining and private outdoor street dining, private multi-vendor fair and festival license, private farmers market, private college sports stadium or coliseum, private professional sports stadium, and a private multi-sports complex licensed pursuant to §60-7-1 *et seq.* of this code and in compliance with, §60-7-2(6)(iv), §60-7-2(7)(D), §60-7-2(8)(I), §60-7-2(10)(L), §60-7-2(11)(D), §60-7-2(12)(H), §60-7-2(13)(6), §60-7-2(14)(H), 60-7-2(15)(H), §60-7-2(16)(G), §60-7-2(17)(G), §60-7-2(18)(H), §60-7-2(19)(H), §60-7-2(20)(H), §60-7-2(21)(L), §60-7-2(22)(H), §60-7-2(23)(H), §60-7-2(24)(H), §60-7-2(25)(H), §60-7-8c(b)(14), §60-7-8d, §60-7-8g(c)(15), and §60-8-32a of this code; or (b) a private club with more than 1,000 members that is in good standing with the Alcohol Beverage Control Commissioner, that has been approved by the Alcohol Beverage Control Commissioner; and which has designated certain seating areas on

its licensed premises as nonalcoholic liquor and nonintoxicating beer areas, as noted in the licensee's floorplan, by using a mandatory carding or identification program by which all members or guests being served or sold alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer are asked and required to provide their proper identification to verify their identity and further that they are of legal drinking age, 21 years of age or older, prior to each sale or service of alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer.

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CHAPTER 5

**(Com. Sub. for H. B. 3311 - By Delegates Hornby, Phillips,
Westfall, Willis, Hardy, Chiarelli, Maynor, Dean, Hite,
Espinosa, and McGeehan)**

[Passed March 10, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §60-8-2 of the Code of West Virginia, 1931, as amended, relating to the alcohol content of certain wines; changing the alcohol limit of table wine; changing the minimum alcohol content of nonfortified dessert wine.

Be it enacted by the Legislature of West Virginia:

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 includes nonfortified dessert wines 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. The term "grocery store" 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 the separate or segregated portion (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.

"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 15.6 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 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 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 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 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 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 15.5 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 the wine is made.

"Vintage wine" or "vintage-dated wine" means wines from which the grapes used to produce 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 to which no alcohol has been added and 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 deals principally in the sale of table wine, nonfortified dessert wines, wine accessories, and food or foodstuffs normally associated with wine and: (1) Who maintains a representative number of 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.

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CHAPTER 6

(S. B. 510 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed March 3, 2023; in effect from passage]
[Approved by the Governor on March 16, 2023.]

AN ACT 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 State Board of Education – State Department of Education, fund 0313, fiscal year 2023, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 0313, fiscal year 2023, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

44 - State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2023 Org 0402

	Appropriation	General Revenue Fund
1a Increased Enrollment – Surplus	05900	2,400,000



CHAPTER 7

(S. B. 678 - By Senators Trump and Barrett)

[Passed March 10, 2023; in effect from passage]
[Approved by the Governor on March 16, 2023.]

AN ACT 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 Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2023, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 0403, fiscal year 2023, organization 0511, be

supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

60 – Division of Human Services

(WV Code Chapter 16)

Fund 0403 FY 2023 Org 0511

	Appropriation		General Revenue Fund
8a Social Services – Surplus	08200	\$	1,200,000

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CHAPTER 8

(Com. Sub. for H. B. 2024 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT making appropriations of public money out of the Treasury in accordance with section 51, article VI of the Constitution.

Be it enacted by the Legislature of West Virginia:

TITLE I – GENERAL PROVISIONS.

Section 1. General policy. – The purpose of this bill is to appropriate money necessary for the economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year 2024.

Sec. 2. Definitions. — For the purpose of this bill:

“Governor” shall mean the Governor of the State of West Virginia.

“Code” shall mean the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

“Spending unit” shall mean the department, bureau, division, office, board, commission, agency, or institution to which an appropriation is made.

The “fiscal year 2024” shall mean the period from July 1, 2023, through June 30, 2024.

“General revenue fund” shall mean the general operating fund of the state and includes all moneys received or collected by the state except as provided in W.V. Code §12-2-2 or as otherwise provided.

“Special revenue funds” shall mean specific revenue sources which by legislative enactments are not required to be accounted for as general revenue, including federal funds.

“From collections” shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collections. If the amount collected exceeds the amount designated “from collections,” the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by Article 2, Chapter 11B of the Code.

Sec. 3. Classification of appropriations. — An appropriation for:

“Personal services” shall mean salaries, wages and other compensation paid to full-time, part-time and temporary employees of the spending unit but shall not include fees or contractual payments paid to consultants or to independent contractors engaged by the spending unit. “Personal services” shall include “annual increment” for “eligible employees” and shall be disbursed only in accordance with Article 5, Chapter 5 of the Code.

Unless otherwise specified, appropriations for “personal services” shall include salaries of heads of spending units.

“Employee benefits” shall mean social security matching, workers' compensation, unemployment compensation, pension and retirement contributions, public employees insurance matching, personnel fees or any other benefit normally paid by the employer as a direct cost of employment. Should the appropriation be insufficient to cover such costs, the remainder of such cost shall be paid by each spending unit from its “unclassified” appropriation,

or its “current expenses” appropriation or other appropriate appropriation. Each spending unit is hereby authorized and required to make such payments in accordance with the provisions of Article 2, Chapter 11B of the Code.

Each spending unit shall be responsible for all contributions, payments or other costs related to coverage and claims of its employees for unemployment compensation and workers compensation. Such expenditures shall be considered an employee benefit.

“BRIM Premiums” shall mean the amount charged as consideration for insurance protection and includes the present value of projected losses and administrative expenses. Premiums are assessed for coverages, as defined in the applicable policies, for claims arising from, inter alia, general liability, wrongful acts, property, professional liability, and automobile exposures.

Should the appropriation for “BRIM Premium” be insufficient to cover such cost, the remainder of such costs shall be paid by each spending unit from its “unclassified” appropriation, its “current expenses” appropriation or any other appropriate appropriation to the Board of Risk and Insurance Management. Each spending unit is hereby authorized and required to make such payments. If there is no appropriation for “BRIM Premium” such costs shall be paid by each spending unit from its “current expenses” appropriation, “unclassified” appropriation or other appropriate appropriation.

West Virginia Council for Community and Technical College Education and Higher Education Policy Commission entities operating with special revenue funds and/or federal funds shall pay their proportionate share of the Board of Risk and Insurance Management total insurance premium cost for their respective institutions.

“Current expenses” shall mean operating costs other than personal services and shall not include equipment, repairs and alterations, buildings, or lands. Each spending unit shall be responsible for and charged monthly for all postage meter service and shall reimburse the appropriate revolving fund monthly for all

such amounts. Such expenditures shall be considered a current expense.

“Equipment” shall mean equipment items which have an appreciable and calculable period of usefulness in excess of one year.

“Repairs and alterations” shall mean routine maintenance and repairs to structures and minor improvements to property which do not increase the capital assets.

“Buildings” shall include new construction and major alteration of existing structures and the improvement of lands and shall include shelter, support, storage, protection, or the improvement of a natural condition.

“Lands” shall mean the purchase of real property or interest in real property.

“Capital outlay” shall mean and include buildings, lands or buildings and lands, with such category or item of appropriation to remain in effect as provided by W.V. Code §12-3-12.

From appropriations made to the spending units of state government, upon approval of the Governor there may be transferred to a special account an amount sufficient to match federal funds under any federal act.

Appropriations classified in any of the above categories shall be expended only for the purposes as defined above and only for the spending units herein designated: *Provided*, That the secretary of each department shall have the authority to transfer within the department those general revenue funds appropriated to the various agencies of the department: *Provided, however*, That no more than five percent of the general revenue funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: and no funds may be transferred to a “personal services and employee benefits” appropriation unless the source funds are also wholly from a “personal services and employee benefits” line, or unless the source funds are from

another appropriation that has exclusively funded employment expenses for at least twelve consecutive months prior to the time of transfer and the position(s) supported by the transferred funds are also permanently transferred to the receiving agency or board within the department: *Provided further*, Notwithstanding any previous provision no more than ten percent of the general revenue funds appropriated to the following funds xxxx, xxxx, xxxx, xxxx, xxxx, xxxx, xxxx, xxxx, xxxx and xxxx within the Department of Health and Human Resources may be transferred between the aforementioned funds: and no funds may be transferred to a “personal services and employee benefits” appropriation unless the source funds are also wholly from a “personal services and employee benefits” line, or unless the source funds are from another appropriation that has exclusively funded employment expenses for at least twelve consecutive months prior to the time of transfer and the position(s) supported by the transferred funds are also permanently transferred to the receiving agency or board within the department: *Provided further*, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by Chapter 5F of the Code shall have the authority to transfer funds appropriated to “personal services and employee benefits,” “current expenses,” “repairs and alterations,” “equipment,” “other assets,” “land,” “buildings” and “contract nursing” to other appropriations within the same account and no funds from other appropriations shall be transferred to the “personal services and employee benefits” or the “unclassified” appropriation except that during Fiscal Year 2024, and upon approval from the State Budget Office, agencies with the appropriation “Salary and Benefits of Cabinet Secretary and Agency Heads” may transfer between this appropriation and the appropriation “Personal Services and Employee Benefits” an amount to cover annualized salaries and employee benefits for the fiscal year ending June 30, 2024, as provided by W.V. Code §6-7-2a: *And provided further*, That no authority exists hereunder to transfer funds into appropriations to which no funds are legislatively appropriated: *And provided further*, That if the Legislature consolidates, reorganizes or terminates agencies,

boards or functions, within any fiscal year the secretary or other appropriate agency head, or in the case of the termination of a spending unit of the state, the Director of the State Budget Office, in the absence of general law providing otherwise, may transfer the funds formerly appropriated to such agency, board or function, allocating items of appropriation as may be necessary if only part of the item may be allocated, in order to implement such consolidation, reorganization or termination. No funds may be transferred from a Special Revenue Account, dedicated account, capital expenditure account or any other account or fund specifically exempted by the Legislature from transfer, except that the use of the appropriations from the State Road Fund for the office of the Secretary of the Department of Transportation is not a use other than the purpose for which such funds were dedicated and is permitted.

Appropriations otherwise classified shall be expended only where the distribution of expenditures for different purposes cannot well be determined in advance or it is necessary or desirable to permit the spending unit the freedom to spend an appropriation for more than one of the above classifications.

Sec. 4. Method of expenditure. — Money appropriated by this bill, unless otherwise specifically directed, shall be appropriated, and expended according to the provisions of Article 3, Chapter 12 of the Code or according to any law detailing a procedure specifically limiting that article.

Sec. 5. Maximum expenditures. — No authority or requirement of law shall be interpreted as requiring or permitting an expenditure in excess of the appropriations set out in this bill.

TITLE II – APPROPRIATIONS.

ORDER OF SECTIONS

- SECTION 1. Appropriations from general revenue.
- SECTION 2. Appropriations from state road fund.

- SECTION 3. Appropriations from other funds.
- SECTION 4. Appropriations from lottery net profits.
- SECTION 5. Appropriations from state excess lottery revenue.
- SECTION 6. Appropriations of federal funds.
- SECTION 7. Appropriations from federal block grants.
- SECTION 8. Awards for claims against the state.
- SECTION 9. Appropriations from general revenue fund surplus accrued.
- SECTION 10. Appropriations from lottery net profits surplus accrued.
- SECTION 11. Appropriations from state excess lottery revenue surplus accrued.
- SECTION 12. Special revenue appropriations.
- SECTION 13. State improvement fund appropriations.
- SECTION 14. Specific funds and collection accounts.
- SECTION 15. Appropriations for refunding erroneous payment.
- SECTION 16. Sinking fund deficiencies.
- SECTION 17. Appropriations for local governments.
- SECTION 18. Total appropriations.
- SECTION 19. General school fund.

Section 1. Appropriations from general revenue. – From the State Fund, General Revenue, there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B the following amounts, as itemized, for expenditure during the fiscal year 2024.

LEGISLATIVE

1 - Senate

Fund 0165 FY 2024 Org 2100

	Appropriation	General Revenue Fund
Compensation of Members (R).....	00300	\$ 1,010,000
Compensation and Per Diem of Officers and Employees (R).....	00500	4,011,332
Current Expenses		
and Contingent Fund (R)	02100	321,392
Repairs and Alterations (R)	06400	35,000
Technology Repair		
and Modernization (R).....	29800	80,000
Expenses of Members (R).....	39900	450,000
BRIM Premium (R)	91300	<u>44,482</u>
Total.....		\$ 5,952,206

The appropriations for the Senate for the fiscal year 2023 are to remain in full force and effect and are hereby reappropriated to June 30, 2024. Any balances so reappropriated may be transferred and credited to the fiscal year 2023 accounts.

Upon the written request of the Clerk of the Senate, the Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The Clerk of the Senate, with the approval of the President, is authorized to draw his or her requisitions upon the Auditor, payable out of the Current Expenses and Contingent Fund of the Senate, for any bills for supplies and services that may have been incurred by the Senate and not included in the appropriation bill, for supplies and services incurred in preparation for the opening, the conduct of the business and after adjournment of any regular or extraordinary session, and for the necessary operation of the Senate offices, the requisitions for which are to be accompanied by bills to be filed with the Auditor.

The Clerk of the Senate, with the approval of the President, or the President of the Senate shall have authority to employ such staff personnel during any session of the Legislature as shall be needed in addition to staff personnel authorized by the Senate resolution adopted during any such session. The Clerk of the Senate, with the approval of the President, or the President of the Senate shall have authority to employ such staff personnel between sessions of the Legislature as shall be needed, the compensation of all staff personnel during and between sessions of the Legislature, notwithstanding any such Senate resolution, to be fixed by the President of the Senate. The Clerk is hereby authorized to draw his or her requisitions upon the Auditor for the payment of all such staff personnel for such services, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the Senate.

For duties imposed by law and by the Senate, the Clerk of the Senate shall be paid a monthly salary as provided by the Senate resolution, unless increased between sessions under the authority of the President, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the Senate.

Included in the above appropriation for Senate (fund 0165, appropriation 02100), an amount not less than \$5,000 is to be used for the West Virginia Academy of Family Physicians - Doc of the Day Program.

2 - House of Delegates

Fund 0170 FY 2024 Org 2200

Compensation of Members (R).....	00300	\$ 3,000,000
Compensation and Per Diem of Officers and Employees (R)	00500	575,000
Current Expenses and Contingent Fund (R)	02100	4,399,031
Expenses of Members (R).....	39900	1,350,000
Capital Outlay, Repairs and Equipment (R).....	58900	500,000

BRIM Premium (R)	91300	<u>80,000</u>
Total.....		\$ 9,904,031

The appropriations for the House of Delegates for the fiscal year 2023 are to remain in full force and effect and are hereby reappropriated to June 30, 2024. Any balances so reappropriated may be transferred and credited to the fiscal year 2023 accounts.

Upon the written request of the Clerk of the House of Delegates, the Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The Clerk of the House of Delegates, with the approval of the Speaker, is authorized to draw his or her requisitions upon the Auditor, payable out of the Current Expenses and Contingent Fund of the House of Delegates, for any bills for supplies and services that may have been incurred by the House of Delegates and not included in the appropriation bill, for bills for services and supplies incurred in preparation for the opening of the session and after adjournment, and for the necessary operation of the House of Delegates' offices, the requisitions for which are to be accompanied by bills to be filed with the Auditor.

The Speaker of the House of Delegates shall have authority to employ such staff personnel during and between sessions of the Legislature as shall be needed, in addition to personnel designated in the House resolution, and the compensation of all personnel shall be as fixed in such House resolution for the session or fixed by the Speaker during and between sessions of the Legislature, notwithstanding such House resolution. The Clerk of the House of Delegates is hereby authorized to draw requisitions upon the Auditor for such services, payable out of the appropriation for the Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the House of Delegates.

For duties imposed by law and by the House of Delegates, including salary allowed by law as keeper of the rolls, the Clerk

of the House of Delegates shall be paid a monthly salary as provided in the House resolution, unless increased between sessions under the authority of the Speaker and payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the House of Delegates.

Included in the above appropriation for House of Delegates (fund 0170, appropriation 02100), an amount not less than \$5,000 is to be used for the West Virginia Academy of Family Physicians - Doc of the Day Program.

3 - Joint Expenses

(W.V. Code Chapter 4)

Fund 0175 FY 2024 Org 2300

Joint Committee on Government		
and Finance (R).....	10400	\$ 7,725,138
Legislative Printing (R).....	10500	260,000
Legislative Rule-Making		
Review Committee (R).....	10600	147,250
Legislative Computer System (R).....	10700	1,447,500
Legislative Dues and Fees (R).....	10701	600,000
BRIM Premium (R).....	91300	<u>60,569</u>
Total.....		\$ 10,240,457

The appropriations for the Joint Expenses for the fiscal year 2023 are to remain in full force and effect and are hereby reappropriated to June 30, 2024. Any balances reappropriated may be transferred and credited to the fiscal year 2023 accounts.

Upon the written request of the Clerk of the Senate, with the approval of the President of the Senate, and the Clerk of the House of Delegates, with the approval of the Speaker of the House of Delegates, and a copy to the Legislative Auditor, the Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

JUDICIAL*4 - Supreme Court –**General Judicial*Fund 0180 FY 2024 Org 2400

Personal Services		
and Employee Benefits (R).....	00100	\$ 129,136,873
Current Expenses (R).....	13000	21,482,914
Repairs and Alterations (R)	06400	40,000
Equipment (R).....	07000	1,814,000
Military Services Members Court (R)...	09002	300,000
Judges' Retirement System (R).....	11000	854,000
Buildings (R).....	25800	10,000
Other Assets (R).....	69000	80,000
BRIM Premium (R)	91300	<u>716,410</u>
Total.....		\$ 154,434,197

The appropriations to the Supreme Court of Appeals for the fiscal years 2021, 2022 and 2023 are to remain in full force and effect and are hereby reappropriated to June 30, 2024. Any balances so reappropriated may be transferred and credited to the fiscal year 2023 accounts.

This fund shall be administered by the Administrative Director of the Supreme Court of Appeals, who shall draw requisitions for warrants in payment in the form of payrolls, making deductions therefrom as required by law for taxes and other items.

The appropriation for the Judges' Retirement System (fund 0180, appropriation 11000) is to be transferred to the Consolidated Public Retirement Board, in accordance with the law relating thereto, upon requisition of the Administrative Director of the Supreme Court of Appeals.

EXECUTIVE*5 - Governor's Office*

(W.V. Code Chapter 5)

Fund 0101 FY 2024 Org 0100

Personal Services		
and Employee Benefits	00100	\$ 3,409,542
Current Expenses (R)	13000	799,000
Repairs and Alterations	06400	25,000
Equipment	07000	1,000
National Governors Association	12300	60,700
Herbert Henderson		
Office of Minority Affairs	13400	396,726
Community Food Program	18500	1,000,000
Office of Resiliency (R)	18600	613,421
BRIM Premium	91300	<u>183,645</u>
Total		\$ 6,489,034

Any unexpended balances remaining in the appropriations for Unclassified (fund 0101, appropriation 09900), Current Expenses (fund 0101, appropriation 13000), and Office of Resiliency (fund 0101, appropriation 18600) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

The above appropriation for Herbert Henderson Office of Minority Affairs (fund 0101, appropriation 13400) shall be transferred to the Minority Affairs Fund (fund 1058).

6 - Governor's Office –

Custodial Fund

(W.V. Code Chapter 5)

Fund 0102 FY 2024 Org 0100

Personal Services		
and Employee Benefits	00100	\$ 410,065
Current Expenses (R)	13000	182,158
Repairs and Alterations	06400	5,000
Equipment	07000	<u>1,000</u>
Total		\$ 598,223

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0102, appropriation 13000) at the close of the fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

Appropriations are to be used for current general expenses, including compensation of employees, household maintenance, cost of official functions, and additional household expenses occasioned by such official functions.

7 - Governor's Office –

Civil Contingent Fund

(W.V. Code Chapter 5)

Fund 0105 FY 2024 Org 0100

Milton Flood Wall (R)	75701	\$	3,500,000
Local Economic			
Development Assistance (R)	81900		<u>5,000,000</u>
Total.....		\$	8,500,000

Any unexpended balances remaining in the appropriations for Business and Economic Development Stimulus – Surplus (fund 0105, appropriation 08400), Civil Contingent Fund – Total (fund 0105, appropriation 11400), 2012 Natural Disasters – Surplus (fund 0105, appropriation 13500), Congressional Earmark Maintenance of Effort – Surplus (fund 0105, appropriation 22599), Civil Contingent Fund – Total – Surplus (fund 0105, appropriation 23800), Civil Contingent Fund – Surplus (fund 0105, appropriation 26300), Local Economic Development Assistance – Surplus (fund 0105, appropriation 26600), Business and Economic Development Stimulus (fund 0105, appropriation 58600), Civil Contingent Fund (fund 0105, appropriation 61400), Milton Flood Wall (fund 0105, appropriation 75701), Milton Flood Wall – Surplus (fund 0105, appropriation 75799), Natural Disasters – Surplus (fund 0105, appropriation 76400), Local Economic Development Assistance (fund 0105, appropriation 81900), and Federal Funds/Grant Match – Surplus (fund 0105, appropriation 85700) at the close of the fiscal

year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

From this fund there may be expended, at the discretion of the Governor, an amount not to exceed \$1,000 as West Virginia's contribution to the Interstate Oil Compact Commission.

The above fund is intended to provide contingency funding for accidental, unanticipated, emergency, or unplanned events which may occur during the fiscal year and is not to be expended for the normal day-to-day operations of the Governor's Office.

8 - Auditor's Office –

General Administration

(W.V. Code Chapter 12)

Fund 0116 FY 2024 Org 1200

Personal Services

and Employee Benefits.....	00100	\$ 2,546,998
Current Expenses (R).....	13000	13,429
BRIM Premium.....	91300	<u>12,077</u>
Total.....		\$ 2,572,504

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0116, appropriation 13000) at the close of the fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0116, appropriation 00100) is \$95,000 for the Salary of the Auditor.

9 - Treasurer's Office

(W.V. Code Chapter 12)

Fund 0126 FY 2024 Org 1300

Personal Services		
and Employee Benefits	00100	\$ 2,711,818
Unclassified.....	09900	31,463
Current Expenses (R).....	13000	572,684
Abandoned Property Program.....	11800	41,794
Other Assets	69000	10,000
ABLE Program	69201	150,000
BRIM Premium.....	91300	<u>59,169</u>
Total.....		\$ 3,576,928

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0126, appropriation 13000) at the close of the fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0126, appropriation 00100) is \$95,000 for the Salary of the Treasurer.

10 - Department of Agriculture

(W.V. Code Chapter 19)

Fund 0131 FY 2024 Org 1400

Personal Services		
and Employee Benefits	00100	\$ 6,808,433
Current Expenses (R).....	13000	848,115
Animal Identification Program	03900	136,407
State Farm Museum	05500	87,759
Gypsy Moth Program (R)	11900	1,098,069
WV Farmers Market	12801	150,467
Black Fly Control.....	13700	459,453
HEMP Program.....	13701	375,033
Donated Foods Program	36300	45,000
Veterans to Agriculture Program (R)...	36301	268,572
Predator Control (R)	47000	176,400
Bee Research.....	69100	74,662
Microbiology Program.....	78500	105,583
Moorefield Agriculture Center	78600	1,056,879

Chesapeake Bay Watershed.....	83000	120,911
Livestock Care Standards Board.....	84300	8,820
BRIM Premium.....	91300	138,905
State FFA-FHA Camp and Conference Center	94101	778,539
Threat Preparedness	94200	77,869
WV Food Banks.....	96900	426,000
Senior's Farmers' Market Nutrition Coupon Program	97000	<u>55,835</u>
Total.....		\$ 13,297,711

Any unexpended balances remaining in the appropriations for Gypsy Moth Program (fund 0131, appropriation 11900), Current Expenses (fund 0131, appropriation 13000), Veterans to Agriculture Program (fund 0131, appropriation 36301), Predator Control (fund 0131, appropriation 47000), and Agricultural Disaster and Mitigation Needs – Surplus (fund 0131, appropriation 85000) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0131, appropriation 00100) is \$95,000 for the Salary of the Commissioner.

The above appropriation for Predator Control (fund 0131, appropriation 47000) is to be made available to the United States Department of Agriculture, Wildlife Services to administer the Predator Control Program.

A portion of the Current Expenses appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for marketing and development activities.

From the above appropriation for WV Food Banks (fund 0131, appropriation 96900), \$20,000 is for House of Hope and the remainder of the appropriation shall be allocated to the Huntington Food Bank and the Mountaineer Food Bank in Braxton County.

11 - West Virginia Conservation Agency

(W.V. Code Chapter 19)

Fund 0132 FY 2024 Org 1400

Personal Services		
and Employee Benefits	00100	\$ 869,296
Unclassified.....	09900	77,059
Current Expenses (R).....	13000	317,848
Soil Conservation Projects (R).....	12000	10,107,529
BRIM Premium.....	91300	<u>34,428</u>
Total.....		\$ 11,406,160

Any unexpended balances remaining in the appropriations for Soil Conservation Projects (fund 0132, appropriation 12000) and Current Expenses (fund 0132, appropriation 13000) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

12 - Department of Agriculture –

Meat Inspection Fund

(W.V. Code Chapter 19)

Fund 0135 FY 2024 Org 1400

Personal Services		
and Employee Benefits	00100	\$ 1,032,292
Unclassified.....	09900	7,090
Current Expenses	13000	<u>82,605</u>
Total.....		\$ 1,121,987

Any part or all of this appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for the above-named program.

13 - Department of Agriculture –

Agricultural Awards Fund

(W.V. Code Chapter 19)

Fund 0136 FY 2024 Org 1400

Programs and Awards for 4-H Clubs and FFA/FHA.....	57700	\$	15,000
Commissioner's Awards and Programs	73700		<u>39,250</u>
Total.....		\$	54,250

14 - Department of Agriculture –

West Virginia Agricultural Land Protection Authority

(W.V. Code Chapter 8A)

Fund 0607 FY 2024 Org 1400

Personal Services and Employee Benefits.....	00100	\$	105,302
Unclassified.....	09900		<u>950</u>
Total.....		\$	106,252

15 - Attorney General

(W.V. Code Chapters 5, 14, 46A and 47)

Fund 0150 FY 2024 Org 1500

Personal Services and Employee Benefits (R).....	00100	\$	3,387,827
Unclassified (R)	09900		24,428
Current Expenses (R).....	13000		681,295
Repairs and Alterations.....	06400		1,000
Equipment.....	07000		7,500
Criminal Convictions and Habeas Corpus Appeals (R)....	26000		988,021
Better Government Bureau	74000		287,469
BRIM Premium.....	91300		<u>120,654</u>
Total.....		\$	5,498,194

Any unexpended balances remaining in the appropriations for Personal Services and Employee Benefits (fund 0150, appropriation 00100), Unclassified (fund 0150, appropriation 09900), Current Expenses (fund 0150, appropriation 13000),

Criminal Convictions and Habeas Corpus Appeals (fund 0150, appropriation 26000), and Agency Client Revolving Liquidity Pool (fund 0150, appropriation 36200) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0150, appropriation 00100) is \$95,000 for the Salary of the Attorney General.

When legal counsel or secretarial help is appointed by the Attorney General for any state spending unit, this account shall be reimbursed from such spending units specifically appropriated account or from accounts appropriated by general language contained within this bill: *Provided*, That the spending unit shall reimburse at a rate and upon terms agreed to by the state spending unit and the Attorney General: *Provided, however*, That if the spending unit and the Attorney General are unable to agree on the amount and terms of the reimbursement, the spending unit and the Attorney General shall submit their proposed reimbursement rates and terms to the Governor for final determination.

16 - Secretary of State

(W.V. Code Chapters 3, 5, and 59)

Fund 0155 FY 2024 Org 1600

Personal Services			
and Employee Benefits	00100	\$	118,794
Unclassified (R)	09900		8,352
Current Expenses (R)	13000		781,584
BRIM Premium.....	91300		<u>34,500</u>
Total.....		\$	943,230

Any unexpended balances remaining in the appropriations for Unclassified (fund 0155, appropriation 09900) and Current Expenses (fund 0155, appropriation 13000) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0155, appropriation 00100) is \$95,000 for the Salary of the Secretary of State.

17 - State Election Commission

(W.V. Code Chapter 3)

Fund 0160 FY 2024 Org 1601

Personal Services			
and Employee Benefits	00100	\$	2,477
Unclassified.....	09900		75
Current Expenses	13000		<u>4,956</u>
Total.....		\$	7,508

DEPARTMENT OF ADMINISTRATION

18 - Department of Administration –

Office of the Secretary

(W.V. Code Chapter 5F)

Fund 0186 FY 2024 Org 0201

Personal Services			
and Employee Benefits	00100	\$	479,079
Salary and Benefits of Cabinet Secretary			
and Agency Heads	00201		153,400
Unclassified.....	09900		9,177
Current Expenses	13000		85,009
Repairs and Alterations.....	06400		100
Equipment.....	07000		1,000
Financial Advisor (R)	30400		27,546
Lease Rental Payments	51600		14,850,000
Design-Build Board	54000		4,000
Other Assets	69000		100
BRIM Premium.....	91300		<u>6,736</u>
Total.....		\$	15,616,147

Any unexpended balance remaining in the appropriation for Financial Advisor (fund 0186, appropriation 30400) at the close of the fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

The appropriation for Lease Rental Payments (fund 0186, appropriation 51600) shall be disbursed as provided by W.V. Code §31-15-6b.

19 - Consolidated Public Retirement Board

(W.V. Code Chapter 5)

Fund 0195 FY 2024 Org 0205

The Division of Highways, Division of Motor Vehicles, Public Service Commission, and other departments, bureaus, divisions, or commissions operating from special revenue funds and/or federal funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.

20 - Division of Finance

(W.V. Code Chapter 5A)

Fund 0203 FY 2024 Org 0209

Personal Services			
and Employee Benefits	00100	\$	66,135
Unclassified.....	09900		1,400
Current Expenses	13000		53,563
GAAP Project (R).....	12500		650,070
BRIM Premium.....	91300		<u>20,675</u>
Total.....		\$	791,843

Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, appropriation 12500) at the close of the fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

21 - Division of General Services

(W.V. Code Chapter 5A)

Fund 0230 FY 2024 Org 0211

Personal Services		
and Employee Benefits	00100	\$ 2,985,695
Unclassified.....	09900	20,000
Current Expenses	13000	1,148,349
Repairs and Alterations.....	06400	500
Equipment.....	07000	5,000
Fire Service Fee	12600	14,000
Preservation and Maintenance of Statues and Monuments on Capitol Grounds.....	37100	68,000
Capital Outlay, Repairs and Equipment (R).....	58900	23,660,888
BRIM Premium.....	91300	<u>129,983</u>
Total.....		\$ 28,032,415

Any unexpended balance remaining in the appropriation for Capital Outlay, Repairs and Equipment (fund 0230, appropriation 58900) and Capital Outlay, Repairs and Equipment – Surplus (fund 0230, appropriation 67700) at the close of the fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

From the above appropriation for Preservation and Maintenance of Statues and Monuments on Capitol Grounds (fund 0230, appropriation 37100), the Division shall consult the Division of Culture and History and Capitol Building Commission in all aspects of planning, assessment, maintenance, and restoration.

The above appropriation for Capital Outlay, Repairs and Equipment (fund 0230, appropriation 58900) shall be expended for capital improvements, maintenance, repairs, and equipment for state-owned buildings.

22 - Division of Purchasing

(W.V. Code Chapter 5A)

Fund 0210 FY 2024 Org 0213

Personal Services		
and Employee Benefits	00100	\$ 1,105,767
Unclassified.....	09900	144
Current Expenses	13000	1,285
Repairs and Alterations.....	06400	200
BRIM Premium.....	91300	<u>6,922</u>
Total.....		\$ 1,114,318

The Division of Highways shall reimburse Fund 2031 within the Division of Purchasing for all actual expenses incurred pursuant to the provisions of W.V. Code §17-2A-13.

23 - Travel Management

(W.V. Code Chapter 5A)

Fund 0615 FY 2024 Org 0215

Personal Services		
and Employee Benefits	00100	\$ 842,645
Unclassified.....	09900	12,032
Current Expenses	13000	440,247
Repairs and Alterations.....	06400	1,000
Equipment.....	07000	5,000
Buildings.....	25800	100
Other Assets.....	69000	<u>100</u>
Total.....		\$ 1,301,124

24 - Commission on Uniform State Laws

(W.V. Code Chapter 29)

Fund 0214 FY 2024 Org 0217

Current Expenses	13000	\$ 45,550
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To pay expenses for members of the Commission on Uniform State Laws.

25 - West Virginia Public Employees Grievance Board

(W.V. Code Chapter 6C)

Fund 0220 FY 2024 Org 0219

Personal Services		
and Employee Benefits	00100	\$ 1,027,173
Unclassified.....	09900	1,000
Current Expenses	13000	145,295
Equipment.....	07000	50
BRIM Premium.....	91300	<u>8,740</u>
Total.....		\$ 1,182,258

26 - Ethics Commission

(W.V. Code Chapter 6B)

Fund 0223 FY 2024 Org 0220

Personal Services		
and Employee Benefits	00100	\$ 640,224
Unclassified.....	09900	2,200
Current Expenses	13000	105,501
Repairs and Alterations.....	06400	500
Other Assets.....	69000	100
BRIM Premium.....	91300	<u>4,574</u>
Total.....		\$ 753,099

27 - Public Defender Services

(W.V. Code Chapter 29)

Fund 0226 FY 2024 Org 0221

Personal Services		
and Employee Benefits	00100	\$ 1,921,914
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	119,000
Unclassified.....	09900	333,300
Current Expenses	13000	12,740
Public Defender Corporations.....	35200	23,014,199

Appointed Counsel Fees (R).....	78800	12,691,113
BRIM Premium.....	91300	<u>10,575</u>
Total.....		\$ 38,102,841

Any unexpended balance remaining in the appropriation for Appointed Counsel Fees - Surplus (fund 0226, appropriation 43500) and Appointed Counsel Fees (fund 0226, appropriation 78800) at the close of the fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

The director shall have the authority to transfer funds from the appropriation to Public Defender Corporations (fund 0226, appropriation 35200) to Appointed Counsel Fees (fund 0226, appropriation 78800).

*28 - Committee for the Purchase of
Commodities and Services from the Handicapped*

(W.V. Code Chapter 5A)

Fund 0233 FY 2024 Org 0224

Personal Services		
and Employee Benefits.....	00100	\$ 3,187
Current Expenses	13000	<u>868</u>
Total.....		\$ 4,055

29 - Public Employees Insurance Agency

(W.V. Code Chapter 5)

Fund 0200 FY 2024 Org 0225

PEIA Subsidy.....	80100	\$ 71,373,750
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The Division of Highways, Division of Motor Vehicles, Public Service Commission, and other departments, bureaus, divisions, or commissions operating from special revenue funds and/or federal funds shall pay their proportionate share of the public employees health insurance cost for their respective divisions.

The above appropriation for PEIA Subsidy (fund 0200, appropriation 80100) may be transferred to a special revenue fund and shall be utilized by the West Virginia Public Employees Insurance Agency for the purposes of offsetting benefit changes to offset the aggregate premium cost-sharing percentage requirements between employers and employees. Such amount shall not be included in the calculation of the plan year aggregate premium cost-sharing percentages between employers and employees.

30 - West Virginia Prosecuting Attorneys Institute

(W.V. Code Chapter 7)

Fund 0557 FY 2024 Org 0228

Forensic Medical Examinations (R)	68300	\$	568,607
Federal Funds/Grant Match (R)	74900		<u>112,555</u>
Total.....		\$	681,162

Any unexpended balances remaining in the appropriations for Forensic Medical Examinations (fund 0557, appropriation 68300) and Federal Funds/Grant Match (fund 0557, appropriation 74900) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

31 - Real Estate Division

(W.V. Code Chapter 5A)

Fund 0610 FY 2024 Org 0233

Personal Services			
and Employee Benefits	00100	\$	728,108
Unclassified.....	09900		124
Current Expenses	13000		137,381
Repairs and Alterations.....	06400		100
Equipment.....	07000		2,500
BRIM Premium.....	91300		<u>9,784</u>
Total.....		\$	877,997

DEPARTMENT OF COMMERCE*32 - Division of Forestry*

(W.V. Code Chapter 19)

Fund 0250 FY 2024 Org 0305

Personal Services		
and Employee Benefits.....	00100	\$ 4,987,129
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	111,674
Unclassified.....	09900	21,435
Current Expenses	13000	558,024
Repairs and Alterations.....	06400	80,000
BRIM Premium.....	91300	<u>98,754</u>
Total.....		\$ 5,857,016

Out of the above appropriations a sum may be used to match federal funds for cooperative studies or other funds for similar purposes.

Any unexpended balances remaining in the appropriations for Current Expenses – Surplus (fund 0250, appropriation 13099) and Equipment – Surplus (fund 0250, appropriation 34100) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

33 - Geological and Economic Survey

(W.V. Code Chapter 29)

Fund 0253 FY 2024 Org 0306

Personal Services		
and Employee Benefits.....	00100	\$ 1,705,320
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	112,753
Unclassified.....	09900	27,678
Current Expenses	13000	51,524
Repairs and Alterations.....	06400	968

Mineral Mapping System (R)	20700	1,136,567
BRIM Premium.....	91300	<u>24,486</u>
Total.....		\$ 3,059,296

Any unexpended balance remaining in the appropriation for Mineral Mapping System (fund 0253, appropriation 20700) at the close of the fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

The above Unclassified and Current Expenses appropriations include funding to secure federal and other contracts and may be transferred to a special revolving fund (fund 3105) for the purpose of providing advance funding for such contracts.

34 - Division of Labor

(W.V. Code Chapters 21 and 47)

Fund 0260 FY 2024 Org 0308

Personal Services		
and Employee Benefits.....	00100	\$ 1,666,653
Current Expenses	13000	227,000
Repairs and Alterations.....	06400	28,000
Equipment.....	07000	15,000
BRIM Premium.....	91300	<u>8,500</u>
Total.....		\$ 1,945,153

35 - Division of Natural Resources

(W.V. Code Chapter 20)

Fund 0265 FY 2024 Org 0310

Personal Services		
and Employee Benefits.....	00100	\$ 20,400,532
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	113,188
Unclassified.....	09900	184,711
Current Expenses	13000	529,654
Repairs and Alterations.....	06400	100

Equipment.....	07000	100
Buildings (R).....	25800	100
Capital Outlay – Parks (R).....	28800	6,000,000
Litter Control Conservation Officers ...	56400	151,662
Upper Mud River Flood Control (R) ...	65400	175,210
Other Assets.....	69000	100
Land (R).....	73000	100
Law Enforcement.....	80600	2,628,555
BRIM Premium.....	91300	<u>45,141</u>
Total.....		\$ 30,229,153

Any unexpended balances remaining in the appropriations for Equine Enrichment - Surplus (fund 0265, appropriation 22899), Buildings (fund 0265, appropriation 25800), Capital Outlay – Parks (fund 0265, appropriation 28800), Upper Mud River Flood Control (fund 0265, appropriation 65400), Land (fund 0265, appropriation 73000), and State Park Improvements – Surplus (fund 0265, appropriation 76300) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

Any revenue derived from mineral extraction at any state park shall be deposited in a special revenue account of the Division of Natural Resources, first for bond debt payment purposes and with any remainder to be for park operation and improvement purposes.

36 - Division of Miners' Health, Safety and Training

(W.V. Code Chapter 22A)

Fund 0277 FY 2024 Org 0314

Personal Services		
and Employee Benefits.....	00100	\$ 9,924,652
Unclassified.....	09900	111,016
Current Expenses	13000	1,396,141
Coal Dust and Rock Dust Sampling	27000	499,261
BRIM Premium.....	91300	<u>80,668</u>
Total.....		\$ 12,011,738

Included in the above appropriation for Current Expenses (fund 0277, appropriation 13000) is \$500,000 to be used for coal mine training activities at an established mine training facility in southern West Virginia.

37 - Board of Coal Mine Health and Safety

(W.V. Code Chapter 22)

Fund 0280 FY 2024 Org 0319

Personal Services			
and Employee Benefits	00100	\$	245,490
Unclassified.....	09900		3,480
Current Expenses	13000		<u>118,138</u>
Total.....		\$	367,108

Included in the above appropriation for Current Expenses (fund 0280, appropriation 13000) up to \$29,000 shall be used for the Coal Mine Safety and Technical Review Committee.

38 - WorkForce West Virginia

(W.V. Code Chapter 23)

Fund 0572 FY 2024 Org 0323

Personal Services			
and Employee Benefits	00100	\$	51,433
Unclassified.....	09900		584
Current Expenses	13000		<u>6,456</u>
Total.....		\$	58,473

39 - Department of Commerce –

Office of the Secretary

(W.V. Code Chapter 19)

Fund 0606 FY 2024 Org 0327

Personal Services			
and Employee Benefits	00100	\$	1,417,755

Salary and Benefits of Cabinet Secretary and Agency Heads	00201	153,750
Unclassified.....	09900	1,490
Current Expenses	13000	<u>353,147</u>
Total.....		\$ 1,926,142

40 - State Board of Rehabilitation –

Division of Rehabilitation Services

(W.V. Code Chapter 18)

Fund 0310 FY 2024 Org 0932

Personal Services		
and Employee Benefits.....	00100	\$ 12,317,698
Current Expenses	13000	558,815
Independent Living Services.....	00900	429,418
Workshop Development	16300	1,817,427
Supported Employment		
Extended Services.....	20600	77,960
Ron Yost Personal Assistance Fund	40700	333,828
Employment Attendant Care Program.	59800	131,575
BRIM Premium.....	91300	<u>77,464</u>
Total.....		\$ 15,744,185

The above appropriation for Workshop Development (fund 0310, appropriation 16300) shall be used exclusively with the private nonprofit community rehabilitation program organizations known as work centers or sheltered workshops. The appropriation shall also be used to continue the support of the program, services, and individuals with disabilities currently in place at those organizations.

DEPARTMENT OF TOURISM

41 - Department of Tourism –

Office of the Secretary

(W.V. Code Chapter 5B)

Fund 0246 FY 2024 Org 0304

Tourism – Brand Promotion (R)	61803	\$ 3,000,000
Tourism – Public Relations (R)	61804	1,500,000
Tourism – Events and Sponsorships (R)	61805	500,000
Tourism – Industry Development (R) ..	61806	500,000
State Parks and Recreation Advertising (R)	61900	<u>1,500,000</u>
Total		\$ 7,000,000

Any unexpended balances remaining in the appropriations for Tourism – Development Opportunity Fund (fund 0246, appropriation 11601), Tourism – Brand Promotion (fund 0246, appropriation 61803), Tourism – Public Relations (fund 0246, appropriation 61804), Tourism – Events and Sponsorships (fund 0246, appropriation 61805), Tourism – Industry Development (fund 0246, appropriation 61806), and State Parks and Recreation Advertising (fund 0246, appropriation 61900) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

The Secretary of the Department of Tourism shall have the authority to transfer between the above items of appropriation.

DEPARTMENT OF ECONOMIC DEVELOPMENT

42 - Department of Economic Development –

Office of the Secretary

(W.V. Code Chapter 5B)

Fund 0256 FY 2024 Org 0307

Personal Services and Employee Benefits	00100	\$ 4,261,881
Unclassified	09900	108,055
Current Expenses	13000	4,738,464
National Youth Science Camp	13200	241,570

Local Economic Development		
Partnerships (R)	13300	1,250,000
ARC Assessment	13600	152,585
Marshall University		
Research Corporation	xxxxx	500,000
Global Economic Development		
Partnerships (R)	20201	150,000
Guaranteed Work Force Grant (R).....	24200	988,088
Directed Transfer	70000	15,000,000
Mainstreet Program.....	79400	173,222
BRIM Premium.....	91300	3,157
Hatfield McCoy Recreational Trail.....	96000	<u>198,415</u>
Total.....		\$ 27,765,437

Any unexpended balances remaining in the appropriations for Unclassified – Surplus (fund 0256, appropriation 09700), Partnership Grants (fund 0256, appropriation 13100), Local Economic Development Partnerships (fund 0256, appropriation 13300), Global Economic Development Partnerships (fund 0256, appropriation 20201), and Guaranteed Work Force Grant (fund 0256, appropriation 24200) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

From the above appropriation for Current Expenses (fund 0256, appropriation 13000), \$50,000 shall be used for the Western Potomac Economic Partnership, \$100,000 shall be used for Advantage Valley, \$750,000 shall be used for the Robert C. Byrd Institute, \$548,915 shall be used for West Virginia University, and \$298,915 shall be used for Southern West Virginia Community and Technical College for the Mine Training and Energy Technologies Academy.

The above appropriation to Local Economic Development Partnerships (fund 0256, appropriation 13300) shall be used by the Department of Economic Development for the award of funding assistance to county and regional economic development corporations or authorities participating in the Certified Development Community Program developed under the provisions of W.V. Code §5B-2-14. The Department of Economic Development shall award the funding assistance through a matching grant program, based upon a formula whereby funding

assistance may not exceed \$30,000 per county served by an economic development or redevelopment corporation or authority.

The above appropriation for Directed Transfer (fund 0256, appropriation 70000) shall be transferred to the Economic Enhancement Grant Fund (fund 3382).

DEPARTMENT OF EDUCATION

43 - State Board of Education –

School Lunch Program

(W.V. Code Chapters 18 and 18A)

Fund 0303 FY 2024 Org 0402

Personal Services			
and Employee Benefits	00100	\$	368,331
Current Expenses	13000		<u>2,118,865</u>
Total		\$	2,487,196

44 - State Board of Education –

State Department of Education

(W.V. Code Chapters 18 and 18A)

Fund 0313 FY 2024 Org 0402

Personal Services			
and Employee Benefits	00100	\$	4,825,679
Unclassified (R)	09900		420,000
Current Expenses (R)	13000		4,580,000
Teachers' Retirement Savings Realized	09500		37,543,000
Center for Professional			
Development (R)	11500		150,000
Increased Enrollment	14000		4,250,000
Safe Schools	14300		4,509,127
Attendance Incentive Bonus (R)	15001		2,262,389
National Teacher Certification (R)	16100		300,000

Jobs & Hope – Childhood		
Drug Prevention Education.....	21901	5,000,000
Technology Repair and Modernization	29800	951,003
Hope Scholarship Program (R).....	30401	23,970,739
HVAC Technicians.....	35500	541,248
Early Retirement		
Notification Incentive	36600	300,000
MATH Program	36800	386,532
Assessment Programs (R).....	39600	3,953,638
Benedum Professional Development		
Collaborative (R)	42700	429,775
Governor's Honors Academy (R).....	47800	1,059,270
21 st Century Fellows	50700	274,899
English as a Second Language.....	52800	96,000
Teacher Reimbursement	57300	297,188
Hospitality Training.....	60000	277,954
Youth in Government	61600	100,000
High Acuity Special Needs (R).....	63400	1,500,000
Foreign Student Education.....	63600	101,445
State Board of Education		
Administrative Costs	68400	285,887
IT Academy (R)	72100	500,000
Early Literacy Program.....	75600	5,717,133
School Based Truancy Prevention (R).	78101	2,063,740
Communities in Schools (R).....	78103	4,905,755
Mastery Based Education	78104	125,000
Mountain State		
Digital Literacy Program	86401	415,500
21 st Century Learners (R).....	88600	1,821,209
BRIM Premium.....	91300	342,859
21 st Century Assessment and Professional Development	93100	2,012,157
21 st Century Technology		
Infrastructure Network		
Tools and Support (R)	93300	9,885,992
Special Olympic Games.....	96600	25,000
Educational Program Allowance	99600	<u>516,250</u>
Total.....		\$ 126,696,368

The above appropriations include funding for the State Board of Education and its executive office.

From the above appropriation for Current Expenses (fund 0313, appropriation 13000), \$2,000,000 shall be used for the Department of Education Child Nutrition Program – Non-traditional Child Hunger Solutions.

Any unexpended balances remaining in the appropriations for Unclassified (fund 0313, appropriation 09900), Current Expenses (fund 0313, appropriation 13000), Center for Professional Development (fund 0313, appropriation 11500), Attendance Incentive Bonus (fund 0313, appropriation 15001), National Teacher Certification (fund 0313, appropriation 16100), Hope Scholarship Program (fund 0313, appropriation 30401), Assessment Programs (fund 0313, appropriation 39600), Benedum Professional Development Collaborative (fund 0313, appropriation 42700), Governor's Honors Academy (fund 0313, appropriation 47800), High Acuity Special Needs (fund 0313, appropriation 63400), IT Academy (fund 0313, appropriation 72100), School Based Truancy Prevention (fund 0313, appropriation 78101), Communities in Schools (fund 0313, appropriation 78103), 21st Century Learners (fund 0313, appropriation 88600), and 21st Century Technology Infrastructure Network Tools and Support (fund 0313, appropriation 93300) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

The above appropriation for Teachers' Retirement Savings Realized (fund 0313, appropriation 09500) shall be transferred to the Employee Pension and Health Care Benefit Fund (fund 2044).

From the above appropriation for Unclassified (fund 0313, appropriation 09900), \$120,000 shall be for assisting low income students with AP and CLEP exam fees.

From the above appropriation for MATH Program (fund 0313, appropriation 36800), \$50,000 shall be for Math Counts.

The above appropriation for Hospitality Training (fund 0313, appropriation 60000), shall be allocated only to entities that have a plan approved for funding by the Department of Education, at the funding level determined by the State Superintendent of Schools. Plans shall be submitted to the State Superintendent of Schools to be considered for funding.

From the above appropriation for Educational Program Allowance (fund 0313, appropriation 99600), \$100,000 shall be expended for the Morgan County Board of Education for Paw Paw Schools; \$150,000 shall be for the Randolph County Board of Education for Pickens School; \$100,000 shall be for the Preston County Board of Education for the Aurora School; \$100,000 shall be for the Fayette County Board of Education for Meadow Bridge; and \$66,250 is for Project Based Learning in STEM fields.

45 - State Board of Education –

Aid for Exceptional Children

(W.V. Code Chapters 18 and 18A)

Fund 0314 FY 2024 Org 0402

Special Education – Counties	15900	\$ 7,425,757
Special Education – Institutions.....	16000	4,161,325
Education of Juveniles		
Held in Predispositional		
Juvenile Detention Centers	30200	702,582
Education of Institutionalized		
Juveniles and Adults (R).....	47200	<u>21,780,531</u>
Total.....		\$ 34,070,195

Any unexpended balance remaining in the appropriation for Education of Institutionalized Juveniles and Adults (fund 0314, appropriation 47200) at the close of the fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

From the above appropriations, the Superintendent shall have authority to expend funds for the costs of special education for those children residing in out-of-state placements.

*46 - State Board of Education –**State Aid to Schools*

(W.V. Code Chapters 18 and 18A)

Fund 0317 FY 2024 Org 0402

Other Current Expenses	02200	\$ 180,202,533
Advanced Placement.....	05300	635,238
Professional Educators.....	15100	940,631,329
Service Personnel.....	15200	350,277,867
Fixed Charges	15300	111,993,457
Transportation	15400	87,405,241
Improved Instructional Programs.....	15600	57,738,239
Professional Student Support Services	65500	64,943,783
21 st Century Strategic Technology		
Learning Growth.....	93600	37,971,242
Teacher and Leader Induction.....	93601	<u>17,006,361</u>
Basic Foundation Allowances.....		1,848,805,290
Less Local Share		(533,898,170)
Adjustments		<u>(1,679,011)</u>
Total Basic State Aid		1,313,228,109
Public Employees' Insurance Matching	01200	218,605,348
Teachers' Retirement System.....	01900	70,894,634
School Building Authority	45300	0
Retirement Systems –		
Unfunded Liability.....	77500	<u>285,469,999</u>
Total.....		\$ 1,888,198,090

*47 - State Board of Education –**School Building Authority*

(W.V. Code Chapters 18 and 18A)

Fund 0318 FY 2024 Org 0404

School Building Authority	45300	\$ 36,000,000
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The above appropriation for School Building Authority (fund 0318, appropriation 45300) shall be transferred to the School Construction Fund (fund 3952).

48 - State Board of Education –

Vocational Division

(W.V. Code Chapters 18 and 18A)

Fund 0390 FY 2024 Org 0402

Personal Services		
and Employee Benefits	00100	\$ 1,409,342
Unclassified.....	09900	268,800
Current Expenses	13000	883,106
Wood Products – Forestry		
Vocational Program	14600	82,713
Albert Yanni Vocational Program	14700	132,123
Vocational Aid.....	14800	24,540,570
Adult Basic Education	14900	5,468,396
Jobs & Hope (R)	14902	6,252,729
Program Modernization	30500	884,313
High School Equivalency		
Diploma Testing (R).....	72600	812,028
FFA Grant Awards.....	83900	11,496
Pre-Engineering Academy Program	84000	<u>265,294</u>
Total.....		\$ 41,010,910

Any unexpended balances remaining in the appropriations for Jim's Dream (fund 0390, appropriation 14901), Jobs and Hope (fund 0390, appropriation 14902), and High School Equivalency Diploma Testing (fund 0390, appropriation 72600) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

49 - State Board of Education –

West Virginia Schools for the Deaf and the Blind

(W.V. Code Chapters 18 and 18A)

Fund 0320 FY 2024 Org 0403

Personal Services		
and Employee Benefits	00100	\$ 10,875,030
Unclassified (R)	09900	110,000
Current Expenses (R)	13000	2,250,696
Repairs and Alterations	06400	164,675
Equipment	07000	77,000
Buildings (R)	25800	45,000
Capital Outlay and Maintenance (R) ...	75500	1,670,000
BRIM Premium	91300	<u>130,842</u>
Total		\$ 15,323,243

Any unexpended balances remaining in the appropriations for Unclassified (fund 0320, appropriation 09900), Current Expenses (fund 0320, appropriation 13000), Buildings (fund 0320, appropriation 25800) and Capital Outlay and Maintenance (fund 0320, appropriation 75500) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

DEPARTMENT OF ARTS, CULTURE, AND HISTORY*50 - Division of Culture and History*

(W.V. Code Chapter 29)

Fund 0293 FY 2024 Org 0432

Personal Services		
and Employee Benefits	00100	\$ 3,658,720
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	120,106
Unclassified (R)	09900	28,483
Current Expenses	13000	610,843
Repairs and Alterations	06400	1,000
Equipment	07000	1
WV Humanities Council	16800	250,000
Buildings	25800	1
Other Assets	69000	1
Educational Enhancements	69500	73,500
Land	73000	1

Culture and History Programming.....	73200	231,573
Capital Outlay and Maintenance (R) ...	75500	19,600
Historical Highway Marker Program...	84400	57,548
BRIM Premium.....	91300	<u>39,337</u>
Total.....		\$ 5,090,714

Any unexpended balances remaining in the appropriations for Unclassified (fund 0293, appropriation 09900), Capital Outlay, Repairs and Equipment (fund 0293, appropriation 58900), Capital Improvements – Surplus (fund 0293, appropriation 66100), Capital Outlay, Repairs and Equipment – Surplus (fund 0293, appropriation 67700), and Capital Outlay and Maintenance (fund 0293, appropriation 75500) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

From the above appropriation for Educational Enhancements (fund 0293, appropriation 69500) \$73,500 shall be used for the Clay Center.

The Current Expenses appropriation includes funding for the arts funds, department programming funds, grants, fairs and festivals, and Camp Washington Carver; and shall be expended only upon authorization of the Division of Culture and History and in accordance with the provisions of Chapter 5A, Article 3, and Chapter 12 of the WV Code.

51 - Library Commission

(W.V. Code Chapter 10)

Fund 0296 FY 2024 Org 0432

Personal Services		
and Employee Benefits.....	00100	\$ 1,154,498
Salary and Benefits of Cabinet Secretary		
and Agency Heads.....	00201	112,000
Current Expenses.....	13000	139,624
Repairs and Alterations.....	06400	6,500
Services to Blind & Handicapped.....	18100	161,717
BRIM Premium.....	91300	<u>18,205</u>
Total.....		\$ 1,592,544

52 - Educational Broadcasting Authority

(W.V. Code Chapter 10)

Fund 0300 FY 2024 Org 0439

Personal Services		
and Employee Benefits	00100	\$ 3,391,551
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	120,106
Current Expenses	13000	113,844
Mountain Stage	24900	450,000
Capital Outlay and Maintenance (R) ...	75500	49,250
BRIM Premium.....	91300	<u>47,727</u>
Total.....		\$ 4,172,478

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 0300, appropriation 75500) at the close of the fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

DEPARTMENT OF ENVIRONMENTAL PROTECTION*53 - Environmental Quality Board*

(W.V. Code Chapter 20)

Fund 0270 FY 2024 Org 0311

Personal Services		
and Employee Benefits	00100	\$ 94,048
Current Expenses	13000	28,453
Repairs and Alterations.....	06400	800
Equipment.....	07000	500
Other Assets.....	69000	400
BRIM Premium.....	91300	<u>791</u>
Total.....		\$ 124,992

54 - Division of Environmental Protection

(W.V. Code Chapter 22)

Fund 0273 FY 2024 Org 0313

Personal Services		
and Employee Benefits	00100	\$ 4,266,202
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	168,000
Current Expenses	13000	85,816
Water Resources Protection		
and Management.....	06800	585,133
Environmental Response		
and Cleanups.....	27101	91,888
Dam Safety.....	60700	253,074
West Virginia Stream		
Partners Program	63700	77,396
W.V. Contributions to		
River Commissions.....	77600	148,485
Office of Water Resources		
Non-Enforcement Activity	85500	<u>1,074,298</u>
Total.....		\$ 6,750,292

55 - Air Quality Board

(W.V. Code Chapter 16)

Fund 0550 FY 2024 Org 0325

Personal Services		
and Employee Benefits	00100	\$ 60,737
Current Expenses	13000	11,612
Repairs and Alterations.....	06400	800
Equipment.....	07000	400
Other Assets.....	69000	200
BRIM Premium.....	91300	<u>2,304</u>
Total.....		\$ 76,053

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

56 - Department of Health and Human Resources –

Office of the Secretary

(W.V. Code Chapter 5F)

Fund 0400 FY 2024 Org 0501

Personal Services			
and Employee Benefits	00100	\$	389,301
Unclassified.....	09900		6,459
Current Expenses	13000		50,613
Commission for the Deaf			
and Hard of Hearing	70400		<u>234,018</u>
Total.....		\$	680,391

*57 - Division of Health –**Central Office*

(W.V. Code Chapter 16)

Fund 0407 FY 2024 Org 0506

Personal Services			
and Employee Benefits	00100	\$	13,513,717
Unclassified.....	09900		671,795
Current Expenses	13000		5,388,459
Chief Medical Examiner (R).....	04500		10,684,766
State Aid for Local and Basic			
Public Health Services.....	18400		17,285,283
Safe Drinking Water Program (R)	18700		1,942,818
Women, Infants and Children	21000		38,621
Early Intervention	22300		8,134,060
Cancer Registry.....	22500		219,600
Office of Drug Control Policy (R)	35401		567,875
Statewide EMS Program Support (R)..	38300		1,722,828
Office of Medical Cannabis (R).....	42001		1,519,966
Black Lung Clinics	46700		170,885
Vaccine for Children.....	55100		341,261
Tuberculosis Control.....	55300		343,494
Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (R).....	57500		6,242,965
Epidemiology Support	62600		1,568,269

Primary Care Support	62800	1,241,505
Sexual Assault Intervention and Prevention	72300	2,000,000
Health Right Free Clinics.....	72700	4,250,000
Capital Outlay and Maintenance (R) ...	75500	70,000
Healthy Lifestyles	77800	902,808
Maternal Mortality Review	83400	51,660
Diabetes Education and Prevention	87300	97,125
BRIM Premium.....	91300	169,791
State Trauma and Emergency Care System.....	91800	1,950,095
WVU Charleston Poison Control Hotline	94400	<u>712,942</u>
Total.....		\$ 81,802,588

Any unexpended balances remaining in the appropriations for Chief Medical Examiner (fund 0407, appropriation 04500), Safe Drinking Water Program (fund 0407, appropriation 18700), Office of Drug Control Policy (fund 0407, appropriation 35401), Office of Drug Control Policy – Surplus (fund 0407, appropriation 35402), Statewide EMS Program Support (fund 0407, appropriation 38300), Office of Medical Cannabis (fund 0407, appropriation 42001), Medical Cannabis-Surplus (fund 0407, appropriation 42099), Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, appropriation 57500), Capital Outlay and Maintenance (fund 0407, appropriation 75500), Emergency Response Entities – Special Projects (fund 0407, appropriation 82200), Tobacco Education Program (fund 0407, appropriation 90600), and Pregnancy Centers – Surplus (fund 0407, appropriation xxxxx) the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

Notwithstanding the provisions of Title I, section three of this bill, the Secretary of the Department of Health and Human Resources shall have the authority to transfer funds within the above appropriations: *Provided*, That no more than five percent of the funds appropriated to one appropriation may be transferred to other appropriations: *Provided, however*, That no funds from other

appropriations shall be transferred to the Personal Services and Employee Benefits appropriation.

From the above appropriation for Current Expenses (fund 0407, appropriation 13000), an amount not less than \$100,000 is for the West Virginia Cancer Coalition; \$50,000 shall be expended for the West Virginia AIDS Coalition; \$100,000 is for Adolescent Immunization Education; \$73,065 is for informal dispute resolution relating to nursing home administrative appeals; and \$1,000,000 shall be used for the administration of the Telestroke program.

From the above appropriation for Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, appropriation 57500) up to \$400,000 may be transferred to the Breast and Cervical Cancer Diagnostic Treatment Fund (fund 5197) and \$11,000 is for the Marshall County Health Department for dental services.

58 - Consolidated Medical Services Fund

(W.V. Code Chapter 16)

Fund 0525 FY 2024 Org 0506

Personal Services

and Employee Benefits	00100	\$ 1,744,950
Current Expenses	13000	164,113
Behavioral Health Program (R)	21900	70,868,956
Institutional Facilities Operations (R)....	33500	12,031,796
Substance Abuse		
Continuum of Care (R)	35400	1,840,000
Capital Outlay and Maintenance (R) ...	75500	0
BRIM Premium.....	91300	<u>53,249</u>
Total.....		\$ 86,703,064

Any unexpended balances remaining in the appropriations for Jim's Dream (fund 0525, appropriation 14901), Behavioral Health Program (fund 0525, appropriation 21900), Institutional Facilities Operations (fund 0525, appropriation 33500), Substance Abuse Continuum of Care (fund 0525, appropriation 35400), Institutional

Facilities Operations – Surplus (fund 0525, appropriation 63200), and Capital Outlay and Maintenance (fund 0525, appropriation 75500) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

Notwithstanding the provisions of Title I, section three of this bill, the Secretary of the Department of Health and Human Resources shall have the authority to transfer funds within the above appropriations: *Provided*, That no more than five percent of the funds appropriated to one appropriation may be transferred to other appropriations: *Provided, however*, That no funds from other appropriations shall be transferred to the Personal Services and Employee Benefits appropriation.

Included in the above appropriation for Behavioral Health Program (fund 0525, appropriation 21900) is \$100,000 for the Recovery Point of Huntington.

From the above appropriation for Substance Abuse Continuum of Care (fund 0525, appropriation 35400), the funding will be consistent with the goal areas outlined in the Comprehensive Substance Abuse Strategic Action Plan.

Additional funds have been appropriated in fund 5156, fiscal year 2024, organization 0506, for the operation of the institutional facilities. The secretary of the Department of Health and Human Resources is authorized to utilize up to 10 percent of the funds from the Institutional Facilities Operations appropriation to facilitate cost effective and cost saving services at the community level.

The above appropriation for Institutional Facilities Operations (fund 0525, appropriation 33500) shall be transferred to Hopemont Hospital, Lakin Hospital, John Manchin Senior Health Care Center, Jackie Withrow Hospital, Welch Community Hospital, William R. Sharpe Jr. Hospital, Mildred Mitchell-Bateman Hospital, and William R. Sharpe Jr. Hospital – Transitional Living Facility.

59 - Division of Health –

West Virginia Drinking Water Treatment

(W.V. Code Chapter 16)

Fund 0561 FY 2024 Org 0506

West Virginia Drinking Water Treatment

Revolving Fund-Transfer.....	68900	\$	647,500
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The above appropriation for Drinking Water Treatment Revolving Fund – Transfer shall be transferred to the West Virginia Drinking Water Treatment Revolving Fund (fund 3386) or appropriate bank depository and the Drinking Water Treatment Revolving – Administrative Expense Fund (fund 3387) as provided by Chapter 16 of the Code.

60 - Human Rights Commission

(W.V. Code Chapter 5)

Fund 0416 FY 2024 Org 0510

Personal Services

and Employee Benefits.....	00100	\$	1,044,845
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		112,000
Unclassified.....	09900		4,024
Current Expenses	13000		331,304
BRIM Premium.....	91300		<u>10,764</u>
Total.....		\$	1,502,937

61 - Division of Human Services

(W.V. Code Chapters 9, 48, and 49)

Fund 0403 FY 2024 Org 0511

Personal Services

and Employee Benefits.....	00100	\$	56,266,691
Unclassified.....	09900		5,688,944
Current Expenses	13000		12,240,425
Child Care Development.....	14400		3,138,536
Medical Services.....	18900		267,202,774
Social Services	19500		224,478,972

Family Preservation Program	19600	1,565,000
Family Resource Networks.....	27400	1,762,464
Domestic Violence		
Legal Services Fund	38400	400,000
James "Tiger" Morton		
Catastrophic Illness Fund	45500	373,424
I/DD Waiver.....	46600	108,541,736
Child Protective Services		
Case Workers.....	46800	30,347,953
Title XIX Waiver for Seniors.....	53300	13,593,620
WV Teaching Hospitals		
Tertiary/Safety Net	54700	6,356,000
In-Home Family Education.....	68800	1,000,000
WV Works Separate State Program.....	69800	1,535,000
Child Support Enforcement	70500	6,933,494
Temporary Assistance for Needy Families/		
Maintenance of Effort.....	70700	25,819,096
Child Care –		
Maintenance of Effort Match.....	70800	5,693,743
Grants for Licensed Domestic Violence		
Programs and		
Statewide Prevention	75000	2,500,000
Capital Outlay and Maintenance (R) ...	75500	11,875
Community Based Services		
and Pilot Programs for Youth.....	75900	1,000,000
Medical Services Administrative Costs	78900	43,786,785
Traumatic Brain Injury Waiver.....	83500	800,000
Indigent Burials (R)	85100	1,550,000
CHIP Administrative Costs.....	85601	703,452
CHIP Services.....	85602	10,489,660
BRIM Premium.....	91300	892,642
Rural Hospitals Under 150 Beds.....	94000	2,596,000
Children's Trust Fund – Transfer	95100	220,000
PATH	95400	<u>7,265,970</u>
Total.....		\$ 844,754,256

From the above appropriation of Current Expenses (fund 0403, appropriation 13000), \$300,000 shall be used for Green Acres Regional Center, Inc.

Any unexpended balances remaining in the appropriations for Capital Outlay and Maintenance (fund 0403, appropriation 75500) and Indigent Burials (fund 0403, appropriation 85100) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

Notwithstanding the provisions of Title I, section three of this bill, the Secretary of the Department of Health and Human Resources shall have the authority to transfer funds within the above appropriations: *Provided*, That no more than five percent of the funds appropriated to one appropriation may be transferred to other appropriations: *Provided, however*, That no funds from other appropriations shall be transferred to the Personal Services and Employee Benefits appropriation.

The Secretary shall have authority to expend funds for the educational costs of those children residing in out-of-state placements, excluding the costs of special education programs.

Included in the above appropriation for Social Services (fund 0403, appropriation 19500) is funding for continuing education requirements relating to the practice of social work.

The above appropriation for Domestic Violence Legal Services Fund (fund 0403, appropriation 38400) shall be transferred to the Domestic Violence Legal Services Fund (fund 5455).

The above appropriation for James “Tiger” Morton Catastrophic Illness Fund (fund 0403, appropriation 45500) shall be transferred to the James “Tiger” Morton Catastrophic Illness Fund (fund 5454) as provided by Article 5Q, Chapter 16 of the WV Code.

The above appropriation for WV Works Separate State Program (fund 0403, appropriation 69800), shall be transferred to the WV Works Separate State College Program Fund (fund 5467), and the WV Works Separate State Two-Parent Program Fund (fund 5468) as determined by the Secretary of the Department of Health and Human Resources.

From the above appropriation for Child Support Enforcement (fund 0403, appropriation 70500) an amount not to exceed \$300,000 may be transferred to a local banking depository to be utilized to offset funds determined to be uncollectible.

From the above appropriation for the Grants for Licensed Domestic Violence Programs and Statewide Prevention (fund 0403, appropriation 75000), 50 percent of the total shall be divided equally and distributed among the 14 licensed programs and the West Virginia Coalition Against Domestic Violence (WVCADV). The balance remaining in the appropriation for Grants for Licensed Domestic Violence Programs and Statewide Prevention (fund 0403, appropriation 75000), shall be distributed according to the formula established by the Family Protection Services Board.

The above appropriation for Children's Trust Fund – Transfer (fund 0403, appropriation 95100) shall be transferred to the Children's Trust Fund (fund 5469).

*62 - Health Facilities –
Central Office
(W.V. Code Chapter 16)*

Fund xxxx FY 2024 Org xxxx

Personal Services			
and Employee Benefits	00100	\$	1,535,120
Current Expenses	13000		360,480
BRIM Premium.....	91300		<u>1,242,849</u>
Total.....		\$	3,138,449

*63 - Health Facilities –
Health Facilities Capital Projects Fund*

(W.V. Code Chapter 16)

Fund xxxx FY 2024 Org xxxx

Capital Outlay and Maintenance	75500	\$	550,000
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The Secretary shall have the ability to transfer between appropriations for Capital Outlay and Maintenance within the funds xxxx, xxxx, xxxx, xxxx, xxxx, xxxx, xxxx, xxxx and xxxx as needed.

*64 - Health Facilities –
Hopemont Hospital*

(W.V. Code Chapter 16)

Fund xxxx FY 2024 Org xxxx

Personal Services			
and Employee Benefits	00100	\$	5,809,271
Contract Nursing.....	xxxxx		2,693,811
Repairs and Alterations.....	06400		1
Equipment.....	07000		1
Current Expenses	13000		1,873,082
Buildings	25800		1
Other Assets.....	69000		1
Capital Outlay and Maintenance.....	75500		<u>50,000</u>
Total.....		\$	10,426,168

*65 - Health Facilities –
Lakin Hospital*

(W.V. Code Chapter 16)

Fund xxxx FY 2024 Org xxxx

Personal Services			
and Employee Benefits	00100	\$	7,148,761
Contract Nursing.....	xxxxx		1,339,262
Repairs and Alterations.....	06400		1
Equipment.....	07000		1
Current Expenses	13000		2,363,676
Buildings	25800		1
Other Assets.....	69000		1
Capital Outlay and Maintenance.....	75500		<u>50,000</u>
Total.....		\$	10,901,703

66 - Health Facilities –

John Manchin Senior Health Care Center

(W.V. Code Chapter 16)

Fund xxxx FY 2024 Org xxxx

Personal Services			
and Employee Benefits	00100	\$	3,669,817
Contract Nursing.....	xxxxx		907,556
Repairs and Alterations.....	06400		1
Equipment.....	07000		1
Current Expenses	13000		1,471,878
Buildings.....	25800		1
Other Assets.....	69000		1
Capital Outlay and Maintenance.....	75500		<u>50,000</u>
Total.....		\$	6,099,255

67 - Health Facilities –

Jackie Withrow Hospital

(W.V. Code Chapter 16)

Fund xxxx FY 2024 Org xxxx

Personal Services			
and Employee Benefits	00100	\$	6,832,977
Contract Nursing.....	xxxxx		1,625,311
Repairs and Alterations.....	06400		1
Equipment.....	07000		1
Current Expenses	13000		2,655,893
Buildings.....	25800		1
Other Assets.....	69000		1
Capital Outlay and Maintenance.....	75500		<u>50,000</u>
Total.....		\$	11,164,185

68 - Health Facilities –

Welch Community Hospital

(W.V. Code Chapter 16)

Fund xxxx FY 2024 Org xxxx

Personal Services		
and Employee Benefits	00100	\$ 14,925,683
Contract Nursing.....	xxxxx	2,576,401
Repairs and Alterations.....	06400	1
Equipment.....	07000	1
Current Expenses	13000	13,199,285
Buildings.....	25800	1
Other Assets.....	69000	1
Capital Outlay and Maintenance.....	75500	<u>50,000</u>
Total.....		\$ 30,751,373

69 - Health Facilities –

William R. Sharpe Jr. Hospital

(W.V. Code Chapter 16)

Fund xxxx FY 2024 Org xxxx

Personal Services		
and Employee Benefits	00100	\$ 23,869,659
Contract Nursing.....	xxxxx	10,469,835
Repairs and Alterations.....	06400	1
Equipment.....	07000	1
Current Expenses	13000	10,280,300
Buildings.....	25800	1
Other Assets.....	69000	1
Capital Outlay and Maintenance.....	75500	<u>50,000</u>
Total.....		\$ 44,669,798

The above appropriation for Personal Services and Employee Benefits (fund xxxx, appropriation 00100) contains prior year salary increases due to the Hartley court order in the amount of \$2,202,013.

70 - Health Facilities –

Mildred Mitchell-Bateman Hospital

(W.V. Code Chapter 16)

Fund xxxx FY 2024 Org xxxx

Personal Services		
and Employee Benefits	00100	\$ 24,011,880
Contract Nursing.....	xxxxx	6,457,520
Repairs and Alterations.....	06400	1
Equipment.....	07000	1
Current Expenses	13000	2,967,683
Buildings.....	25800	1
Other Assets.....	69000	1
Capital Outlay and Maintenance.....	75500	<u>50,000</u>
Total.....		\$ 33,487,087

The above appropriation for Personal Services and Employee Benefits (fund xxxx, appropriation 00100) contains prior year salary increases due to the Hartley court order in the amount of \$2,067,984.

71 - Health Facilities –

William R. Sharpe Jr. Hospital -

Transitional Living Facility

(W.V. Code Chapter 16)

Fund xxxx FY 2024 Org xxxx

Personal Services		
and Employee Benefits	00100	\$ 1,488,296
Contract Nursing.....	xxxxx	10,000
Repairs and Alterations.....	06400	1
Equipment.....	07000	1
Current Expenses	13000	171,794
Buildings.....	25800	1
Other Assets.....	69000	1
Capital Outlay and Maintenance.....	75500	<u>50,000</u>
Total.....		\$ 1,720,094

DEPARTMENT OF HOMELAND SECURITY*72 - Department of Homeland Security –**Office of the Secretary*

(W.V. Code Chapter 5F)

Fund 0430 FY 2024 Org 0601

Personal Services		
and Employee Benefits	00100	\$ 677,939
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	168,000
Unclassified (R)	09900	30,000
Current Expenses	13000	91,636
Repairs and Alterations	06400	500
Equipment	07000	500
Fusion Center (R)	46900	2,973,178
Other Assets	69000	500
Directed Transfer	70000	32,000
BRIM Premium	91300	22,563
WV Fire and EMS		
Survivor Benefit (R)	93900	<u>200,000</u>
Total		\$ 4,196,816

Any unexpended balances remaining in the appropriations for Unclassified (fund 0430, appropriation 09900), Fusion Center (fund 0430, appropriation 46900), Justice Reinvestment Training – Surplus (fund 0430, appropriation 69900), WV Fire and EMS Survivor Benefit (fund 0430, appropriation 93900), and Homeland State Security Administrative Agency (fund 0430, appropriation 95300) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

The above appropriation for Directed Transfer (fund 0430, appropriation 70000) shall be transferred to the Law-Enforcement, Safety and Emergency Worker Funeral Expense Payment Fund (fund 6003).

73 - *Division of Emergency Management*

(W.V. Code Chapter 15)

Fund 0443 FY 2024 Org 0606

Personal Services		
and Employee Benefits.....	00100	\$ 2,228,903
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	61,250
Unclassified.....	09900	21,022
Current Expenses	13000	51,065
Repairs and Alterations.....	06400	600
Radiological Emergency Preparedness	55400	17,052
SIRN....	55401	600,000
Federal Funds/Grant Match (R)	74900	1,488,195
Mine and Industrial Accident Rapid Response Call Center.....	78100	504,586
Early Warning Flood System (R)	87700	1,298,686
BRIM Premium.....	91300	<u>96,529</u>
Total.....		\$ 6,367,888

Any unexpended balances remaining in the appropriations for Federal Funds/Grant Match (fund 0443, appropriation 74900), Early Warning Flood System (fund 0443, appropriation 87700), and Disaster Mitigation (fund 0443, appropriation 95200) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

74 - *Division of Corrections and Rehabilitation –*

West Virginia Parole Board

(W.V. Code Chapter 62)

Fund 0440 FY 2024 Org 0608

Personal Services		
and Employee Benefits.....	00100	\$ 313,598
Unclassified.....	09900	10,000
Current Expenses	13000	334,440

Salaries of Members of

West Virginia Parole Board.....	22700	758,847
BRIM Premium.....	91300	<u>6,149</u>
Total.....		\$ 1,423,034

The above appropriation for Salaries of Members of West Virginia Parole Board (fund 0440, appropriation 22700) includes funding for salary, annual increment (as provided for in W.V. Code §5-5-1), and related employee benefits of board members.

*75 - Division of Corrections and Rehabilitation –**Central Office*

(W.V. Code Chapter 15A)

Fund 0446 FY 2024 Org 0608

Personal Services

and Employee Benefits.....	00100	\$ 253,306
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	126,000
Current Expenses	13000	<u>2,400</u>
Total.....		\$ 381,706

*76 - Division of Corrections and Rehabilitation –**Correctional Units*

(W.V. Code Chapter 15A)

Fund 0450 FY 2024 Org 0608

Employee Benefits.....	01000	\$ 1,258,136
Unclassified.....	09900	1,578,800
Current Expenses (R).....	13000	57,690,483
Children's Protection Act (R).....	09000	838,437
Facilities Planning and Administration (R).....	38600	1,274,200
Charleston Correctional Center	45600	3,656,034
Beckley Correctional Center.....	49000	2,729,359
Anthony Correctional Center.....	50400	6,447,805

Huttonsville Correctional Center	51400	20,401,425
Northern Correctional Center.....	53400	8,347,868
Inmate Medical Expenses (R).....	53500	62,226,064
Pruntytown Correctional Center	54300	9,309,903
Corrections Academy.....	56900	2,038,045
Information Technology Services.....	59901	2,759,052
Martinsburg Correctional Center	66300	4,604,918
Parole Services.....	68600	6,247,435
Special Services	68700	6,071,838
Investigative Services	71600	3,595,775
Capital Outlay and Maintenance (R) ...	75500	2,000,000
Salem Correctional Center.....	77400	12,013,827
McDowell County Correctional Center	79000	2,542,590
Stevens Correctional Center.....	79100	7,863,195
Parkersburg Correctional Center.....	82800	6,669,363
St. Mary's Correctional Center.....	88100	15,556,307
Denmar Correctional Center	88200	5,531,288
Ohio County Correctional Center	88300	2,254,692
Mt. Olive Correctional Complex	88800	23,580,960
Lakin Correctional Center.....	89600	11,523,549
BRIM Premium.....	91300	<u>2,527,657</u>
Total.....		\$ 293,139,005

Any unexpended balances remaining in the appropriations for Children's Protection Act (fund 0450, appropriation 09000), Unclassified – Surplus (fund 0450, appropriation 09700), Current Expenses (fund 0450, appropriation 13000), Facilities Planning and Administration (fund 0450, appropriation 38600), Inmate Medical Expenses (fund 0450, appropriation 53500), Capital Improvements – Surplus (fund 0450, appropriation 66100), Capital Outlay and Maintenance (fund 0450, appropriation 75500), Security System Improvements – Surplus (fund 0450, appropriation 75501), and Roof Repairs and Mechanical System Upgrades (fund 0450, appropriation 75502) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

The Commissioner of Corrections and Rehabilitation shall have the authority to transfer between appropriations.

From the above appropriation to Current Expenses (fund 0450, appropriation 13000), payment shall be made to house Division of Corrections and Rehabilitation inmates in federal, county, and /or regional jails.

Any realized savings from Energy Savings Contract may be transferred to Facilities Planning and Administration (fund 0450, appropriation 38600).

77 - Division of Corrections and Rehabilitation –

Bureau of Juvenile Services

(W.V. Code Chapter 15A)

Fund 0570 FY 2024 Org 0608

Statewide Reporting Centers.....	26200	\$	7,201,627
Robert L. Shell Juvenile Center	26700		2,761,055
Resident Medical Expenses (R)	53501		3,604,999
Central Office.....	70100		1,839,891
Capital Outlay and Maintenance (R) ...	75500		250,000
Gene Spadaro Juvenile Center	79300		2,901,456
BRIM Premium.....	91300		115,967
Kenneth Honey Rubenstein Juvenile Center (R).....	98000		6,116,258
Vicki Douglas Juvenile Center	98100		2,544,867
Northern Regional Juvenile Center.....	98200		2,876,302
Lorrie Yeager Jr. Juvenile Center	98300		2,636,094
Sam Perdue Juvenile Center	98400		2,853,458
Tiger Morton Center	98500		2,863,241
Donald R. Kuhn Juvenile Center	98600		5,508,620
J.M. “Chick” Buckbee Juvenile Center	98700		<u>2,708,143</u>
Total.....		\$	46,781,978

Any unexpended balances remaining in the appropriations for Resident Medical Expenses (fund 0570, appropriation 53501), Capital Outlay and Maintenance (fund 0570, appropriation 75500), Roof Repairs and Mechanical System Upgrades (fund 0570, appropriation 75502), and Kenneth Honey Rubenstein Juvenile Center (fund 0570, appropriation 98000) at the close of the fiscal

year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

The Director of Juvenile Services shall have the authority to transfer between appropriations to the individual juvenile centers above including Statewide Reporting Centers and Central Office and may transfer funds from the individual juvenile centers to Resident Medical Expenses (fund 0570, appropriation 53501).

78 - West Virginia State Police

(W.V. Code Chapter 15)

Fund 0453 FY 2024 Org 0612

Personal Services		
and Employee Benefits	00100	\$ 76,151,187
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	139,300
Children's Protection Act	09000	1,069,244
Current Expenses	13000	10,384,394
Repairs and Alterations.....	06400	450,523
Trooper Class	52100	3,207,832
Barracks Lease Payments	55600	237,898
Communications		
and Other Equipment (R).....	55800	1,070,968
Trooper Retirement Fund.....	60500	15,519,212
Handgun Administration Expense	74700	83,647
Capital Outlay and Maintenance (R) ...	75500	250,000
Retirement Systems –		
Unfunded Liability.....	77500	9,984,000
Automated Fingerprint		
Identification System	89800	2,243,491
BRIM Premium.....	91300	<u>5,743,921</u>
Total.....		\$ 126,535,617

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 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

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.

79 - Fire Commission

(W.V. Code Chapter 29)

Fund 0436 FY 2024 Org 0619

Current Expenses	13000	\$	63,061
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80 - Division of Protective Services

(W.V. Code Chapter 5F)

Fund 0585 FY 2024 Org 0622

Personal Services			
and Employee Benefits	00100	\$	3,315,050
Unclassified (R)	09900		21,991
Current Expenses	13000		422,981
Repairs and Alterations.....	06400		8,500
Equipment (R).....	07000		64,171
BRIM Premium.....	91300		<u>32,602</u>
Total.....		\$	3,865,295

Any unexpended balances remaining in the appropriations for Equipment (fund 0585, appropriation 07000) and Unclassified (fund 0585, appropriation 09900) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

81 - Division of Administrative Services -

Criminal Justice Fund

(W.V. Code Chapter 15A)

Fund 0546 FY 2024 Org 0623

Personal Services		
and Employee Benefits	00100	\$ 609,397
Current Expenses	13000	233,360
Repairs and Alterations.....	06400	1,804
Child Advocacy Centers (R).....	45800	2,211,436
Community Corrections (R)	56100	4,602,566
Statistical Analysis Program	59700	50,395
Sexual Assault Forensic		
Examination Commission (R)	71400	280,977
Qualitative Analysis and Training		
for Youth Services (R).....	76200	86,829
Law Enforcement		
Professional Standards.....	83800	175,630
Justice Reinvestment Initiative (R).....	89501	2,338,707
BRIM Premium.....	91300	<u>2,123</u>
Total.....		\$ 10,593,224

Any unexpended balances remaining in the appropriations for Child Advocacy Centers (fund 0546, appropriation 45800), Community Corrections (fund 0546, appropriation 56100), Sexual Assault Forensic Examination Commission (fund 0546 appropriation 71400), Qualitative Analysis and Training for Youth Services (fund 0546, appropriation 76200), Justice Reinvestment Initiative (fund 0546, appropriation 89501) and Victims of Crime Act – Surplus (fund 0546, appropriation xxxxx) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

From the above appropriation for Current Expenses (fund 0546, appropriation 13000), \$100,000 shall be used for Court Appointed Special Advocates.

From the above appropriation for Child Advocacy Centers (fund 0546, appropriation 45800), the Division may retain an amount not to exceed four percent of the appropriation for administrative purposes.

82 - Division of Administrative Services

(W.V. Code Chapter 15A)

Fund 0619 FY 2024 Org 0623

Personal Services		
and Employee Benefits	00100	\$ 5,447,439
Unclassified.....	09900	50,000
Current Expenses	13000	<u>555,000</u>
Total.....		\$ 6,052,439

DEPARTMENT OF REVENUE*83 - Office of the Secretary*

(W.V. Code Chapter 11)

Fund 0465 FY 2024 Org 0701

Personal Services		
and Employee Benefits	00100	\$ 374,950
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	168,000
Unclassified.....	09900	437
Current Expenses	13000	81,594
Repairs and Alterations.....	06400	1,262
Equipment.....	07000	8,000
Other Assets.....	69000	<u>500</u>
Total.....		\$ 634,743

Any unexpended balance remaining in the appropriation for Unclassified – Total (fund 0465, appropriation 09600) at the close of the fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

84 - Tax Division

(W.V. Code Chapter 11)

Fund 0470 FY 2024 Org 0702

Personal Services		
and Employee Benefits (R).....	00100	\$ 19,746,554
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	147,000
Unclassified (R)	09900	174,578
Current Expenses (R).....	13000	6,823,635
Repairs and Alterations.....	06400	10,150
Equipment.....	07000	54,850
Tax Technology Upgrade	09400	3,700,000
Multi State Tax Commission	65300	77,958
Other Assets.....	69000	10,000
BRIM Premium.....	91300	<u>15,579</u>
Total.....		\$ 30,760,304

Any unexpended balances remaining in the appropriations for Personal Services and Employee Benefits (fund 0470, appropriation 00100), Unclassified (fund 0470, appropriation 09900), Current Expenses (fund 0470, appropriation 13000), and Integrated Tax Assessment System (fund 0470, appropriation 29200) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

85 - State Budget Office

(W.V. Code Chapter 11B)

Fund 0595 FY 2024 Org 0703

Personal Services		
and Employee Benefits.....	00100	\$ 852,844
Unclassified (R)	09900	9,200
Current Expenses (R).....	13000	<u>119,449</u>
Total.....		\$ 981,493

Any unexpended balances remaining in the appropriations for Unclassified (fund 0595, appropriation 09900) and Current Expenses (fund 0595, appropriation 13000) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

86 - West Virginia Office of Tax Appeals

(W.V. Code Chapter 11)

Fund 0593 FY 2024 Org 0709

Personal Services			
and Employee Benefits	00100	\$	949,360
Unclassified.....	09900		5,255
Current Expenses (R)	13000		229,374
BRIM Premium.....	91300		<u>3,062</u>
Total.....		\$	1,187,051

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0593, appropriation 13000) at the close of the fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

87 - State Athletic Commission

(W.V. Code Chapter 29)

Fund 0523 FY 2024 Org 0933

Personal Services			
and Employee Benefits	00100	\$	7,200
Current Expenses	13000		<u>29,611</u>
Total.....		\$	36,811

DEPARTMENT OF TRANSPORTATION*88 - Division of Multimodal Transportation Facilities –**State Rail Authority*

(W.V. Code Chapter 17)

Fund 0506 FY 2024 Org 0810

Personal Services			
and Employee Benefits	00100	\$	378,891
Current Expenses	13000		287,707

Other Assets (R).....	69000	1,270,019
BRIM Premium.....	91300	<u>201,541</u>
Total.....		\$ 2,138,158

Any unexpended balance remaining in the appropriation for Other Assets (fund 0506, appropriation 69000) at the close of the fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

89 - Division of Multimodal Transportation Facilities –

Public Transit

(W.V. Code Chapter 17)

Fund 0510 FY 2024 Org 0810

Equipment (R).....	07000	\$ 100,000
Current Expenses (R).....	13000	2,242,989
Buildings (R).....	25800	100,000
Other Assets (R).....	69000	<u>50,000</u>
Total.....		\$ 2,492,989

Any unexpended balances remaining in the appropriations for Equipment (fund 0510, appropriation 07000), Current Expenses (fund 0510, appropriation 13000), Buildings (fund 0510, appropriation 25800), and Other Assets (fund 0510, appropriation 69000) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

From the above appropriation for Current Expenses (fund 0510, appropriation 13000), \$30,000 shall be used to support the Sistersville Ferry.

90 - Division of Multimodal Transportation Facilities –

(W.V. Code Chapter 17)

Fund 0580 FY 2024 Org 0810

Personal Services and Employee Benefits (R).....	00100	\$ 700,000
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Current Expenses (R).....	13000	750,000
BRIM Premium.....	91300	<u>7,500</u>
Total.....		\$ 1,457,500

Any unexpended balances remaining in the appropriations for Personal Services and Employee Benefits (fund 0580, appropriation 00100), Current Expenses (fund 0580, appropriation 13000) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

91 - Division of Multimodal Transportation Facilities –

Aeronautics Commission

(W.V. Code Chapter 17)

Fund 0582 FY 2024 Org 0810

Personal Services		
and Employee Benefits.....	00100	\$ 235,249
Current Expenses (R).....	13000	591,839
Repairs and Alterations.....	06400	100
BRIM Premium.....	91300	<u>4,438</u>
Total.....		\$ 831,626

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0582, appropriation 13000) at the close of the fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

DEPARTMENT OF VETERANS' ASSISTANCE

92 - Department of Veterans' Assistance

(W.V. Code Chapter 9A)

Fund 0456 FY 2024 Org 0613

Personal Services		
and Employee Benefits.....	00100	\$ 2,431,023
Salary and Benefits of Cabinet Secretary		
and Agency Heads.....	00201	110,880

Unclassified.....	09900	20,000
Current Expenses	13000	161,450
Repairs and Alterations.....	06400	5,000
Veterans' Field Offices (R)	22800	405,550
Veterans' Nursing Home (R).....	28600	7,989,445
Veterans' Toll Free Assistance Line	32800	2,015
Veterans' Reeducation Assistance (R) .	32900	40,000
Veterans' Grant Program (R)	34200	560,000
Veterans' Grave Markers.....	47300	10,000
Directed Transer.....	70000	1,500,000
Veterans' Cemetery (R).....	80800	408,896
BRIM Premium.....	91300	<u>50,000</u>
Total.....		\$ 13,694,259

Any unexpended balances remaining in the appropriations for Veterans' Field Offices (fund 0456, appropriation 22800), Buildings – Surplus (fund 0456, appropriation 25899), Veterans' Nursing Home (fund 0456, appropriation 28600), Veterans' Reeducation Assistance (fund 0456, appropriation 32900), Veterans' Grant Program (fund 0456, appropriation 34200), Veterans' Bonus – Surplus (fund 0456, appropriation 34400), Veterans' Cemetery (fund 0456, appropriation 80800), and Educational Opportunities for Children of Deceased Veterans (fund 0456, appropriation 85400) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

The above appropriation for Directed Transfer (fund 0456, appropriation 70000) shall be transferred to Veterans' Facilitates Support Fund (fund 6703).

93 - Department of Veterans' Assistance –

Veterans' Home

(W.V. Code Chapter 9A)

Fund 0460 FY 2024 Org 0618

Personal Services

and Employee Benefits..... 00100 \$ 1,439,267

Current Expenses (R).....	13000	46,759
Veterans Outreach Programs	61700	<u>206,495</u>
Total.....		\$ 1,692,521

Any unexpended balances remaining in the appropriations for Current Expenses (fund 0460, appropriation 13000) at the close of fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

BUREAU OF SENIOR SERVICES

94 - Bureau of Senior Services

(W.V. Code Chapter 29)

Fund 0420 FY 2024 Org 0508

Transfer to Division of Human Services
 for Health Care and Title XIX Waiver
 for Senior Citizens 53900 \$ 10,839,825

The above appropriation for Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens (fund 0420, appropriation 53900) along with the federal moneys generated thereby shall be used for reimbursement for services provided under the program.

The above appropriation is in addition to funding provided in fund 5405 for this program.

**WEST VIRGINIA COUNCIL FOR COMMUNITY
 AND TECHNICAL COLLEGE EDUCATION**

95 - West Virginia Council for

Community and Technical College Education –

Control Account

(W.V. Code Chapter 18B)

Fund 0596 FY 2024 Org 0420

West Virginia Council for Community and Technical Education (R)	39200	\$	751,721
Transit Training Partnership	78300		34,293
Community College			
Workforce Development (R)	87800		2,789,705
College Transition Program.....	88700		278,222
West Virginia Advance			
Workforce Development (R)	89300		3,123,576
Technical Program Development (R) ..	89400		1,800,735
WV Invests Grant Program (R)	89401		<u>7,040,309</u>
Total.....		\$	<u>15,818,561</u>

Any unexpended balances remaining in the appropriations for West Virginia Council for Community and Technical Education (fund 0596, appropriation 39200), Capital Improvements – Surplus (fund 0596, appropriation 66100), Community College Workforce Development (fund 0596, appropriation 87800), West Virginia Advance Workforce Development (fund 0596, appropriation 89300), Technical Program Development (fund 0596, appropriation 89400), and WV Invests Grant Program (fund 0596, appropriation 89401) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

96 - Mountwest Community and Technical College

(W.V. Code Chapter 18B)

Fund 0599 FY 2024 Org 0444

Mountwest Community and Technical College	48700	\$	6,903,571
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97 - New River Community and Technical College

(W.V. Code Chapter 18B)

Fund 0600 FY 2024 Org 0445

New River Community and Technical College	35800	\$	6,302,132
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98 - Pierpont Community and Technical College

(W.V. Code Chapter 18B)

Fund 0597 FY 2024 Org 0446

Pierpont Community and Technical College	93000	\$	8,370,981
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99 - Blue Ridge Community and Technical College

(W.V. Code Chapter 18B)

Fund 0601 FY 2024 Org 0447

Blue Ridge Community and Technical College	88500	\$	8,416,425
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100 - West Virginia University at Parkersburg

(W.V. Code Chapter 18B)

Fund 0351 FY 2024 Org 0464

West Virginia University – Parkersburg	47100	\$	11,193,778
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101 - Southern West Virginia Community and Technical College

(W.V. Code Chapter 18B)

Fund 0380 FY 2024 Org 0487

Southern West Virginia Community and Technical College	44600	\$	8,849,656
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102 - West Virginia Northern Community and Technical College

(W.V. Code Chapter 18B)

Fund 0383 FY 2024 Org 0489

West Virginia Northern Community and Technical College	44700	\$	7,818,075
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103 - Eastern West Virginia Community and Technical College

(W.V. Code Chapter 18B)

Fund 0587 FY 2024 Org 0492

Eastern West Virginia Community and Technical College	41200	\$	2,349,856
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104 - BridgeValley Community and Technical College

(W.V. Code Chapter 18B)

Fund 0618 FY 2024 Org 0493

BridgeValley Community and Technical College	71700	\$	8,629,476
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HIGHER EDUCATION POLICY COMMISSION

105 - Higher Education Policy Commission –

Administration –

Control Account

(W.V. Code Chapter 18B)

Fund 0589 FY 2024 Org 0441

Personal Services and Employee Benefits	00100	\$	2,845,271
Current Expenses	13000		1,096,902
RHI Program and Site Support – RHEP Program Administration (R)...	03700		80,000
Mental Health Provider Loan Repayment (R).....	11301		330,000
Higher Education Grant Program	16400		40,619,864
Tuition Contract Program (R)	16500		1,225,676
Underwood-Smith Scholarship Program-Student Awards.....	16700		628,349
Facilities Planning and Administration.....	38600		1,760,254

Higher Education System Initiatives....	48801	1,640,884
PROMISE Scholarship – Transfer.....	80000	18,500,000
HEAPS Grant Program (R).....	86700	5,020,954
Health Professionals'		
Student Loan Program (R).....	86701	547,470
Dual Enrollment Program.....	xxxxx	4,200,000
BRIM Premium.....	91300	<u>17,817</u>
Total.....		\$ 78,513,441

Any unexpended balances remaining in the appropriations for RHI Program and Site Support – RHEP Program Administration (fund 0589, 03700), Mental Health Provider Loan Repayment (fund 0589, appropriation 11301), Tuition Contract Program (fund 0589, appropriation 16500), HEAPS Grant Program (fund 0589, appropriation 86700), and Health Professionals' Student Loan Program (fund 0589, appropriation 86701) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

The above appropriation for Facilities Planning and Administration (fund 0589, appropriation 38600) is for operational expenses of the West Virginia Regional Technology Park between construction and full occupancy.

The above appropriation for Higher Education Grant Program (fund 0589, appropriation 16400) shall be transferred to the Higher Education Grant Fund (fund 4933) established by W.V. Code §18C-5-3.

The above appropriation for Underwood-Smith Scholarship Program - Student Awards (fund 0589, appropriation 16700) shall be transferred to the Underwood-Smith Teaching Scholars Program Fund (4922) established by W.V. Code §18C-4-1.

The above appropriation for PROMISE Scholarship-Transfer (fund 0589, appropriation 80000) shall be transferred to the PROMISE Scholarship Fund (fund 4296) established by W.V. Code §18C-7-7.

The above appropriation for Dual Enrollment Program (fund 0589, appropriation xxxxx) shall be used for the dual enrollment program established by House Bill 2005 during the 2023 Regular Session.

106 - West Virginia University –

School of Medicine

Medical School Fund

(W.V. Code Chapter 18B)

Fund 0343 FY 2024 Org 0463

WVU School of Health Science –

Eastern Division.....	05600	\$ 2,332,926
WVU – School of Health Sciences	17400	15,840,755
WVU – School of Health Sciences –		
Charleston Division	17500	2,424,011
Rural Health Outreach Programs (R)...	37700	168,616
West Virginia University School of Medicine		
BRIM Subsidy	46000	<u>1,203,087</u>
Total.....		\$ 21,969,395

Any unexpended balances remaining in the appropriations for Rural Health Outreach Programs (fund 0343, appropriation 37700) at the close of fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

107 - West Virginia University –

General Administrative Fund

(W.V. Code Chapter 18B)

Fund 0344 FY 2024 Org 0463

West Virginia University	45900	\$ 92,753,136
Jackson's Mill.....	46100	510,382
West Virginia University		
Institute of Technology.....	47900	8,578,613

State Priorities – Brownfield		
Professional Development	53100	816,556
West Virginia University		
Land Grant Match.....	xxxxx	8,549,644
Energy Express	86100	382,935
West Virginia University –		
Potomac State	99400	<u>4,880,803</u>
Total.....		\$ 116,472,069

From the above appropriation for Jackson's Mill (fund 0344, appropriation 46100), \$250,000 shall be used for the West Virginia State Fire Training Academy.

108 - Marshall University –

School of Medicine

(W.V. Code Chapter 18B)

Fund 0347 FY 2024 Org 0471

Marshall Medical School	17300	\$ 7,750,340
Rural Health Outreach Programs (R)...	37700	158,970
Forensic Lab (R)	37701	227,415
Center for Rural Health (R)	37702	164,735
Marshall University Medical School		
BRIM Subsidy	44900	<u>872,612</u>
Total.....		\$ 9,174,072

Any unexpended balances remaining in the appropriations for Rural Health Outreach Programs (fund 0347, appropriation 37700), Forensic Lab (fund 0347, appropriation 37701), and Center for Rural Health (fund 0347, appropriation 37702) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

109 - Marshall University –

General Administration Fund

(W.V. Code Chapter 18B)

Fund 0348 FY 2024 Org 0471

Marshall University	44800	\$ 50,873,019
Luke Lee Listening		
Language and Learning Lab (R)....	44801	154,576
VISTA E-Learning (R)	51900	229,019
State Priorities – Brownfield		
Professional Development (R).....	53100	809,606
Marshall University Graduate College		
Writing Project (R)	80700	25,412
Marshall University		
Minority Health Institute	xxxxx	100,000
WV Autism Training Center (R)	93200	<u>1,922,515</u>
Total.....		\$ 54,114,147

Any unexpended balances remaining in the appropriations for Luke Lee Listening Language and Learning Lab (fund 0348, appropriation 44801), VISTA E-Learning (fund 0348, appropriation 51900), State Priorities – Brownfield Professional Development (fund 0348, appropriation 53100), Marshall University Graduate College Writing Project (fund 0348, appropriation 80700), and WV Autism Training Center (fund 0348, appropriation 93200) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

110 - West Virginia School of Osteopathic Medicine

(W.V. Code Chapter 18B)

Fund 0336 FY 2024 Org 0476

West Virginia		
School of Osteopathic Medicine....	17200	\$ 5,402,148
Rural Health Outreach Programs (R)...	37700	171,672
West Virginia		
School of Osteopathic Medicine		
BRIM Subsidy	40300	153,405
Rural Health Initiative –		
Medical Schools Support.....	58100	<u>408,713</u>
Total.....		\$ 6,135,938

Any unexpended balance remaining in the appropriation for Rural Health Outreach Programs (fund 0336, appropriation 37700) at the close of fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

111 - Bluefield State University

(W.V. Code Chapter 18B)

Fund 0354 FY 2024 Org 0482

Bluefield State University.....	40800	\$	6,855,771
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112 - Concord University

(W.V. Code Chapter 18B)

Fund 0357 FY 2024 Org 0483

Concord University.....	41000	\$	11,170,362
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113 - Fairmont State University

(W.V. Code Chapter 18B)

Fund 0360 FY 2024 Org 0484

Fairmont State University.....	41400	\$	19,961,302
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114 - Glenville State University

(W.V. Code Chapter 18B)

Fund 0363 FY 2024 Org 0485

Glenville State University.....	42800	\$	7,071,784
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115 - Shepherd University

(W.V. Code Chapter 18B)

Fund 0366 FY 2024 Org 0486

Shepherd University.....	43200	\$	13,374,828
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116 - West Liberty University

(W.V. Code Chapter 18B)

Fund 0370 FY 2024 Org 0488

West Liberty University..... 43900 \$ 9,964,386

117 - West Virginia State University

(W.V. Code Chapter 18B)

Fund 0373 FY 2024 Org 0490

West Virginia State University 44100 \$ 11,700,408

Healthy Grandfamilies (R)..... 62101 800,000

West Virginia State University

Land Grant Match..... 95600 4,350,192

Total..... \$ 16,850,600

Any unexpended balance remaining in the appropriation for Healthy Grandfamilies (fund 0373, appropriation 62101) at the close of fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

118 - Higher Education Policy Commission –

Administration -

West Virginia Network for Educational Telecomputing (WVNET)

(W.V. Code Chapter 18B)

Fund 0551 FY 2024 Org 0495

WVNET 16900 \$ 1,873,368

MISCELLANEOUS BOARDS AND COMMISSIONS

119 - Adjutant General –

State Militia

(W.V. Code Chapter 15)

Fund 0433 FY 2024 Org 0603

Salary and Benefits of Cabinet Secretary and Agency Heads	00201	\$ 189,000
Unclassified (R)	09900	106,798
College Education Fund.....	23200	4,000,000
Civil Air Patrol.....	23400	249,664
Armory Board Transfer.....	70015	2,317,555
Mountaineer ChalleNGe Academy.....	70900	3,432,008
Military Authority (R).....	74800	6,415,000
Drug Enforcement and Support	74801	<u>1,558,845</u>
Total.....		\$ 18,268,870

Any unexpended balances remaining in the appropriations for Unclassified (fund 0433, appropriation 09900), Military Authority (fund 0433, appropriation 74800), and Military Authority – Surplus (fund 0433, appropriation 74899) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

From the above appropriations an amount approved by the Adjutant General may be transferred to the State Armory Board for operation and maintenance of National Guard Armories.

The Adjutant General shall have the authority to transfer between appropriations.

From the above appropriation and other state and federal funding, the Adjutant General shall provide an amount not less than \$3,453,019 to the Mountaineer ChalleNGe Academy to meet anticipated program demand.

120 - Adjutant General –

Military Fund

(W.V. Code Chapter 15)

Fund 0605 FY 2024 Org 0603

Personal Services		
and Employee Benefits	00100	\$ 100,000
Current Expenses	13000	<u>57,775</u>
Total		\$ 157,775

Total TITLE II, Section 1 – General Revenue
 (Including claims against the state) \$4,874,572,614

Sec. 2. Appropriations from state road fund. — From the state road fund there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2024.

DEPARTMENT OF TRANSPORTATION

121 - Division of Motor Vehicles

(W.V. Code Chapters 17, 17A, 17B, 17C, 17D, 20, and 24A)

Fund 9007 FY 2024 Org 0802

	Appropriation	State Road Fund
Personal Services		
and Employee Benefits	00100	\$ 40,182,297
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	129,500
Current Expenses	13000	22,556,730
Repairs and Alterations	06400	144,000
Equipment	07000	1,080,000
Buildings	25800	10,000
Other Assets	69000	2,480,000
BRIM Premium	91300	<u>110,000</u>
Total		\$ 66,692,527

122 - Division of Highways

(W.V. Code Chapters 17 and 17C)

Fund 9017 FY 2024 Org 0803

Salary and Benefits of Cabinet Secretary and Agency Heads	00201	\$	200,000
Debt Service.....	04000		138,000,000
Maintenance.....	23700		553,773,844
Inventory Revolving	27500		4,000,000
Equipment Revolving	27600		51,250,386
General Operations	27700		181,700,457
Interstate Construction.....	27800		200,000,000
Other Federal Aid Programs	27900		350,000,000
Appalachian Programs.....	28000		150,000,000
Highway Litter Control.....	28200		<u>1,650,000</u>
Total.....			\$ 1,630,574,687

The above appropriations are to be expended in accordance with the provisions of Chapters 17 and 17C of the code.

The Commissioner of Highways shall have the authority to operate revolving funds within the State Road Fund for the operation and purchase of various types of equipment used directly and indirectly in the construction and maintenance of roads and for the purchase of inventories and materials and supplies.

There is hereby appropriated in addition to the above appropriations, sufficient money for the payment of claims, accrued or arising during this budgetary period, to be paid in accordance with Sections 17 and 18, Article 2, Chapter 14 of the code.

It is the intent of the Legislature to capture and match all federal funds available for expenditure on the Appalachian highway system at the earliest possible time. Therefore, should amounts in excess of those appropriated be required for the purposes of Appalachian programs, funds in excess of the amount appropriated may be made available upon recommendation of the commissioner and approval of the Governor. Further, for the purpose of Appalachian programs, funds appropriated by appropriation may be transferred to other appropriations upon recommendation of the commissioner and approval of the Governor.

Total TITLE II, Section 2 – State Road Fund
 (Including claims against the state) \$1,697,782,874

Sec. 3. Appropriations from other funds. — From the funds designated there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2024.

LEGISLATIVE

123 - Crime Victims Compensation Fund

(W.V. Code Chapter 14)

Fund 1731 FY 2024 Org 2300

	Appropriation	Other Funds
Personal Services		
and Employee Benefits	00100	\$ 498,020
Current Expenses	13000	133,903
Repairs and Alterations.....	06400	1,000
Economic Loss Claim Payment Fund..	33400	2,000,000
Other Assets	69000	<u>3,700</u>
Total.....		\$ 2,636,623

JUDICIAL

124 - Supreme Court –

Court Advanced Technology Subscription Fund

(W.V. Code Chapter 51)

Fund 1704 FY 2024 Org 2400

Current Expenses	13000	\$ 100,000
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125 - Supreme Court –

Adult Drug Court Participation Fund

(W.V. Code Chapter 62)

Fund 1705 FY 2024 Org 2400

Current Expenses	13000	\$	200,000
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*126 - Supreme Court –**Family Court Fund*

(W.V. Code Chapter 51)

Fund 1763 FY 2024 Org 2400

Current Expenses	13000	\$	1,050,000
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*127 - Supreme Court –**Court Facilities Maintenance Fund*

(W.V. Code Chapter 51)

Fund 1766 FY 2024 Org 2400

Current Expenses	13000	\$	250,000
Repairs and Alterations.....	06400		<u>250,000</u>
Total		\$	500,000

EXECUTIVE*128 - Governor's Office –**Minority Affairs Fund*

(W.V. Code Chapter 5)

Fund 1058 FY 2024 Org 0100

Personal Services and Employee Benefits.....	00100	\$	236,517
Current Expenses	13000		453,200
Martin Luther King, Jr. Holiday Celebration.....	03100		<u>8,926</u>
Total.....		\$	698,643

129 - Auditor's Office –

Grant Recovery Fund

(W.V. Code Chapter 12)

Fund 1205 FY 2024 Org 1200

Repairs and Alterations.....	06400	\$	2,000
Equipment.....	07000		7,000
Current Expenses	13000		<u>191,000</u>
Total.....		\$	200,000

130 - Auditor's Office –

Land Operating Fund

(W.V. Code Chapters 11A, 12, and 36)

Fund 1206 FY 2024 Org 1200

Personal Services and Employee Benefits.....	00100	\$	863,144
Unclassified.....	09900		15,139
Current Expenses	13000		715,291
Repairs and Alterations.....	06400		2,600
Equipment.....	07000		426,741
Cost of Delinquent Land Sale	76800		<u>1,841,168</u>
Total.....		\$	3,864,083

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the necessary amount for the expenditure of funds other than Personal Services and Employee Benefits to enable the division to pay the direct expenses relating to land sales as provided in Chapter 11A of the West Virginia Code.

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by law.

*131 - Auditor's Office –**Local Government Purchasing Card Expenditure Fund*

(W.V. Code Chapter 6)

Fund 1224 FY 2024 Org 1200

Personal Services		
and Employee Benefits	00100	\$ 653,525
Current Expenses	13000	282,030
Repairs and Alterations.....	06400	6,000
Equipment.....	07000	10,805
Other Assets.....	69000	50,000
Statutory Revenue Distribution.....	74100	<u>3,500,000</u>
Total.....		\$ 4,502,360

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the amount necessary to meet the transfer of revenue distribution requirements to provide a proportionate share of rebates back to the general fund of local governments based on utilization of the program in accordance with W.V. Code §6-9-2b.

*132 - Auditor's Office –**Securities Regulation Fund*

(W.V. Code Chapter 32)

Fund 1225 FY 2024 Org 1200

Personal Services		
and Employee Benefits	00100	\$ 2,906,017
Unclassified.....	09900	31,866
Current Expenses	13000	1,463,830
Repairs and Alterations.....	06400	12,400
Equipment.....	07000	594,700
Other Assets.....	69000	<u>1,200,000</u>
Total.....		\$ 6,208,813

133 - Auditor's Office –

Technology Support and Acquisition Fund

(W.V. Code Chapter 12)

Fund 1233 FY 2024 Org 1200

Current Expenses	13000	\$	10,000
Other Assets	69000		<u>5,000</u>
Total.....		\$	15,000

Fifty percent of the deposits made into this fund shall be transferred to the Treasurer's Office – Technology Support and Acquisition Fund (fund 1329, org 1300) for expenditure for the purposes described in W.V. Code §12-3-10c.

134 - Auditor's Office –

Purchasing Card Administration Fund

(W.V. Code Chapter 12)

Fund 1234 FY 2024 Org 1200

Personal Services and Employee Benefits	00100	\$	3,284,440
Current Expenses	13000		2,303,622
Repairs and Alterations.....	06400		5,500
Equipment.....	07000		850,000
Other Assets	69000		508,886
Statutory Revenue Distribution.....	74100		<u>8,000,000</u>
Total.....		\$	14,952,448

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the amount necessary to meet the transfer and revenue distribution requirements to the Purchasing Improvement Fund (fund 2264), the Entrepreneurship and Innovation Investment Fund (fund 3014), the Hatfield-McCoy Regional Recreation Authority, and the State Park Operating Fund (fund 3265) per W.V. Code §12-3-10d.

*135 - Auditor's Office –**Chief Inspector's Fund*

(W.V. Code Chapter 6)

Fund 1235 FY 2024 Org 1200

Personal Services and Employee Benefits	00100	\$	3,786,468
Current Expenses	13000		765,915
Equipment	07000		<u>50,000</u>
Total		\$	4,602,383

*136 - Auditor's Office –**Volunteer Fire Department Workers'**Compensation Premium Subsidy Fund*

(W.V. Code Chapters 12 and 33)

Fund 1239 FY 2024 Org 1200

Volunteer Fire Department Workers' Compensation Subsidy...	83200	\$	2,500,000
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*137 - Department of Agriculture –**Agriculture Fees Fund*

(W.V. Code Chapter 19)

Fund 1401 FY 2024 Org 1400

Personal Services and Employee Benefits	00100	\$	2,634,966
Unclassified	09900		37,425
Current Expenses	13000		1,856,184
Repairs and Alterations	06400		158,500
Equipment	07000		436,209
Other Assets	69000		<u>10,000</u>
Total		\$	5,133,284

138 - Department of Agriculture –

West Virginia Rural Rehabilitation Program

(W.V. Code Chapter 19)

Fund 1408 FY 2024 Org 1400

Personal Services			
and Employee Benefits	00100	\$	82,884
Unclassified.....	09900		10,476
Current Expenses	13000		<u>2,200,000</u>
Total.....		\$	2,293,360

139 - Department of Agriculture –

General John McCausland Memorial Farm Fund

(W.V. Code Chapter 19)

Fund 1409 FY 2024 Org 1400

Personal Services			
and Employee Benefits	00100	\$	80,453
Unclassified.....	09900		2,100
Current Expenses	13000		89,500
Repairs and Alterations.....	06400		36,400
Equipment.....	07000		<u>15,000</u>
Total.....		\$	223,453

The above appropriations shall be expended in accordance with Article 26, Chapter 19 of the Code.

140 - Department of Agriculture –

Farm Operating Fund

(W.V. Code Chapter 19)

Fund 1412 FY 2024 Org 1400

Personal Services			
and Employee Benefits	00100	\$	908,740

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Unclassified.....	09900	45,807
Current Expenses	13000	3,410,542
Repairs and Alterations.....	06400	128,500
Equipment.....	07000	10,000
Other Assets.....	69000	27,000
Land	73000	<u>250,000</u>
Total.....		\$ 4,985,740

144 - Department of Agriculture –

Integrated Predation Management Fund

(W.V. Code Chapter 7)

Fund 1465 FY 2024 Org 1400

Current Expenses	13000	\$ 112,500
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145 - Department of Agriculture –

West Virginia Spay Neuter Assistance Fund

(W.V. Code Chapter 19)

Fund 1481 FY 2024 Org 1400

Current Expenses	13000	\$ 1,000,000
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146 - Department of Agriculture –

Veterans and Warriors to Agriculture Fund

(W.V. Code Chapter 19)

Fund 1483 FY 2024 Org 1400

Current Expenses	13000	\$ 7,500
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147 - Department of Agriculture –

State FFA-FHA Camp and Conference Center

(W.V. Code Chapters 18 and 18A)

Fund 1484 FY 2024 Org 1400

Personal Services		
and Employee Benefits	00100	\$ 1,251,311
Unclassified.....	09900	17,000
Current Expenses	13000	1,143,306
Repairs and Alterations.....	06400	82,500
Equipment.....	07000	76,000
Buildings	25800	1,000
Other Assets.....	69000	10,000
Land	73000	<u>1,000</u>
Total.....		\$ 2,582,117

148 - Attorney General –

Antitrust Enforcement Fund

(W.V. Code Chapter 47)

Fund 1507 FY 2024 Org 1500

Personal Services		
and Employee Benefits	00100	\$ 363,466
Current Expenses	13000	148,803
Repairs and Alterations.....	06400	1,000
Equipment.....	07000	<u>1,000</u>
Total.....		\$ 514,269

149 - Attorney General –

Preneed Burial Contract Regulation Fund

(W.V. Code Chapter 47)

Fund 1513 FY 2024 Org 1500

Personal Services		
and Employee Benefits	00100	\$ 234,077
Current Expenses	13000	54,615
Repairs and Alterations.....	06400	1,000

Equipment.....	07000	<u>1,000</u>
Total.....		\$ 290,692

150 - Attorney General –

Preneed Funeral Guarantee Fund

(W.V. Code Chapter 47)

Fund 1514 FY 2024 Org 1500

Current Expenses	13000	\$ 901,135
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151 - Secretary of State –

Service Fees and Collection Account

(W.V. Code Chapters 3, 5, and 59)

Fund 1612 FY 2024 Org 1600

Personal Services		
and Employee Benefits.....	00100	\$ 1,148,695
Unclassified.....	09900	4,524
Current Expenses	13000	<u>8,036</u>
Total.....		\$ 1,161,255

152 - Secretary of State –

General Administrative Fees Account

(W.V. Code Chapters 3, 5, and 59)

Fund 1617 FY 2024 Org 1600

Personal Services		
and Employee Benefits.....	00100	\$ 3,131,478
Unclassified.....	09900	25,529
Current Expenses	13000	1,276,716
Technology Improvements	59900	<u>870,000</u>
Total.....		\$ 5,303,723

DEPARTMENT OF ADMINISTRATION

153 - Department of Administration –

Office of the Secretary –

Tobacco Settlement Fund

(W.V. Code Chapter 4)

Fund 2041 FY 2024 Org 0201

Tobacco Settlement

Securitization Trustee Passthru..... 65000 \$ 80,000,000

154 - Department of Administration –

Office of the Secretary –

Employee Pension and Health Care Benefit Fund

(W.V. Code Chapter 18)

Fund 2044 FY 2024 Org 0201

Current Expenses 13000 \$ 37,543,000

The above appropriation for Current Expenses (fund 2044, appropriation 13000) shall be transferred to the Consolidated Public Retirement Board – Teachers' Accumulation Fund (fund 2600).

155 - Department of Administration –

Division of Finance –

Shared Services Section Fund

(W.V. Code Chapter 5A)

Fund 2020 FY 2024 Org 0209

Personal Services

and Employee Benefits 00100 \$ 1,586,318

Current Expenses	13000	<u>500,000</u>
Total.....		\$ 2,086,318

156 - Division of Information Services and Communications

(W.V. Code Chapter 5A)

Fund 2220 FY 2024 Org 0210

Personal Services		
and Employee Benefits	00100	\$ 22,681,040
Unclassified.....	09900	344,119
Current Expenses	13000	14,418,001
Equipment.....	07000	2,050,000
Other Assets	69000	<u>1,045,000</u>
Total.....		\$ 40,538,160

The total amount of these appropriations shall be paid from a special revenue fund out of collections made by the Division of Information Services and Communications as provided by law.

Each spending unit operating from the General Revenue Fund, from special revenue funds or receiving reimbursement for postage from the federal government shall be charged monthly for all postage meter service and shall reimburse the revolving fund monthly for all such amounts.

157 - Division of Purchasing –

Vendor Fee Fund

(W.V. Code Chapter 5A)

Fund 2263 FY 2024 Org 0213

Personal Services		
and Employee Benefits	00100	\$ 593,486
Current Expenses	13000	9,115
BRIM Premium.....	91300	<u>810</u>
Total.....		\$ 603,411

*158 - Division of Purchasing –**Purchasing Improvement Fund*

(W.V. Code Chapter 5A)

Fund 2264 FY 2024 Org 0213

Personal Services		
and Employee Benefits	00100	\$ 1,016,493
Unclassified.....	09900	5,562
Current Expenses	13000	492,066
Repairs and Alterations.....	06400	500
Equipment.....	07000	500
Other Assets.....	69000	500
BRIM Premium.....	91300	850
Total.....		\$ 1,516,471

*159 - Travel Management –**Aviation Fund*

(W.V. Code Chapter 5A)

Fund 2302 FY 2024 Org 0215

Unclassified.....	09900	\$ 1,000
Current Expenses	13000	149,700
Repairs and Alterations.....	06400	1,275,237
Equipment.....	07000	1,000
Buildings.....	25800	100
Other Assets.....	69000	100
Land	73000	100
Total.....		\$ 1,427,237

160 - Fleet Management Division Fund

(W.V. Code Chapter 5A)

Fund 2301 FY 2024 Org 0216

Personal Services		
and Employee Benefits	00100	\$ 808,935

Unclassified.....	09900	4,000
Current Expenses	13000	11,630,614
Repairs and Alterations.....	06400	12,000
Equipment.....	07000	800,000
Other Assets.....	69000	<u>2,000</u>
Total.....		\$ 13,257,549

161 - Division of Personnel

(W.V. Code Chapter 29)

Fund 2440 FY 2024 Org 0222

Personal Services		
and Employee Benefits.....	00100	\$ 4,896,513
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	122,500
Unclassified.....	09900	51,418
Current Expenses	13000	1,262,813
Repairs and Alterations.....	06400	5,000
Equipment.....	07000	20,000
Other Assets.....	69000	<u>60,000</u>
Total.....		\$ 6,418,244

The total amount of these appropriations shall be paid from a special revenue fund out of fees collected by the Division of Personnel.

162 - West Virginia Prosecuting Attorneys Institute

(W.V. Code Chapter 7)

Fund 2521 FY 2024 Org 0228

Personal Services		
and Employee Benefits.....	00100	\$ 139,194
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	119,000
Unclassified.....	09900	4,023
Current Expenses	13000	297,528
Repairs and Alterations.....	06400	600

*165 - Division of Forestry –**Timbering Operations Enforcement Fund*

(W.V. Code Chapter 19)

Fund 3082 FY 2024 Org 0305

Personal Services			
and Employee Benefits	00100	\$	253,779
Current Expenses	13000		54,873
Repairs and Alterations.....	06400		<u>11,250</u>
Total.....		\$	319,902

*166 - Division of Forestry –**Severance Tax Operations*

(W.V. Code Chapter 11)

Fund 3084 FY 2024 Org 0305

Current Expenses	13000		333,757
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*167 - Geological and Economic Survey –**Geological and Analytical Services Fund*

(W.V. Code Chapter 29)

Fund 3100 FY 2024 Org 0306

Personal Services			
and Employee Benefits	00100	\$	37,966
Unclassified.....	09900		2,182
Current Expenses	13000		141,631
Repairs and Alterations.....	06400		50,000
Equipment.....	07000		20,000
Other Assets.....	69000		<u>10,000</u>
Total.....		\$	261,779

The above appropriations shall be used in accordance with W.V. Code §29-2-4.

*168 - Division of Labor –**West Virginia Jobs Act Fund*

(W.V. Code Chapter 21)

Fund 3176 FY 2024 Org 0308

Current Expenses	13000	75,000
Equipment	07000	<u>25,000</u>
Total.....		\$ 100,000

*169 - Division of Labor –**HVAC Fund*

(W.V. Code Chapter 21)

Fund 3186 FY 2024 Org 0308

Personal Services and Employee Benefits	00100	\$ 422,640
Unclassified.....	09900	4,000
Current Expenses	13000	82,000
Repairs and Alterations.....	06400	4,500
Buildings	25800	1,000
BRIM Premium.....	91300	<u>8,500</u>
Total.....		\$ 522,640

*170 - Division of Labor –**Elevator Safety Fund*

(W.V. Code Chapter 21)

Fund 3188 FY 2024 Org 0308

Personal Services and Employee Benefits	00100	\$ 306,835
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	111,680
Unclassified.....	09900	2,261

Current Expenses	13000	94,712
Repairs and Alterations.....	06400	2,000
Buildings	25800	1,000
BRIM Premium.....	91300	<u>8,500</u>
Total.....		\$ 526,988

*171 - Division of Labor –**Steam Boiler Fund*

(W.V. Code Chapter 21)

Fund 3189 FY 2024 Org 0308

Personal Services		
and Employee Benefits.....	00100	\$ 83,471
Unclassified.....	09900	1,000
Current Expenses	13000	20,000
Repairs and Alterations.....	06400	2,000
Buildings	25800	1,000
BRIM Premium.....	91300	<u>1,000</u>
Total.....		\$ 108,471

*172 - Division of Labor –**Crane Operator Certification Fund*

(W.V. Code Chapter 21)

Fund 3191 FY 2024 Org 0308

Personal Services		
and Employee Benefits.....	00100	\$ 199,719
Unclassified.....	09900	1,380
Current Expenses	13000	51,265
Repairs and Alterations.....	06400	1,500
Buildings	25800	1,000
BRIM Premium.....	91300	<u>7,000</u>
Total.....		\$ 261,864

*173 - Division of Labor –**Amusement Rides and Amusement Attraction Safety Fund*

(W.V. Code Chapter 21)

Fund 3192 FY 2024 Org 0308

Personal Services			
and Employee Benefits	00100	\$	196,626
Unclassified.....	09900		1,281
Current Expenses	13000		44,520
Repairs and Alterations.....	06400		2,000
Buildings	25800		1,000
BRIM Premium.....	91300		<u>8,500</u>
Total.....		\$	253,927

*174 - Division of Labor –**State Manufactured Housing Administration Fund*

(W.V. Code Chapter 21)

Fund 3195 FY 2024 Org 0308

Personal Services			
and Employee Benefits	00100	\$	299,557
Unclassified.....	09900		1,847
Current Expenses	13000		43,700
Repairs and Alterations.....	06400		1,000
Buildings	25800		1,000
BRIM Premium.....	91300		<u>3,404</u>
Total.....		\$	350,508

*175 - Division of Labor –**Weights and Measures Fund*

(W.V. Code Chapter 47)

Fund 3196 FY 2024 Org 0308

Unclassified.....	09900	\$	1,200
Current Expenses	13000		93,000
Repairs and Alterations.....	06400		10,000
Equipment.....	07000		10,000
BRIM Premium.....	91300		<u>7,000</u>
Total.....		\$	121,200

176 - Division of Labor –

Bedding and Upholstery Fund

(W.V. Code Chapter 21)

Fund 3198 FY 2024 Org 0308

Personal Services and Employee Benefits	00100	\$	154,316
Unclassified.....	09900		2,000
Current Expenses	13000		145,400
Repairs and Alterations.....	06400		2,000
Buildings.....	25800		1,000
BRIM Premium.....	91300		<u>8,700</u>
Total.....		\$	313,416

177 - Division of Labor –

Psychophysiological Examiners Fund

(W.V. Code Chapter 21)

Fund 3199 FY 2024 Org 0308

Current Expenses	13000	\$	4,000
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178 - Division of Natural Resources –

License Fund – Wildlife Resources

(W.V. Code Chapter 20)

Fund 3200 FY 2024 Org 0310

Wildlife Resources.....	02300	\$	10,522,336
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(W.V. Code Chapter 20)

Fund 3205 FY 2024 Org 0310

Personal Services		
and Employee Benefits	00100	\$ 475,576
Current Expenses	13000	1,056,876
Repairs and Alterations.....	06400	15,016
Equipment.....	07000	8,300
Buildings.....	25800	8,300
Other Assets.....	69000	1,900,000
Land	73000	<u>31,700</u>
Total.....		\$ 3,495,768

*182 - Division of Natural Resources –**State Parks and Recreation Endowment Fund*

(W.V. Code Chapter 20)

Fund 3211 FY 2024 Org 0310

Current Expenses	13000	\$ 6,000
Repairs and Alterations.....	06400	3,000
Equipment.....	07000	2,000
Buildings.....	25800	3,000
Other Assets.....	69000	3,504,000
Land	73000	<u>2,000</u>
Total.....		\$ 3,520,000

*183 - Division of Natural Resources –**Whitewater Study and Improvement Fund*

(W.V. Code Chapter 20)

Fund 3253 FY 2024 Org 0310

Personal Services		
and Employee Benefits	00100	\$ 73,395
Current Expenses	13000	64,778
Equipment.....	07000	1,297

Unclassified.....	09900	30,000
Current Expenses	13000	1,315,078
Equipment.....	07000	<u>36,000</u>
Total.....		\$ 3,594,590

187 - State Board of Rehabilitation –

Division of Rehabilitation Services –

West Virginia Rehabilitation Center Special Account

(W.V. Code Chapter 18)

Fund 8664 FY 2024 Org 0932

Personal Services and Employee Benefits.....	00100	\$ 119,738
Current Expenses	13000	1,180,122
Repairs and Alterations.....	06400	85,500
Equipment.....	07000	220,000
Buildings.....	25800	150,000
Other Assets.....	69000	<u>150,000</u>
Total.....		\$ 1,905,360

DEPARTMENT OF ECONOMIC DEVELOPMENT

188 - Department of Economic Development –

Office of Energy –

Energy Assistance

(W.V. Code Chapter 5B)

Fund 3010 FY 2024 Org 0307

Energy Assistance - Total.....	64700	\$ 7,211
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189 - Department of Economic Development –

Office of the Secretary –

Broadband Enhancement Fund

(W.V. Code Chapter 31G)

Fund 3013 FY 2024 Org 0307

Personal Services and Employee Benefits	00100	\$ 131,682
Current Expenses	13000	<u>1,648,318</u>
Total.....		\$ 1,780,000

*190 - Department of Economic Development –**Office of the Secretary –**Entrepreneurship and Innovation Investment Fund*

(W.V. Code Chapter 5B)

Fund 3014 FY 2024 Org 0307

Entrepreneurship and Innovation Investment Fund ...	70301	\$ 1,500,000
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*191 - Department of Economic Development –**Office of the Secretary –**Broadband Development Fund*

(W.V. Code Chapter 31G)

Fund 3034 FY 2024 Org 0307

Personal Services and Employee Benefits	00100	\$ 668,906
Unclassified.....	09900	2,000,000
Current Expenses	13000	<u>235,302,925</u>
Total.....		\$ 237,971,831

*192 - Department of Economic Development –**Office of the Secretary –**Office of Coalfield Community Development*

(W.V. Code Chapter 5B)

Fund 3162 FY 2024 Org 0307

Personal Services			
and Employee Benefits	00100	\$	438,687
Unclassified.....	09900		8,300
Current Expenses	13000		<u>399,191</u>
Total.....		\$	846,178

DEPARTMENT OF EDUCATION*193 - State Board of Education –**Strategic Staff Development*

(W.V. Code Chapter 18)

Fund 3937 FY 2024 Org 0402

Personal Services			
and Employee Benefits	00100	\$	35,000
Unclassified.....	09900		26,000
Current Expenses	13000		<u>2,539,000</u>
Total.....		\$	2,600,000

*194 - School Building Authority –**School Construction Fund*

(W.V. Code Chapters 18 and 18A)

Fund 3952 FY 2024 Org 0404

SBA Construction Grants	24000	\$	102,345,818
Directed Transfer	70000		<u>1,371,182</u>
Total.....		\$	103,717,000

The above appropriation for Directed Transfer (fund 3952, appropriation 70000) shall be transferred to the School Building Authority Fund (fund 3959) for the administrative expenses of the School Building Authority.

195 - School Building Authority

(W.V. Code Chapter 18)

Fund 3959 FY 2024 Org 0404

Personal Services		
and Employee Benefits	00100	\$ 1,198,718
Current Expenses	13000	244,195
Repairs and Alterations	06400	13,150
Equipment	07000	<u>26,000</u>
Total		\$ 1,482,063

DEPARTMENT OF ARTS, CULTURE, AND HISTORY*196 - Division of Culture and History –**Public Records and Preservation Revenue Account*

(W.V. Code Chapter 5A)

Fund 3542 FY 2024 Org 0432

Personal Services		
and Employee Benefits	00100	\$ 244,348
Current Expenses	13000	862,241
Equipment	07000	75,000
Buildings	25800	1,000
Other Assets	69000	52,328
Land	73000	<u>1,000</u>
Total		\$ 1,235,917

DEPARTMENT OF ENVIRONMENTAL PROTECTION*197 - Solid Waste Management Board*

(W.V. Code Chapter 22C)

Fund 3288 FY 2024 Org 0312

Personal Services		
and Employee Benefits	00100	\$ 891,366

Current Expenses	13000	2,059,457
Repairs and Alterations.....	06400	1,000
Equipment.....	07000	5,000
Other Assets.....	69000	<u>4,403</u>
Total.....		\$ 2,961,226

198 - Division of Environmental Protection –

Hazardous Waste Management Fund

(W.V. Code Chapter 22)

Fund 3023 FY 2024 Org 0313

Personal Services		
and Employee Benefits.....	00100	\$ 819,765
Unclassified.....	09900	8,072
Current Expenses	13000	155,969
Repairs and Alterations.....	06400	500
Equipment.....	07000	1,505
Other Assets.....	69000	<u>2,000</u>
Total.....		\$ 987,811

199 - Division of Environmental Protection –

Air Pollution Education and Environment Fund

(W.V. Code Chapter 22)

Fund 3024 FY 2024 Org 0313

Personal Services		
and Employee Benefits.....	00100	\$ 814,372
Unclassified.....	09900	14,647
Current Expenses	13000	876,863
Repairs and Alterations.....	06400	13,000
Equipment.....	07000	53,105
Other Assets.....	69000	<u>20,000</u>
Total.....		\$ 1,791,987

*200 - Division of Environmental Protection –**Special Reclamation Fund*

(W.V. Code Chapter 22)

Fund 3321 FY 2024 Org 0313

Personal Services		
and Employee Benefits	00100	\$ 1,721,232
Current Expenses	13000	16,185,006
Repairs and Alterations.....	06400	79,950
Equipment.....	07000	130,192
Other Assets.....	69000	<u>32,000</u>
Total.....		\$ 18,148,380

*201 - Division of Environmental Protection –**Oil and Gas Reclamation Fund*

(W.V. Code Chapter 22)

Fund 3322 FY 2024 Org 0313

Personal Services		
and Employee Benefits	00100	\$ 555,414
Current Expenses	13000	<u>1,956,094</u>
Total.....		\$ 2,511,508

*202 - Division of Environmental Protection –**Oil and Gas Operating Permit and Processing Fund*

(W.V. Code Chapter 22)

Fund 3323 FY 2024 Org 0313

Personal Services		
and Employee Benefits	00100	\$ 2,240,459
Unclassified.....	09900	15,700
Current Expenses	13000	932,300
Repairs and Alterations.....	06400	9,500

Equipment.....	07000	500
Other Assets.....	69000	<u>500</u>
Total.....		\$ 3,198,959

203 - Division of Environmental Protection –

Mining and Reclamation Operations Fund

(W.V. Code Chapter 22)

Fund 3324 FY 2024 Org 0313

Personal Services		
and Employee Benefits.....	00100	\$ 3,684,989
Unclassified.....	09900	920
Current Expenses.....	13000	2,202,231
Repairs and Alterations.....	06400	60,260
Equipment.....	07000	83,000
Other Assets.....	69000	<u>57,500</u>
Total.....		\$ 6,088,900

204 - Division of Environmental Protection –

Underground Storage Tank

Administrative Fund

(W.V. Code Chapter 22)

Fund 3325 FY 2024 Org 0313

Personal Services		
and Employee Benefits.....	00100	\$ 492,391
Unclassified.....	09900	7,520
Current Expenses.....	13000	318,420
Repairs and Alterations.....	06400	5,350
Equipment.....	07000	3,610
Other Assets.....	69000	<u>3,500</u>
Total.....		\$ 830,791

*205 - Division of Environmental Protection –**Hazardous Waste Emergency Response Fund*

(W.V. Code Chapter 22)

Fund 3331 FY 2024 Org 0313

Personal Services			
and Employee Benefits	00100	\$	627,683
Unclassified.....	09900		10,616
Current Expenses	13000		767,905
Repairs and Alterations.....	06400		7,014
Equipment.....	07000		9,000
Other Assets.....	69000		<u>3,500</u>
Total.....		\$	1,425,718

*206 - Division of Environmental Protection –**Solid Waste Reclamation and**Environmental Response Fund*

(W.V. Code Chapter 22)

Fund 3332 FY 2024 Org 0313

Personal Services			
and Employee Benefits	00100	\$	873,713
Unclassified.....	09900		22,900
Current Expenses	13000		3,604,737
Repairs and Alterations.....	06400		25,000
Equipment.....	07000		31,500
Buildings.....	25800		500
Other Assets.....	69000		<u>1,000</u>
Total.....		\$	4,559,350

*207 - Division of Environmental Protection –**Solid Waste Enforcement Fund*

(W.V. Code Chapter 22)

Fund 3333 FY 2024 Org 0313

Personal Services		
and Employee Benefits	00100	\$ 3,442,454
Unclassified.....	09900	31,145
Current Expenses	13000	940,229
Repairs and Alterations.....	06400	30,930
Equipment.....	07000	23,356
Other Assets.....	69000	<u>25,554</u>
Total.....		\$ 4,493,668

208 - Division of Environmental Protection –

Air Pollution Control Fund

(W.V. Code Chapter 22)

Fund 3336 FY 2024 Org 0313

Personal Services		
and Employee Benefits	00100	\$ 6,263,887
Unclassified.....	09900	70,572
Current Expenses	13000	1,469,467
Repairs and Alterations.....	06400	84,045
Equipment.....	07000	103,601
Other Assets.....	69000	<u>52,951</u>
Total.....		\$ 8,044,523

209 - Division of Environmental Protection –

Environmental Laboratory

Certification Fund

(W.V. Code Chapter 22)

Fund 3340 FY 2024 Org 0313

Personal Services		
and Employee Benefits	00100	\$ 375,851
Unclassified.....	09900	1,120
Current Expenses	13000	201,146

(W.V. Code Chapter 22)

Fund 3490 FY 2024 Org 0313

Personal Services		
and Employee Benefits	00100	\$ 1,145,549
Unclassified.....	09900	1,180
Current Expenses	13000	589,834
Repairs and Alterations.....	06400	27,612
Equipment.....	07000	23,500
Other Assets.....	69000	<u>11,520</u>
Total.....		\$ 1,799,195

*214 - Oil and Gas Conservation Commission –**Special Oil and Gas Conservation Fund*

(W.V. Code Chapter 22C)

Fund 3371 FY 2024 Org 0315

Personal Services		
and Employee Benefits	00100	\$ 167,915
Current Expenses	13000	161,225
Repairs and Alterations.....	06400	1,000
Equipment.....	07000	9,481
Other Assets.....	69000	<u>1,500</u>
Total.....		\$ 341,121

DEPARTMENT OF HEALTH AND HUMAN RESOURCES*215 - Division of Health –**Ryan Brown Addiction Prevention and Recovery Fund*

(W.V. Code Chapter 19)

Fund 5111 FY 2024 Org 0506

Current Expenses	13000	\$ 10,667,392
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*216 - Division of Health –**The Vital Statistics Account*

(W.V. Code Chapter 16)

Fund 5144 FY 2024 Org 0506

Personal Services		
and Employee Benefits	00100	\$ 1,144,311
Unclassified.....	09900	15,500
Current Expenses	13000	<u>3,557,788</u>
Total.....		\$ 4,717,599

*217 - Division of Health –**Hospital Services Revenue Account**Special Fund**Capital Improvement, Renovation and Operations*

(W.V. Code Chapter 16)

Fund 5156 FY 2024 Org 0506

Institutional Facilities Operations	33500	\$ 59,195,646
Medical Services Trust Fund –		
Transfer.....	51200	<u>27,800,000</u>
Total.....		\$ 86,995,646

The total amount of these appropriations shall be paid from the Hospital Services Revenue Account Special Fund created by W.V. Code §16-1-13, and shall be used for operating expenses and for improvements in connection with existing facilities.

Additional funds have been appropriated in fund 0525, fiscal year 2024, organization 0506, for the operation of the institutional facilities. The Secretary of the Department of Health and Human Resources is authorized to utilize up to 10 percent of the funds from the appropriation for Institutional Facilities Operations to facilitate cost effective and cost saving services at the community level.

Necessary funds from the above appropriation for Institutional Facilities Operations may be used for medical facilities operations, either in connection with this fund or in connection with the appropriations designated for Hopemont Hospital, Lakin Hospital, John Manchin Senior Health Care Center, Jackie Withrow Hospital, Welch Community Hospital, William R. Sharpe Jr. Hospital, Mildred Mitchell-Bateman Hospital, and William R. Sharpe Jr. Hospital – Transitional Living Facility.

218 - Division of Health –

Laboratory Services Fund

(W.V. Code Chapter 16)

Fund 5163 FY 2024 Org 0506

Personal Services			
and Employee Benefits	00100	\$	1,028,784
Unclassified.....	09900		18,114
Current Expenses	13000		<u>2,209,105</u>
Total.....		\$	3,256,003

219 - Division of Health –

The Health Facility Licensing Account

(W.V. Code Chapter 16)

Fund 5172 FY 2024 Org 0506

Personal Services			
and Employee Benefits	00100	\$	688,753
Unclassified.....	09900		7,113
Current Expenses	13000		<u>98,247</u>
Total.....		\$	794,113

220 - Division of Health –

Hepatitis B Vaccine

(W.V. Code Chapter 16)

Fund 5183 FY 2024 Org 0506

Current Expenses	13000	\$	9,740
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*221 - Division of Health –**Lead Abatement Account**(W.V. Code Chapter 16)*Fund 5204 FY 2024 Org 0506

Personal Services			
and Employee Benefits	00100	\$	19,100
Unclassified.....	09900		373
Current Expenses	13000		<u>17,875</u>
Total.....		\$	37,348

*222 - Division of Health –**West Virginia Birth-to-Three Fund**(W.V. Code Chapter 16)*Fund 5214 FY 2024 Org 0506

Personal Services			
and Employee Benefits	00100	\$	738,310
Unclassified.....	09900		223,999
Current Expenses	13000		<u>33,372,684</u>
Total.....		\$	34,334,993

*223 - Division of Health –**Tobacco Control Special Fund**(W.V. Code Chapter 16)*Fund 5218 FY 2024 Org 0506

Current Expenses	13000	\$	7,579
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224 - Division of Health –

Medical Cannabis Program Fund

(W.V. Code Chapter 16A)

Fund 5420 FY 2024 Org 0506

Personal Services		
and Employee Benefits	00100	\$ 509,658
Current Expenses	13000	<u>2,046,040</u>
Total.....		\$ 2,555,698

225 - Division of Health –

Emergency Medical Service Workers Salary Enhancement Fund

(W.V. Code Chapter 16A)

Fund xxxx FY 2024 Org 0506

Current Expenses	13000	\$ 10,000,000
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226 - West Virginia Health Care Authority –

Health Care Cost Review Fund

(W.V. Code Chapter 16)

Fund 5375 FY 2024 Org 0507

Personal Services		
and Employee Benefits	00100	\$ 556,513
Unclassified.....	09900	13,500
Current Expenses	13000	<u>785,445</u>
Total.....		\$ 1,355,458

The above appropriation is to be expended in accordance with and pursuant to the provisions of W.V. Code §16-29B and from the special revolving fund designated Health Care Cost Review Fund.

227 - *West Virginia Health Care Authority –*

Certificate of Need Program Fund

(W.V. Code Chapter 16)

Fund 5377 FY 2024 Org 0507

Personal Services and Employee Benefits	00100	\$ 555,842
Current Expenses	13000	<u>392,267</u>
Total.....		\$ 948,109

228 - *Division of Human Services –*

Health Care Provider Tax –

Medicaid State Share Fund

(W.V. Code Chapter 11)

Fund 5090 FY 2024 Org 0511

Medical Services	18900	\$ 393,594,315
Medical Services Administrative Costs	78900	<u>259,746</u>
Total.....		\$ 393,854,061

The above appropriation for Medical Services Administrative Costs (fund 5090, appropriation 78900) shall be transferred to a special revenue account in the treasury for use by the Department of Health and Human Resources for administrative purposes. The remainder of all moneys deposited in the fund shall be transferred to the Medical Services Program Fund (fund 5084).

229 - *Division of Human Services –*

Child Support Enforcement Fund

(W.V. Code Chapter 48A)

Fund 5094 FY 2024 Org 0511

Personal Services and Employee Benefits	00100	\$ 24,809,509
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Unclassified.....	09900	380,000
Current Expenses	13000	<u>12,810,491</u>
Total.....		\$ 38,000,000

230 - Division of Human Services –

Medical Services Trust Fund

(W.V. Code Chapter 9)

Fund 5185 FY 2024 Org 0511

Medical Services.....	18900	\$ 55,000,000
Medical Services Administrative Costs	78900	<u>686,674</u>
Total.....		\$ 55,686,674

The above appropriation to Medical Services shall be used to provide state match of Medicaid expenditures as defined and authorized in subsection (c) of W.V. Code §9-4A-2a. Expenditures from the fund are limited to the following: payment of backlogged billings, funding for services to future federally mandated population groups and payment of the required state match for Medicaid disproportionate share payments. The remainder of all moneys deposited in the fund shall be transferred to the Division of Human Services accounts.

231 - Division of Human Services –

James “Tiger” Morton Catastrophic Illness Fund

(W.V. Code Chapter 16)

Fund 5454 FY 2024 Org 0511

Personal Services		
and Employee Benefits.....	00100	\$ 136,984
Unclassified.....	09900	4,000
Current Expenses	13000	<u>396,000</u>
Total.....		\$ 536,984

232 - Division of Human Services –

Domestic Violence Legal Services Fund

(W.V. Code Chapter 48)

Fund 5455 FY 2024 Org 0511

Current Expenses 13000 \$ 900,000

233 - Division of Human Services –

West Virginia Works Separate State College Program Fund

(W.V. Code Chapter 9)

Fund 5467 FY 2024 Org 0511

Current Expenses 13000 \$ 500,000

234 - Division of Human Services –

West Virginia Works Separate State Two-Parent Program Fund

(W.V. Code Chapter 9)

Fund 5468 FY 2024 Org 0511

Current Expenses 13000 \$ 1,500,000

235 - Division of Human Services –

Marriage Education Fund

(W.V. Code Chapter 9)

Fund 5490 FY 2024 Org 0511

Personal Services			
and Employee Benefits	00100	\$	10,000
Current Expenses	13000		<u>25,000</u>
Total.....		\$	35,000

DEPARTMENT OF HOMELAND SECURITY

236 - Department of Homeland Security –

Office of the Secretary –

Law-Enforcement, Safety and Emergency Worker

Funeral Expense Payment Fund

(W.V. Code Chapter 15)

Fund 6003 FY 2024 Org 0601

Current Expenses 13000 \$ 32,000

237 - Division of Emergency Management –

Statewide Interoperable Radio Network Account

(W.V. Code Chapter 15)

Fund 6208 FY 2024 Org 0606

Current Expenses 13000 \$ 80,000

238 - Division of Emergency Management –

West Virginia Interoperable Radio Project

(W.V. Code Chapter 24)

Fund 6295 FY 2024 Org 0606

Unclassified.....	09900	\$	20,000
Current Expenses	13000		3,980,000
Repairs and Alterations.....	06400		250,000
Equipment.....	07000		<u>250,000</u>
Total.....		\$	4,500,000

239 - Division of Corrections and Rehabilitation –

Parolee Supervision Fees

(W.V. Code Chapter 15A)

Fund 6362 FY 2024 Org 0608

Personal Services		
and Employee Benefits	00100	\$ 1,199,557
Unclassified.....	09900	9,804
Current Expenses	13000	758,480
Equipment.....	07000	30,000
Other Assets.....	69000	<u>40,129</u>
Total.....		\$ 2,037,970

*240 - Division of Corrections and Rehabilitation –**Regional Jail and Correctional Facility Authority*

(W.V. Code Chapter 15A)

Fund 6675 FY 2024 Org 0608

Personal Services		
and Employee Benefits	00100	\$ 2,027,746
Debt Service.....	04000	1,900,000
Repairs and Alterations.....	06400	5,000,000
Equipment.....	07000	2,000,000
Unclassified.....	09900	100,000
Current Expenses	13000	<u>245,472</u>
Total.....		\$ 11,273,218

*241 - West Virginia State Police –**Motor Vehicle Inspection Fund*

(W.V. Code Chapter 17C)

Fund 6501 FY 2024 Org 0612

Personal Services		
and Employee Benefits	00100	\$ 2,019,791
Current Expenses	13000	1,488,211
Repairs and Alterations.....	06400	204,500
Equipment.....	07000	3,770,751

Buildings	25800	534,000
Other Assets	69000	5,000
BRIM Premium.....	91300	<u>302,432</u>
Total.....		\$ 8,324,685

The total amount of these appropriations shall be paid from the special revenue fund out of fees collected for inspection stickers as provided by law.

242 - West Virginia State Police –

Forensic Laboratory Fund

(W.V. Code Chapter 15)

Fund 6511 FY 2024 Org 0612

Personal Services		
and Employee Benefits.....	00100	\$ 1,623,315
Current Expenses	13000	90,000
Repairs and Alterations.....	06400	5,000
Equipment.....	07000	<u>545,000</u>
Total.....		\$ 2,263,315

243 - West Virginia State Police –

Drunk Driving Prevention Fund

(W.V. Code Chapter 15)

Fund 6513 FY 2024 Org 0612

Current Expenses	13000	\$ 1,327,000
Equipment.....	07000	3,491,895
BRIM Premium.....	91300	<u>154,452</u>
Total.....		\$ 4,973,347

The total amount of these appropriations shall be paid from the special revenue fund out of receipts collected pursuant to W.V. Code §11-15-9a and 16 and paid into a revolving fund account in the State Treasury.

*244 - West Virginia State Police –**Surplus Real Property Proceeds Fund*

(W.V. Code Chapter 15)

Fund 6516 FY 2024 Org 0612

Buildings	25800	\$	1,022,778
Land	73000		1,000
BRIM Premium.....	91300		<u>77,222</u>
Total.....		\$	1,101,000

*245 - West Virginia State Police –**Surplus Transfer Account*

(W.V. Code Chapter 15)

Fund 6519 FY 2024 Org 0612

Current Expenses	13000	\$	225,000
Repairs and Alterations.....	06400		20,000
Equipment	07000		250,000
Buildings	25800		40,000
Other Assets	69000		45,000
BRIM Premium.....	91300		<u>5,000</u>
Total.....		\$	585,000

*246 - West Virginia State Police –**Central Abuse Registry Fund*

(W.V. Code Chapter 15)

Fund 6527 FY 2024 Org 0612

Personal Services and Employee Benefits	00100	\$	279,648
Current Expenses	13000		376,443
Repairs and Alterations.....	06400		500
Equipment	07000		300,500

Other Assets.....	69000	300,500
BRIM Premium.....	91300	<u>18,524</u>
Total.....		\$ 1,276,115

247 - West Virginia State Police –

Bail Bond Enforcer Account

(W.V. Code Chapter 15)

Fund 6532 FY 2024 Org 0612

Current Expenses	13000	\$ 8,300
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248 - West Virginia State Police –

State Police Academy Post Exchange

(W.V. Code Chapter 15)

Fund 6544 FY 2024 Org 0612

Current Expenses	13000	\$ 160,000
Repairs and Alterations.....	06400	<u>40,000</u>
Total.....		\$ 200,000

249 - Fire Commission –

Fire Marshal Fees

(W.V. Code Chapter 29)

Fund 6152 FY 2024 Org 0619

Personal Services and Employee Benefits.....	00100	\$ 3,742,215
Unclassified.....	09900	3,800
Current Expenses	13000	1,646,550
Repairs and Alterations.....	06400	58,500
Equipment.....	07000	140,800
BRIM Premium.....	91300	<u>65,000</u>
Total.....		\$ 5,656,865

250 - *Division of Administrative Services –*

W.V. Community Corrections Fund

(W.V. Code Chapter 62)

Fund 6386 FY 2024 Org 0623

Personal Services			
and Employee Benefits	00100	\$	171,789
Unclassified.....	09900		750
Current Expenses	13000		1,846,250
Repairs and Alterations.....	06400		<u>1,000</u>
Total.....		\$	2,019,789

251 - *Division of Administrative Services –*

Court Security Fund

(W.V. Code Chapter 51)

Fund 6804 FY 2024 Org 0623

Personal Services			
and Employee Benefits	00100	\$	25,430
Current Expenses	13000		<u>1,478,135</u>
Total.....		\$	1,503,565

252 - *Division of Administrative Services –*

Second Chance Driver's License Program Account

(W.V. Code Chapter 17B)

Fund 6810 FY 2024 Org 0623

Current Expenses	13000	\$	125,000
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DEPARTMENT OF REVENUE

253 - *Division of Financial Institutions*

(W.V. Code Chapter 31A)

Fund 3041 FY 2024 Org 0303

Personal Services		
and Employee Benefits.....	00100	\$ 2,720,504
Salary and Benefits of Cabinet Secretary and		
Agency Heads.....	00201	119,000
Current Expenses	13000	650,475
Equipment.....	07000	8,500
Total.....		\$ 3,498,479

254 - Office of the Secretary –

State Debt Reduction Fund

(W.V. Code Chapter 29)

Fund 7007 FY 2024 Org 0701

Retirement Systems –

Unfunded Liability.....	77500	\$ 20,000,000
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The above appropriation for Retirement Systems – Unfunded Liability (fund 7007, appropriation 77500) shall be transferred to the School Aid Formula Funds Holding Account Fund (fund 2606).

255 - Home Rule Board Operations

(W.V. Code Chapter 8)

Fund 7010 FY 2024 Org 0701

Personal Services		
and Employee Benefits.....	00100	\$ 25,000
Unclassified.....	09900	680
Current Expenses	13000	42,000
Repairs and Alterations.....	06400	120
Equipment.....	07000	200
Total.....		\$ 68,000

256 - Tax Division –

Reduced Cigarette Ignition Propensity

Standard and Fire Prevention Act Fund

(W.V. Code Chapter 47)

Fund 7092 FY 2024 Org 0702

Current Expenses	13000	\$	35,000
Equipment	07000		<u>15,000</u>
Total.....		\$	50,000

*257 - State Budget Office –**Public Employees Insurance Reserve Fund*

(W.V. Code Chapter 11B)

Fund 7400 FY 2024 Org 0703

Public Employees Insurance

Reserve Fund – Transfer..... 90300 \$ 6,800,000

The above appropriation for Public Employees Insurance Reserve Fund – Transfer shall be transferred to the Medical Services Trust Fund (fund 5185).

*258 - Insurance Commissioner –**Examination Revolving Fund*

(W.V. Code Chapter 33)

Fund 7150 FY 2024 Org 0704

Personal Services

and Employee Benefits	00100	\$	771,781
Current Expenses	13000		1,357,201
Repairs and Alterations.....	06400		3,000
Equipment.....	07000		81,374
Buildings.....	25800		8,289
Other Assets.....	69000		<u>11,426</u>
Total.....		\$	2,233,071

*259 - Insurance Commissioner –**Consumer Advocate*

(W.V. Code Chapter 33)

Fund 7151 FY 2024 Org 0704

Personal Services		
and Employee Benefits	00100	\$ 592,264
Current Expenses	13000	202,152
Repairs and Alterations.....	06400	5,000
Equipment.....	07000	34,225
Buildings.....	25800	4,865
Other Assets.....	69000	<u>19,460</u>
Total.....		\$ 857,966

260 - Insurance Commissioner –

Insurance Commission Fund

(W.V. Code Chapter 33)

Fund 7152 FY 2024 Org 0704

Personal Services		
and Employee Benefits.....	00100	\$ 25,074,593
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	136,500
Current Expenses	13000	8,797,758
Repairs and Alterations.....	06400	68,614
Equipment.....	07000	1,728,240
Buildings.....	25800	25,000
Other Assets.....	69000	<u>340,661</u>
Total.....		\$ 36,171,366

261 - Insurance Commissioner –

Insurance Fraud Prevention Fund

(W.V. Code Chapter 33)

Fund 7153 FY 2024 Org 0704

Current Expenses	13000	\$ 15,000
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262 - Insurance Commissioner –

Workers' Compensation Old Fund

(W.V. Code Chapter 23)

Fund 7162 FY 2024 Org 0704

Employee Benefits	01000	\$ 50,000
Current Expenses	13000	<u>250,500,000</u>
Total.....		\$ 250,550,000

263 - Insurance Commissioner –

Workers' Compensation Uninsured Employers' Fund

(W.V. Code Chapter 23)

Fund 7163 FY 2024 Org 0704

Current Expenses	13000	\$ 15,000,000
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264 - Insurance Commissioner –

Self-Insured Employer Guaranty Risk Pool

(W.V. Code Chapter 23)

Fund 7164 FY 2024 Org 0704

Current Expenses	13000	\$ 9,000,000
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265 - Insurance Commissioner –

Self-Insured Employer Security Risk Pool

(W.V. Code Chapter 23)

Fund 7165 FY 2024 Org 0704

Current Expenses	13000	\$ 14,000,000
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266 - Municipal Bond Commission

(W.V. Code Chapter 13)

Fund 7253 FY 2024 Org 0706

Personal Services			
and Employee Benefits	00100	\$	373,348
Current Expenses	13000		154,344
Equipment	07000		<u>100</u>
Total		\$	527,792

267 - Racing Commission –

Relief Fund

(W.V. Code Chapter 19)

Fund 7300 FY 2024 Org 0707

Medical Expenses – Total	24500	\$	154,000
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The total amount of this appropriation shall be paid from the special revenue fund out of collections of license fees and fines as provided by law.

No expenditures shall be made from this fund except for hospitalization, medical care, and/or funeral expenses for persons contributing to this fund.

268 - Racing Commission –

Administration and Promotion Account

(W.V. Code Chapter 19)

Fund 7304 FY 2024 Org 0707

Personal Services			
and Employee Benefits	00100	\$	279,525
Current Expenses	13000		85,433
Other Assets	69000		<u>5,000</u>
Total		\$	369,958

269 - Racing Commission –

General Administration

(W.V. Code Chapter 19)

Fund 7305 FY 2024 Org 0707

Personal Services		
and Employee Benefits	00100	\$ 2,450,028
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	48,443
Current Expenses	13000	497,284
Repairs and Alterations.....	06400	5,000
Other Assets	69000	<u>40,000</u>
Total.....		\$ 3,040,755

*270 - Racing Commission –**Administration, Promotion, Education, Capital Improvement**and Greyhound Adoption Programs**to include Spaying and Neutering Account*

(W.V. Code Chapter 19)

Fund 7307 FY 2024 Org 0707

Personal Services		
and Employee Benefits	00100	\$ 930,289
Current Expenses	13000	160,099
Other Assets	69000	<u>200,000</u>
Total.....		\$ 1,290,388

*271 - Alcohol Beverage Control Administration –**Wine License Special Fund*

(W.V. Code Chapter 60)

Fund 7351 FY 2024 Org 0708

Personal Services		
and Employee Benefits	00100	\$ 152,670
Current Expenses	13000	54,186

Repairs and Alterations.....	06400	7,263
Equipment.....	07000	10,000
Buildings.....	25800	100,000
Transfer Liquor Profits and Taxes	42500	30,750
Other Assets.....	69000	<u>100</u>
Total.....		\$ 354,969

To the extent permitted by law, four classified exempt positions shall be provided from Personal Services and Employee Benefits appropriation for field auditors.

272 - Alcohol Beverage Control Administration

(W.V. Code Chapter 60)

Fund 7352 FY 2024 Org 0708

Personal Services		
and Employee Benefits.....	00100	\$ 6,016,074
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	122,500
Current Expenses	13000	2,890,577
Repairs and Alterations.....	06400	91,000
Equipment.....	07000	108,000
Buildings.....	25800	375,100
Purchase of Supplies for Resale.....	41900	100,000,000
Transfer Liquor Profits and Taxes	42500	30,000,000
Other Assets.....	69000	125,100
Land	73000	<u>100</u>
Total.....		\$ 139,728,451

The total amount of these appropriations shall be paid from a special revenue fund out of liquor revenues and any other revenues available.

The above appropriations include the salary of the commissioner and the salaries, expenses, and equipment of administrative offices, warehouses, and inspectors.

The above appropriations include funding for the Tobacco/Alcohol Education Program.

There is hereby appropriated from liquor revenues, in addition to the above appropriations as needed, the necessary amount for the purchase of liquor as provided by law and the remittance of profits and taxes to the General Revenue Fund.

273 - State Athletic Commission Fund

(W.V. Code Chapter 29)

Fund 7009 FY 2024 Org 0933

Personal Services			
and Employee Benefits	00100	\$	17,500
Current Expenses	13000		<u>28,000</u>
Total		\$	45,500

DEPARTMENT OF TRANSPORTATION

274 - Division of Motor Vehicles –

Dealer Recovery Fund

(W.V. Code Chapter 17)

Fund 8220 FY 2024 Org 0802

Current Expenses	13000	\$	189,000
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275 - Division of Motor Vehicles –

Motor Vehicle Fees Fund

(W.V. Code Chapter 17B)

Fund 8223 FY 2024 Org 0802

Personal Services			
and Employee Benefits	00100	\$	4,109,846
Current Expenses	13000		4,337,712
Repairs and Alterations	06400		16,000
Equipment	07000		75,000
Other Assets	69000		10,000
BRIM Premium	91300		<u>110,000</u>
Total		\$	8,658,558

276 - *Division of Highways –**A. James Manchin Fund*

(W.V. Code Chapter 22)

Fund 8319 FY 2024 Org 0803

Current Expenses	13000	\$	2,500,000
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277 - *WV Division of Multimodal Transportation Facilities -**State Rail Authority -**West Virginia Commuter Rail Access Fund*

(W.V. Code Chapter 29)

Fund 8402 FY 2024 Org 0810

Current Expenses	13000	\$	600,000
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DEPARTMENT OF VETERANS' ASSISTANCE278 - *Veterans' Facilities Support Fund*

(W.V. Code Chapter 9A)

Fund 6703 FY 2024 Org 0613

Current Expenses	13000	\$	1,654,234
Other Assets	69000		<u>10,000</u>
Total.....		\$	1,664,234

279 - *Department of Veterans' Assistance –**W.V. Veterans' Home –**Special Revenue Operating Fund*

(W.V. Code Chapter 9A)

Fund 6754 FY 2024 Org 0618

Current Expenses	13000	\$	289,400
Repairs and Alterations.....	06400		<u>10,600</u>
Total.....		\$	300,000

BUREAU OF SENIOR SERVICES

280 - Bureau of Senior Services –

Community Based Service Fund

(W.V. Code Chapter 29)

Fund 5409 FY 2024 Org 0508

Personal Services and Employee Benefits.....	00100	\$	144,813
Salary and Benefits of Cabinet Secretary and Agency Heads.....	00201		25,795
Current Expenses	13000		<u>10,348,710</u>
Total.....		\$	10,519,318

The total amount of these appropriations are funded from annual table game license fees to enable the aged and disabled citizens of West Virginia to stay in their homes through the provision of home and community-based services.

HIGHER EDUCATION POLICY COMMISSION

281 - Higher Education Policy Commission –

System –

Tuition Fee Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(W.V. Code Chapters 18 and 18B)

Fund 4903 FY 2024 Org 0442

Debt Service.....	04000	\$	27,411,984
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General Capital Expenditures	30600	5,000,000
Facilities Planning and Administration	38600	<u>467,154</u>
Total.....		\$ 32,879,138

The total amount of these appropriations shall be paid from the Special Capital Improvement Fund created in W.V. Code §18B-10-8. Projects are to be paid on a cash basis and made available on July 1.

The above appropriations, except for Debt Service, may be transferred to special revenue funds for capital improvement projects at the institutions.

282 - Tuition Fee Revenue Bond Construction Fund

(W.V. Code Chapters 18 and 18B)

Fund 4906 FY 2024 Org 0442

Any unexpended balance remaining in the appropriation for Capital Outlay (fund 4906, appropriation 51100) at the close of the fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

The appropriation shall be paid from available unexpended cash balances and interest earnings accruing to the fund. The appropriation shall be expended at the discretion of the Higher Education Policy Commission and the funds may be allocated to any institution within the system.

The total amount of this appropriation shall be paid from the unexpended proceeds of revenue bonds previously issued pursuant to W.V. Code §18-12B-8, which have since been refunded.

283 - West Virginia University –

West Virginia University Health Sciences Center

(W.V. Code Chapters 18 and 18B)

Fund 4179 FY 2024 Org 0463

Personal Services		
and Employee Benefits	00100	\$ 11,425,515
Current Expenses	13000	4,524,300
Repairs and Alterations	06400	425,000
Equipment	07000	512,000
Buildings	25800	150,000
Other Assets	69000	<u>50,000</u>
Total		\$ 17,086,815

284 - Marshall University –

School of Medicine

(W.V. Code Chapter 18B)

Fund 4271 FY 2024 Org 0471

Marshall Medical School	17300	\$ 5,500,000
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285 - West Virginia School of Osteopathic Medicine

(W.V. Code Chapter 18B)

Fund 4272 FY 2024 Org 0476

West Virginia School of Osteopathic Medicine	17200	\$ 3,996,878
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MISCELLANEOUS BOARDS AND COMMISSIONS

286 - Board of Barbers and Cosmetologists –

Barbers and Beauticians Special Fund

(W.V. Code Chapters 16 and 30)

Fund 5425 FY 2024 Org 0505

Personal Services		
and Employee Benefits	00100	\$ 587,300
Current Expenses	13000	234,969
Repairs and Alterations	06400	<u>5,000</u>
Total		\$ 827,269

The total amount of these appropriations shall be paid from a special revenue fund out of collections made by the Board of Barbers and Cosmetologists as provided by law.

287 - Hospital Finance Authority –

Hospital Finance Authority Fund

(W.V. Code Chapter 16)

Fund 5475 FY 2024 Org 0509

Personal Services			
and Employee Benefits.....	00100	\$	10,000
Salary and Benefits of Cabinet Secretary			
and Agency Heads.....	00201		93,339
Unclassified.....	09900		1,501
Current Expenses.....	13000		<u>55,268</u>
Total.....		\$	160,108

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by Article 29A, Chapter 16 of the Code.

288 - State Armory Board –

General Armory Fund

(W.V. Code Chapter 15)

Fund 6057 FY 2024 Org 0603

Personal Services			
and Employee Benefits.....	00100	\$	1,688,662
Current Expenses.....	13000		650,000
Repairs and Alterations.....	06400		385,652
Equipment.....	07000		250,000
Buildings.....	25800		520,820
Other Assets.....	69000		350,000
Land.....	73000		<u>200,000</u>
Total.....		\$	4,045,134

From the above appropriations, the Adjutant General may receive and expend funds to conduct operations and activities to include functions of the Military Authority. The Adjutant General may transfer funds between appropriations, except no funds may be transferred to Personal Services and Employee Benefits (fund 6057, appropriation 00100).

289 - W.V. State Board of Examiners for Licensed Practical Nurses –

Licensed Practical Nurses

(W.V. Code Chapter 30)

Fund 8517 FY 2024 Org 0906

Personal Services			
and Employee Benefits	00100	\$	988,523
Current Expenses	13000		<u>253,007</u>
Total.....		\$	1,241,530

290 - W.V. Board of Examiners for Registered Professional Nurses –

Registered Professional Nurses

(W.V. Code Chapter 30)

Fund 8520 FY 2024 Org 0907

Personal Services			
and Employee Benefits	00100	\$	1,381,175
Current Expenses	13000		312,655
Repairs and Alterations	06400		3,000
Equipment	07000		25,000
Other Assets	69000		<u>4,500</u>
Total.....		\$	1,726,330

291 - Public Service Commission

(W.V. Code Chapter 24)

Fund 8623 FY 2024 Org 0926

Personal Services		
and Employee Benefits	00100	\$ 12,882,976
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	318,640
Unclassified.....	09900	147,643
Current Expenses	13000	2,507,202
Repairs and Alterations.....	06400	270,000
Equipment.....	07000	160,000
Buildings	25800	10
PSC Weight Enforcement.....	34500	4,870,957
Debt Payment/Capital Outlay	52000	350,000
Land	73000	10
BRIM Premium.....	91300	<u>172,216</u>
Total.....		\$ 21,679,654

The total amount of these appropriations shall be paid from a special revenue fund out of collections for special license fees from public service corporations as provided by law.

The Public Service Commission is authorized to transfer up to \$500,000 from this fund to meet the expected deficiencies in the Motor Carrier Division (fund 8625, org 0926) due to the amendment and reenactment of W.V. Code §24A-3-1 by Enrolled House Bill Number 2715, Regular Session, 1997.

292 - Public Service Commission –

Gas Pipeline Division –

Public Service Commission Pipeline Safety Fund

(W.V. Code Chapter 24B)

Fund 8624 FY 2024 Org 0926

Personal Services		
and Employee Benefits	00100	\$ 294,103
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	11,949
Unclassified.....	09900	3,851
Current Expenses	13000	93,115

Repairs and Alterations.....	06400	<u>4,000</u>
Total.....		\$ 407,018

The total amount of these appropriations shall be paid from a special revenue fund out of receipts collected for or by the Public Service Commission pursuant to and in the exercise of regulatory authority over pipeline companies as provided by law.

293 - Public Service Commission –

Motor Carrier Division

(W.V. Code Chapter 24A)

Fund 8625 FY 2024 Org 0926

Personal Services		
and Employee Benefits.....	00100	\$ 2,420,468
Salary and Benefits of Cabinet Secretary		
and Agency Heads.....	00201	67,711
Unclassified.....	09900	29,233
Current Expenses.....	13000	577,557
Repairs and Alterations.....	06400	23,000
Equipment.....	07000	<u>50,000</u>
Total.....		\$ 3,167,969

The total amount of these appropriations shall be paid from a special revenue fund out of receipts collected for or by the Public Service Commission pursuant to and in the exercise of regulatory authority over motor carriers as provided by law.

294 - Public Service Commission –

Consumer Advocate Fund

(W.V. Code Chapter 24)

Fund 8627 FY 2024 Org 0926

Personal Services		
and Employee Benefits.....	00100	\$ 978,337
Current Expenses.....	13000	536,472

Equipment.....	07000	9,872
BRIM Premium.....	91300	<u>4,660</u>
Total.....		\$ 1,529,341

The total amount of these appropriations shall be supported by cash from a special revenue fund out of collections made by the Public Service Commission.

295 - Real Estate Commission –

Real Estate License Fund

(W.V. Code Chapter 30)

Fund 8635 FY 2024 Org 0927

Personal Services		
and Employee Benefits.....	00100	\$ 644,650
Current Expenses	13000	293,122
Repairs and Alterations.....	06400	2,500
Equipment.....	07000	<u>5,000</u>
Total.....		\$ 945,272

The total amount of these appropriations shall be paid out of collections of license fees as provided by law.

296 - W.V. Board of Examiners for Speech-Language

Pathology and Audiology –

Speech-Language Pathology and Audiology Operating Fund

(W.V. Code Chapter 30)

Fund 8646 FY 2024 Org 0930

Personal Services		
and Employee Benefits.....	00100	\$ 100,292
Current Expenses	13000	<u>63,499</u>
Total.....		\$ 163,791

297 - *W.V. Board of Respiratory Care* –*Board of Respiratory Care Fund*

(W.V. Code Chapter 30)

Fund 8676 FY 2024 Org 0935

Personal Services			
and Employee Benefits	00100	\$	91,632
Current Expenses	13000		<u>62,709</u>
Total		\$	154,341

298 - *W.V. Board of Licensed Dietitians* –*Dietitians Licensure Board Fund*

(W.V. Code Chapter 30)

Fund 8680 FY 2024 Org 0936

Personal Services			
and Employee Benefits	00100	\$	20,219
Current Expenses	13000		<u>20,250</u>
Total		\$	40,469

299 - *Massage Therapy Licensure Board* –*Massage Therapist Board Fund*

(W.V. Code Chapter 30)

Fund 8671 FY 2024 Org 0938

Personal Services			
and Employee Benefits	00100	\$	118,869
Current Expenses	13000		<u>47,388</u>
Total		\$	166,257

300 - *Board of Medicine* –*Medical Licensing Board Fund*

(W.V. Code Chapter 30)

Fund 9070 FY 2024 Org 0945

Personal Services		
and Employee Benefits	00100	\$ 1,623,608
Current Expenses	13000	1,108,789
Repairs and Alterations.....	06400	<u>8,000</u>
Total.....		\$ 2,740,397

*301 - West Virginia Enterprise Resource Planning Board –**Enterprise Resource Planning System Fund*

(W.V. Code Chapter 12)

Fund 9080 FY 2024 Org 0947

Personal Services		
and Employee Benefits	00100	\$ 5,577,966
Unclassified.....	09900	132,000
Current Expenses	13000	19,214,993
Repairs and Alterations.....	06400	300
Equipment.....	07000	502,000
Buildings.....	25800	2,000
Other Assets.....	69000	<u>2,004,500</u>
Total.....		\$ 27,433,759

*302 - Board of Treasury Investments –**Board of Treasury Investments Fee Fund*

(W.V. Code Chapter 12)

Fund 9152 FY 2024 Org 0950

Personal Services		
and Employee Benefits	00100	\$ 857,714
Unclassified.....	09900	14,850
Current Expenses	13000	580,889

profits of the lottery any amounts needed to pay debt service for which an appropriation is made for Fund 9065, Fund 4297, Fund 3390, Fund 3514, Fund 9067, and Fund 9068 and is authorized to transfer any such amounts to Fund 9065, Fund 4297, Fund 3390, Fund 3514, Fund 9067, and Fund 9068 for that purpose. Upon receipt of reimbursement of amounts so transferred, the Director of the Lottery shall deposit the reimbursement amounts to the following accounts as required by this section.

304 - Education, Arts, Sciences and Tourism –

Debt Service Fund

(W.V. Code Chapter 5)

Fund 2252 FY 2024 Org 0211

	Appropriation	Lottery Funds
Debt Service – Total	31000	\$ 10,000,000

305 - Department of Tourism –

Office of the Secretary

(W.V. Code Chapter 5B)

Fund 3067 FY 2024 Org 0304

Tourism – Telemarketing Center	46300	\$ 82,080
Tourism – Advertising (R).....	61800	2,422,407
Tourism – Operations (R)	66200	<u>4,451,771</u>
Total.....		\$ 6,956,258

Any unexpended balances remaining in the appropriations for Tourism – Advertising (fund 3067, appropriation 61800) and Tourism – Operations (fund 3067, appropriation 66200) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

306 - Division of Natural Resources

(W.V. Code Chapter 20)

Fund 3267 FY 2024 Org 0310

Personal Services

and Employee Benefits.....	00100	\$ 2,667,436
Current Expenses	13000	26,900
Pricketts Fort State Park.....	32400	106,560
Non-Game Wildlife (R).....	52700	483,485
State Parks and Recreation		
Advertising (R).....	61900	<u>494,578</u>
Total.....		\$ 3,778,959

Any unexpended balances remaining in the appropriations for Capital Outlay – Parks (fund 3267, appropriation 28800), Non-Game Wildlife (fund 3267, appropriation 52700), and State Parks and Recreation Advertising (fund 3267, appropriation 61900) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

307 - State Board of Education

(W.V. Code Chapters 18 and 18A)

Fund 3951 FY 2024 Org 0402

FBI Checks.....	37200	\$ 122,303
Vocational Education		
Equipment Replacement.....	39300	800,000
Assessment Program (R).....	39600	490,439
Literacy Project.....	89900	350,000
21 st Century Technology Infrastructure		
Network Tools and Support (R)	93300	<u>12,622,796</u>
Total.....		\$ 14,385,538

Any unexpended balances remaining in the appropriations for Assessment Program (fund 3951, appropriation 39600), and 21st Century Technology Infrastructure Network Tools and Support (fund 3951, appropriation 93300) at the close of the fiscal year

2023 are hereby reappropriated for expenditure during the fiscal year 2024.

308 - State Department of Education –

School Building Authority –

Debt Service Fund

(W.V. Code Chapter 18)

Fund 3963 FY 2024 Org 0404

Debt Service – Total	31000	\$ 15,239,213
Directed Transfer	70000	<u>2,760,787</u>
Total.....		\$ 18,000,000

The School Building Authority shall have the authority to transfer between the above appropriations in accordance with W.V. Code §29-22-18.

The above appropriation for Directed Transfer (fund 3963, appropriation 70000) may be transferred to the Department of Education, State Board of Education, School Building Authority, School Construction Fund, fund 3952, organization 0404 to be used for school construction and maintenance projects.

309 - Division of Culture and History –

Lottery Education Fund

(W.V. Code Chapter 29)

Fund 3534 FY 2024 Org 0432

Huntington Symphony	02700	\$ 59,058
Preservation West Virginia (R).....	09200	491,921
Fairs and Festivals (R)	12200	1,346,814
Commission for National and Community Service (R)	19300	387,916
Archeological Curation/Capital Improvements (R).....	24600	40,593

Historic Preservation Grants (R).....	31100	417,933
West Virginia Public Theater.....	31200	120,019
Greenbrier Valley Theater	42300	115,000
Theater Arts of West Virginia.....	46400	90,000
Marshall Artists Series.....	51800	36,005
Grants for Competitive		
Arts Program (R)	62400	811,500
West Virginia State Fair.....	65700	31,241
Save the Music.....	68000	40,000
Contemporary American		
Theater Festival	81100	57,281
Independence Hall	81200	27,277
Mountain State Forest Festival	86400	38,187
WV Symphony.....	90700	59,058
Wheeling Symphony.....	90800	59,058
Appalachian Childrens' Chorus.....	91600	<u>54,554</u>
Total.....		\$ 4,283,415

Any unexpended balances remaining in the appropriations for Preservation West Virginia (fund 3534, appropriation 09200), Fairs and Festivals (fund 3534, appropriation 12200), Commission for National and Community Service (fund 3534, appropriation 19300), Archeological Curation/Capital Improvements (fund 3534, appropriation 24600), Historic Preservation Grants (fund 3534, appropriation 31100), and Grants for Competitive Arts Program (fund 3534, appropriation 62400) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

From the above appropriation for Preservation West Virginia (fund 3534, appropriation 09200) funding shall be provided to the African-American Heritage Family Tree Museum (Fayette) \$2,673, Aracoma Story (Logan) \$20,000, Arts Monongahela (Monongalia) \$11,881, Barbour County Arts and Humanities Council \$891, Beckley Main Street (Raleigh) \$2,970, Buffalo Creek Memorial (Logan) \$2,970, Carnegie Hall (Greenbrier) \$46,899, Ceredo Historical Society (Wayne) \$1,188, Ceredo Kenova Railroad Museum (Wayne) \$1,188, Ceredo Museum (Wayne) \$720, Children's Theatre of Charleston (Kanawha)

\$3,500, Chuck Mathena Center (Mercer) \$62,532, Country Music Hall of Fame and Museum (Marion) \$4,159, First Stage Children's Theater Company (Cabell) \$1,188, Flannigan Murrell House (Summers) \$3,781, Fort Ashby Fort (Mineral) \$891, Fort New Salem (Harrison) \$2,198, Fort Randolph (Mason) \$2,970, General Adam Stephen Memorial Foundation (Berkeley) \$11,006, Grafton Mother's Day Shrine Committee (Taylor) \$9,029, Hardy County Tour and Crafts Association (Hardy) \$11,881, Heartwood in the Hills (Calhoun) \$5,040, Henderson Hall (Wood) \$20,000, Heritage Farm Museum & Village (Cabell) \$29,703, Historic Fayette Theater (Fayette) \$3,267, Historic Middleway Conservancy (Jefferson) \$594, Jefferson County Black History Preservation Society (Jefferson) \$2,970, Jefferson County Historical Landmark Commission (Jefferson) \$4,753, Maddie Carroll House (Cabell) \$4,455, Marshall County Historical Society (Marshall) \$5,049, McCoy Theater (Hardy) \$11,881, Memorial Day Patriotic Exercise (Taylor) \$20,000, Morgantown Theater Company (Monongalia) \$11,881, Mountaineer Boys' State (Lewis) \$5,941, Nicholas Old Main Foundation (Nicholas) \$1,188, Norman Dillon Farm Museum (Berkeley) \$5,941, Oil and Gas Museum (Wood) \$20,000, Old Opera House Theater Company (Jefferson) \$8,911, Parkersburg Arts Center (Wood) \$11,881, Pocahontas Historic Opera House (Pocahontas) \$3,564, Raleigh County All Wars Museum (Raleigh) \$5,941, Rhododendron Girl's State (Ohio) \$5,941, Roane County 4-H and FFA Youth Livestock Program (Roane) \$2,970, Society for the Preservation of McGrew House (Preston) \$2,079, Southern West Virginia Veterans' Museum (Raleigh) \$3,393, Summers County Historic Landmark Commission (Summers) \$2,970, Those Who Served War Museum (Mercer) \$2,376, Three Rivers Avian Center (Summers) \$5,311, Veterans Committee for Civic Improvement of Huntington (Wayne) \$2,970, West Virginia Museum of Glass (Lewis) \$2,970, West Virginia Music Hall of Fame (Kanawha) \$20,792, YMCA Camp Horseshoe (Tucker) \$59,406, Youth Museum of Southern West Virginia (Raleigh) \$7,129, Z.D. Ramsdell House (Wayne) \$720

From the above appropriation for Fairs and Festivals (fund 3534, appropriation 12200) funding shall be provided to A

Princeton 4th (Mercer) \$1,800, African-American Cultural Heritage Festival (Jefferson) \$2,970, Allegheny Echo (Pocahontas) \$4,456, Alpine Festival/Leaf Peepers Festival (Tucker) \$6,683, American Civil War (Grant) \$3,127, American Legion Post 8 Veterans Day Parade (McDowell) \$1,250, Angus Beef and Cattle Show (Lewis) \$891, Annual Don Redman Heritage Concert & Awards (Jefferson) \$938, Antique Market Fair (Lewis) \$1,188, Apple Butter Festival (Morgan) \$3,564, Armed Forces Day-South Charleston (Kanawha) \$2,000, Arthurdale Heritage New Deal Festival (Preston) \$2,970, Athens Town Fair (Mercer) \$1,188, Augusta Fair (Randolph) \$2,970, Autumn Harvest Fest (Monroe) \$2,448, Back Home Festival (Wetzel) \$5,000, Barbour County Fair (Barbour) \$14,851, Barboursville Octoberfest (Cabell) \$2,970, Battelle District Fair (Monongalia) \$3,340, Battle of Dry Creek (Greenbrier) \$891, Battle of Point Pleasant Memorial Committee (Mason) \$2,970, Belle Town Fair (Kanawha) \$3,000, Belleville Homecoming (Wood) \$11,881, Berkeley County Youth Fair (Berkeley) \$10,990, Black Heritage Festival (Harrison) \$3,564, Black Walnut Festival (Roane) \$5,940, Blast from the Past (Upshur) \$1,440, Blue-Gray Reunion (Barbour) \$2,079, Boone County Labor Day Celebration (Boone) \$2,376, Boone Day (Kanawha) \$1,000, Bradshaw Fall Festival (McDowell) \$1,188, Bramwell Labor Day (Mercer) \$5,000, Brandonville Heritage Day (Preston) \$1,048, Braxton County Fair (Braxton) \$6,832, Braxton County Monster Fest / West Virginia Autumn Festival (Braxton) \$1,485, Brooke County Fair (Brooke) \$2,079, Buckwheat Festival (Preston) \$5,050, Buffalo October Fest (Putnam) \$3,240, Burlington Apple Harvest Auxiliary (Mineral) \$13,821, Burlington Pumpkin Harvest Festival (Raleigh) \$2,970, Burlington Volunteer Fire and Rescue Carnival (Mineral) \$4,000, Burnsville Freedom Festival (Braxton) \$1,407, Calhoun County Wood Festival (Calhoun) \$1,188, Cameron 4th of July (Marshall) \$500, Cameron VFD Fireman's Festival (Marshall) \$2,500, Campbell's Creek Community Fair (Kanawha) \$2,000, Cape Coalwood Festival Association (McDowell) \$1,485, Cacapon River Fest (Hampshire) \$2,500, Capon Bridge Founders Day Festival (Hampshire) \$1,188, Capon Springs Ruritan 4th of July (Hampshire) \$684, Cass Homecoming (Pocahontas) \$1,188, Celebration of America (Monongalia) \$3,564, Chapmanville Apple Butter Festival

(Logan) \$684, Chapmanville Fire Department 4th of July (Logan) \$1,782, Charles Town Christmas Festival (Jefferson) \$2,970, Charles Town Heritage Festival (Jefferson) \$2,970, Cherry River Festival (Nicholas) \$3,861, Chester Fireworks (Hancock) \$891, Chester 4th of July Festivities (Hancock) \$2,970, Chilifest West Virginia State Chili Championship (Cabell) \$1,563, Chillin' on the Elk (Kanawha) \$1,000, Christmas In Our Town (Marion) \$3,127, Christmas in Shepherdstown (Jefferson) \$2,376, Christmas in the Park (Brooke) \$2,970, Christmas in the Park (Logan) \$14,851, Christmas on Main Street (Hancock) \$11,881, City of Dunbar Critter Dinner (Kanawha) \$5,000, Clay County Golden Delicious Apple Festival (Clay) \$4,158, Clay District Fair (Monongalia) \$3,341, Coal Field Jamboree (Logan) \$20,792, Coalton Days Fair (Randolph) \$4,158, Country Roads Festival (Wetzel) \$3,200, Covered Bridge Festival (Marion) \$3,000, Craigsville Fall Festival (Nicholas) \$2,079, Cruise into Princeton (Mercer) \$2,160, Culturefest World Music & Arts Festival (Mercer) \$4,690, Delbarton Homecoming (Mingo) \$2,079, Doddridge County Fair (Doddridge) \$4,158, Durbin Days (Pocahontas) \$2,970, Elbert/Filbert Reunion Festival (McDowell) \$891, Fairview 4th of July Celebration (Marion) \$684, Farmer's Day Festival (Monroe) \$2,330, Fenwick Mountain Old Time Community Festival (Nicholas) \$2,880, FestivALL Charleston (Kanawha) \$12,000, Fly in Festival (Cabell) \$5,000, Follansbee Community Days (Brooke) \$4,900, Fort Gay Mountain Heritage Days (Wayne) \$2,970, Fort Henry Days (Ohio) \$3,148, Fort Henry Living History (Ohio) \$1,563, Fort New Salem Spirit of Christmas Festival (Harrison) \$2,432, Frankford Autumnfest (Greenbrier) \$2,970, Franklin Fishing Derby (Pendleton) \$10,709, Freedom Festival (Wood) \$8,000, Freshwater Folk Festival (Greenbrier) \$2,970, Friends Auxiliary of W.R. Sharpe Hospital (Lewis) \$2,970, Fund for the Arts-Wine & All that Jazz Festival (Kanawha) \$1,500, Gassaway Days Celebration (Braxton) \$2,970, Gilmer County Farm Show (Gilmer) \$2,376, Grant County Arts Council (Grant) \$1,188, Great Greenbrier River Race (Pocahontas) \$5,940, Guyandotte Civil War Days (Cabell) \$5,941, Hamlin 4th of July Celebration (Lincoln) \$2,970, Hampshire Civil War Celebration Days (Hampshire) \$684, Hampshire County 4th of July Celebration (Hampshire) \$11,881, Hampshire County Fair (Hampshire) \$5,002, Hampshire

Highlands Art & Music Festival (Hampshire) \$4,252, Hancock County Oldtime Fair (Hancock) \$2,970, Hardy County Commission - 4th of July (Hardy) \$5,940, Hatfield McCoy Matewan Reunion Festival (Mingo) \$12,330, Hatfield McCoy Trail National ATV and Dirt Bike Weekend (Wyoming) \$2,970, Head for the Hills Festival (Ritchie) \$3,000, Head of the Dragon (McDowell) \$1,500, Heritage Craft Festival (Monroe) \$1,044, Hilltop Festival (Cabell) \$684, Hinton Railroad Days (Summers) \$4,347, Holly River Festival (Webster) \$891, Hometown Mountain Heritage Festival (Fayette) \$2,432, Hometown Trail Days (McDowell) \$1,188, Hundred 4th of July (Wetzel) \$4,307, Huntersville Traditions Day (Pocahontas) \$4,000, Iaeger Town Fair (McDowell) \$891, Irish Heritage Festival of West Virginia (Raleigh) \$2,970, Irish Spring Festival (Lewis) \$684, Italian Heritage Festival-Clarksburg (Harrison) \$17,821, Jackson County Fair (Jackson) \$2,970, Jamboree (Pocahontas) \$2,970, Jefferson County Fair Association (Jefferson) \$14,851, Jersey Mountain Ruritan Pioneer Days (Hampshire) \$684, John Henry Days Festival (Monroe) \$4,698, Johnnie Johnson Blues and Jazz Festival (Marion) \$2,970, Johnstown Community Fair (Harrison) \$1,485, Junior Heifer Preview Show (Lewis) \$1,188, Kenova Autumn Festival (Wayne) \$4,377, Kermit Fall Festival (Mingo) \$1,782, King Coal Festival (Mingo) \$2,970, Kingwood Downtown Street Fair and Heritage Days (Preston) \$1,188, Knights of Columbus Irish Road Bowling (Marshall County) \$3,000, L.Z. Rainelle West Virginia Veterans Reunion (Greenbrier) \$2,970, Larry Joe Harless Center Octoberfest Hatfield McCoy Trail (Mingo) \$5,940, Larry Joe Harless Community Center Spring Middle School Event (Mingo) \$2,970, Last Blast of Summer (McDowell) \$2,970, Lewis County Fair (Lewis) \$3,000, Lewisburg Shanghai (Greenbrier) \$1,188, Lincoln County Fall Festival (Lincoln) \$4,752, Lincoln County Winterfest (Lincoln) \$2,970, Linside Veterans' Day Parade (Monroe) \$720, Little Levels Heritage Festival (Pocahontas) \$1,188, Lost Creek Community Festival (Harrison) \$4,158, Main Street Arts Festival (Upshur) \$3,127, Main Street Martinsburg Chocolate Fest and Book Fair (Berkeley) \$2,813, Main Street Martinsburg Food Truck Fest (Berkeley) \$4,700, Malden Salt Fest (Kanawha) \$3,000, Mannington District Fair (Marion) \$3,564, Marmet Labor Day

Celebration (Kanawha) \$3,500, Marshall County Antique Power Show (Marshall) \$1,485, Marshall County Fair (Marshall) \$5,000, Mason County Fair (Mason) \$2,970, Matewan Massacre Reenactment (Mingo) \$5,004, Matewan-Magnolia Fair (Mingo) \$15,932, McARTS-McDowell County (McDowell) \$11,881, McGrew House History Day (Preston) \$1,188, McNeill's Rangers (Mineral) \$4,752, Meadow Bridge Hometown Festival (Fayette) \$743, Meadow River Days Festival (Greenbrier) \$1,782, Mercer County Fair (Mercer) \$1,188, Mercer County Heritage Festival (Mercer) \$3,474, Milton Christmas in the Park (Cabell) \$1,485, Milton Old Timey Days (Cabell) \$1,485, Mineral County Veterans Day Parade (Mineral) \$891, Molasses Festival (Calhoun) \$1,188, Monongahfest (Marion) \$3,752, Monongalia County Fair (Monongalia) \$7,250, Moon Over Mountwood Fishing Festival (Wood) \$1,782, Morgan County Fair-History Wagon (Morgan) \$891, Moundsville Bass Festival (Marshall) \$2,376, Moundsville July 4th Celebration (Marshall) \$2,970, Mount Liberty Fall Festival (Barbour) \$1,485, Mountain Festival (Mercer) \$2,747, Mountain Heritage Arts and Crafts Festival (Jefferson) \$2,970, Mountain Music Festival (McDowell) \$1,485, Mountain Roots Community Theater (Kanawha) \$5,000, Mountain State Apple Harvest Festival (Berkeley) \$4,456, Mountain State Arts & Crafts Fair Cedar Lakes (Jackson) \$26,732, Mullens Dogwood Festival (Wyoming) \$4,158, Multi-Cultural Festival of West Virginia (Kanawha) \$11,988, New Cumberland Christmas Parade (Hancock) \$1,782, New Cumberland 4th of July (Hancock) \$2,970, New Martinsville Regatta (Wetzel) \$9,000, New Martinsville Vintage Regatta (Wetzel) \$5,000, New River Bridge Day Festival (Fayette) \$23,762, Nicholas County Potato Festival (Nicholas) \$2,079, Oak Leaf Festival (Fayette) \$6,253, Oceana Heritage Festival (Wyoming) \$4,000, Oglebay City Park - Festival of Lights (Ohio) \$47,524, Oglebay Festival (Ohio) \$5,940, Ohio County Country Fair (Ohio) \$5,346, Ohio River Fest (Jackson) \$4,320, Old Brick Playhouse (Randolph) \$7,000, Old Central City Fair (Cabell) \$2,970, Old Tyme Christmas (Jefferson) \$1,425, Osage Street Fair (Monongalia) \$2,188, Paden City Labor Day Festival (Wetzel) \$3,861, Parkersburg Homecoming (Wood) \$8,754, Paw Paw District Fair (Marion) \$2,079, Pax Reunion Committee (Fayette) \$2,970, Pendleton County 4-H Weekend

(Pendleton) \$1,188, Petersburg 4th of July Celebration (Grant) \$11,881, Piedmont-Annual Back Street Festival (Mineral) \$2,376, Pinch Reunion (Kanawha) \$2,000, Pine Bluff Fall Festival (Harrison) \$2,376, Pine Grove 4th of July Festival (Wetzel) \$4,158, Pineville Festival (Wyoming) \$3,564, Pleasants County Agriculture Youth Fair (Pleasants) \$2,970, Pocahontas County Pioneer Days (Pocahontas) \$4,159, Pratt Fall Festival (Kanawha) \$2,500, Princeton Autumnfest (Mercer) \$1,563, Princeton Street Fair (Mercer) \$2,970, Putnam County Fair (Putnam) \$2,970, Quartets on Parade (Hardy) \$2,376, Rainelle Fall Festival (Greenbrier) \$3,127, Rand Community Center Festival (Kanawha) \$2,500, Randolph County Community Arts Council (Randolph) \$1,782, Randolph County Fair (Randolph) \$4,158, Randolph County Ramps and Rails (Randolph) \$2,188, Ranson Christmas Festival (Jefferson) \$2,970, Ranson Festival (Jefferson) \$2,970, Renick Liberty Festival (Greenbrier) \$684, Ripley 4th of July (Jackson) \$8,910, Ritchie County Fair and Exposition (Ritchie) \$2,970, Ritchie County Pioneer Days (Ritchie) \$684, River City Festival (Preston) \$684, Roane County Agriculture Field Day (Roane) \$1,782, Rock the Park (Kanawha) \$3,000, Rocket Boys Festival (Raleigh) \$1,710, Rowlesburg Labor Day Festival (Preston) \$684, Rupert Country Fling (Greenbrier) \$1,876, Saint Spyridon Greek Festival (Harrison) \$1,485, Salem Apple Butter Festival (Harrison) \$2,376, Sistersville 4th of July (Tyler) \$3,267, Skirmish on the River (Mingo) \$1,250, Smoke on the Water (Wetzel) \$1,782, South Charleston Summerfest (Kanawha) \$7,500, Southern Wayne County Fall Festival (Wayne) \$684, Spirit of Grafton Celebration (Taylor) \$6,240, Spring Mountain Festival (Grant) \$2,500, St. Albans City of Lights - December (Kanawha) \$4,000, St. Albans Train Fest (Kanawha) \$7,000, Sternwheel Festival (Wood) \$1,782, Stonewall Jackson Heritage Arts & Crafts Jubilee (Lewis) \$6,534, Stonewall Jackson's Roundhouse Raid (Berkeley) \$7,200, Strawberry Festival (Upshur) \$17,821, Sylvester Big Coal River Festival (Boone) \$1,944, Tacy Fair (Barbour) \$684, Taste of Parkersburg (Wood) \$2,970, Taylor County Fair (Taylor) \$3,567, Three Rivers Coal Festival (Marion) \$4,604, Thunder on the Tygart - Mothers' Day Celebration (Taylor) \$7,300, Town of Delbarton 4th of July Celebration (Mingo) \$1,782, Town of Fayetteville Heritage Festival (Fayette) \$4,456,

Town of Rivesville 4th of July Festival (Marion) \$3,127, Town of Winfield - Putnam County Homecoming (Putnam) \$3,240, Treasure Mountain Festival (Pendleton) \$18,000, Tri-County Fair (Grant) \$22,548, Tucker County Arts Festival and Celebration (Tucker) \$10,692, Tucker County Fair (Tucker) \$2,821, Tucker County Health Fair (Tucker) \$1,188, Turkey Festival (Hardy) \$1,782, Tyler County Fireworks Celebration (Tyler) \$2,000, Upper Kanawha Valley Oktoberfest (Kanawha) \$2,000, Upper Ohio Valley Italian Festival (Ohio) \$7,128, Valley District Fair (Preston) \$2,079, Veterans Welcome Home Celebration (Cabell) \$938, Vietnam Veterans of America # 949 Christmas Party (Cabell) \$684, Volcano Days at Mountwood Park (Wood) \$2,970, War Homecoming Fall Festival (McDowell) \$891, Wardensville Fall Festival (Hardy) \$2,970, Wayne County Fair (Wayne) \$2,970, Wayne County Fall Festival (Wayne) \$2,970, Webster County Fair (Webster) \$3,600, Webster County Wood Chopping Festival (Webster) \$8,910, Webster Wild Water Weekend (Webster) \$1,188, Welcome Home Family Day (Wayne) \$1,900, Wellsburg 4th of July Celebration (Brooke) \$4,456, Wellsburg Apple Festival of Brooke County (Brooke) \$2,970, West Virginia Chestnut Festival (Preston) \$684, West Virginia Coal Festival (Boone) \$5,940, West Virginia Coal Show (Mercer) \$1,563, West Virginia Dairy Cattle Show (Lewis) \$5,940, West Virginia Dandelion Festival (Greenbrier) \$2,970, West Virginia Day at the Railroad Museum (Mercer) \$1,800, West Virginia Fair and Exposition (Wood) \$4,812, West Virginia Freedom Festival (Logan) \$4,456, West Virginia Oil and Gas Festival (Tyler) \$6,534, West Virginia Peach Festival (Hampshire) \$5,166, West Virginia Pumpkin Festival (Cabell) \$5,940, West Virginia Rivers and Rails Festival (Pleasants) \$1,099, West Virginia State Folk Festival (Gilmer) \$2,970, Wetzel County Autumnfest (Wetzel) \$3,267, Wetzel County Town and Country Days (Wetzel) \$10,098, Wheeling City of Lights (Ohio) \$4,752, Wheeling Vintage Raceboat Regatta (Ohio) \$11,881, Whipple Community Action (Fayette) \$1,485, Winfield Watersports Weekend (Putnam) \$3,240, Wirt County Fair (Wirt) \$1,485, Wirt County Pioneer Days (Wirt) \$1,188, Youth Stockman Beef Expo (Lewis) \$1,188.

Any Fairs and Festivals awards shall be funded in addition to, and not in lieu of, individual grant allocations derived from the Arts Council and Cultural Grant Program allocations.

310 - Division of Culture and History –

Library Commission -

Lottery Education Fund

(W.V. Code Chapter 10)

Fund 3559 FY 2024 Org 0432

Books and Films	17900	\$	360,784
Services to Libraries	18000		550,000
Grants to Public Libraries	18200		9,439,571
Digital Resources	30900		219,992
Infomine Network	88400		<u>943,353</u>
Total		\$	11,513,700

311 - Educational Broadcasting Authority

(W.V. Code Chapter 10)

Fund 3587 FY 2024 Org 0439

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 3587, appropriation 75500) at the close of fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

312 - Higher Education Policy Commission –

Lottery Education –

Higher Education Policy Commission –

Control Account

(W.V. Code Chapters 18B and 18C)

Fund 4925 FY 2024 Org 0441

RHI Program and Site Support (R).....	03600	\$ 1,918,886
RHI Program and Site Support – RHEP Program Administration	03700	146,653
RHI Program and Site Support – Grad Med Ed and Fiscal Oversight (R)	03800	90,192
Minority Doctoral Fellowship (R)	16600	129,604
Health Sciences Scholarship (R).....	17600	226,251
Vice Chancellor for Health Sciences – Rural Health Residency Program (R).....	60100	62,725
WV Engineering, Science, and Technology Scholarship Program.....	86800	<u>452,831</u>
Total.....		\$ 3,027,142

Any unexpended balances remaining in the appropriations for RHI Program and Site Support (fund 4925, appropriation 03600), RHI Program and Site Support – Grad Med Ed and Fiscal Oversight (fund 4925, appropriation 03800), Minority Doctoral Fellowship (fund 4925, appropriation 16600), Health Sciences Scholarship (fund 4925, appropriation 17600), and Vice Chancellor for Health Sciences – Rural Health Residency Program (fund 4925, appropriation 60100) at the close of fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

The above appropriation for WV Engineering, Science, and Technology Scholarship Program (fund 4925, appropriation 86800) shall be transferred to the West Virginia Engineering, Science and Technology Scholarship Fund (fund 4928, org 0441) established by W.V. Code §18C-6-1.

313 - Community and Technical College –

Capital Improvement Fund

(W.V. Code Chapter 18B)

Fund 4908 FY 2024 Org 0442

Debt Service – Total	31000	\$ 5,000,000
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Any unexpended balance remaining in the appropriation for Capital Outlay and Improvements – Total (fund 4908, appropriation 84700) and Capital Improvements - Total (fund 4908, appropriation 95800) at the close of fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

The total amount of this appropriation shall be paid from the sale of the Series 2017 Community and Technical Colleges Capital Improvement Refunding Revenue Bonds and anticipated interest earnings.

314 - Higher Education Policy Commission –

Lottery Education –

West Virginia University – School of Medicine

(W.V. Code Chapter 18B)

Fund 4185 FY 2024 Org 0463

WVU Health Sciences –

RHI Program and Site Support (R)	03500	\$	1,223,320
MA Public Health Program and Health Science Technology (R).....	62300		52,445
Health Sciences Career Opportunities Program (R)	86900		336,987
HSTA Program (R)	87000		1,847,803
Center for Excellence in Disabilities (R).....	96700		<u>321,875</u>
Total.....		\$	<u>3,782,430</u>

Any unexpended balances remaining in the appropriations for WVU Health Sciences – RHI Program and Site Support (fund 4185, appropriation 03500), MA Public Health Program and Health Science Technology (fund 4185, appropriation 62300), Health Sciences Career Opportunities Program (fund 4185, appropriation 86900), HSTA Program (fund 4185, appropriation 87000), and Center for Excellence in Disabilities (fund 4185,

appropriation 96700) at the close of fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

315 - Higher Education Policy Commission –

Lottery Education –

Marshall University – School of Medicine

(W.V. Code Chapter 18B)

Fund 4896 FY 2024 Org 0471

Marshall Medical School –

RHI Program and Site Support (R)	03300	\$	444,614
Vice Chancellor for Health Sciences – Rural Health Residency Program (R).....	60100		<u>176,614</u>
Total.....		\$	621,228

Any unexpended balances remaining in the appropriations for Marshall Medical School – RHI Program and Site Support (fund 4896, appropriation 03300) and Vice Chancellor for Health Sciences – Rural Health Residency Program (fund 4896, appropriation 60100) at the close of fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

316 - Bureau of Senior Services –

Lottery Senior Citizens Fund

(W.V. Code Chapter 29)

Fund 5405 FY 2024 Org 0508

Personal Services

and Employee Benefits	00100	\$	145,914
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		70,720
Current Expenses	13000		332,284
Repairs and Alterations.....	06400		1,000

Local Programs Service		
Delivery Costs	20000	2,435,250
Silver Haired Legislature	20200	18,500
Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens	53900	23,726,633
Roger Tompkins		
Alzheimers Respite Care	64300	2,306,333
WV Alzheimers Hotline	72400	45,000
Regional Aged and Disabled Resource Center.....	76700	425,000
Senior Services Medicaid Transfer	87100	16,400,070
Legislative Initiatives for the Elderly...	90400	9,671,239
Long Term Care Ombudsmen.....	90500	297,226
BRIM Premium.....	91300	7,718
In-Home Services and Nutrition for Senior Citizens (R).....	91700	<u>6,845,941</u>
Total.....		\$ 62,728,828

Any unexpended balances remaining in the appropriation for Senior Citizen Centers and Programs (fund 5405, appropriation 46200) and In-Home Services and Nutrition for Senior Citizens (fund 5405, appropriation 91700) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

Included in the above appropriation for Current Expenses (fund 5405, appropriation 13000), is funding to support an in-home direct care workforce registry.

The above appropriation for Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens (appropriation 53900) along with the federal moneys generated thereby shall be used for reimbursement for services provided under the program.

Total TITLE II, Section 4 –

Lottery Revenue.....	<u>\$ 144,077,498</u>
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Sec. 5. Appropriations from state excess lottery revenue fund. — In accordance with W.V. Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and §29-25-22b, the following appropriations shall be deposited and disbursed by the Director of the Lottery to the following accounts in this section in the amounts indicated.

After first funding the appropriations required by W.V. Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and §29-25-22b, the Director of the Lottery shall provide funding from the State Excess Lottery Revenue Fund for the remaining appropriations in this section to the extent that funds are available. In the event that revenues to the State Excess Lottery Revenue Fund are sufficient to meet all the appropriations required made pursuant to this section, then the Director of the Lottery shall then provide the funds available for fund 5365, appropriation 18900.

317 - Governor's Office

(W.V. Code Chapter 5)

Fund 1046 FY 2024 Org 0100

Any unexpended balance remaining in the appropriation for Publication of Papers and Transition Expenses – Lottery Surplus (fund 1046, appropriation 06600) at the close of the fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

318 - Office of Technology

(W.V. Code Chapter 5A)

Fund 2532 FY 2024 Org 0231

Any unexpended balances remaining in the appropriations for Cyber Security (fund 2532, appropriation 99001), Enterprise Data Center (fund 2532, appropriation 99002), and Enterprise Telephony Modernization (fund 2532, appropriation 99003) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

319 - Department of Economic Development –

Office of the Secretary –

West Virginia Development Office

(W.V. Code Chapter 5B)

Fund 3170 FY 2024 Org 0307

Any unexpended balance remaining in the appropriation for Recreational Grants or Economic Development Loans (fund 3170, appropriation 25300) at the close of the fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

320 - Division of Natural Resources –

State Park Improvement Fund

Fund 3277 FY 2024 Org 0310

	Appropriation		Excess Lottery Funds
Current Expenses (R).....	13000	\$	23,300
Repairs and Alterations (R)	06400		161,200
Equipment (R).....	07000		200,000
Buildings (R).....	25800		100,000
Other Assets (R).....	69000		<u>1,020,500</u>
Total.....		\$	1,505,000

Any unexpended balances remaining in the appropriations for Repairs and Alterations (fund 3277, appropriation 06400), Equipment (fund 3277, appropriation 07000), Unclassified – Total (fund 3277, appropriation 09600), Current Expenses (fund 3277, appropriation 13000), Buildings (fund 3277, appropriation 25800), and Other Assets (fund 3277, appropriation 69000) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

321 - West Virginia Infrastructure Council –

West Virginia Infrastructure Transfer Fund

Fund 3390 FY 2024 Org 0316

Directed Transfer 70000 \$ 46,000,000

The above appropriation shall be allocated pursuant to W.V. Code §29-22-18d and §31-15-9.

322 - Department of Education –

School Building Authority

Fund 3514 FY 2024 Org 0404

Debt Service - Total	31000	\$ 18,948,000
Directed Transfer	70000	<u>52,000</u>
Total.....		\$ 19,000,000

The School Building Authority shall have the authority to transfer between the above appropriations in accordance with W.V. Code §29-22-18a.

The above appropriation for Directed Transfer (fund 3514, appropriation 70000) may be transferred to the Department of Education, State Board of Education, School Building Authority, School Construction Fund (fund 3952, organization 0404) to be used for school construction and maintenance projects.

323 - Higher Education Policy Commission –

Education Improvement Fund

Fund 4295 FY 2024 Org 0441

PROMISE Scholarship – Transfer..... 80000 \$ 29,000,000

The above appropriation shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by W.V. Code §18C-7-7.

The Legislature has explicitly set a finite amount of available appropriations and directed the administrators of the Program to provide for the award of scholarships within the limits of available appropriations.

324 - Higher Education Policy Commission –

Higher Education Improvement Fund

Fund 4297 FY 2024 Org 0441

Directed Transfer 70000 \$ 15,000,000

The above appropriation for Directed Transfer shall be transferred to Higher Education Policy Commission – System – Tuition Fee Capital Improvement Fund (fund 4903, org 0442) as authorized by Senate Concurrent Resolution No. 41.

325 - Higher Education Policy Commission –

Administration –

Control Account

Fund 4932 FY 2024 Org 0441

Any unexpended balance remaining in the appropriation for Advanced Technology Centers (fund 4932, appropriation 02800) at the close of the fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

326 - Division of Human Services

(W.V. Code Chapters 9, 48, and 49)

Fund 5365 FY 2024 Org 0511

Medical Services 18900 \$ 60,716,750

327 - Division of Corrections and Rehabilitation –

Correctional Units

(W.V. Code Chapter 15A)

Fund 6283 FY 2024 Org 0608

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 6283, appropriation 75500) at the close of the fiscal year 2023 is hereby reappropriated for expenditure during the fiscal year 2024.

328 - Lottery Commission –

General Purpose Account

Fund 7206 FY 2024 Org 0705

General Revenue Fund – Transfer 70011 \$ 65,000,000

The above appropriation shall be transferred to the General Revenue Fund as determined by the Director of the Lottery in accordance with W.V. Code §29-22-18a.

329 - Lottery Commission –

Refundable Credit

Fund 7207 FY 2024 Org 0705

Directed Transfer 70000 \$ 10,000,000

The above appropriation shall be transferred to the General Revenue Fund to provide reimbursement for the refundable credit allowable under W.V. Code §11-21-21. The amount of the required transfer shall be determined solely by the State Tax Commissioner and shall be completed by the Director of the Lottery upon the commissioner's request.

330 - Lottery Commission –

Distributions to Statutory Funds and Purposes

Fund 7213 FY 2024 Org 0705

Parking Garage Fund – Transfer..... 70001 \$ 500,000

2004 Capitol Complex		
Parking Garage Fund – Transfer....	70002	216,478
Capitol Dome and Improvements Fund –		
Transfer.....	70003	1,796,256
Capitol Renovation		
and Improvement Fund – Transfer	70004	2,381,252
Economic Development Promotion and		
Closing Fund - Transfer.....	70005	1,298,864
Research Challenge Fund – Transfer ...	70006	1,731,820
Tourism Promotion Fund – Transfer ...	70007	4,808,142
Cultural Facilities and Capital Resources		
Matching Grant Program Fund –		
Transfer.....	70008	1,250,535
State Debt Reduction Fund – Transfer.	70010	20,000,000
General Revenue Fund – Transfer	70011	1,167,799
West Virginia Racing Commission		
Racetrack Video Lottery Account	70012	3,463,637
Historic Resort Hotel Fund.....	70013	24,010
Licensed Racetrack Regular Purse Fund	70014	<u>22,383,247</u>
Total.....		\$ 61,022,040

331 - Racing Commission

Fund 7308 FY 2024 Org 0707

Special Breeders Compensation		
(W.V. Code §29-22-18a,		
subsection (I)).....	21800	\$ 2,000,000

332 - Economic Development Authority –

Economic Development Project Fund

Fund 9065 FY 2024 Org 0944

Debt Service – Total	31000	\$ 19,000,000
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Pursuant to W.V. Code §29-22-18a, subsection (f), excess lottery revenues are authorized to be transferred to the lottery fund as reimbursement of amounts transferred to the economic

development project fund pursuant to section four of this title and W.V. Code §29-22-18, subsection (f).

333 - Economic Development Authority –

Cacapon and Beech Fork State Parks –

Lottery Revenue Debt Service

Fund 9067 FY 2024 Org 0944

Debt Service..... 04000 \$ 2,032,000

334 - Economic Development Authority –

State Parks Lottery Revenue Debt Service Fund

Fund 9068 FY 2024 Org 0944

Debt Service..... 04000 \$ 4,395,000

Total TITLE II, Section 5 –

Excess Lottery Funds..... \$334,670,790

Sec. 6. Appropriations of federal funds. — In accordance with Article 11, Chapter 4 of the Code from federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2024.

LEGISLATIVE

335 - Crime Victims Compensation Fund

(W.V. Code Chapter 14)

Fund 8738 FY 2024 Org 2300

	Appropriation	Federal Funds
Economic Loss Claim Payment Fund..	33400 \$	900,000

JUDICIAL*336 - Supreme Court*Fund 8867 FY 2024 Org 2400

Personal Services		
and Employee Benefits	00100	\$ 1,813,000
Current Expenses	13000	1,557,000
Repairs and Alterations	06400	100,000
Equipment	07000	250,000
Other Assets	69000	<u>280,000</u>
Total		\$ 4,000,000

EXECUTIVE*337 - Governor's Office –**Coronavirus State Fiscal Recovery Fund*

(W.V. Code Chapter 4)

Fund 8823 FY 2024 Org 0100

Personal Services		
and Employee Benefits	00100	\$ 941,932,089
Unclassified	09900	13,554,899
Current Expenses	13000	400,000,000
Repairs and Alterations	06400	1,000
Equipment	07000	1,000
Other Assets	69000	<u>1,000</u>
Total		\$1,355,489,988

338 - Department of Agriculture

(W.V. Code Chapter 19)

Fund 8736 FY 2024 Org 1400

Personal Services		
and Employee Benefits	00100	\$ 2,754,576
Unclassified	09900	50,534

Current Expenses	13000	6,828,661
Repairs and Alterations	06400	650,000
Equipment	07000	910,500
Buildings	25800	1,000,000
Other Assets	69000	550,000
Land	73000	500,000
Federal Coronavirus Pandemic	89101	<u>4,721,430</u>
Total.....		\$ 17,965,701

339 - *Department of Agriculture –*

Meat Inspection Fund

(W.V. Code Chapter 19)

Fund 8737 FY 2024 Org 1400

Personal Services		
and Employee Benefits	00100	\$ 710,478
Unclassified.....	09900	8,755
Current Expenses	13000	136,012
Repairs and Alterations.....	06400	5,500
Equipment	07000	<u>114,478</u>
Total.....		\$ 975,223

340 - *Department of Agriculture –*

State Conservation Committee

(W.V. Code Chapter 19)

Fund 8783 FY 2024 Org 1400

Personal Services		
and Employee Benefits	00100	\$ 99,978
Current Expenses	13000	<u>15,599,974</u>
Total.....		\$ 15,699,952

341 - *Department of Agriculture –*

Land Protection Authority

Fund 8896 FY 2024 Org 1400

Personal Services			
and Employee Benefits	00100	\$	46,526
Unclassified.....	09900		5,004
Current Expenses	13000		<u>448,920</u>
Total.....		\$	500,450

342 - Attorney General –

Medicaid Fraud Unit

Fund 8882 FY 2024 Org 1500

Personal Services			
and Employee Benefits	00100	\$	1,708,686
Unclassified.....	09900		15,336
Current Expenses	13000		599,513
Repairs and Alterations.....	06400		4,313
Equipment.....	07000		7,500
Other Assets.....	69000		<u>11,336</u>
Total.....		\$	2,346,684

343 - Secretary of State –

State Election Fund

(W.V. Code Chapter 3)

Fund 8854 FY 2024 Org 1600

Personal Services			
and Employee Benefits	00100	\$	210,240
Unclassified.....	09900		7,484
Current Expenses	13000		415,727
Repairs and Alterations.....	06400		15,000
Other Assets.....	69000		<u>100,000</u>
Total.....		\$	748,451

DEPARTMENT OF COMMERCE

344 - Division of Forestry

(W.V. Code Chapter 19)

Fund 8703 FY 2024 Org 0305

Personal Services			
and Employee Benefits	00100	\$	623,959
Unclassified.....	09900		51,050
Current Expenses	13000		3,962,013
Repairs and Alterations.....	06400		155,795
Equipment.....	07000		100,000
Other Assets.....	69000		<u>3,078,847</u>
Total.....		\$	7,971,664

345 - Geological and Economic Survey

(W.V. Code Chapter 29)

Fund 8704 FY 2024 Org 0306

Personal Services			
and Employee Benefits	00100	\$	54,432
Unclassified.....	09900		2,803
Current Expenses	13000		195,639
Repairs and Alterations.....	06400		5,000
Equipment.....	07000		7,500
Other Assets.....	69000		<u>15,000</u>
Total.....		\$	280,374

346 - Division of Labor

(W.V. Code Chapters 21 and 47)

Fund 8706 FY 2024 Org 0308

Personal Services			
and Employee Benefits	00100	\$	441,444
Unclassified.....	09900		5,572
Current Expenses	13000		167,098
Repairs and Alterations.....	06400		<u>500</u>
Total.....		\$	614,614

347 - Division of Natural Resources

(W.V. Code Chapter 20)

Fund 8707 FY 2024 Org 0310

Personal Services		
and Employee Benefits	00100	\$ 11,177,236
Unclassified.....	09900	107,693
Current Expenses	13000	7,887,660
Repairs and Alterations.....	06400	566,250
Equipment.....	07000	2,126,141
Administration	15500	50,325
Buildings	25800	951,000
Other Assets.....	69000	4,768,670
Land	73000	<u>2,893,920</u>
Total.....		\$ 30,528,895

*348 - Division of Miners' Health,
Safety and Training*

(W.V. Code Chapter 22)

Fund 8709 FY 2024 Org 0314

Personal Services		
and Employee Benefits	00100	\$ 680,944
Current Expenses	13000	<u>150,000</u>
Total.....		\$ 830,944

349 - WorkForce West Virginia

(W.V. Code Chapter 23)

Fund 8835 FY 2024 Org 0323

Unclassified.....	09900	\$ 5,127
Current Expenses	13000	667,530
Reed Act 2002 –		
Unemployment Compensation	62200	4,446,737
Reed Act 2002 –		
Employment Services	63000	<u>3,246,737</u>
Total.....		\$ 8,366,131

Pursuant to the requirements of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, and the provisions of W.V. Code §21A-9-9, the above appropriation to Unclassified and Current Expenses shall be used by WorkForce West Virginia for the specific purpose of administration of the state's unemployment insurance program or job service activities, subject to each and every restriction, limitation or obligation imposed on the use of the funds by those federal and state statutes.

350 - State Board of Rehabilitation –

Division of Rehabilitation Services

(W.V. Code Chapter 18)

Fund 8734 FY 2024 Org 0932

Personal Services		
and Employee Benefits	00100	\$ 12,295,366
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	153,000
Current Expenses	13000	68,440,940
Repairs and Alterations.....	06400	350,400
Equipment.....	07000	<u>1,275,870</u>
Total.....		\$ 82,515,576

351 - State Board of Rehabilitation –

Division of Rehabilitation Services –

Disability Determination Services

(W.V. Code Chapter 18)

Fund 8890 FY 2024 Org 0932

Personal Services		
and Employee Benefits	00100	\$ 13,359,886
Current Expenses	13000	13,383,206
Repairs and Alterations.....	06400	1,100
Equipment.....	07000	<u>83,350</u>
Total.....		\$ 26,827,542

DEPARTMENT OF TOURISM*352 - Department of Tourism –**Tourism Workforce Development Fund*

(W.V. Code Chapter 5B)

Fund 8903 FY 2024 Org 0304

Federal Coronavirus Pandemic 89101 \$ 5,148,017

DEPARTMENT OF ECONOMIC DEVELOPMENT*353 - Department of Economic Development –**Office of the Secretary*

(W.V. Code Chapter 5B)

Fund 8705 FY 2024 Org 0307

Personal Services		
and Employee Benefits	00100	\$ 1,641,850
Unclassified.....	09900	50,000
Current Expenses	13000	<u>21,304,019</u>
Total.....		\$ 22,995,869

*354 - Department of Economic Development –**Office of Energy*

(W.V. Code Chapter 5B)

Fund 8892 FY 2024 Org 0307

Personal Services		
and Employee Benefits	00100	\$ 993,648
Unclassified.....	09900	7,350
Current Expenses	13000	<u>8,266,076</u>
Total.....		\$ 9,267,074

355 - *Department of Economic Development –*

Office of the Secretary –

Office of Economic Opportunity

(W.V. Code Chapter 5)

Fund 8901 FY 2024 Org 0307

Personal Services			
and Employee Benefits	00100	\$	854,189
Repairs and Alterations.....	06400		250
Equipment.....	07000		6,000
Unclassified.....	09900		106,795
Current Expenses	13000		<u>20,303,081</u>
Total.....		\$	21,270,315

DEPARTMENT OF EDUCATION

356 - *State Board of Education –*

State Department of Education

(W.V. Code Chapters 18 and 18A)

Fund 8712 FY 2024 Org 0402

Personal Services			
and Employee Benefits	00100	\$	6,006,039
Unclassified.....	09900		2,000,000
Current Expenses	13000		1,434,146,008
Repairs and Alterations.....	06400		10,000
Equipment.....	07000		10,000
Other Assets.....	69000		10,000
Federal Coronavirus Pandemic	89101		<u>4,990,123</u>
Total.....		\$	1,447,172,170

357 - *State Board of Education –*

School Lunch Program

(W.V. Code Chapters 18 and 18A)

Fund 8713 FY 2024 Org 0402

Personal Services		
and Employee Benefits	00100	\$ 1,962,329
Unclassified.....	09900	1,150,500
Current Expenses	13000	258,781,265
Repairs and Alterations.....	06400	20,000
Equipment.....	07000	100,000
Other Assets.....	69000	25,000
Federal Coronavirus Pandemic	89101	<u>743,436</u>
Total.....		\$ 262,782,530

358 - *State Board of Education –**Vocational Division*

(W.V. Code Chapters 18 and 18A)

Fund 8714 FY 2024 Org 0402

Personal Services		
and Employee Benefits	00100	\$ 1,976,812
Unclassified.....	09900	155,000
Current Expenses	13000	20,820,081
Repairs and Alterations.....	06400	10,000
Equipment.....	07000	10,000
Other Assets.....	69000	<u>10,000</u>
Total.....		\$ 22,981,893

359 - *State Board of Education –**Aid for Exceptional Children*

(W.V. Code Chapters 18 and 18A)

Fund 8715 FY 2024 Org 0402

Personal Services		
and Employee Benefits	00100	\$ 3,595,092
Unclassified.....	09900	1,000,000

Current Expenses	13000	133,346,390
Repairs and Alterations	06400	10,000
Equipment	07000	10,000
Other Assets	69000	10,000
Federal Coronavirus Pandemic	89101	<u>17,336,635</u>
Total		\$ 155,308,117

DEPARTMENT OF ARTS, CULTURE, AND HISTORY

360 - Division of Culture and History

(W.V. Code Chapter 29)

Fund 8718 FY 2024 Org 0432

Personal Services and Employee Benefits	00100	\$ 882,376
Current Expenses	13000	1,947,372
Repairs and Alterations	06400	1,000
Equipment	07000	1,000
Buildings	25800	1,000
Other Assets	69000	1,000
Land	73000	360
Federal Coronavirus Pandemic	89101	<u>765,400</u>
Total		\$ 3,599,508

361 - Library Commission

(W.V. Code Chapter 10)

Fund 8720 FY 2024 Org 0432

Personal Services and Employee Benefits	00100	\$ 376,710
Current Expenses	13000	1,076,162
Equipment	07000	543,406
Federal Coronavirus Pandemic	89101	<u>2,388,880</u>
Total		\$ 4,385,158

362 - Commission for National and Community Service

(W.V. Code Chapter 5F)

Fund 8841 FY 2024 Org 0432

Personal Services		
and Employee Benefits	00100	\$ 458,335
Current Expenses	13000	5,587,325
Repairs and Alterations.....	06400	1,000
Federal Coronavirus Pandemic	89101	<u>1,960,558</u>
Total.....		\$ 8,007,218

363 - National Coal Heritage Area Authority

(W.V. Code Chapter 29)

Fund 8869 FY 2024 Org 0432

Personal Services		
and Employee Benefits	00100	\$ 198,501
Current Expenses	13000	328,008
Repairs and Alterations.....	06400	5,000
Equipment.....	07000	3,000
Other Assets.....	69000	<u>2,000</u>
Total.....		\$ 536,509

DEPARTMENT OF ENVIRONMENTAL PROTECTION*364 - Division of Environmental Protection*

(W.V. Code Chapter 22)

Fund 8708 FY 2024 Org 0313

Personal Services		
and Employee Benefits	00100	\$ 36,118,029
Unclassified.....	09900	1,923,580
Current Expenses	13000	347,447,019
Repairs and Alterations.....	06400	739,783
Equipment.....	07000	1,712,238
Other Assets.....	69000	2,177,261
Land	73000	<u>80,000</u>
Total.....		\$ 390,197,910

DEPARTMENT OF HEALTH AND HUMAN RESOURCES*365 - Division of Health –**Consolidated Medical Service Fund*

(W.V. Code Chapter 16)

Fund 8723 FY 2024 Org 0506

Personal Services		
and Employee Benefits	00100	\$ 1,701,896
Unclassified.....	09900	73,307
Current Expenses	13000	92,583,302
Federal Coronavirus Pandemic	89101	<u>4,886,344</u>
Total.....		\$ 99,244,849

*366 - Division of Health –**Central Office*

(W.V. Code Chapter 16)

Fund 8802 FY 2024 Org 0506

Personal Services		
and Employee Benefits	00100	\$ 20,144,404
Unclassified.....	09900	856,614
Current Expenses	13000	152,758,622
Equipment.....	07000	456,972
Buildings	25800	155,000
Other Assets.....	69000	380,000
Federal Coronavirus Pandemic	89101	<u>195,982,333</u>
Total.....		\$ 370,733,945

*367 - Division of Health –**West Virginia Safe Drinking Water Treatment*

(W.V. Code Chapter 16)

Fund 8824 FY 2024 Org 0506

West Virginia Drinking Water Treatment
 Revolving Fund – Transfer 68900 \$ 80,753,300

368 - Human Rights Commission

(W.V. Code Chapter 5)

Fund 8725 FY 2024 Org 0510

Personal Services			
and Employee Benefits	00100	\$	466,840
Unclassified.....	09900		5,050
Current Expenses	13000		<u>64,950</u>
Total.....		\$	536,840

369 - Division of Human Services

(W.V. Code Chapters 9, 48, and 49)

Fund 8722 FY 2024 Org 0511

Personal Services			
and Employee Benefits	00100	\$	83,474,243
Unclassified.....	09900		22,855,833
Current Expenses	13000		162,181,984
Medical Services.....	18900		4,151,432,776
Medical Services Administrative Costs	78900		133,070,682
CHIP Administrative Costs.....	85601		4,559,061
CHIP Services.....	85602		54,410,807
Federal Economic Stimulus	89100		2,456
Federal Coronavirus Pandemic	89101		<u>51,642,105</u>
Total.....		\$	4,663,629,947

DEPARTMENT OF HOMELAND SECURITY

370 - Division of Emergency Management

(W.V. Code Chapter 15)

Fund 8727 FY 2024 Org 0606

Personal Services			
and Employee Benefits	00100	\$	1,658,977

Salary and Benefits of Cabinet Secretary and Agency Heads	00201	61,250
Current Expenses	13000	20,429,281
Repairs and Alterations.....	06400	5,000
Equipment.....	07000	<u>100,000</u>
Total.....		\$ 22,254,508

371 - Division of Corrections and Rehabilitation

(W.V. Code Chapters 15A)

Fund 8836 FY 2024 Org 0608

Unclassified.....	09900	\$ 1,100
Current Expenses	13000	<u>108,900</u>
Total.....		\$ 110,000

372 - West Virginia State Police

(W.V. Code Chapter 15)

Fund 8741 FY 2024 Org 0612

Personal Services and Employee Benefits	00100	\$ 2,512,971
Current Expenses	13000	2,250,971
Repairs and Alterations.....	06400	42,000
Equipment.....	07000	13,356,035
Buildings	25800	1,740,500
Other Assets.....	69000	1,065,750
Land	73000	<u>500</u>
Total.....		\$ 20,968,727

373 - Fire Commission

(W.V. Code Chapter 29)

Fund 8819 FY 2024 Org 0619

Current Expenses	13000	\$ 80,000
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374 - Division of Administrative Services

(W.V. Code Chapter 15)

Fund 8803 FY 2024 Org 0623

Personal Services		
and Employee Benefits	00100	\$ 1,310,150
Unclassified.....	09900	25,185
Current Expenses	13000	75,381,973
Repairs and Alterations.....	06400	<u>1,750</u>
Total.....		\$ 76,719,058

DEPARTMENT OF REVENUE*375 - Insurance Commissioner*

(W.V. Code Chapter 33)

Fund 8883 FY 2024 Org 0704

Personal Services		
and Employee Benefits	00100	\$ 145,000
Current Expenses	13000	2,825,000
Equipment.....	07000	<u>30,000</u>
Total.....		\$ 3,000,000

DEPARTMENT OF TRANSPORTATION*376 - Division of Motor Vehicles*

(W.V. Code Chapter 17B)

Fund 8787 FY 2024 Org 0802

Personal Services		
and Employee Benefits	00100	\$ 551,394
Current Expenses	13000	5,448,106
Repairs and Alterations.....	06400	<u>500</u>
Total.....		\$ 6,000,000

377 - Division of Multimodal Transportation Facilities -

Public Transit

(W.V. Code Chapter 17)

Fund 8745 FY 2024 Org 0810

Personal Services			
and Employee Benefits	00100	\$	1,062,407
Current Expenses	13000		19,863,149
Repairs and Alterations.....	06400		2,500
Equipment.....	07000		3,501,714
Buildings	25800		2,450,000
Other Assets	69000		<u>250,000</u>
Total.....		\$	27,129,770

378 - Division of Multimodal Transportation Facilities -

Aeronautics Commission

(W.V. Code Chapter 29)

Fund 8831 FY 2024 Org 0810

Current Expenses	13000	\$	400,000
Other Assets	69000		<u>100</u>
Total.....		\$	400,100

DEPARTMENT OF VETERANS' ASSISTANCE

379 - Department of Veterans' Assistance

(W.V. Code Chapter 9A)

Fund 8858 FY 2024 Org 0613

Personal Services			
and Employee Benefits	00100	\$	3,130,016
Salary and Benefits of Cabinet Secretary			
and Agency Heads	00201		57,120
Current Expenses	13000		2,840,300

MISCELLANEOUS BOARDS AND COMMISSIONS*382 - Adjutant General –**State Militia*

(W.V. Code Chapter 15)

Fund 8726 FY 2024 Org 0603

Unclassified.....	09900	\$	982,705
Mountaineer ChalleNGe Academy.....	70900		11,896,281
Martinsburg Starbase	74200		566,904
Charleston Starbase.....	74300		533,211
Military Authority.....	74800		<u>88,956,147</u>
Total.....		\$	102,935,248

The Adjutant General shall have the authority to transfer between appropriations.

*383 - Adjutant General –**West Virginia National Guard Counterdrug Forfeiture Fund*

(W.V. Code Chapter 15)

Fund 8785 FY 2024 Org 0603

Personal Services			
and Employee Benefits.....	00100	\$	1,350,000
Current Expenses	13000		150,000
Repairs and Alterations.....	06400		50,000
Equipment.....	07000		200,000
Buildings.....	25800		100,000
Other Assets.....	69000		100,000
Land	73000		<u>50,000</u>
Total.....		\$	2,000,000

*384 - Public Service Commission –**Motor Carrier Division*

(W.V. Code Chapter 24A)

Fund 8743 FY 2024 Org 0926

Personal Services		
and Employee Benefits	00100	\$ 1,460,622
Current Expenses	13000	368,953
Repairs and Alterations.....	06400	39,000
Equipment.....	07000	<u>1,000</u>
Total.....		\$ 1,869,575

*385 - Public Service Commission –**Gas Pipeline Division*

(W.V. Code Chapter 24B)

Fund 8744 FY 2024 Org 0926

Personal Services		
and Employee Benefits	00100	\$ 655,854
Unclassified.....	09900	4,072
Current Expenses	13000	124,628
Equipment.....	07000	<u>3,000</u>
Total.....		\$ 787,554

386 - Economic Development Authority

(W.V. Code Chapter 31)

Fund 8893 FY 2024 Org 0944

Current Expenses	13000	5,000,000
Total TITLE II, Section 6 - Federal Funds		<u>\$9,443,163,508</u>

Sec. 7. Appropriations from federal block grants. — The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 2024.

387 - *Department of Economic Development –**Office of the Secretary –**Community Development*Fund 8746 FY 2024 Org 0307

Personal Services		
and Employee Benefits	00100	\$ 10,662,609
Unclassified.....	09900	2,375,000
Current Expenses	13000	<u>224,476,883</u>
Total.....		\$ 237,514,492

388 - *Department of Economic Development –**Office of the Secretary –**Office of Economic Opportunity –**Community Services*Fund 8902 FY 2024 Org 0307

Personal Services		
and Employee Benefits	00100	\$ 771,289
Unclassified.....	09900	125,000
Current Expenses	13000	17,781,811
Repairs and Alterations.....	06400	1,500
Equipment.....	07000	<u>9,000</u>
Total.....		\$ 18,688,600

389 - *WorkForce West Virginia –**Workforce Investment Act*Fund 8749 FY 2024 Org 0323

Personal Services and		
Employee Benefits.....	00100	\$ 2,981,825
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	124,018

Federal Coronavirus Pandemic	89101	<u>14,973,256</u>
Total.....		\$ 26,648,550

393 - Division of Health –

Community Mental Health Services

Fund 8794 FY 2024 Org 0506

Personal Services		
and Employee Benefits	00100	\$ 590,137
Unclassified.....	09900	33,533
Current Expenses	13000	4,883,307
Federal Coronavirus Pandemic	89101	<u>12,483,247</u>
Total.....		\$ 17,990,224

394 - Division of Human Services –

Energy Assistance

Fund 8755 FY 2024 Org 0511

Personal Services		
and Employee Benefits	00100	\$ 2,572,965
Unclassified.....	09900	350,000
Current Expenses	13000	44,952,003
Federal Coronavirus Pandemic	89101	<u>22,832,540</u>
Total.....		\$ 70,707,508

395 - Division of Human Services –

Social Services

Fund 8757 FY 2024 Org 0511

Personal Services		
and Employee Benefits	00100	\$ 9,381,007
Unclassified.....	09900	171,982
Current Expenses	13000	<u>8,870,508</u>
Total.....		\$ 18,423,497

*396 - Division of Human Services –**Temporary Assistance for Needy Families*Fund 8816 FY 2024 Org 0511

Personal Services		
and Employee Benefits	00100	\$ 21,939,537
Unclassified.....	09900	1,250,000
Current Expenses	13000	105,871,588
Federal Coronavirus Pandemic	89101	<u>4,617,546</u>
Total.....		\$ 133,678,671

*397 - Division of Human Services –**Child Care and Development*Fund 8817 FY 2024 Org 0511

Personal Services		
and Employee Benefits	00100	\$ 3,584,890
Unclassified.....	09900	350,000
Current Expenses	13000	57,150,000
Federal Coronavirus Pandemic	89101	<u>170,000,000</u>
Total.....		\$ 231,084,890

Total TITLE II, Section 7 –

Federal Block Grants \$ 831,899,732

Sec. 8. Awards for claims against the state. — There are hereby appropriated for fiscal year 2024, from the fund as designated, in the amounts as specified, general revenue funds in the amount of \$709,597, special revenue funds in the amount of \$397,169 and state road funds in the amount of \$515,660 for payment of claims against the state.

Sec. 9. Appropriations from general revenue fund surplus accrued. — The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year 2024 out of surplus funds only, accrued from

the fiscal year ending June 30, 2023, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriations be payable only from surplus as of July 31, 2023 from the fiscal year ending June 30, 2023, only after first meeting requirements of W.Va. Code §11B-2-20(b).

In the event that surplus revenues available on July 31, 2023, are not sufficient to meet the appropriations made pursuant to this section, then the appropriations shall be made to the extent that surplus funds are available as of the date mandated to meet the appropriations in this section and shall be allocated first to provide the necessary funds to meet the first appropriation of this section and each subsequent appropriation in the order listed in this section.

398 - Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2024 Org 0310

Capital Outlay, Repairs and Equipment - Surplus	67700	\$ 52,000,000
Current Expenses – Surplus	13099	<u>900,000</u>
Total.....		\$ 52,900,000

399 - Department of Transportation

Division of Highways

(WV Code Chapter 17 and 17C)

Fund 0620 FY 2024 Org 0803

Directed Transfer - Surplus.....	70099	\$ 10,000,000
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The above appropriation for Directed Transfer – Surplus (fund 0620, appropriation 70099) shall be transferred to Division of Highways (fund 9017, appropriation 23700).

*400 - Department of Tourism –**Office of the Secretary*

(WV Code Chapter 5B)

Fund 0246 FY 2024 Org 0304

Tourism – Brand Promotion - Surplus....	61893	\$ 7,000,000
Tourism – Industry Development –		
Surplus	61896	<u>8,000,000</u>
Total.....		\$ 15,000,000

*401 - Governor's Office –**Civil Contingent Fund*

(WV Code Chapter 5)

Fund 0105 FY 2024 Org 0100

Federal Funds/Grant Match - Surplus ...	85700	\$ 282,000,000
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The funds shall be used for the purpose of grants to address deferred maintenance issues at the State's Colleges, Universities and Community and Technical Schools, and for deferred maintenance at the State's correctional units. They may also be used for federal grant and match programs that may become available to the State.

402 - Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2024 Org 0432

Current Expenses - Surplus.....	13099	\$ 2,200,000
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*403 - State Board of Education –**School Building Authority*

(W.V. Code Chapters 18 and 18A)

Fund 0318 FY 2024 Org 0404

School Building Authority - Surplus ... XXXXX \$ 40,000,000

The above appropriation for School Building Authority – Surplus (fund 0318, appropriation XXXXX), shall be transferred to the School Construction Fund (3952).

404 - Higher Education Policy Commission -

Administration -

Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2024 Org 0441

Nursing Program Expansion Support –

Surplus XXXXX \$ 20,000,000

405 - State Board of Education –

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2024 Org 0402

Jobs & Hope - Surplus XXXXX \$ 1,600,000

406 - West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2024 Org 1400

Soil Conservation Projects - Surplus ... 26900 \$ 21,060,000

407 - Department of Economic Development -

Office of the Secretary

(WV Code Chapter 5B)

Fund 0256 FY 2024 Org 0307

Directed Transfer– Surplus	70099	\$ 38,000,000
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The above appropriation for Directed Transfer – Surplus (fund 0256, appropriation 70099) shall be transferred to Water Development Authority (fund 3382).

*408 - Department of Administration –**Division of General Services*

(W.V. Code Chapter 5A)

Fund 0230 FY 2024 Org 0211

Capital Outlay, Repairs and Equipment –

Surplus	67700	\$ 5,000,000
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The above appropriation for Capital Outlay, Repairs and Equipment – Surplus (fund 0230, appropriation 67700) shall be expended for the Holly Grove Mansion.

*409 - Department of Economic Development –**Office of the Secretary*

(WV Code Chapter 5B)

Fund 0256 FY 2024 Org 0307

Current Expenses - Surplus.....	13099	\$ 500,000
WV Land Stewardship Corporation –		
Surplus	xxxxx	1,500,000
Directed Transfer – Surplus	70099	35,000,000
Back Roads to Appalachia - Surplus....	xxxxx	<u>200,000</u>
Total.....		\$ 37,200,000

The above appropriation for Directed Transfer – Surplus (fund 0256, appropriation 70099) shall be transferred to the WVEDA Credit Insurance Fund (fund 9063)

*410 - Governor's Office -**Civil Contingent Fund**(WV Code Chapter 5)*Fund 0105 FY 2024 Org 0100

Civil Contingent Fund – Surplus	26300	\$	500,000
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*411 - Department of Homeland Security -**Office of the Secretary**(WV Code Chapter 5F)*Fund 0430 FY 2024 Org 0601

Current Expenses – Surplus	13099	\$	800,000
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*412 - Adjutant General –**State Militia**(WV Code Chapter 15)*Fund 0433 FY 2024 Org 0603

Armory Board Transfer - Surplus	70299	\$	3,318,000
Civil Air Patrol – Surplus	23499		<u>1,400,000</u>
Total.....		\$	4,718,000

*413 - Division of Health -**Central Office**(WV Code Chapter 16)*Fund 0407 FY 2024 Org 0506

Directed Transfer - Surplus.....	70099	\$	10,000,000
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The above appropriation for Directed Transfer – Surplus (fund 0407, appropriation 70099) shall be transferred to the Emergency

Medical Services Salary Enhancement Fund, Current Expenses (fund xxxx, appropriation 13000).

414 - Department of Commerce –

Office of the Secretary

(W.V. Code Chapter 19)

Fund 0606 FY 2024 Org 0327

Jobs for WV Graduates - Surplus xxxxxx \$ 1,000,000

415 - Division of Multimodal Transportation Facilities -

Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2024 Org 0810

Current Expenses - Surplus..... 13099 \$ 1,000,000

416 - Division of Health -

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2024 Org 0506

Current Expenses - Surplus..... 13099 \$ 2,000,000

The above appropriation for Current Expenses – Surplus (fund 0407, appropriation 13099) shall be used for the Hardy County Health Department.

417 - Department of Administration -

Office of the Secretary

(WV Code Chapters 5F)

Fund 0186 FY 2024 Org 0201

Directed Transfer - Surplus..... 70099 \$ 500,000

The above appropriation for Directed Transfer – Surplus (fund 0204, appropriation 70099) shall be transferred to the Department of Administration, Office of Technology – Chief Officer Administration Fund (fund 2531).

418 - State Board of Education -

West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2024 Org 0403

Fire Protection - Surplus XXXXX \$ 500,000

419 - Department of Revenue -

Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2024 Org 0701

Directed Transfer - Surplus..... 70099 \$ 400,000,000

The above appropriation for Directed Transfer – Surplus (fund 0465, appropriation 70099), shall be transferred to the Personal Income Tax Reserve Fund (fund 1313).

420 - Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2024 Org 0211

Consolidated State Laboratory –
Surplus XXXXX \$ 125,000,000

The above appropriation shall only be used for the construction of a consolidated laboratory facility to be used by the West Virginia

State Police, Department of Agriculture and the Department of Health and Human Resources.

421 - West Virginia School of Osteopathic Medicine

(WV Code Chapter 18B)

Fund 0336 FY 2024 Org 0476

West Virginia School of

Osteopathic Medicine - Surplus..... 17299 \$ 29,000,000

422 - West Virginia University –

General Administrative Fund

(WV Code Chapter 18B)

Fund 0344 FY 2024 Org 0463

National Cancer Institute - Surplus..... xxxxx \$ 50,000,000

423 - Division of Culture and History

(W.V. Code Chapter 29)

Fund 0293 FY 2024 Org 0432

Educational Enhancements - Surplus... 92700 \$ 500,000

The above appropriation for Educational Enhancements – Surplus (fund 0293, appropriation 92700) shall be used for Save the Children.

424 - Governor's Office –

(WV Code Chapter 5)

Fund 0101 FY 2024 Org 0100

Posey Perry Emergency Food Bank Fund –

Surplus XXXXXX \$ 10,000,000

425 - State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2024 Org 0402

Communities in Schools - Surplus..... XXXXX \$ 5,000,000

Total TITLE II, Section 9 –

General Revenue

Surplus Accrued \$1,165,478,000

Sec. 10. Appropriations from lottery net profits surplus accrued. — The following items are hereby appropriated from the lottery net profits, and are to be available for expenditure during the fiscal year 2024 out of surplus funds only, as determined by the director of lottery, accrued from the fiscal year ending June 30, 2023, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriations be payable only from surplus accrued from the fiscal year ending June 30, 2023.

In the event that surplus revenues available from the fiscal year ending June 30, 2023, are not sufficient to meet the appropriations made pursuant to this section, then the appropriations shall be made to the extent that surplus funds are available.

426 - Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2024 Org 0508

Senior Services Medicaid Transfer –

Lottery Surplus 68199 \$ 14,750,000

In-Home Services and Nutrition

for Senior Citizens – Surplus..... 76699 2,000,000

Total..... 16,750,000

Total TITLE II, Section 10 –

Surplus Accrued..... \$ 16,750,000

Sec. 11. Appropriations from state excess lottery revenue surplus accrued. — The following items are hereby appropriated from the state excess lottery revenue fund, and are to be available for expenditure during the fiscal year 2024 out of surplus funds only, as determined by the Director of Lottery, accrued from the fiscal year ending June 30, 2023, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriations be payable only from surplus accrued from the fiscal year ending June 30, 2023.

In the event that surplus revenues available from the fiscal year ending June 30, 2023, are not sufficient to meet the appropriations made pursuant to this section, then the appropriations shall be made to the extent that surplus funds are available.

427 - Racing Commission –

General Administration

(WV Code Chapter 19)

Fund 7308 FY 2024 Org 0707

Directed Transfer 70000 \$ 800,000

The above appropriation for Directed Transfer (fund 7308, appropriation 70000), \$800,000 shall be transferred to the Racing Commission – General Administration (Fund 7305).

428 - Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 5365 FY 2023 Org 0511

Medical Services – Lottery Surplus..... 68100 \$ 17,000,000

Total TITLE II, Section 11 –

Surplus Accrued..... \$ 17,800,000

Sec. 12. Special revenue appropriations. — There are hereby appropriated for expenditure during the fiscal year 2024 special revenues collected pursuant to general law enactment of the Legislature which are not paid into the state fund as general revenue under the provisions of W.V. Code §12-2-2 and are not expressly appropriated under this act: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with the provisions of W.V. Code §12-2-1 et seq., W.V. Code §12-3-1 et seq., and W.V. Code §11B-2-1 et seq., unless the spending unit has filed with the Director of the Budget and the Legislative Auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund; and

(b) A detailed expenditure schedule showing for what purposes the fund is to be expended: *Provided, however,* That federal funds received by the state may be expended only in accordance with Sections (6) or (7) of this Title and with W.V. Code §4-11-1, *et seq.* *Provided further,* That federal funds that become available to a 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 this act may be only be expended in the limited circumstances provided by W. Va. Code §4-11-5(d): *And provided further,* That no provision of this act may be construed to authorize the expenditure of federal funds except as provided in this section.

Sec. 13. State improvement fund appropriations. — Bequests or donations of nonpublic funds, received by the Governor on behalf of the state during the fiscal year 2024, for the purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated state improvement fund.

There are hereby appropriated all moneys so deposited during the fiscal year 2024 to be expended as authorized by the Governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers

or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 14. Specific funds and collection accounts. — A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of Article 3, Chapter 12 of the Code.

Sec. 15. Appropriations for refunding erroneous payment. — Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he or she shall issue his or her requisition upon the Auditor for the refunding of the proper amount. The Auditor shall issue his or her warrant to the Treasurer and the Treasurer shall pay the warrant out of the fund into which the amount was originally paid.

Sec. 16. Sinking fund deficiencies. — There is hereby appropriated to the Governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia Housing Development Fund which is under the supervision and control of the Municipal Bond Commission as provided by W.V. Code §31-18-20b, or in the funds of the municipal bond commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The Governor is authorized to transfer from time to time such amounts to the Municipal Bond Commission as may be necessary for these purposes.

The Municipal Bond Commission shall reimburse the State of West Virginia through the Governor from the first remittance collected from the West Virginia Housing Development Fund or from any state agency or local taxing district for which the Governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

Sec. 17. Appropriations for local governments. — There are hereby appropriated for payment to counties, districts, and municipal corporations such amounts as will be necessary to pay taxes due counties, districts, and municipal corporations and which have been paid into the treasury:

- (a) For redemption of lands;
- (b) By public service corporations;
- (c) For tax forfeitures.

Sec. 18. Total appropriations. — Where only a total sum is appropriated to a spending unit, the total sum shall include personal services and employee benefits, annual increment, current expenses, repairs and alterations, buildings, equipment, other assets, land, and capital outlay, where not otherwise specifically provided and except as otherwise provided in TITLE I – GENERAL PROVISIONS, Sec. 3.

Sec. 19. General school fund. — The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with W.V. Code §18-9A-16.

TITLE III – ADMINISTRATION

Sec. 1. Appropriations conditional. — The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of Article 2, Chapter 11B of the Code.

Where spending units or parts of spending units have been absorbed by or combined with other spending units, it is the intent of this act that appropriations and reappropriations shall be to the succeeding or later spending unit created, unless otherwise indicated.

Sec. 2. Constitutionality. — If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

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CHAPTER 9

(H. B. 2882 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed February 15, 2023; in effect from passage.]
[Approved by the Governor on February 24, 2023.]

AN ACT making a supplementary appropriation by adding a new item of appropriation and increasing the expenditure 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 Economic Development, Office of the Secretary, fund 0256, fiscal year 2023, organization 0307, by supplementing and amending Chapter 11, Acts of the Legislature, Regular Session, 2022, known as the budget bill for the fiscal year ending June 30, 2023.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended expirations to the unappropriated surplus balance of the State Fund General Revenue; and

WHEREAS, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That Chapter 11, Acts of the Legislature, Regular Session, 2022, known as the budget bill, to fund 0256, fiscal year 2023, organization 0307 be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ECONOMIC DEVELOPMENT

42 – Department of Economic Development –

Office of the Secretary

(WV Code Chapter 5B)

Fund 0256 FY 2023 Org 0307

	Appropriation	General Revenue Fund
1 Personal Services and Employee Benefits.....	00100	\$ 4,151,904
2 Unclassified	09900	108,055
3 Current Expenses	13000	4,738,464
4 National Youth Science Camp.....	13200	241,570
5 Local Economic Development Partnerships (R) ...	13300	1,250,000
6 ARC Assessment	13600	152,585
7 Global Economic Development Partnerships (R) ...	20201	150,000
8 Guaranteed Work Force Grant (R)...	24200	982,630
8a Directed Transfer – Surplus.....	70099	115,000,000
9 Mainstreet Program	79400	170,493

10	BRIM Premium	91300	3,157
11	Hatfield McCoy Recreational Trail	96000	<u>198,415</u>
12	Total.....		\$ 127,147,273

Any unexpended balances remaining in the appropriations for Unclassified – Surplus 14 (fund 0256, appropriation 09700), Partnership Grants (fund 0256, appropriation 13100), Local 15 Economic Development Partnerships (fund 0256, appropriation 13300), Global Economic Development Partnerships (fund 0256, appropriation 20201), and Guaranteed Work Force Grant (fund 0256, appropriation 24200) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

From the above appropriation for Current Expenses (fund 0256, appropriation 13000), \$50,000 shall be used for the Western Potomac Economic Partnership, \$100,000 shall be used for Advantage Valley, \$750,000 shall be used for the Robert C. Byrd Institute, \$548,915 shall be used for West Virginia University, \$298,915 shall be used for Southern West Virginia 23 Community and Technical College for the Mine Training and Energy Technologies Academy.

The above appropriation to Local Economic Development Partnerships (fund 0256, appropriation 13300) shall be used by the Department of Economic Development for the award of funding assistance to county and regional economic development corporations or 27 authorities participating in the Certified Development Community Program developed under 28 the provisions of W.Va. Code §5B-2-14. The Department of Economic Development shall award the funding assistance through a matching grant program, based upon a formula whereby funding assistance may not exceed \$30,000 per county served by an economic development or redevelopment corporation or authority.

From the above appropriation for Directed Transfer – Surplus (fund 0256, appropriation 33 70099), \$105,000,000 shall be transferred to the Economic Development Project Fund (fund 34 9069) and \$10,000,000 shall be transferred to the Broadband Development Fund (fund 3034).

CHAPTER 10

(Com. Sub. for H. B. 2883 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 11, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT supplementing and amending Chapter eleven, Acts of the Legislature, Regular Session, 2022, known as the budget bill, as amended, in Title II from the appropriations of public moneys out of federal moneys remaining unappropriated, to the Executive, Governor's Office, Coronavirus State Fiscal Recovery Fund, fund 8823, fiscal year 2023, organization 0100, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2023 which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 8823, fiscal year 2023, organization 0100, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 6. Appropriations of federal funds.

EXECUTIVE

330 – Governor's Office –

Coronavirus State Fiscal Recovery Fund

(WV Code Chapter 4)

Fund 8823 FY 2023 Org 0100

1	Personal Services and Employee Benefits.....	00100	\$ 263,932,089
2	Unclassified	09900	13,554,899
3	Current Expenses	13000	400,000,000
4	Repairs and Alterations.....	06400	1,000
5	Equipment.....	07000	1,000
6	Other Assets.....	69000	1,000
6a	Directed Transfer	70000	685,000,000
7	Total.....		\$ 1,365,489,988

From the above appropriation for Directed Transfer (fund 8823, appropriation 70000), \$5,000,000 shall be transferred to the Department of Economic Development (fund 3171) for site ready projects, \$482,000,000 shall be transferred to the Economic Development Authority (fund 9069), \$20,000,000 shall be transferred to the Reclamation of Abandoned and Dilapidated Property Program Fund (fund 3305), \$177,000,000 shall be transferred to Water Development Authority (fund 3382), and \$1,000,000 shall be transferred to Marshall University (fund 4893).



CHAPTER 11

(H. B. 2904 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]

[Approved by the Governor on March 16, 2023.]

AN ACT supplementing and amending Chapter 11, Acts of the Legislature, Regular Session, 2022, known as the budget bill, in Title II from the appropriations of public moneys out of the Treasury from the balance remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Commerce, Office of the Secretary, fund 0606, fiscal year 2023, organization 0327, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023, by adding a new item of appropriation.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That Chapter 11, Acts of the Legislature, Regular Session, 2022, known as the budget bill, to fund 0606, fiscal year 2023, organization 0327 be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF COMMERCE

39 - Department of Commerce –

Office of the Secretary

(WV Code Chapter 19)

Fund 0606 FY 2023 Org 0327

	Appro- piation	General Revenue Fund
1 Personal Services and Employee Benefits.....	00100 \$	1,374,092
2 Salary and Benefits of Cabinet Secretary 3 and Agency Heads.....	00201	153,750
4 Unclassified	09900	1,490
5 Current Expenses	13000	353,147
5a Directed Transfer – Surplus.....	70099	1,000,000
6 Total.....	\$	2,882,479

The above appropriation for Directed Transfer – Surplus (fund 0606, appropriation 70099) shall be transferred to the Marketing and Communications Operating Fund (fund 3002).

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CHAPTER 12

(H. B. 2906 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 7, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2023 in the amount of \$21,550,000 from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of Lottery Net Profits Fund, there now remains an unappropriated balance in the State Treasury which is available for expiration during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds remaining as an unappropriated balance for the fiscal year ending June 30, 2023 in Lottery Net Profits be decreased by expiring the amount of \$21,550,000 to the unappropriated surplus balance of the State Fund, General Revenue to be available for appropriation during the fiscal year ending June 30, 2023.



CHAPTER 13

(H. B. 2907 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration, Division of General Services, fund 0230, fiscal year 2023, organization 0211, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 0230, fiscal year 2023, organization 0211, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

21 - Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2023 Org 0211

	Appro- priation	General Revenue Fund
9a Capital Outlay, Repairs and Equipment – Surplus.....	67700	19,000,000

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CHAPTER 14

(Com. Sub. for H. B. 2908 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Commerce, Division of Forestry, fund 0250, fiscal year 2023, organization 0305, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 0250, fiscal year 2023, organization 0305, be supplemented and amended by adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF COMMERCE

32 – Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2023 Org 0305

	Appropriation	General Revenue Fund
5a Current Expenses – Surplus (R)	13099	1,200,000
6a Equipment – Surplus (R)	34100	800,000



CHAPTER 15

(Com. Sub. for H. B. 2910 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 7, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT making a supplementary appropriation by adding new items of appropriation and increasing the expenditure of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration, Public Defender Services, fund 0226, fiscal year 2023, organization 0221, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 0226, fiscal year 2023, organization 0221, be supplemented and amended by adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

27 – Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2023 Org 0221

	Appro- priation	General Revenue Fund
6a Public Defender Corporations – Surplus.....	35299	1,400,000
7a Appointed Counsel Fees – Surplus.....	43500	18,600,000

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CHAPTER 16

(Com. Sub. for H. B. 2911 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT 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 Administrative Services, fund 0546, fiscal year 2023, organization 0623, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 0546, fiscal year 2023, organization 0623, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HOMELAND SECURITY

70 - Division of Administrative Services

(WV Code Chapter 15A)

Fund 0546 FY 2023 Org 0623

	Appropriation	General Revenue Fund
10a Victims of Crime Act – Surplus (R)	#####	9,500,000

●

CHAPTER 17

(H. B. 2913 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]

[Approved by the Governor on March 16, 2023.]

AN ACT 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 Health and Human Resources, Consolidated Medical Services Fund, fund 0525, fiscal year 2023, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 0525, fiscal year 2023, organization 0506, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

57 – Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund 0525 FY 2023 Org 0506

	Appropriation	General Revenue Fund
5a Institutional Facilities Operations – Surplus (R)	63200 \$	12,031,796

●

CHAPTER 18

(Com. Sub. for H. B. 2914 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT 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 Governor's Office – Civil Contingent Fund, fund 0105, fiscal year 2023, organization 0100 by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 0105, fiscal year 2023, 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

7 – Governor’s Office –

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2023 Org 0100

	Appropriation	General Revenue Fund
2a Federal Funds/Grant Match –		
Surplus (R)	85700 \$	85,000,000

●

CHAPTER 19

(H. B. 2915 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 7, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2023, in the amount of \$30,500,000 from the balance of moneys remaining as an unappropriated balance in the State Excess Lottery Revenue Fund.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenues for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Excess Lottery Revenue Fund, there now remains an unappropriated balance in the State Treasury which is available for expiration during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds remaining as an unappropriated balance for the fiscal year ending June 30, 2023 in the State Excess Lottery Revenue Fund be decreased by expiring the amount of \$30,500,000 to the unappropriated surplus balance of the State Fund, General Revenue to be available for appropriation during the fiscal year ending June 30, 2023.

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CHAPTER 20

(Com. Sub. for H. B. 2928 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT 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 Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2023, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor’s Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 0407, fiscal year 2023, organization 0506, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

56 – Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2023 Org 0506

	Appro- priation	General Revenue Fund
28a Pregnancy Centers – Surplus (R)...	#####	1,000,000

●

CHAPTER 21

(H. B. 3039 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]

[Approved by the Governor on March 16, 2023.]

AN ACT making a supplementary appropriation by adding a new item of appropriation and increasing the expenditure 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 Miscellaneous Boards and Commissions, Adjutant General – State Militia, fund 0433, fiscal year 2023, organization 0603, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 0433, fiscal year 2023, organization 0603, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

MISCELLANEOUS BOARDS AND COMMISSIONS

107 - Adjutant General –

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2023 Org 0603

	Appro- priation	General Revenue Fund
6a Armory Board Transfer – Surplus ...	70299	1,000,000

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CHAPTER 22

(Com. Sub. for H. B. 3040 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 11, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration, Office of the Secretary, fund 0186, fiscal year 2023, organization 0201, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 0186, fiscal year 2023, organization 0201, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

18 – Department of Administration –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2023 Org 0201

	Appro- piation	General Revenue Fund
1 11a Consolidated Public Retirement – Surplus.....	82199 \$	26,000,000

The above appropriation for Consolidated Public Retirement – Surplus (fund 0186, appropriation 82199) shall be transferred by the Secretary of Administration to the respective retirement plans in order to provide bonus payments and raise the benefit floor.

CHAPTER 23

(H. B. 3065 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]

[Approved by the Governor on March 16, 2023.]

AN ACT supplementing and amending Chapter 11, Acts of the Legislature, Regular Session, 2022, known as the budget bill, as amended, in Title II from the appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Transportation, Division of Multimodal Transportation Facilities – Aeronautics Commission, fund 0582, fiscal year 2023, organization 0810, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended supplemental appropriations from the balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; and

Whereas, On March 30, 2022, the Governor approved House Bill 4492, which re-organized the Aeronautics Commission under the newly-created the Division of Multimodal Transportation Facilities of the Department of Transportation; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 0582, fiscal year 2023, organization 0810, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF TRANSPORTATION

79 – Division of Multimodal Transportation Facilities –

Aeronautics Commission

(WV Code Chapter 17)

Fund 0582 FY 2023 Org 0810

1	Personal Services and Employee Benefits.....	00100	\$	229,791
2	Current Expenses (R).....	13000		791,839
3	Repairs and Alterations.....	06400		100
4	BRIM Premium	91300		<u>4,438</u>
5	Total.....		\$	1,026,168

Any unexpended balances remaining in the appropriations for Current Expenses (fund 0582, appropriation 13000) remaining at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

CHAPTER 24

(H. B. 3066 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 7, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT supplementing and amending Chapter 11, Acts of the Legislature, Regular Session, 2022, 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 Education, State Board of Education – State Aid to Schools, fund 0317, fiscal year 2023, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023 by increasing and decreasing items of appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Chapter 11, Acts of the Legislature, Regular Session, 2022, known as the budget bill, fund 0317, fiscal year 2023, organization 0402 be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

46 - State Board of Education –

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2023 Org 0402

1	Other Current Expenses.....	02200	\$ 159,480,765
2	Advanced Placement	05300	594,563
3	Professional Educators.....	15100	904,903,651
4	Service Personnel.....	15200	303,700,782
5	Fixed Charges	15300	105,288,344
6	Transportation.....	15400	65,257,311
7	Improved Instructional Programs	15600	52,483,109
8	Professional Student Support Services.....	65500	61,460,030
9	21 st Century Strategic Technology Learning Growth	93600	27,460,983
10	Teacher and Leader Induction	93601	<u>6,496,102</u>
11	Basic Foundation Allowances		1,687,125,640
12	Less Local Share.....		(481,346,874)
13	Adjustments		<u>(2,495,004)</u>
14	Total Basic State Aid.....		1,203,283,762
15	Public Employees' Insurance Matching.....	01200	214,704,266
16	Teachers' Retirement System.....	01900	68,915,309
17	School Building Authority (R)	45300	24,000,000
18	Retirement Systems – Unfunded Liability	77500	<u>276,328,760</u>
19	Total.....		\$ 1,787,232,097

Any unexpended balances remaining in the appropriations for School Building Authority (fund 0317, appropriation 45300) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

The above appropriation for School Building Authority (fund 0317, appropriation 45300) shall be transferred to the School Building Authority - School Construction Fund (fund 3952).



CHAPTER 25

(H. B. 3067 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT supplementing and amending Chapter 11, Acts of the Legislature, Regular Session, 2022, known as the budget bill, as amended, in Title II from the appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Transportation, Division of Multimodal Transportation Facilities – Public Transit, fund 0510, fiscal year 2023, organization 0810, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended supplemental appropriations from the balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; and

Whereas, On March 30, 2022 the Governor approved House Bill 4492, which re-organized the Division of Public Transit under

the newly-created the Division of Multimodal Transportation Facilities of the Department of Transportation; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 0510, fiscal year 2023, organization 0810, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF TRANSPORTATION

78 – Division of Multimodal Transportation Facilities –

Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2023 Org 0810

1	Equipment (R)	07000	\$	100,000
2	Current Expenses (R).....	13000		3,042,989
3	Buildings (R)	25800		100,000
4	Other Assets (R)	69000		<u>50,000</u>
5	Total.....		\$	3,292,989

Any unexpended balances remaining in the appropriations for Equipment (fund 0510, appropriation 07000), Current Expenses (fund 0510, appropriation 13000), Buildings (fund 0510, appropriation 25800), and Other Assets (fund 0510, appropriation 69000) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

From the above appropriation for Current Expenses (fund 0510, appropriation 13000), \$30,000 shall be used to support the Sistersville Ferry.



CHAPTER 26

(H. B. 3073 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to Miscellaneous Boards and Commissions, Adjutant General – State Militia, fund 0433, fiscal year 2023, organization 0603, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended supplemental appropriations from the balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor’s Statement of the State Fund, General Revenue, there now remains an unappropriated balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 0433, fiscal year 2023, organization 0603, be

supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

MISCELLANEOUS BOARDS AND COMMISSIONS

107 - Adjutant General –

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2023 Org 0603

	Appropriation	General Revenue Fund
5 Civil Air Patrol	23400	100,000



CHAPTER 27

(Com. Sub. for H. B. 3074 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT supplementing and amending Chapter 11, Acts of the Legislature, Regular Session, 2022, known as the budget bill, as amended, in Title II from the appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Transportation, Division of Multimodal Transportation Facilities, fund 0580, fiscal year 2023, organization 0810, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended supplemental appropriations from the balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; and

Whereas, On March 30, 2022 the Governor approved House Bill 4492, which created the Division of Multimodal Transportation Facilities of the Department of Transportation; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 0580, fiscal year 2023, organization 0810, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Sec. 1. Appropriations from general revenue.

DEPARTMENT OF TRANSPORTATION

78a – Division of Multimodal Transportation Facilities

(WV Code Chapter 17)

Fund 0580 FY 2023 Org 0810

1	Personal Services and Employee Benefits (R)	00100	\$	600,000
2	Current Expenses (R).....	13000		92,500
3	BRIM Premium (R)	91300		<u>7,500</u>
4	Total.....		\$	700,000



CHAPTER 28

(H. B. 3108 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT supplementing and amending Chapter 11, Acts of the Legislature, Regular Session, 2022, known as the budget bill, as amended, in Title II from the appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Transportation, Division of Multimodal Transportation Facilities - State Rail Authority, fund 0506, fiscal year 2023, organization 0810, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended supplemental appropriations from the balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; and

Whereas, On March 30, 2022, the Governor approved House Bill 4492, which re-organized the State Rail Authority under the

newly-created Division of Multimodal Transportation Facilities of the Department of Transportation; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 0506, fiscal year 2023, organization 0810, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF TRANSPORTATION

77 – Division of Multimodal Transportation Facilities –

State Rail Authority

(WV Code Chapter 17)

Fund 0506 FY 2023 Org 0810

1	Personal Services and Employee Benefits.....	00100	\$	370,704
2	Current Expenses	13000		287,707
3	Other Assets (R)	69000		2,370,019
4	BRIM Premium	91300		<u>201,541</u>
5	Total.....		\$	3,229,971

Any unexpended balances remaining in the appropriation for Other Assets (fund 0506, appropriation 69000) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

●

CHAPTER 29

(H. B. 3109 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the State Board of Education – State Department of Education, fund 0313, fiscal year 2023, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended supplemental appropriations from the balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor’s Statement of the State Fund, General Revenue, there now remains an unappropriated balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 0313, fiscal year 2023, organization 0402, be

supplemented and amended by adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

44 – State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2023 Org 0402

	Appropriation	General Revenue Fund
3a Equipment.....	07000	1,300,000
37a Allowance for Extraordinary Sustained Growth	94300	281,766

●

CHAPTER 30

(H. B. 3396 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 8, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT supplementing, amending, and increasing existing items of appropriation from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2023, organization 0803, for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 11, 2023, which included a statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2022, and further included the revised estimate of revenues for the fiscal year 2023, less regular appropriations for the fiscal year 2023; and

Whereas, It appears from the Statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 9017, fiscal year 2023, organization 0803, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION*110 - Division of Highways*

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2023 Org 0803

	Appropriation	State Road Fund
8 Interstate Construction.....	27800	70,000,000
9 Other Federal Aid Programs	27900	40,000,000
10 Appalachian Programs.....	28000	80,000,000

●

CHAPTER 31

(H. B. 3509 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT 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, 2023, to Miscellaneous Boards and Commissions, Public Service Commission – Consumer Advocate Fund, fund 8627, fiscal year 2023, organization 0926, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established that there now remains an unappropriated balance in Miscellaneous Boards and Commissions, Public Service Commission – Consumer Advocate Fund, fund 8627, fiscal year 2023, organization 0926, that is available for expenditure during the fiscal year ending June 30, 2023, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 8627, fiscal year 2023, organization 0926 be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

*287 - Public Service Commission –**Consumer Advocate Fund*

(WV Code Chapter 24)

Fund 8627 FY 2023 Org 0926

	Appropriation	Other Funds
1 Personal Services and Employee Benefits.....	00100 \$	20,000
2 Current Expenses	13000	150,000

●

CHAPTER 32

(H. B. 3510 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 8, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT 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, 2023, to the Department of Administration, Office of Technology – Chief Technology Officer Administration Fund, fund 2531, fiscal year 2023, organization 0231, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Administration, Office of Technology – Chief Technology Officer Administration Fund, fund 2531, fiscal year 2023, organization 0231, that is available for expenditure during the fiscal year ending June 30, 2023, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 2531, fiscal year 2023, organization 0231, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF ADMINISTRATION

*152 - Office of Technology –
Chief Technology Officer Administration Fund*

(WV Code Chapter 5A)

Fund 2531 FY 2023 Org 0231

	Appropriation	Other Funds
3 Current Expenses	13000	2,000,000

●

CHAPTER 33

(H. B. 3511 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 8, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT 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, 2023, to the Department of Education, State Board of Education – School Lunch Program, fund 8713, fiscal year 2023, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2023, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 8713, fiscal year 2023, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF EDUCATION

350 - State Board of Education –

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2023 Org 0402

	Appropriation	Federal Funds
6a Federal Coronavirus Pandemic.....	89101	743,436

●

CHAPTER 34

(H. B. 3512 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 9, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2023, to the Department of Health and Human Resources, Division of Human Services, fund 8722, fiscal year 2023, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2023, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 8722, fiscal year 2023, organization 0511, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

362 - Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 8722 FY 2023 Org 0511

	Appropriation	Federal Funds
4 Medical Services.....	18900	212,000,000
5 Medical Services Administrative Costs	78900	57,142,618



CHAPTER 35

(H. B. 3513 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT 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, 2023, to the Department of Homeland Security, Division of Corrections and Rehabilitation – Regional Jail and Correctional Facility Authority, fund 6675, fiscal year 2023, organization 0608, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Homeland Security, Division of Corrections and Rehabilitation –Regional Jail and Correctional Facility Authority, fund 6675, fiscal year 2023, organization 0608, that is available for expenditure during the fiscal year ending June 30, 2023, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 6675, fiscal year 2023, organization 0608, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HOMELAND SECURITY

228 - Division of Corrections and Rehabilitation –

Regional Jail and Correctional Facility Authority

(WV Code Chapter 15A)

Fund 6675 FY 2023 Org 0608

	Appropriation	Other Funds
2 Debt Service.....	04000	7,100,000

And, That the total appropriation for the fiscal year ending June 30, 2023, to fund 6675, fiscal year 2023, organization 0608, be supplemented and amended by adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

228 – Division of Corrections and Rehabilitation –

Regional Jail and Correctional Facility Authority

(WV Code Chapter 15A)

Fund 6675 FY 2023 Org 0608

	Appropriation	General Revenue Fund
1a Unclassified	09900	100,000
3a Repairs and Alterations.....	06400	5,000,000
3b Equipment.....	07000	2,000,000

●

CHAPTER 36

(H. B. 3514 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed on March 9, 2023; in effect from passage.]

[Approved by the Governor on March 16, 2023.]

AN ACT 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, 2023, to the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2023, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2023, organization 0506, that is available for expenditure during the fiscal year ending June 30, 2023, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 5214, fiscal year 2023, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

*211 - Division of Health –
West Virginia Birth-to-Three Fund*

(WV Code Chapter 16)

Fund 5214 FY 2023 Org 0506

	Appropriation	Other Funds
3 Current Expenses	13000	3,238,284

●

CHAPTER 37

(H. B. 3515 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed on March 10, 2023; in effect from passage.]

[Approved by the Governor on March 16, 2023.]

AN ACT 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, 2023, to the Department of Veterans' Assistance, Veterans' Facilities Support Fund, fund 6703, fiscal year 2023, organization 0613, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Veterans' Assistance, Veterans' Facilities Support Fund, fund 6703, fiscal year 2023, organization 0613, that is available for expenditure during the fiscal year ending June 30, 2023, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 6703, fiscal year 2023, organization 0613, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF VETERANS' ASSISTANCE

270 - Veterans' Facilities Support Fund

(WV Code Chapter 9A)

Fund 6703 FY 2023 Org 0613

	Appropriation	Other Funds
1a Veterans Nursing Home	28600	1,500,000

●

CHAPTER 38

(H. B. 3516 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed on March 9, 2023; in effect from passage.]

[Approved by the Governor on March 16, 2023.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2023, to the Department of Health and Human Resources, Division of Health – West Virginia Safe Drinking Water Treatment, fund 8824, fiscal year 2023, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2023, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 8824, fiscal year 2023, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

*360 - Division of Health –**West Virginia Safe Drinking Water Treatment*

(WV Code Chapter 16)

Fund 8824 FY 2023 Org 0506

		Appro- priation	Federal Funds
1	West Virginia Drinking Water Treatment		
2	Revolving Fund – Transfer.....	68900 \$	64,753,300

●

CHAPTER 39

(H. B. 3517 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 9, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT 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, 2023, to the Division of Human Services – Child Care and Development, fund 8817, fiscal year 2023, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2023, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 8817, fiscal year 2023, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

391 – Division of Human Services –

Child Care and Development

Fund 8817 FY 2023 Org 0511

	Appropriation	Federal Funds
3 Current Expenses	13000 \$	7,566,541

●

CHAPTER 40

(H. B. 3518 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT 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, 2023, to the Department of Agriculture, fund 8736, fiscal year 2023, organization 1400, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2023, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 8736, fiscal year 2023, organization 1400, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

EXECUTIVE

331 - Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2023 Org 1400

	Appropriation	Federal Funds
9 Federal Coronavirus Pandemic.....	89101	3,622,591

●

CHAPTER 41

(H. B. 3519 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 3, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2023, to the Department of Transportation, Division of Motor Vehicles, fund 8787, fiscal year 2023, organization 0802, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2023, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 8787, fiscal year 2023, organization 0802, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF TRANSPORTATION

370 - Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2023 Org 0802

	Appropriation	Federal Funds
1 Personal Services and Employee Benefits.....	00100 \$	100,000

●

CHAPTER 42

(H. B. 3520 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 3, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT 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, 2023, to the Department of Education, State Board of Education – Vocational Division, fund 8714, fiscal year 2023, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2023, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 8714, fiscal year 2023, organization 0402, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF EDUCATION

351 - State Board of Education –

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2023 Org 0402

	Appropriation	Federal Funds
3 Current Expenses	13000	3,000,000

●

CHAPTER 43

(H. B. 3521 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 3, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT 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, 2023, to the Division of Health – Maternal and Child Health, fund 8750, fiscal year 2023, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2023, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 8750, fiscal year 2023, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

384 - Division of Health –

Maternal and Child Health

Fund 8750 FY 2023 Org 0506

	Appropriation	Federal Funds
3 Current Expenses	13000	1,000,000

●

CHAPTER 44

(H. B. 3522 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 3, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT 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, 2023, to the Department of Commerce, Division of Natural Resources – License Fund – Wildlife Resources, fund 3200, fiscal year 2023, organization 0310, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Commerce, Division of Natural Resources – License Fund – Wildlife Resources, fund 3200, fiscal year 2023, organization 0310, that is available for expenditure during the fiscal year ending June 30, 2023, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 3200, fiscal year 2023, organization 0310, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF COMMERCE

*167 - Division of Natural Resources –
 License Fund – Wildlife Resources
 (WV Code Chapter 20)*

Fund 3200 FY 2023 Org 0310

	Appropriation	Other Funds
1 Wildlife Resources.....	02300 \$	200,000

●

CHAPTER 45

(H. B. 3523 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 3, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT 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, 2023, to Miscellaneous Boards and Commissions, Economic Development Authority, fund 8893, fiscal year 2023, organization 0944, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2023, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 8893, fiscal year 2023, organization 0944, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

380a - Economic Development Authority

(WV Code Chapter 31)

Fund 8893 FY 2023 Org 0944

	Appropriation	Federal Funds
1 Current Expenses	13000 \$	5,000,000

●

CHAPTER 46

(H. B. 3524 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT 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, 2023, to the Department of Agriculture – West Virginia Spay Neuter Assistance Fund, fund 1481, fiscal year 2023, organization 1400, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Agriculture, West Virginia Spay Neuter Assistance Fund, fund 1481, fiscal year 2023, organization 1400, that is available for expenditure during the fiscal year ending June 30, 2023, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 1481, fiscal year 2023, organization 1400, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

EXECUTIVE

*134 - Department of Agriculture –
West Virginia Spay Neuter Assistance Fund*

(WV Code Chapter 19)

Fund 1481 FY 2023 Org 1400

	Appropriation	Other Funds
1 Current Expenses	13000	400,000

●

CHAPTER 47

(H. B. 3526 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed on March 10, 2023; in effect from passage.]

[Approved by the Governor on March 16, 2023.]

AN ACT 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, 2023, to Miscellaneous Boards and Commissions, Public Service Commission, fund 8623, fiscal year 2023, organization 0926, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established that there now remains an unappropriated balance in Miscellaneous Boards and Commissions, Public Service Commission, fund 8623, fiscal year 2023, organization 0926, that is available for expenditure during the fiscal year ending June 30, 2023, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 8623, fiscal year 2023, organization 0926 be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

284 - Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2023 Org 0926

	Appropriation	Other Funds
6 Repairs and Alterations.....	06400	248,780
10 Debt Payment/Capital Outlay	52000	2,800,000

●

CHAPTER 48

(H. B. 3527 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 3, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, State Excess Lottery Revenue Fund, Department of Education, fund 3517, fiscal year 2023, organization 0402, and to the Department of Education, School Building Authority, fund 3514, fiscal year 2023, organization 0404 by supplementing and amending appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Excess Lottery Revenue Fund, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023; and

Whereas, It appears from the Governor's Statement of the State Excess Lottery Revenue Fund, there now remains an unappropriated balance in the State Treasury which is available for expiration during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 3517, fiscal year 2023, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 5. Appropriations from state excess lottery revenue fund.

314a - Department of Education

Fund 3517 FY 2023 Org 0402

	Appropriation		Excess Lottery Funds
1 Equipment.....	07000 \$		15,000,000

And, that the total appropriation for the fiscal year ending June 30, 2023, to fund 3514, fiscal year 2023, organization 0404, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 5. Appropriations from state excess lottery revenue fund.

315 - Department of Education –

School Building Authority

Fund 3514 FY 2023 Org 0404

	Appropriation		Excess Lottery Funds
2 Directed Transfer	70000 \$		25,000,000

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CHAPTER 49

(H. B. 3528 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 3, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT 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, 2023, to the Department of Health and Human Resources, Division of Health – Hospital Services Revenue Account Special Fund Capital Improvement, Renovation and Operations, fund 5156, fiscal year 2023, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources, Division of Health – Hospital Services Revenue Account Special Fund Capital Improvement, Renovation and Operations, fund 5156, fiscal year 2023, organization 0506, that is available for expenditure during the fiscal year ending June 30, 2023, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 5156, fiscal year 2023, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.**DEPARTMENT OF HEALTH AND HUMAN RESOURCES***206 – Division of Health –**Hospital Services Revenue Account**Special Fund**Capital Improvement, Renovation and Operations*

(WV Code Chapter 16)

Fund 5156 FY 2023 Org 0506

	Appropriation	Other Funds
1 Institutional Facilities Operations..	33500 \$	29,877,096

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CHAPTER 50

(H. B. 3529 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 8, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2023, to the Department of Commerce, State Board of Rehabilitation – Division of Rehabilitation Services, fund 8734, fiscal year 2023, organization 0932, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2023, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 8734, fiscal year 2023, organization 0932, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF COMMERCE

343 – State Board of Rehabilitation –

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2023 Org 0932

	Appropriation	Federal Funds
4 Current Expenses	13000	34,000,000

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CHAPTER 51

(H. B. 3542 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT expiring funds to the Department of Administration, Board of Risk and Insurance Management, Public Entity Insurance Trust Fund, fund 2363, fiscal year 2023, organization 0218, in the amount of \$50,000,000, from the Department of Administration, Board of Risk and Insurance Management, Mine Subsidence Insurance Fund, fund 2361, fiscal year 2023, organization 0218.

Whereas, The Governor finds that the account balance in the Department of Administration, Board of Risk and Insurance Management, Mine Subsidence Insurance Fund, fund 2361, fiscal year 2023, organization 0218, exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending June 30, 2023, in the Department of Administration, Board of Risk and Insurance Management, Mine Subsidence Insurance Fund, fund 2361, fiscal year 2023, organization 0218 be decreased by expiring the amount of \$50,000,000 to the Department of Administration, Board of Risk and Insurance Management, Public Entity Insurance Trust Fund, fund 2363, organization 0218.



CHAPTER 52

**(H. B. 3553 - By Delegates Summers, Espinosa, Gearheart,
Horst, Hott, Riley, Barnhart, Mazzocchi, Anderson and
Rowe)**

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT 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 Health and Human Resources, Central Office, fund 0407, fiscal year 2023, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 11, 2023, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included the estimate of revenue for the fiscal year 2023, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2023, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 0407, fiscal year 2023, organization 0506, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

56 - Division of Health-

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2023 Org 0506

	Appropriation	General Revenue Fund
4a Chief Medical Examiner – Surplus (R)	#####	250,000

CHAPTER 53

(H. B. 3557 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 9, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2023, to the Department of Veterans' Assistance, fund 8858, fiscal year 2023, organization 0613, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2023, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 8858, fiscal year 2023, organization 0613, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF VETERANS' ASSISTANCE

373 – Department of Veterans' Assistance

(WV Code Chapter 9A)

Fund 8858 FY 2023 Org 0613

	Appropriation	Federal Funds
7 Buildings	25800	750,000

CHAPTER 54

(H. B. 3563 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2023, to the Department of Health and Human Resources, Division of Human Services, fund 8722, fiscal year 2023, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

WHEREAS, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2023, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 8722, fiscal year 2023, organization 0511, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

362 - Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 8722 FY 2023 Org 0511

	Appropriation	Federal Funds
3 Current Expenses	13000	65,750,000
9 Federal Coronavirus Pandemic	89101	68,579,000

CHAPTER 55

(H. B. 3564 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 16, 2023.]

AN ACT 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, 2023, to the Division of Human Services – Energy Assistance, fund 8755, fiscal year 2023, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2023.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2023, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 8755, fiscal year 2023, organization 0511, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

388 - Division of Human Services –

Energy Assistance

Fund 8755 FY 2023 Org 0511

	Appropriation	Federal Funds
4 Federal Coronavirus Pandemic.....	89101	20,000,000

And, That the total appropriation for the fiscal year ending June 30, 2023, to fund 8755, fiscal year 2023, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

388 - Division of Human Services –

Energy Assistance

Fund 8755 FY 2023 Org 0511

	Appropriation	Federal Funds
3 Current Expenses.....	13000	20,000,000

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CHAPTER 56

**(Com. Sub. for H. B. 2221 - By Delegates Westfall, Kelly,
Steele, Shamblin, Hillenbrand, Kump and Garcia)**

[Passed March 9, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §38-10-4 of the Code of West Virginia, 1931, as amended, relating to bankruptcy; correcting an erroneous term; updating the monetary amounts of certain exemptions to account for inflation, including those amounts related to household goods, jewelry, tools of the trade, and payments made on account of a personal bodily injury; excluding life insurance proceeds paid to the debtor as a beneficiary; excluding any annuities, other than those annuities included in §38-10-4(i)(5), which are paid to the debtor as a beneficiary; and, excluding any annuities or life insurance policies owned by the debtor which are payable to someone other than the debtor, including any applicable cash surrender value, from inclusion in the bankruptcy estate used to satisfy creditors in a bankruptcy proceeding.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREEES IN BANKRUPTCY.

§38-10-4. Exemptions of property in bankruptcy proceedings.

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 \$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 §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 subdivision may exceed \$35,000 in value but may not exceed \$250,000 per household.

(b) The debtor's interest, not to exceed \$7,500 in value, in one motor vehicle.

(c) The debtor's interest, not to exceed \$800 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 subdivision may not exceed \$16,000.

(d) The debtor's interest, not to exceed \$2,000 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 subdivision (a) of this subsection in any property.

(f) The debtor's interest, not to exceed \$3,000 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 unmaturing life insurance contract owned by the debtor, other than a credit life insurance contract.

(h) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(i) 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, including a simplified employee pension 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.

(j) 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) All life insurance proceeds paid to the debtor as a beneficiary, any annuities, other than those annuities included in §38-10-4(i)(5), which are paid to the debtor as a beneficiary, or any annuities or life insurance policies owned by the debtor which are payable to someone other than the debtor, including any applicable cash surrender value.

(4) A payment, not to exceed \$50,000 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 §18-30-1 *et seq.* of this code on behalf of any beneficiary.

(k) Solely for the purpose of applying the provisions of 11 U.S.C. § 522(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 of the debtor's bankruptcy estate the property specified under 11 U.S.C. § 522(d).

(l) The amendments made to this section during the 2023 regular session of the Legislature shall apply to bankruptcies filed on or after the effective date of those amendments.

CHAPTER 57

(S. B. 246 - By Senator Woodrum)

[Passed March 4, 2023; in effect 90 days from passage (June 2, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §31G-1-3 of the Code of West Virginia, 1931, as amended, relating to revising membership of the Broadband Enhancement Council; eliminating obsolete language; increasing number of members of council representing urban business users in state; and increasing number of members of council representing urban residential users in state.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.

§31G-1-3. Broadband Enhancement Council; members of council; administrative support.

(a) The Broadband Enhancement Council is hereby continued. The current members, funds, and personnel shall continue in effect and be wholly transferred from the Department of Commerce to the Department of Economic Development, except as may be hereinafter provided.

(b) The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties are considered and held to be, and are hereby determined to be, essential governmental functions and for a public purpose. The council shall be situated within the Department of Economic Development for administrative, personnel, and technical support services only.

(c) The council shall consist of 13 voting members, designated as follows:

(1) The Secretary of the Department of Economic Development or his or her designee;

(2) The Chief Information Officer or his or her designee;

(3) The Vice Chancellor for Administration of the Higher Education Policy Commission or his or her designee;

(4) The State Superintendent of Schools or his or her designee; and

(5) Nine public members that may serve no more than three consecutive three-year terms from the date of their appointment and are appointed by and serve at the will and pleasure of the Governor with the advice and consent of the Senate, as follows:

(i) One member representing users of large amounts of broadband services in this state;

(ii) One member from each congressional district representing rural business users in this state;

(iii) One member from each congressional district representing rural residential users in this state;

(iv) Two members representing urban business users in this state; and

(v) Two members representing urban residential users in this state.

(6) Additionally, the President of the Senate shall name two Senators from the West Virginia Senate, one from each party, and the Speaker of the House shall name two Delegates from the West Virginia House of Delegates, one from each party, each to serve in the capacity of ex officio, nonvoting advisory members of the council.

(d) A chair and vice chair shall be elected from the members of the council for a term of two years: *Provided*, That a chair or vice-chair may not serve more than two consecutive full or partial terms in that capacity. In the absence of the chair, the vice chair shall serve as chair. The council shall appoint a secretary-treasurer who need not be a member of the council and who, among other tasks or functions designated by the council, shall keep records of its proceedings.

(e) The council may appoint committees or subcommittees to investigate and make recommendations to the full council. Members of these committees or subcommittees need not be members of the council.

(f) Seven voting members of the council constitute a quorum and the affirmative vote of a simple majority of those members present is necessary for any action taken by vote of the council.

(g) The gubernatorial appointed members shall be deemed part-time public officials, and may pursue and engage in another business or occupation or gainful employment. Any person employed by, owning an interest in, or otherwise associated with a broadband deployment project, project sponsor, or project participant may serve as a council member and is not disqualified from serving as a council member because of a conflict of interest prohibited under §6B-2-5 of this code and is not subject to prosecution for violation of that section when the violation is created solely as a result of his or her relationship with the broadband deployment project, project sponsor, or project participant so long as the member recuses himself or herself from board participation regarding the conflicting issue in the manner set forth in §6B-2-5 of this code and the legislative rules promulgated by the West Virginia Ethics Commission.

(h) No member of the council who serves by virtue of his or her office may receive any compensation or reimbursement of expenses for serving as a member. The public members and members of any committees or subcommittees are entitled to be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of his or her official

duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(i) No person is subject to antitrust or unfair competition liability based on membership or participation in the council, which provides an essential governmental function and enjoys state action immunity.

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CHAPTER 58

(S. B. 529 - By Senators Woodrum, Barrett, Trump, and Hamilton)

[Passed March 6, 2023; in effect 90 days from passage (June 4, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §47B-10-3 of the Code of West Virginia, 1931, as amended, relating to allowing for the formation of limited liability limited partnerships.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. LIMITED LIABILITY PARTNERSHIPS.

§47B-10-3. Name of registered limited liability partnership.

(a) The name of a registered limited liability partnership shall contain either the words Registered Limited Liability Partnership, or the abbreviation L.L.P. or LLP as the last words or letters of its name; or

(b) A registered limited liability limited partnership shall contain the words Registered Limited Liability Limited Partnership, or the abbreviation L.L.L.P. or LLLP as the last words or letters of its name.



CHAPTER 59

(Com. Sub. for Com. Sub. for S. B. 273 - By Senators Trump, Woelfel, Plymale, Rucker, Barrett, and Deeds)

[Passed March 11, 2023; in effect from passage]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §49-2-101, §49-2-102, and §49-2-809 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §49-10-101, §49-10-102, and §49-10-103; to amend said code by adding thereto a new article, designated §49-11-101, all relating to child welfare; continuing the Bureau for Social Services; providing authority to the bureau; providing how the commissioner shall allocate child protective service workers; requiring reporting; requiring the department to have a redundancy centralized intake system; setting forth requirements for data submission in the event a system exists; providing that the Bureau for Social Services shall develop a merit-based system; providing legislative findings; providing that the merit-based system is not subject to the grievance process; providing that for existing employees there is no grievance procedure for a regional pay disparity for the same job classification and establishing time frames for implementation; and updating the child welfare dashboard.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-101. Authorization and responsibility; Bureau for Social Services.

(a) The Bureau for Social Services is continued within the department. The bureau is under the immediate supervision of a commissioner.

(b) The Bureau for Social Services is authorized to provide care, support, and protective services for children who are handicapped by dependency, neglect, single parent status, mental or physical disability, or who for other reasons are in need of public service. The bureau is also authorized to accept children for care from their parent or parents, guardian, custodian, or relatives, and to accept the custody of children committed to its care by courts. The bureau or any county office of the department is also authorized to accept temporary custody of children for care from any law-enforcement officer in an emergency situation.

(c) The bureau is responsible for the care of the infant child of an unmarried mother who has been committed to the custody of the department while the infant is placed in the same licensed child welfare agency as his or her mother. The bureau provides care for those children in family homes meeting required standards, at board or otherwise, through a licensed child welfare agency, or in a state institution providing care for dependent or neglected children. If practical, when placing any child in the care of a family or a child welfare agency, the bureau shall select a family holding the same religious belief as the parents or relatives of the child, or a child welfare agency conducted under religious auspices of the same belief as the parents or relatives.

§49-2-102. Staffing Allocation for Child Protective Services Workers.

Notwithstanding any other provision of this code to the contrary, effective July 1, 2024, the commissioner shall allocate and station child protective services workers by county based on population, referrals, and average caseload. The allocation may not decrease below the bureau's allocation of January 1, 2023. The county population shall be based on the United States Census. The bureau shall report the allocation to the Legislative Oversight Commission on Health and Human Resources Accountability by July 1 each year.

§49-2-809. Reporting procedures.

(a) Reports of child abuse and neglect pursuant to this article shall be made immediately to the department of child protective services by a method established by the Bureau for Social Services:

Provided, That if the method for reporting is web-based, the Bureau for Social Services shall maintain a system for addressing emergency situations that require immediate attention and shall be followed by a written report within 48 hours if so requested by the receiving agency. The Bureau for Social Services shall establish and maintain a 24-hour, seven-day-a-week telephone number to receive calls reporting suspected or known child abuse or neglect.

(b) The department shall have a redundancy for its system in the event of an outage to receive reports. This redundancy system shall be transparent, meaning that it shall allow for reporting in the same means as if the outage had not occurred and no time delay shall occur from when the outage occurs to when the redundancy system begins to operate. This redundancy system shall be operational no later than July 1, 2023. If the department contends that it currently has a redundancy system, it shall describe the system, provide an operational date for the system, and explain why calls to centralized intake were unanswered to the Joint Committee on Government and Finance by July 1, 2023.

(c) A copy of any report of serious physical abuse, sexual abuse, or assault shall be forwarded by the department to the appropriate law-enforcement agency, the prosecuting attorney, or the coroner or medical examiner's office. All reports under this article are confidential. Reports of known or suspected institutional child abuse or neglect shall be made and received as all other reports made pursuant to this article.

(d) The department shall annually submit a report in an electronic format, via the legislative webpage, on July 1 to the Joint Committee on Government and Finance, which shall contain: How many calls were made to centralized intake on a per county basis, how many calls were referred to centralized intake on a per county basis, how many calls were screened out centralized intake on a per county basis, and the time from referral to investigation on a per county basis.

ARTICLE 10. EXEMPTION FROM WEST VIRGINIA DIVISION OF PERSONNEL.

§49-10-101. Legislative findings.

The Legislature finds the State of West Virginia is experiencing a child welfare crisis. From 2016 to 2020, the child protective service vacancy rate has increased from 9.7 percent to 33 percent. This significant lack of staffing has caused a delay in response times to begin investigations. During the same time period, the average hours to start a child protective service investigation after referral went from 119.1 hours in 2016 to now averaging 428.1 hours in 2020. This significant failure to begin the investigation can and has cost lives. The Legislature finds that the Bureau for Social Services is having extreme difficulty recruiting and retaining child protective service workers, youth service workers, adult protective service workers, and other related workers, including necessary casework support personnel and managers at the county level, who assist in the provision of services to vulnerable populations.

§49-10-102. Bureau for Social Service employees exempt from Division of Personnel.

(a) The Commissioner of the Bureau for Social Services shall develop a merit-based system policy for the bureau. The procedure shall include classification specifications, and may include compensation adjustments, retention incentives, and hiring approval by the commissioner. The commissioner shall have the full authority to evaluate applicants for employment or promotion or make classification determinations for positions within the merit-based system. The pay rates and employment requirements shall be put into effect on or before January 1, 2024. This merit-based system shall apply to new employees in the above referenced job classifications and for existing employees who elect, in writing to enter the merit-based system. The merit-based system is exempt from the Division of Personnel and all requirements of §29-6-1 *et seq.* of this code and any related rules. There is no requirement for uniformity regarding the pay scale for the same classification between regions of the state to account for market rates and demand for specific positions. The provisions of §6C-2-1 *et seq.* of this code are not applicable.

(b) Funding for the pay rates and employment requirements shall be provided from the appropriation to the bureau.

(c) The commissioner may conduct periodic wage and compensation analysis of identified market rates for the above positions as determined by the commissioner.

(d) The commissioner shall report to Legislative Oversight Commission of Health and Human Resources accountability by January 1, 2024.

§49-10-103. Bureau for Social Service employees no requirement uniformity in pay scale.

The Legislature finds that the Bureau for Social Services is having extreme difficulty retaining child protective service workers, youth service workers, adult protective service workers, and other related workers, including necessary casework support personnel and managers at the county level, who assist in the provision of services to vulnerable populations. To retain qualified employees in these crucial positions, there is no requirement for uniformity regarding the pay scale for the same classification between regions of the state to account for market rates and demand for specific positions. The provisions of §6C-2-1 *et seq.* of this code shall be applicable to the employees of the merit-based system as set forth in §49-10-102 of this code, however, there is no right to a grievance for any such regional pay disparity for the same job classification.

ARTICLE 11. SYSTEM REPORTING.

§49-11-101. Systemic reporting transparency; rulemaking.

The commissioner shall change the existing child welfare data dashboard by July 1, 2023, to report on system-wide issues, including, but not limited to, system-level performance indicators, intake hotline performance indicators, field investigation performance indicators, open case performance indicators, out-of-home placement performance indicators, and federally mandated performance indicators.

CHAPTER 60

(Com. Sub. for S. B. 647 - By Senator Trump)

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §49-4-601b of the Code of West Virginia, 1931, as amended, relating to substantiation of abuse and neglect allegations; requiring that when an abuse and/or neglect allegation is substantiated and a child abuse petition could be filed and the department does not do so, records related to the allegation are sealed after one year, absent a new allegation within that year; excluding persons from having records sealed who have a substantiated case but no court case can be filed; requiring that substantiated cases where the court does not adjudicate abuse and/or neglect be deemed unsubstantiated; allowing a petition to seal a file after five years for persons found to be creating an abusing parent; exceptions; criteria; directing the department to propose legislative rules to effectuate the statutory directive; clarifying terms relating to abuse and/or neglect; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

PART VI. Procedures in cases of child neglect or abuse.

§49-4-601b. Substantiation by the department of abuse and neglect; file purging; expungement; exceptions.

(a) Notwithstanding any provision of this code to the contrary, when the department substantiates an allegation of abuse and/or neglect against a person, but there is no judicial finding of abuse and/or neglect as a result of the allegation, the department shall

provide written notice of the substantiation to the person by certified mail, return receipt requested.

(b) The person against whom an abuse and/or neglect allegation has been substantiated, as described in subsection (a) of this section, has the right to contest the substantiation by filing a grievance with the board of review of the department and has the right to appeal the decision of the board of review to the court, in accordance with the provisions of §29A-5-1 *et seq.* of this code regarding administrative appeals.

(c) The secretary of the department shall propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code, within the applicable time limit to be considered by the Legislature during its regular session in the year 2021, which rules shall include, at a minimum:

(1) Provisions for ensuring that an individual against whom the department has substantiated an allegation of abuse and/or neglect, but against whom there is no judicial finding of abuse and/or neglect, receives written notice of the substantiation in a timely manner. The written notice shall at a minimum, state the following:

(A) The name of the child the person is alleged to have abused and/or neglected, the place or places where the abuse and/or neglect allegedly occurred, and the date or dates on which the abuse and/or neglect is alleged to have occurred;

(B) That the person has a right to file a grievance protesting the substantiation of abuse and/or neglect with the board of review of the department and clear instructions regarding how to file a grievance with the board of review, including a description of any applicable time limits;

(C) That the person has a right to appeal an adverse decision of the board of review of the department to the courts and notice of any applicable time limits; and

(D) A description of any public or nonpublic registry on which the person's name will be included as a result of a substantiated allegation of abuse and/or neglect and a statement that the inclusion

of the person's name on the registry may prevent the person from holding jobs from which child abusers are disqualified, or from providing foster or kinship care to a child in the future;

(2) Provisions for ensuring that a person against whom an allegation of abuse and/or neglect has been substantiated, but against whom there is no judicial finding of abuse and/or neglect, may file a grievance with the department and provisions guaranteeing that he or she will have a full and fair opportunity to be heard; and

(3) Provisions requiring the department to remove a person's name from an abuse and/or neglect registry maintained by the department if a substantiated allegation is successfully challenged in the board of review or in a court.

(d) Notwithstanding any provision of this code to the contrary:

(1) Where any allegation of abuse and/or neglect is substantiated and a petition for abuse and/or neglect could be filed and the department does not file a petition, all department records related to the allegation shall be sealed one year after the substantiation determination, unless during the one-year period another allegation of child abuse and/or neglect against the person is substantiated: *Provided*, That the provisions of this subdivision do not apply to a person against whom an allegation is substantiated but the circumstances do not allow for the filing of a petition for abuse and/or neglect;

(2) Where an allegation of child abuse and/or neglect is substantiated and a petition is filed with the circuit court which does not end in an adjudication that abuse and/or neglect occurred, the allegation shall be considered to have been unsubstantiated.

(3)(A) Where an allegation of child abuse and/or neglect is substantiated and a judicial determination of child abuse and/or neglect is found, a person may petition the circuit court which found the person to be an abusing parent to have his or her department record sealed after no less than five years have elapsed since the finding of abuse and/or neglect is rendered: *Provided*,

That a petition may not be filed if the person had been the subject of a substantiated allegation of abuse and/or neglect during the period of time after the finding and prior to the filing of the petition; and

(B) In its consideration of a petition filed under this subdivision, the court, in its discretion, may look at all relevant factors related to the petition, including, but not limited to, efforts at rehabilitation and family reunification.

(e) The sealing of a record pursuant to subsection (d) of this section means that any inquiry of the department about a person having a record of child abuse and/or neglect for purposes of possible employment shall be answered in the negative.

(f) The secretary is directed to propose legislative rules pursuant to §29A-1-1 *et seq.* of this code to effectuate the amendments to this section enacted during the regular session of the Legislature, 2023.

CHAPTER 61

**(Com. Sub. for H. B. 2016 - By Delegates Summers, Tully,
Rohrbach and Espinosa)**

[Passed March 10, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §16-5-28 of the Code of West Virginia, 1931, as amended; to amend and reenact §49-4-608 of said code; and to amend and reenact §49-5-101 of said code, all relating to releasing information to facilitate care of a child; providing for qualified disclosure of confidential information between certain entities; requiring court notices be sent to child placement agencies in adoption cases; requiring State Registrar to issue copy of vital record to child placement agency; requiring the disclosed records to be maintained in compliance with code; and requiring the department to provide electronic access to certain information.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-28. Copies from the system of vital statistics.

In accordance with §16-5-27 of this code and the legislative rules promulgated thereunder:

(a) The State Registrar and other custodians of vital records authorized to issue certified copies shall upon receipt of an application, issue a certified copy of a vital record in his or her custody to the registrant, his or her parents, spouse, adult children, grandchildren or great-grandchildren, legal guardian, or their respective authorized representative. Additionally, the State

Registrar and other custodians of vital records, upon receipt of an application, shall issue a certified copy of a vital record in his or her custody to a child placing agency completing adoption on behalf of the department. Others may be authorized to obtain certified copies when they demonstrate that the record is needed for the determination or protection of his or her personal or property right. The department may promulgate rules to further define others who may obtain copies of vital records filed under this article.

(b) All forms and procedures used in the issuance of certified copies of vital records in the state shall be approved by the State Registrar. All certified copies of certificates of birth issued shall have security features that deter the document from being altered, counterfeited, duplicated, or simulated without ready detection in compliance with regulations issued by the federal government.

(c) Each copy or abstract issued shall show the date of registration, and copies or abstracts issued from records marked "Amended" shall be similarly marked and, when possible, show the effective date of the amendment. Copies issued from records marked "Delayed" shall be similarly marked and shall include the date of registration and a description of the evidence used to establish the delayed certificate. Any copy issued of a "Certificate of Foreign Birth" shall indicate the foreign birth and show the actual place of birth and the statement that the certificate is not proof of United States citizenship for the person for whom it is issued.

(d) A certified copy of a vital record issued in accordance with this section shall be considered for all purposes the same as the original, and shall be prima facie evidence of the facts stated in the record: *Provided*, That the evidentiary value of a certificate or record filed more than one year after the event, or a record which has been amended, or a certificate of foreign birth, shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

(e) Nothing in this section shall be construed to permit disclosure of information contained in the "Information for

Medical and Health Use Only” section of the certificate of birth or the “Information for Statistical Purposes Only” section of the certificate of marriage or certificate of divorce or annulment unless specifically authorized by the State Registrar for statistical or research purposes. This information is not subject to subpoena or court order and is not admissible before any court, tribunal, or judicial body. Information collected for administrative use may not be included on certified copies of records, and may be disclosed only for administrative, statistical, or research purposes authorized by state or federal law and legislative rule.

(f) When the State Registrar receives information that a certificate may have been registered through fraud or misrepresentation, he or she may withhold issuance of any copy of that certificate.

(1) The State Registrar shall inform the registrant or the registrant's authorized representative of the right to request a hearing by the commissioner.

(2) The secretary of the department may authorize the State Registrar or another person to hold an investigation or hearing to determine if fraud or misrepresentation has occurred.

(3) If upon conclusion of a hearing or investigation no fraud or misrepresentation is found, copies may be issued.

(4) If fraud or misrepresentation is found by a preponderance of the evidence, the State Registrar shall remove the certificate from the file. The certificate and evidence will be retained but will not be subject to inspection or copying except upon order of a court of competent jurisdiction or by the State Registrar for purposes of prosecution or administration of the system of vital statistics.

(g) No person may prepare or issue any certificate which purports to be an original, certified copy, or copy of a vital record, except as authorized by this article, or by legislative rule.

CHAPTER 49. CHILD WELFARE.

ARTICLE 4. COURT ACTIONS.

§49-4-608. Permanency hearing; frequency; transitional planning; out-of-state placement; findings; notice; permanent placement review.

(a) *Permanency hearing when reasonable efforts are not required.* — If the court finds pursuant to this article that the department is not required to make reasonable efforts to preserve the family, then notwithstanding any other provision a permanency hearing must be held within 30 days following the entry of the court order so finding, and a permanent placement review hearing must be conducted at least once every 90 days thereafter until a permanent placement is achieved.

(b) *Permanency hearing every 12 months until permanency is achieved.* — If 12 months after receipt by the department or its authorized agent of physical care, custody, and control of a child either by a court-ordered placement or by a voluntary agreement the department has not placed a child in an adoptive home, placed the child with a natural parent, placed the child in legal guardianship, or permanently placed the child with a fit and willing relative, the court shall hold a permanency hearing. The department shall file a progress report with the court detailing the efforts that have been made to place the child in a permanent home and copies of the child's case plan, which shall include the permanency plan as defined in §49-1-201 and §49-4-604 of this code. Copies of the report shall be sent to the parties and all persons entitled to notice and the right to be heard. The court shall schedule a hearing giving notice and the right to be present to the child's attorney; the child; the child's parents; the child's guardians; the child's foster parents; any preadoptive parent, or any relative providing care for the child; any person entitled to notice and the right to be heard; and other persons as the court may, in its discretion, direct. The child's presence may be waived by the child's attorney at the request of the child or if the child is younger than 12 years-of-age and would suffer emotional harm. The purpose of the hearing is to review the child's case, to determine whether and under what conditions the child's commitment to the department shall continue, to determine what efforts are necessary to provide the child with a permanent home, and to determine if the department has made reasonable

efforts to finalize the permanency plan. The court shall conduct another permanency hearing within 12 months thereafter for each child who remains in the care, custody, and control of the department until the child is placed in an adoptive home, returned to his or her parents, placed in legal guardianship, or permanently placed with a fit and willing relative.

(c) *Transitional planning for older children.* — In the case of a child who has attained 16 years of age, the court shall determine the services needed to assist the child to make the transition from foster care to independent living. The child's case plan should specify services aimed at transitioning the child into adulthood. When a child turns 17, or as soon as a child aged 17 comes into a case, the department must immediately provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child. The plan must include specific options on housing, health insurance, education, local opportunities for mentors, continuing support services, work force support, and employment services, and the plan should be as detailed as the child may elect. In addition to these requirements, when a child with special needs turns 17, or as soon as a child aged 17 with special needs comes into a case, he or she is entitled to the appointment of a department adult services worker to the multidisciplinary treatment team, and coordination between the multidisciplinary treatment team and other transition planning teams, such as special education individualized education planning (IEP) teams.

(d) *Out-of-state placements.* — A court may not order a child to be placed in an out-of-state facility unless the child is diagnosed with a health issue that no in-state facility or program serves unless a placement out of state is in closer proximity to the child's family for the necessary care or the services are able to be provided more timely. If the child is to be placed with a relative or other responsible person out of state, the court shall use judicial leadership to help expedite the process under the Interstate Compact for the Placement of Children provided in §49-7-101 and §49-7-102 of this code and the Uniform Child Custody

Jurisdiction and Enforcement Act provided in §48-20-101 *et seq.* of this code.

(e) *Findings in order.* — At the conclusion of the hearing the court shall, in accordance with the best interests of the child, enter an order containing all the appropriate findings. The court order shall state:

(1) Whether or not the department made reasonable efforts to preserve the family and to prevent out-of-home placement or that the specific situation made the effort unreasonable;

(2) Whether or not the department made reasonable efforts to finalize the permanency plan and concurrent plan for the child;

(3) The appropriateness of the child's current placement, including its distance from the child's home and whether or not it is the least restrictive one (or most family-like one) available;

(4) The appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement;

(5) Services required to meet the child's needs and achieve permanency; and

(6) In addition, in the case of any child for whom another planned permanent living arrangement is the permanency plan the court shall: (A) Inquire of the child about the desired permanency outcome for the child; (B) make a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child; and (C) provide in the court order compelling reasons why it continues to not be in the best interest of the child to: (i) return home, (ii) be placed for adoption, (iii) be placed with a legal guardian, or (iv) be placed with a fit and willing relative.

(f) The department shall annually report to the court the current status of the placements of children in the care, custody, and control of the state department who have not been adopted.

(g) The department shall file a report with the court in any case where any child in the custody of the state receives more than three placements in one year no later than 30 days after the third placement. This report shall be provided to all parties and persons entitled to notice and the right to be heard. Upon motion by any party, the court shall review these placements and determine what efforts are necessary to provide the child with a permanent home. No report may be provided to any parent or parent's attorney whose parental rights have been terminated pursuant to this article.

(h) The department shall give actual notice, in writing, to the court, the child, the child's attorney, the parents, and the parents' attorney at least 48 hours prior to the move if this is a planned move, or within 48 hours of the next business day after the move if the child is in imminent danger in the child's current placement, except where the notification would endanger the child or the foster family. A multidisciplinary treatment team shall convene as soon as practicable after notice to explore placement options. This requirement is not waived by placement of the child in a home or other residence maintained by a private provider. No notice may be provided pursuant to this provision to any parent or parent's attorney whose parental rights have been terminated pursuant to this article.

(i) Nothing in this article precludes any party from petitioning the court for review of the child's case at any time. The court shall grant the petition upon a showing that there is a change in circumstance or needs of the child that warrants court review.

(j) Any foster parent, preadoptive parent or relative providing care for the child shall be given notice of and the right to be heard at the permanency hearing provided in this section.

(k) Once an adoption case is assigned to a child placing agency, all related court hearing notices shall be sent to the child placing agency as an interested party.

ARTICLE 5. RECORD KEEPING AND DATABASE.

§49-5-101. Confidentiality of records; non-release of records; exceptions; penalties.

(a) Except as otherwise provided in this chapter or by order of the court, all records and information concerning a child or juvenile which are maintained by the Division of Corrections and Rehabilitation, the Department of Health and Human Resources, a child agency or facility, or court or law-enforcement agency, are confidential and may not be released or disclosed to anyone, including any federal or state agency.

(b) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, records concerning a child or juvenile, except adoption records and records disclosing the identity of a person making a complaint of child abuse or neglect, may be made available:

(1) Where otherwise authorized by this chapter;

(2) To:

(A) The child;

(B) A parent whose parental rights have not been terminated;

(C) The attorney of the child or parent; and

(D) The Juvenile Justice Commission and its' designees acting in the course of their official duties;

(3) With the written consent of the child or of someone authorized to act on the child's behalf; and

(4) Pursuant to an order of a court of record: *Provided*, That the court shall review the record or records for relevancy and materiality to the issues in the proceeding and safety and may issue an order to limit the examination and use of the records or any part thereof.

(c) In addition to those persons or entities to whom information may be disclosed under subsection (b) of this section, information related to child abuse or neglect proceedings, except information

relating to the identity of the person reporting or making a complaint of child abuse or neglect, shall be made available upon request to:

(1) Federal, state, or local government entities, or any agent of those entities, including law-enforcement agencies and prosecuting attorneys, having a need for that information in order to carry out its responsibilities under law to protect children from abuse and neglect;

(2) The child fatality review team;

(3) Child abuse citizen review panels;

(4) Multidisciplinary investigative and treatment teams; or

(5) A grand jury, circuit court, or family court, upon a finding that information in the records is necessary for the determination of an issue before the grand jury, circuit court, or family court; and

(6) The West Virginia Crime Victims Compensation Fund and its designees acting in the course of their official duties.

(d) If there is a child fatality or near fatality due to child abuse and neglect, information relating to a fatality or near fatality shall be made public by the Department of Health and Human Resources and provided to the entities described in subsection (c) of this section, all under the circumstances described in that subsection: *Provided*, That information released by the Department of Health and Human Resources pursuant to this subsection may not include the identity of a person reporting or making a complaint of child abuse or neglect. For purposes of this subsection, “near fatality” means any medical condition of the child which is certified by the attending physician to be life threatening.

(e) Except in juvenile proceedings which are transferred to criminal proceedings, law-enforcement records and files concerning a child or juvenile shall be kept separate from the records and files of adults and not included within the court files. Law-enforcement records and files concerning a child or juvenile shall only be open to inspection pursuant to §49-5-103 of this code.

(f) Any person who willfully violates the provisions of 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 fined and confined. A person convicted of violating this section is also liable for damages in the amount of \$300, or actual damages, whichever is greater.

(g) Notwithstanding the provisions of this section, or any other provision of this code to the contrary, the name and identity of any juvenile adjudicated or convicted of a violent or felonious crime shall be made available to the public;

(h)(1) Notwithstanding the provisions of this section or any other provision of this code to the contrary, the Division of Corrections and Rehabilitation may provide access to, and the confidential use of, a treatment plan, court records, or other records of a juvenile to an agency in another state which:

(A) Performs the same functions in that state that are performed by the Division of Corrections and Rehabilitation in this state;

(B) Has a reciprocal agreement with this state; and

(C) Has legal custody of the juvenile.

(2) A record which is shared under this subsection may only provide information which is relevant to the supervision, care, custody, and treatment of the juvenile;

(3) The Division of Corrections and Rehabilitation may enter into reciprocal agreements with other states and propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement this subsection; and

(4) Other than the authorization explicitly given in this subsection, this subsection may not be construed to enlarge or restrict access to juvenile records as provided elsewhere in this code.

(i) The records subject to disclosure pursuant to subsection (b) of this section may not include a recorded/videotaped interview, as defined in §62-6B-2(6) of this code, the disclosure of which is exclusively subject to §62-6B-6 of this code.

(j) Notwithstanding the provisions of subsection (a) of this section, records in the possession of the Division of Corrections and Rehabilitation declared to be confidential by the provisions of subsection (a) of this section may be published and disclosed for use in an employee grievance if the disclosure is done in compliance with subsections (k), (l), and (m) of this section.

(k) Records or information declared confidential by the provisions of this section may not be released for use in a grievance proceeding except:

(1) Upon written motion of a party; and

(2) Upon an order of the Public Employee's Grievance Board entered after an in-camera hearing as to the relevance of the record or information.

(l) If production of confidential records or information is disclosed to a grievant, his or her counsel or representative, pursuant to subsection (k) of this section:

(1) The division shall ensure that written records or information is redacted of all identifying information of any juvenile which is not relevant to the resolution of the grievance;

(2) Relevant video and audio records may be disclosed without redaction; and

(3) Records or other information released to a grievant or his or her counsel or representative pursuant to subsection (k) of this section may only be used for purposes of his or her grievance proceeding and may not be disclosed, published, copied, or distributed for any other purpose, and upon the conclusion of the grievance procedure, returned to the Division of Corrections and Rehabilitation.

(m) If a grievant or the Division of Corrections and Rehabilitation seek judicial review of a decision of the Public Employee's Grievance Board, the relevant confidential records disclosed and used in the grievance proceeding may be used in the appeal proceeding upon entry of an order by the circuit court, and the order shall contain a provision limiting disclosure or publication of the records or information to purposes necessary to the proceeding and prohibiting unauthorized use and reproduction.

(n) Nothing in this section may be construed to abrogate the provisions of §29B-1-1 *et seq.* of this code.

(o) A child placing agency or a residential child care and treatment facility may disclose otherwise confidential information to other child placing agencies or residential child care and treatment facilities when making referrals or providing services on behalf of the child. This information shall be maintained in the same manner as provided in this code.

(p) The department shall provide electronic access to information required to perform an adoption to child placing agencies as necessary to complete the adoption.

(q) A child placing agency completing adoption as a contractor on behalf of the department shall have access to secure records from vital statistics and other pertinent record holders.

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CHAPTER 62

(Com. Sub. for H. B. 2018 - By Delegates Summers, Tully, and Rohrbach)

[Passed February 1, 2023; in effect from passage.]
[Approved by the Governor on February 13, 2023.]

AN ACT to amend and reenact §49-4-405 and §49-4-406 of the Code of West Virginia, 1931, as amended, all relating to designating the managed care case coordinator as a member of the multidisciplinary team.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-405. Multidisciplinary treatment planning process involving child abuse and neglect; team membership; duties; reports; admissions.

(a) Within thirty days of the initiation of a judicial proceeding pursuant to part six, of this article, the department shall convene a multidisciplinary treatment team to assess, plan and implement a comprehensive, individualized service plan for children who are victims of abuse or neglect and their families. The multidisciplinary team shall obtain and utilize any assessments for the children or the adult respondents that it deems necessary to assist in the development of that plan.

(b) In a case initiated pursuant to part six of this article, the treatment team consists of:

- (1) The child or family's case manager in the department;
- (2) The adult respondent or respondents;

(3) The child's parent or parents, guardians, any copetitioners, custodial relatives of the child, foster or preadoptive parents;

(4) Any attorney representing an adult respondent or other member of the treatment team;

(5) The child's counsel or the guardian ad litem;

(6) The prosecuting attorney or his or her designee;

(7) A member of a child advocacy center when the child has been processed through the child advocacy center program or programs or it is otherwise appropriate that a member of the child advocacy center participate;

(8) Any court-appointed special advocate assigned to a case;

(9) Any other person entitled to notice and the right to be heard;

(10) An appropriate school official;

(11) The managed care case coordinator; and

(12) Any other person or agency representative who may assist in providing recommendations for the particular needs of the child and family, including domestic violence service providers.

The child may participate in multidisciplinary treatment team meetings if the child's participation is deemed appropriate by the multidisciplinary treatment team. Unless otherwise ordered by the court, a party whose parental rights have been terminated and his or her attorney may not be given notice of a multidisciplinary treatment team meeting and does not have the right to participate in any treatment team meeting.

(c) Prior to disposition in each case which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement with appropriate relatives then with foster care homes, facilities or

programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

(d) The multidisciplinary treatment team shall submit written reports to the court as required by the rules governing this type of proceeding or by the court, and shall meet as often as deemed necessary but at least every three months until the case is dismissed from the docket of the court. The multidisciplinary treatment team shall be available for status conferences and hearings as required by the court.

(e) If a respondent or copetitioner admits the underlying allegations of child abuse or neglect, or both abuse and neglect, in the multidisciplinary treatment planning process, his or her statements may not be used in any subsequent criminal proceeding against him or her, except for perjury or false swearing.

§49-4-406. Multidisciplinary treatment process for status offenders or delinquents; requirements; custody; procedure; reports; cooperation; inadmissibility of certain statements.

(a) When a juvenile is adjudicated as a status offender pursuant to §49-4-711 of this code, the department shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a needs assessment, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile.

(b) When a juvenile is adjudicated as a delinquent or has been granted a pre-adjudicatory community supervision period pursuant to §49-4-708 of this code, the court, either upon its own motion or

motion of a party, may require the department to convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a needs assessment, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. A referral to the department to convene a multidisciplinary treatment team and to conduct such an assessment shall be made when the court is considering placing the juvenile in the department's custody or placing the juvenile out-of-home at the department's expense pursuant to §49-4-714 of this code. In any delinquency proceeding in which the court requires the department to convene a multidisciplinary treatment team, the probation officer shall notify the department at least 15 working days before the court proceeding in order to allow the department sufficient time to convene and develop an individualized service plan for the juvenile.

(c) When a juvenile has been adjudicated and committed to the custody of the Director of the Division of Corrections and Rehabilitation, including those cases in which the juvenile has been committed for examination and diagnosis, or the court considers commitment for examination and diagnosis, the Division of Corrections and Rehabilitation shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a needs assessment, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile, which shall be provided in writing to the court and team members. In cases where the juvenile is committed as a post-sentence disposition to the custody of the Division of Corrections and Rehabilitation, the plan shall be reviewed quarterly by the multidisciplinary treatment team. Where a juvenile has been detained in a facility operated by the Division of Corrections and Rehabilitation without an active

service plan for more than 60 days, the director of the facility may call a multidisciplinary team meeting to review the case and discuss the status of the service plan.

(d)(1) The rules of juvenile procedure shall govern the procedure for obtaining any assessment of a juvenile, preparing an individualized service plan and submitting the plan and any assessment to the court.

(2) In juvenile proceedings conducted pursuant to §49-4-701 *et seq.* of this code, the following representatives shall serve as members and attend each meeting of the multidisciplinary treatment team, so long as they receive notice at least seven days prior to the meeting:

(A) The juvenile;

(B) The juvenile's case manager in the department or the Division of Corrections and Rehabilitation;

(C) The juvenile's parent, guardian or custodian;

(D) The juvenile's attorney;

(E) Any attorney representing a member of the multidisciplinary treatment team;

(F) The prosecuting attorney or his or her designee;

(G) The county school superintendent or the superintendent's designee;

(H) A treatment or service provider with training and clinical experience coordinating behavioral or mental health treatment;

(I) The managed care case coordinator; and

(J) Any other person or agency representative who may assist in providing recommendations for the particular needs of the juvenile and family, including domestic violence service providers. In delinquency proceedings, the probation officer shall be a member of a multidisciplinary treatment team. When appropriate,

the juvenile case manager in the department and the Division of Corrections and Rehabilitation shall cooperate in conducting multidisciplinary treatment team meetings when it is in the juvenile's best interest.

(3) Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement at facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child. The multidisciplinary treatment team shall also determine and advise the court as to the individual treatment and rehabilitation plan recommended for the child for either out-of-home placement or community supervision. The plan may focus on reducing the likelihood of reoffending, requirements for the child to take responsibility for his or her actions, completion of evidence-based services or programs or any other relevant goal for the child. The plan may also include opportunities to incorporate the family, custodian or guardian into the treatment and rehabilitation process.

(4) The multidisciplinary treatment team shall submit written reports to the court as required by applicable law or by the court, shall meet with the court at least every three months, as long as the juvenile remains in the legal or physical custody of the state, and shall be available for status conferences and hearings as required by the court. The multidisciplinary treatment team shall monitor progress of the plan identified in subdivision (3) of this subsection and review progress of the plan at the regular meetings held at least every three months pursuant to this section, or at shorter intervals, as ordered by the court, and shall report to the court on the progress of the plan or if additional modification is necessary.

(5) In any case in which a juvenile has been placed out of his or her home except for a temporary placement in a shelter or

detention center, the multidisciplinary treatment team shall cooperate with the state agency in whose custody the juvenile is placed to develop an after-care plan. The rules of juvenile procedure and §49-4-409 of this code govern the development of an after-care plan for a juvenile, the submission of the plan to the court and any objection to the after-care plan.

(6) If a juvenile respondent admits the underlying allegations of the case initiated pursuant to §49-4-701 through §49-4-725 of this code, in the multidisciplinary treatment planning process, his or her statements may not be used in any juvenile or criminal proceedings against the juvenile, except for perjury or false swearing.

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CHAPTER 63

(H. B. 2875 - By Delegates Kirby, Steele, C. Pritt, Summers, Foster, Fast, Kimble and Kump)

[Passed March 10, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §49-4-114 of the Code of West Virginia, 1931, as amended, relating to giving circuit court judges the authority to waive the requirement that a party pass a home study performed by DHHR or a third-party evaluator before a child can be placed in the home in cases of grandparent adoption.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-114. Consent by agency or department to adoption of child; statement of relinquishment by parent; counseling services; petition to terminate parental rights; notice; hearing; court orders.

(a)(1) Whenever a child welfare agency licensed to place children for adoption or the Department of Health and Human Resources has been given the permanent legal and physical custody of any child and the rights of the mother and the rights of the legal, determined, putative, outside or unknown father of the child have been terminated by order of a court of competent jurisdiction or by a legally executed relinquishment of parental rights, the child welfare agency or the department may consent to the adoption of the child, pursuant to article twenty-two, chapter forty-eight of this code.

(2) Relinquishment for an adoption to an agency or to the department is required of the same persons whose consent or

relinquishment is required, under section three hundred one, article twenty-two, chapter forty-eight of this code. The form of any relinquishment so required shall conform as nearly as practicable to the requirements established in section three hundred three, article twenty-two, chapter forty-eight, and all other provisions of that article providing for relinquishment for adoption shall govern the proceedings herein.

(3) For purposes of any placement of a child for adoption by the department, the department shall first consider the suitability and willingness of any known grandparent or grandparents to adopt the child. Once grandparents who are interested in adopting the child have been identified, the department shall conduct a home study evaluation, including home visits and individual interviews by a licensed social worker. If the department determines, based on the home study evaluation, that the grandparents would be suitable adoptive parents, it shall assure that the grandparents are offered the placement of the child prior to the consideration of any other prospective adoptive parents. A circuit judge may determine the placement of a child for adoption by a grandparent or grandparents is in the best interest of the child without the grandparent or grandparents completing or passing a home study evaluation.

(4) The department shall make available, upon request, for purposes of any private or agency adoption proceeding, replacement and post-placement counseling services by persons experienced in adoption counseling, at no cost, to any person whose consent or relinquishment is required pursuant to article twenty-two, chapter forty-eight of this code.

(b)(1) Whenever the mother has executed a relinquishment, pursuant to this section, and the legal, determined, putative, outsider father, or unknown father, as those terms are defined pursuant to part one, article twenty-two, chapter forty-eight of this code, has not executed a relinquishment, the child welfare agency or the department may, by verified petition, seek to have the father's rights terminated based upon the grounds of abandonment or neglect of the child. Abandonment may be established in accordance with section three hundred six, article twenty-two, chapter forty-eight of this code.

(2) Unless waived by a writing acknowledged as in the case of deeds or by other proper means, notice of the petition shall be served on any person entitled to parental rights of a child prior to its adoption who has not signed a relinquishment of custody of the child.

(3) In addition, notice shall be given to any putative, outsider father, or unknown father who has asserted or exercised parental rights and duties to and with the child and who has not relinquished any parental rights, and the rights have not otherwise been terminated, or who has not had reasonable opportunity before or after the birth of the child to assert or exercise those rights, except that if the child is more than six months old at the time the notice would be required and the father has not asserted or exercised his or her parental rights and he or she knew the whereabouts of the child, then the father shall be presumed to have had reasonable opportunity to assert or exercise any rights.

(c)(1) Upon the filing of the verified petition seeking to have the parental rights terminated, the court shall set a hearing on the petition. A copy of the petition and notice of the date, time, and place of the hearing on the petition shall be personally served on any respondent at least twenty days prior to the date set for the hearing.

(2) The notice shall inform the person that his or her parental rights, if any, may be terminated in the proceeding and that the person may appear and defend any rights within twenty days of the service. In the case of a person who is a nonresident or whose whereabouts are unknown, service shall be achieved: (A) By personal service; (B) by registered or certified mail, return receipt requested, postage prepaid, to the person's last known address, with instructions to forward; or (C) by publication. If personal service is not acquired, then if the person giving notice has any knowledge of the whereabouts of the person to be served, including a last known address, service by mail shall be first attempted as herein provided. Service achieved by mail shall be complete upon mailing and is sufficient service without the need for notice by publication. In the event that no return receipt is received giving adequate evidence of receipt of the notice by the addressee or of receipt of

the notice at the address to which the notice was mailed or forwarded, or if the whereabouts of the person are unknown, then the person required to give notice shall file with the court an affidavit setting forth the circumstances of any attempt to serve the notice by mail, and the diligent efforts to ascertain the whereabouts of the person to be served. If the court determines that the whereabouts of the person to be served cannot be ascertained and that due diligence has been exercised to ascertain the person's whereabouts, then the court shall order service of the notice by publication as a Class II publication in compliance with article three, chapter fifty-nine of this code, and the publication area shall be the county where the proceedings are had, and in the county where the person to be served was last known to reside. In the case of a person under disability, service shall be made on the person and his or her personal representative, or if there be none, a guardian ad litem.

(3) In the case of service by publication or mail or service on a personal representative or a guardian ad litem, the person is allowed thirty days from the date of the first publication or mailing of the service on a personal representative or guardian ad litem in which to appear and defend the parental rights.

(d) A petition under this section may be instituted in the county where the child resides or where the child is living.

(e) If the court finds that the person certified to parental rights is guilty of the allegations set forth in the petition, the court shall enter an order terminating his or her parental rights and shall award the legal and physical custody and control of the child to the petitioner.

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CHAPTER 64

(Com. Sub. for H. B. 3061 - By Delegates Summers and Tully)

[Passed February 15, 2023; in effect from passage.]
[Approved by the Governor on February 24, 2023.]

AN ACT to amend and reenact §49-9-101, §49-9-102 and §49-9-107 of the Code of West Virginia, 1931, as amended; all relating to updating the authority of the Foster Care Ombudsman; expanding the authority of the Foster Care Ombudsman; prohibiting the ombudsman from being compelled to testify or provide information; requiring reporting; permitting the release of information in certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. FOSTER CARE OMBUDSMAN PROGRAM.

§49-9-101. The Foster Care Ombudsman.

(a) There is continued within the Office of the Inspector General the position of the West Virginia Foster Care Ombudsman. The Office of the Inspector General shall employ a Foster Care Ombudsman to affect the purposes of this article.

(b) In addition to the duties provided in §9-5-27 of this code, the duties of the Foster Care Ombudsman include, but are not limited to, the following:

(1) Establishing a statewide procedure to receive, investigate, and resolve complaints:

(A) Filed on behalf of a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained

a critical incident, a child in the juvenile justice system, a foster child, foster parent, or kinship parent;

(B) On the Foster Care Ombudsman's own initiative, of a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system; or

(C) On the Foster Care Ombudsman's own initiative, on behalf of a foster child, relating to action, inaction, or decisions of the state agency, child-placing agency, or residential care facility which may adversely affect the foster child, foster parent, or kinship parent;

(2) Review periodically and make appropriate recommendations for the policies and procedures established by any state agency providing services to the child welfare system;

(3) Pursuant to an investigation, provide assistance to an individual who the Foster Care Ombudsman determines is in need of assistance, including, but not limited to, collaborating with an agency, provider, or others on behalf of the best interests of the child;

(4) Recommend action when appropriate, including, but not limited to, undertaking legislative advocacy and making proposals for systemic reform and formal legal action, in order to secure and ensure the legal, civil, and special rights of children in the child welfare system and the juvenile justice system;

(5) Conduct programs of public education when necessary and appropriate;

(6) Have input into the creation of, and thereafter make recommendations consistent with, the foster children, foster parents, and kinship parents bill of rights;

(7) Take appropriate steps to advise the public of the services of the Foster Care Ombudsman, the purpose of the ombudsman, and procedures to contact the office; and

(8) Make inquiries and obtain assistance and information from other state governmental agencies or persons as the Foster Care Ombudsman requires for the discharge of his or her duties.

(c) (1) The Foster Care Ombudsman or his or her staff may not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to the identity of an individual providing information to the ombudsman as part of an official investigation, or the substance of that person's report to the ombudsman as part of an official investigation. All memoranda, work product, notes, or case files developed and maintained as part of an official investigation of the Foster Care Ombudsman Office are confidential and are not subject to discovery, subpoena, or other means of legal compulsion, and are not admissible as evidence in a judicial or administrative proceeding.

(2) The ombudsman may be compelled to provide testimony by a court or administrative body of competent jurisdiction related to any action carried out by the office that is unrelated to the substance of a specific official investigation, or reports submitted to the Legislative Oversight Commission on Health and Human Resources Accountability provided for in §9-5-27 and §49-9-102 of this code. Should the ombudsman be compelled to testify, provide evidence in discovery, respond to a subpoena, or otherwise divulge testimony or evidence in any judicial, administrative, or legislative proceeding, the ombudsman may not be compelled to provide testimony or evidence concerning the identity of any complainant or any individual providing information to the ombudsman as part of an official investigation, or the substance of any complaint or report unless the ombudsman should decline to exercise that privilege. The purpose of this provision is to ensure a level of confidentiality between the ombudsman and a person reporting to, complaining to, or providing other evidence to the ombudsman as part of an official investigation carried out by the office.

(3) Any objection by the ombudsman to the disclosure of any testimony, documentary, or physical evidence shall be reviewed by the presiding official of such tribunal, in camera, upon the request of the ombudsman, and the presiding official shall prevent the

disclosure of the identity of any complainant, witness, or reporter as well as the substance of their complaint, testimony, or report.

§49-9-102. Investigation of complaints.

(a) Upon receipt of a complaint or by court order within the scope of the Foster Care Ombudsman Program, the Foster Care Ombudsman shall investigate, except as provided in §49-9-102(c) of this code, any act, practice, policy, or procedure of any state agency, child-placing agency, juvenile facility, or residential care facility which affects the health, safety, welfare, or rights of a foster child, a foster parent, a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, or a kinship parent.

(b) Investigative activities of the Foster Care Ombudsman include, but are not limited to: information gathering, mediation, negotiation, informing parties of the status of the investigation, notification to any aggrieved party of alternative processes, reporting of suspected violations to a licensing or certifying agency, and the reporting of suspected criminal violations to the appropriate authorities.

(c) The Foster Care Ombudsman need not investigate any complaint upon determining that:

(1) The complaint is trivial, frivolous, vexatious, or not made in good faith;

(2) The complaint has been too long delayed to justify present investigation;

(3) The resources available, considering the established priorities, are insufficient for an adequate investigation;

(4) The matter complained of is not within the investigatory authority of the Foster Care Ombudsman; or

(5) A real or apparent conflict of interest exists and no other person within the office is available to investigate the complaint in an impartial manner.

(d) The Office of the Inspector General and other appropriate state governmental agencies may establish and implement cooperative agreements for receiving, processing, responding to, and resolving complaints involving state governmental agencies under the provisions of this section.

(e) The Foster Care Ombudsman shall submit an annual written report to the Governor containing:

- (1) The number of complaints;
- (2) The types of complaints;
- (3) The location of the complaints;
- (4) How the complaints are resolved; and

(5) Any other information the Foster Care Ombudsman feels is appropriate.

(f) The Foster Care Ombudsman shall summarize the reports and present that information to the Legislative Oversight Commission on Health and Human Resources Accountability. Nothing shall preclude the Foster Care Ombudsman office from submitting data, findings, or reports beyond this annual report.

(g) Another office, department, agency, or official may not prohibit the release of an ombudsman's recommendations to the Governor and the Legislature.

§49-9-107. Confidentiality of investigations.

(a) Information relating to any investigation of a complaint that contains the identity of the complainant, a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, a foster child, foster parent, or kinship parent shall remain confidential except:

(1) Where imminent risk of serious harm is communicated directly to the Foster Care Ombudsman or his or her staff;

(2) Where disclosure is necessary to the bureau in order for such office to determine the appropriateness of initiating an investigation regarding potential abuse, neglect, or emergency circumstances; or

(3) Where disclosure is necessary to the Office of Health Facility Licensure and Certification in order for such office to determine the appropriateness of initiating an investigation to determine facility compliance with applicable rules of licensure, certification, or both.

(b) The Foster Care Ombudsman shall maintain confidentiality with respect to all matters including the identities of complainants, witnesses, or others from whom information is acquired, except insofar as disclosures may be necessary to enable the Foster Care Ombudsman to carry out duties of the office or to support recommendations.

(c) Notwithstanding any other section within this article, all information, records, and reports received by or developed by the Foster Care Ombudsman Program which relate to a foster child, foster parent, or kinship parent, including written material identifying a foster child, foster parent, or a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, or kinship parent, are confidential pursuant to §49-5-101 *et seq.* of this code and are not subject to the provisions of §29B-1-1 *et seq.* of this code, and may not be disclosed or released by the Foster Care Ombudsman Program, except under the circumstances enumerated in this section.

(d) Nothing in this section prohibits the preparation and submission by the Foster Care Ombudsman of statistical data and reports, as required to implement the provisions of this article or any applicable federal law, exclusive of any material that identifies any foster child, foster parent, kinship parent, or complainant.

(e) The Inspector General shall have access to the records and files of the Foster Care Ombudsman Program to verify its effectiveness and quality where the identity of any complainant, a

child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, or foster child, foster parent, or kinship parent is not disclosed.

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CHAPTER 65

(H. B. 3439 - By Delegates Pinson, Westfall and Burkhammer)

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-2-130, relating to child welfare agencies; requiring a policy of insurance; limiting civil liability for damages or injuries; providing exceptions; and requiring proof of insurance be filed annually.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-130. Limitation of liability; mandatory errors and omissions insurance.

(a) Every child welfare agency shall obtain a policy of insurance in an amount not less than \$1 million per incident insuring the person or entity and every employee, against loss from the liability imposed by law for damages arising from any error or omission in the provision of child placement services.

(b) A child welfare agency providing programs or services is not liable for civil damages in excess of \$1,000,000, per incident, unless the damages or injuries are intentionally or maliciously inflicted.

(c) Every person or entity required by this section to obtain a policy of insurance shall furnish proof of the existence of the policy to the department on or before January 1 of each calendar year.

(d) Any person or entity who fails to secure a policy of insurance before providing child placement services is not entitled to the limited liability created by subsection (b) of this section.

(e) An act of sexual assault or sexual abuse shall constitute an incident.

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CHAPTER 66

**(H. B. 3559 - By Delegates Westfall, Fluharty, Hillenbrand,
Steele, Ward, Ridenour, Warner, Martin, Kump, Marple and
Kimble)**

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §49-4-201 of the Code of West Virginia, 1931, as amended, relating to newborn safety devices; authorizing the use of newborn safety devices; describing the installation and location of a newborn safety device; granting anonymity to the person placing a child in a newborn safety device; outlining the monitoring of a newborn safety device; requiring the transportation of a child found in a newborn safety device to a hospital or medical facility; waiving rights of notification and standing by the person placing a child in a newborn safety device; granting immunity to the emergency service medical provider who removes the child from the newborn safety device; and removing the anonymity provision if child abuse or neglect are evident.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-201. Accepting possession of certain relinquished children.

(a) A hospital or health care facility operating in this state, or a fire department that has been designated a safe-surrender site under §49-4-206 of this code, shall, without a court order, take possession of a child if the child is voluntarily delivered to the hospital, health care facility, or fire department by the child's parent within 30 days

of the child's birth, and the parent did not express an intent to return for the child.

(b) A hospital, health care facility, or fire department that takes possession of a child under this article shall perform any act necessary to protect the physical health or safety of the child. In accepting possession of the child, the hospital, health care facility, or fire department may not require the person to identify himself or herself and shall otherwise respect the person's desire to remain anonymous.

(c) Hospitals, health care facilities, and fire departments designated as safe-surrender sites under §49-4-206, of this code may install and operate newborn safety devices as defined in this section.

(d) "Newborn safety device" means a device:

(1) Designed to permit a person to anonymously place a child under 30 days of age in the device with the intent to leave the child, and for a licensed emergency medical services provider to remove the child from the device and take custody of him or her;

(2) Equipped with an adequate dual alarm system connected to the physical location where the device is physically installed. The dual alarm system shall:

(A) Be tested at least one time per week to ensure the alarm system is in working order; and

(B) Be visually checked at least two times per day to ensure the alarm system is in working order;

(C) Notify a centralized location in the facility within 30 seconds of a child being placed in the device;

(D) Trigger a 911 call if staff at the facility do not respond within 15 minutes after a child is placed in the device.

(3) Be approved by and physically located, with outside access, at a participating hospital or medical facility, or a fire department

that has been designated a safe-surrender site under §49-4-206 of this code, that:

(A) Is licensed or otherwise legally operating in this state; and

(B) Is staffed continuously on a 24-hour basis every day by a licensed emergency medical services provider; and

(4) Is located in an area that is conspicuous and visible to a hospital, a medical facility, or a fire department.

(d) A person who relinquishes a child in a newborn safety device may remain anonymous and shall not be pursued, and the relinquishment of a child pursuant to the provisions of this section shall not, in and of itself, be considered child abuse and neglect as that term is defined in §49-1-201 of this code.

(e) Any emergency medical services provider who physically retrieves a child from a newborn safety device shall immediately arrange for the child to be taken to the nearest hospital emergency room and shall have implied consent to any and all appropriate medical treatment.

(f) By placing a child in a newborn safety device, the person:

(1) Waives the right to notification required by subsequent court proceedings; and

(2) Waives legal standing to make a claim of action against any person who accepts physical custody of the child.

(g) An emergency medical services provider with the duty granted in this article whose actions are taken in good faith is immune from criminal or civil liability, unless his or her actions were the result of gross negligence or willful misconduct. The grant of immunity in this section extends to all employees and administrators of the emergency medical services provider.

(h) The provisions of subsection (d) of this section shall not apply when indicators of child physical abuse or child neglect are present.

CHAPTER 67

(Com. Sub. for S. B. 579 - By Senators Tarr and Swope)

[Passed March 10, 2023; in effect from passage]
[Approved by the Governor on March 28, 2023.]

AN ACT recognizing and declaring certain claims against agencies of the state to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

§1. Finding and declaring certain claims against the Racing Commission to be moral obligations of the state and directing payments thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services rendered by certain claimants herein and has considered these claims against the state, and agency thereof, which have arisen due to over-expenditures of the departmental appropriations by officers of the state spending units, the claims having been previously considered by the Legislative Claims Commission which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the Legislative Claims Commission on the purely statutory grounds that to allow the claims would be condoning illegal acts contrary to the laws of the state. The Legislature, pursuant to its findings of fact and also by the adoption of the findings of fact by the Legislative Claims Commission as its own, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below and directs the Auditor to issue warrants upon receipt of properly executed requisitions supported by itemized

invoices, statements, or other satisfactory documents as required by §12-3-10 of the Code of West Virginia, 1931, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

Claims against the Racing Commission:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Michelle Helms\$16,219.58



CHAPTER 68

**(Com. Sub. for H. B. 3344 - By Delegates Criss, Storch, Riley,
Gearheart, Reynolds, Hott, Statler, Rowe, Espinosa,
Anderson and Horst)**

[Passed March 9, 2023; in effect from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

§1. Finding and declaring certain claims against the Department of Administration; Department of Administration, Office of Technology; Department of Administration, General Services Division; Department of Environmental Protection; Department of Military Affairs & Public Safety, Division of Corrections and Rehabilitation; Department of Military Affairs & Public Safety, West Virginia Army National Guard; Department of Transportation, Division of Highways; and Department of Transportation, Division of Motor Vehicles, to be moral obligations of the state and directing payment thereof.

The Legislature has considered the findings of fact and recommendations reported to it by the Legislative Claims Commission concerning various claims against the state and agencies thereof and, in respect to each of the following claims, the Legislature adopts those findings of fact as its own and in respect of the claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below and directs the Auditor to issue warrants

for the payment thereof out of any fund appropriated and available for the purpose.

(a) *Claims against the Department of Administration:*

(TO BE PAID FROM SPECIAL REVENUE FUND)

- | | | |
|-----|-----------|--------------|
| (1) | IBM | \$112,925.48 |
| (2) | IBM | \$127,905.72 |

(b) *Claim against the Department of Environmental Protection:*

(TO BE PAID FROM SPECIAL REVENUE FUND)

- | | | |
|-----|--------------------------------------|-------------|
| (1) | Eastern Arrow Corporation, Inc... .. | \$61,436.60 |
| (2) | Taylor & Mulder, Inc.... .. | \$7,227.50 |

(c) *Claims against the Department of Administration,
General Services Division:*

(TO BE PAID FROM GENERAL REVENUE FUND)

	Danhill Construction Company	\$43,089.93
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(d) *Claims against the Department of Administration, Office
of Technology:*

(TO BE PAID FROM SPECIAL REVENUE FUND)

- | | | |
|-----|---------------------------------|-------------|
| (1) | Alpha Mechanical Service.... .. | \$2,404.01 |
| (2) | Mahantech Corporation..... | \$6,966.00 |
| (3) | Ricoh USA, Inc..... | \$13,958.80 |
| (4) | Ricoh USA, Inc..... | \$511.47 |
| (5) | Ricoh USA, Inc..... | \$2,558.47 |
| (6) | Touchtone Communications..... | \$16,243.47 |
| (7) | Verizon Business SVCS..... | \$991.67 |

(8) Verizon Business SVCS.....	\$4,409.28
(9) Verizon Business SVCS.....	\$17,800.12
(10) Verizon Business SVCS.....	\$2,613.18
(11) Verizon Business SVCS.....	\$4,951.46
(12) Verizon Business SVCS.....	\$14,764.93

(e) *Claims against the Department of Military Affairs & Public Safety, Division of Corrections and Rehabilitation:*

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) James Cantley	\$222.60
(2) Daniel F. Slonaker	\$63.60

(f) *Claim against the Department of Military Affairs & Public Safety, West Virginia Army National Guard:*

(TO BE PAID FROM GENERAL REVENUE FUND)

March-Westin Company, Inc.....	\$650,000.00
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(g) *Claims against Department of Transportation, Division of Highways:*

(TO BE PAID FROM STATE ROAD FUND)

(1) Cheryl J. Acree	\$542.46
(2) Stacy L. Acree	\$201.35
(3) Jill R. Adams and Nicholas Adams	\$1,000.00
(4) Steven C. Alger.....	\$500.00
(5) Kathy A. Allen.....	\$315.88
(6) Lynette Allen and Brian Allen.....	\$500.00
(7) Danny R. Alvis	\$500.00

(8) Roger Amos.....	\$250.00
(9) Gregory Anderson and Stephanie Anderson	\$750.00
(10) Jeffrey Anderson and Jennifer Anderson	\$419.21
(11) David R. Appleton	\$500.00
(12) Marc D. Arnold.....	\$340.81
(13) Christopher E. Ashworth and Sara Ashworth	\$287.85
(14) Melissa Griffith Atkins.....	\$286.67
(15) Mouhannad Azzouz.....	\$836.17
(16) Lori Bailey.....	\$500.00
(17) Mertie Baker.....	\$500.00
(18) Lizabeth Baldt and Greg Baldt	\$259.95
(19) Shannon Barkley and Christopher Pratt	\$202.23
(20) Lacie Barnett	\$459.80
(21) Lola Basnett.....	\$160.50
(22) Erica Bastin.....	\$500.00
(23) Pauline Bauer.....	\$203.47
(24) Tonya L. Beaver and Alice Parsons	\$710.84
(25) Donna K. Becher and Donald A. Becher.....	\$169.05
(26) LaTricia Burns and Mark Beckett	\$1,000.00
(27) Patricia J. Belcher and Billy Ray Belcher	\$204.66
(28) Thurman Belcher and Peggy Belcher	\$250.00
(29) Macie Bell and Anthony Bell	\$500.00

(30) Daniel Kurland and Gail Bellamy	\$284.62
(31) Armando Benincasa.....	\$302.10
(32) Alexander Bennett	\$200.14
(33) Earl T. Bennett.....	\$1,000.00
(34) Cynthia B. Bernhart	\$146.28
(35) Cynthia B. Bernhart and Paul Bernhart	\$149.46
(36) Charles Beverly	\$254.40
(37) Charles L. Bibbee	\$500.00
(38) Jordan I. Bird	\$511.95
(39) Jacquelyn C. Bissett and Kent Bissett	\$250.00
(40) Amber N. Black.....	\$500.00
(41) Michelle Blair.....	\$250.00
(42) Daisy Bland	\$79.49
(43) Ben Blundell.....	\$500.00
(44) Sarah Boggs.....	\$175.95
(45) Conni F. Bolen.....	\$180.19
(46) George W. Boley	\$250.00
(47) Deidra Bolton	\$102.72
(48) Deidra Bolton	\$106.99
(49) Deidra Bolton	\$203.30
(50) Mountain Funeral Group and David W. Bolyard, Jr. ...	\$911.44
(51) Meloney Raelene Bond	\$213.95

(52) Rachael Miner and Brent BonFleur.....	\$318.08
(53) Matthew L. Bonnell.....	\$500.00
(54) Chad Bonnett and Mike Bonnett	\$100.00
(55) James Boston	\$180.18
(56) James Bowling.....	\$311.04
(57) Grace L. Boyd and Timmy Boyd	\$321.00
(58) Nicholas L. Boyles	\$500.00
(59) Kenton Bozic	\$397.15
(60) Greg W. Bradshaw	\$13,200.00
(61) Rhonda J. Brant	\$319.46
(62) Betty Britton	\$500.00
(63) John G. Britvec and Catherine Brivtec	\$1,000.00
(64) Allen D. Brock.....	\$92.00
(65) Pauline Brooks-Holst.....	\$131.87
(66) Norman J. Broski and Ruth L. Broski	\$508.80
(67) Barbara A. Brown.....	\$500.00
(68) Ronald Brown.....	\$3,650.00
(69) Logan Browning and Heather Browning.....	\$250.00
(70) Brian L. Brumfield	\$391.57
(71) Jennifer Burgess	\$381.57
(72) Joyce L. Burgess and Eddie Burgess.....	\$215.01
(73) Robert W. Burkhart, Sr., and Mary J. Burkhart.....	\$167.43

(74) Jerry L. Butcher	\$187.25
(75) Kevin Byrd, II, and Sharon Byrd.....	\$1,314.00
(76) Monique M. Call	\$423.41
(77) Carl Campbell.....	\$1,308.16
(78) Tammy L. Campbell.....	\$250.00
(79) Inez Cantley	\$263.87
(80) Mark Caravasos and Rhonda Caravasos.....	\$250.00
(81) Paul A. Carmean and Johnette Carmean	\$261.95
(82) Brandon Carr	\$250.00
(83) Giuliana Leon Carrillo.....	\$89.72
(84) Brenda Casey	\$195.80
(85) Jason L. Cerklefskie	\$291.00
(86) Robert J. Cestelli.....	\$163.00
(87) Tyler Channell	\$500.00
(88) Lloyd Chapman	\$250.00
(89) Elliott James Chiartas	\$500.00
(90) Cassidy Clark and Clay Clark	\$150.89
(91) Clifton Clark.....	\$703.43
(92) John Clark.....	\$250.00
(93) Clarksburg-Harrison Regional Housing Authority....	\$236.42
(94) Jeremy Clawges.....	\$506.09
(95) Earnest Gregory Claytor and Rosetta Claytor	\$250.00

(96) Patricia L. Clendenin	\$102.67
(97) Larry W. Clouser and Barbara A. Clouser	\$163.71
(98) Daniel L. Clower	\$250.00
(99) Donna Clutter	\$156.88
(100) Kristina Cochran.....	\$1,000.00
(101) April Dempsey and Sean Cochran.....	\$250.00
(102) April Dempsey and Sean Cochran.....	\$250.00
(103) Jeffrey Cole.....	\$1,000.00
(104) Jamie Collins	\$1,000.00
(105) Deborah M. Colo	\$239.92
(106) Deborah M. Colo	\$109.09
(107) Eric Commodore.....	\$239.79
(108) Bobbie Conklin.....	\$500.00
(109) Frederick D. Connors, Sr.....	\$500.00
(110) Crystal Copeland	\$250.00
(111) David Coram.....	\$200.64
(112) Sandra S. Coram	\$1,000.00
(113) Karen L. Coria	\$456.97
(114) Monica Cork	\$207.40
(115) Samantha Cottrill.....	\$311.04
(116) Christopher M. Coyner	\$3,922.00
(117) Michael A. Cramer	\$319.93

(118) Joseph E. Craver	\$111.30
(119) Donald David Crayton.....	\$500.00
(120) Dustin Criss and Kathy Criss.....	\$2,000.00
(121) Shawn David Crist.....	\$100.00
(122) Kay Crites and Rick Crites	\$500.00
(123) John B. Crowder Jr.	\$500.00
(124) Patrick Crowe	\$286.78
(125) Angela Cruz.....	\$500.00
(126) Danielle Cummings	\$494.16
(127) Shelvy Cunningham	\$107.00
(128) Megan Cutlip and William Cutlip	\$250.00
(129) Clayton W. Daniel and Kristen A. Daniel	\$152.64
(130) Niabi Dann.....	\$500.00
(131) Julie Danser	\$238.08
(132) Olivia R. Darby and J. Whit Darby	\$124.86
(133) Richard A. Daugherty.....	\$500.00
(134) Ronald A. Davis and Barbara J. Davis	\$772.46
(135) Corey Davis and Ashlee Davis	\$500.00
(136) Kimberly Davis.....	\$144.95
(137) Carolyn Davis and Michael Davis	\$281.25
(138) Angela Dawkins	\$406.60
(139) Hillary Dean	\$500.00

(140) Michael J. DeMicco, II, and Jennifer DeMicco.....	\$237.54
(141) Shirley L. Dempsey	\$213.01
(142) Gianna DeVincent and Jeff DeVincent	\$448.61
(143) Jeff DeVincent and Julia DeVincent	\$389.00
(144) Peter L. Dewald	\$250.00
(145) DeEdgra Dewitt and James Dewitt.....	\$181.58
(146) Dawson Dillon and James Dillon	\$500.00
(147) Philip Dinterman and Amy Weislogel.....	\$165.85
(148) David Dionne.....	\$84.53
(149) James Michael Dorado	\$500.00
(150) Rebecca K. Duffy	\$500.00
(151) Mikayla Dukich	\$221.49
(152) Timothy Craig Dunlap, II.....	\$500.00
(153) Albert C. Dunn, Jr.....	\$305.95
(154) Albert C. Dunn, Jr.....	\$307.66
(155) James H. Durr	\$415.51
(156) Zachary Dyer and Rachel Dyer	\$337.14
(157) Sherrie Eary	\$316.65
(158) Cinda R. Echard.....	\$685.04
(159) Robert J. Edmonds.....	\$295.50
(160) Garnet Edwards	\$302.47
(161) Scott A. Eichinger.....	\$529.00

(162) Michael Elkins	\$698.39
(163) Michael Elkins	\$698.39
(164) Benjamin L. Ellis	\$273.79
(165) Clint Ellis	\$250.00
(166) Dave Enders and Judy Enders	\$247.28
(167) Rachael Epling	\$304.35
(168) John T. Fahey	\$326.48
(169) John T. Fahey	\$310.58
(170) Gary Feather	\$250.00
(171) Matthew R. Feathers	\$370.92
(172) Andrew Feit	\$500.00
(173) Jason G. Ferguson	\$163.15
(174) Charles L. Fiest and Cecile Fiest	\$100.00
(175) Blaine E. Fike, Jr., and Deborah Fike	\$178.00
(176) Stacy Henderson and Sonya Fisher-Henderson	\$296.80
(177) Robert J. Fiumara and Sandra A. Fiumara	\$500.00
(178) Austin Williams and Connie Fleming	\$394.42
(179) Brian Fletcher	\$860.00
(180) Katherine Flint	\$1,000.00
(181) Sarah Fominko and Andrew Fominko	\$104.89
(182) Henry Grady Ford, III	\$1,000.00
(183) Travis Foster	\$312.49

(184) Aaron Foster	\$345.08
(185) Lacy Trigg and Kerry Foster	\$429.30
(186) Travis Foster	\$177.00
(187) Stanley D. Freeland	\$81.50
(188) Amy Freeman	\$137.08
(189) Nichole S. Fridley	\$898.48
(190) Nichole S. Fridley	\$878.99
(191) Elizabeth Friend	\$203.30
(192) David P. Fry and Jeanne Fry	\$500.00
(193) Donna L. Suppa Fullen	\$31,092.32
(194) Gianfranco Gallo	\$1,000.00
(195) Phillip Todd Gaujot	\$424.80
(196) Janella Gault and Neal Gault	\$500.00
(197) William C. Gaynor and Sondra S. Gaynor	\$493.26
(198) Jeffrey P. Gerken	\$1,277.93
(199) Jeffrey P. Gerken	\$454.49
(200) Darwin V. Gibson and Jean K. Gibson	\$500.00
(201) Ronald R. Gibson	\$515.81
(202) Shirley J. Gibson	\$794.82
(203) Danny G. Gilmore	\$104.94
(204) Robert J. Ginther and Sierra P. Shenk	\$500.00
(205) Theodore Alan Glance	\$250.00

(206) Justin Goff	\$500.00
(207) Mariea L. Golden.....	\$450.50
(208) Barrington Gore.....	\$77.50
(209) Michael Goulet	\$458.88
(210) Christopher Grammer	\$623.85
(211) Roshana Gray	\$171.39
(212) Melisa J. Green.....	\$152.08
(213) Charlie David Greever.....	\$1,340.74
(214) Laura K. Grimm and Gregory J. Grimm	\$156.88
(215) Thomas Grimmett.....	\$500.00
(216) Venkata Subba Sai Satish Guda	\$500.00
(217) Billy G. Gunter, Jr.	\$250.00
(218) Dana Hall.....	\$221.22
(219) Melanie Hall	\$115.54
(220) Anita Hampton	\$500.00
(221) Roger Hanley.....	\$224.70
(222) William S. Hannig, III and Barbara Hannig.....	\$455.47
(223) Matthew Harbert.....	\$435.46
(224) Chad Harding, Billie Harding and Gatens-Harding Funeral Home, Inc.	\$500.00
(225) Lynda Harless	\$227.83
(226) Iowana Harner	\$500.00
(227) Bobbie Allen Harris.....	\$2,279.00

(228) Kalei Harris.....	\$250.00
(229) Kathy Harris and Mike Harris	\$500.00
(230) Charles E. Harrison.....	\$2,500.00
(231) Jerald Harrison.....	\$250.00
(232) Paige Harrison	\$360.00
(233) Catherine Hart.....	\$127.20
(234) Louis P. Hart.....	\$866.25
(235) Brittany Harvey-Reams	\$500.00
(236) John H. Tolbert and Linda Haskins	\$1,000.00
(237) Daniel P. Haught.....	\$1,000.00
(238) Anthony Hawks and Katherine Hawks	\$6,500.00
(239) Lloyd W. Hay	\$100.00
(240) Lance Hayes	\$500.00
(241) Stasha Hedrick and Greg Hedrick	\$500.00
(242) Todd Hemmerling.....	\$500.00
(243) Debra Henley	\$250.00
(244) Jill Henline and Michael Henline	\$1,000.00
(245) Sierra Henry.....	\$370.00
(246) Traci Hicks	\$205.99
(247) Anna Scott and David Higginbotham.....	\$500.00
(248) Gaynell Snodgrass and Gene Hilbert.....	\$500.00
(249) Nakisha M. Hill	\$500.00

(250) Joey Hixenbaugh	\$89.94
(251) Robert W. Hixon.....	\$358.45
(252) Seth Eric Hoblitzell	\$500.00
(253) Cynthia Hodgkins	\$214.22
(254) Sandra A. Holbrook.....	\$3,127.71
(255) Stacy Hollar and Rylie Hollar	\$103.00
(256) Randolph Hovatter.....	\$169.56
(257) Jodi Howdershelt and Chazie Howdershelt.....	\$500.00
(258) Chazie Howdershelt and Jodi Howdershelt.....	\$161.25
(259) Philip Allen Hudnall.....	\$559.01
(260) Michael Hudson.....	\$500.00
(261) Melinda Humphreys	\$237.54
(262) Melinda Humphreys	\$108.07
(263) Matthew Lee Humphries	\$500.00
(264) Lawrence W. Hunt and Phyllis M. Hunt	\$242.08
(265) Angela N. Hutchinson	\$500.00
(266) Jennifer Hutzler and Clint Hutzler.....	\$500.00
(267) George Ingels and Christina Ingels	\$500.00
(268) Michael Iorillo	\$1,200.00
(269) Carmela Irwin and Holly Irwin	\$184.57
(270) Holly Irwin	\$838.45
(271) Shanna Ison.....	\$500.00

(272) Ted Jackson and Blanche D. Jackson	\$200.00
(273) Gavin S. James	\$500.00
(274) Jonathan D. James and Lori James	\$179.99
(275) Brynne Jewell	\$187.47
(276) Harry Jewell, III and Donna S. Jewell	\$1,705.22
(277) Luanne Jividen	\$354.16
(278) Brandon C. Johnson	\$500.00
(279) Joseph Dale Johnson	\$500.00
(280) John D. Jolliffe and Mary Jolliffe	\$951.79
(281) Erica M. Jones	\$677.40
(282) Ashley C. Justice	\$500.00
(283) James Karas	\$1,289.87
(284) Terry H. Karr and Peggy C. Karr	\$803.79
(285) Mendy D. Kemp and David Kemp	\$500.00
(286) Toni L. Kendrick and John L. Kendrick, III	\$250.00
(287) Frank J. Ketterman and Amanda Ketterman	\$884.96
(288) Jens-Kristian Kiel	\$500.00
(289) Alicia R. King	\$500.00
(290) Emily King	\$350.46
(291) Randy S. Kinnard	\$2,500.00
(292) Jay Kinzel and Natalie Kinzel	\$241.81
(293) Dan Knight and Rita Knight	\$242.08

(294) John Kosa, II.....	\$250.00
(295) Rosalie R. Kovalyk.....	\$689.50
(296) Brian Kress	\$500.00
(297) Carrie Lake	\$176.52
(298) Tina A. Lambert Notyce.....	\$1,000.00
(299) Jeffrey L. Lanham.....	\$93.00
(300) James D. Lanier	\$369.55
(301) Frank Larson.....	\$436.51
(302) Deborah J. Layman and William Layman.....	\$445.12
(303) Jamie Layton.....	\$176.55
(304) Stephanie Ledsome and Brian Ledsome.....	\$807.80
(305) Mary M. Leigh and John P. Rowan.....	\$500.00
(306) Jessica Lemon.....	\$446.22
(307) Virginia Leshner	\$500.00
(308) Chen-Chung Lin and Yuxi Wang	\$500.00
(309) Kenneth J. Lindsay	\$490.93
(310) John Linkinoggor.....	\$175.92
(311) Brian K. Lippencott	\$975.00
(312) Vanessa Lokey.....	\$184.11
(313) Thomas R. Losh.....	\$250.00
(314) Megan M. Loyd	\$256.80
(315) Shawna Luke and Ryan Luke	\$259.69

(316) Terry Lusher	\$500.00
(317) Loreta Mascioli and Jacob Lysick	\$500.00
(318) David Lee MacCallum and Jille MacCallum	\$1,744.83
(319) John MacLeod	\$155.98
(320) John MacLeod	\$500.00
(321) Tina R. Mahon and Timothy Milligan.....	\$1,000.00
(322) Michael Major and Megan Major.....	\$500.00
(323) Ronald Malus.....	\$39.61
(324) Tara Manchin.....	\$287.74
(325) Christian Maness	\$500.00
(326) Samantha Marco	\$113.42
(327) David S. Marcum.....	\$288.53
(328) April M. Marion	\$249.92
(329) Dennis Markle and Clarissa Markle	\$250.00
(330) Terri Markle.....	\$250.00
(331) Terri Markle.....	\$250.00
(332) Thomas R. Marshall	\$100.00
(333) Sarah Martel	\$418.70
(334) Anne M. Martin	\$241.82
(335) James B. Martin.....	\$250.00
(336) Jessica A. Martin	\$390.29
(337) Randy Martin and Terri Martin	\$500.00

(338) Nicole Denise Mata and Nelia P. Mata	\$139.72
(339) Nancy C. Matheny	\$374.32
(340) James R. Mayhew	\$314.82
(341) Tammy Maynard	\$500.00
(342) Roger L. Mayo	\$565.37
(343) Jason Mazza and Linda Fletcher	\$284.08
(344) Julie McClure and Edwin McClure	\$500.00
(345) Thomas McClure and Carol McClure	\$100.00
(346) Charles K. McDaniel and Robin F. McDaniel	\$821.06
(347) Virginia McDaniel	\$500.00
(348) Barbara McDonald	\$237.80
(349) Brandon McIntyre	\$185.50
(350) Lewis McIntyre	\$175.46
(351) Benjamin R. McKay	\$424.83
(352) April Louise McLaughlin	\$380.30
(353) Breanne McLaughlin and Stanley McLaughlin	\$424.23
(354) Elyssa J. McManaway	\$13,097.98
(355) Caitlin McNemar and Bryan McNemar	\$242.31
(356) Caitlin McNemar and Bryan McNemar	\$233.26
(357) Judy E. Metheny	\$500.00
(358) Tonya Michotas	\$120.99
(359) Amy L. Miller and Brian Miller	\$87.98

(360) Derek Miller	\$500.00
(361) Annette Millett.....	\$1,076.53
(362) Rhonda Millione	\$338.12
(363) Brian Minor and Minor's Auto Sales	\$578.00
(364) Michael L. Miridokis.....	\$348.34
(365) Tanya S. Modispaugh-Roszak.....	\$250.00
(366) Herbert R. Moffett, Jr.	\$1,000.00
(367) Amy M. Monday and Dan Monday.....	\$489.41
(368) Kimberly A. Moore	\$458.92
(369) Sonny R. Moore and Kathleen Moore.....	\$500.00
(370) Diane M. Moran	\$128.40
(371) Rebecca Moran and Christopher Moran.....	\$219.50
(372) Muranda L. Morgan and Ross H. Morgan.....	\$250.00
(373) Mark Morral	\$14,527.80
(374) Tom Morral.....	\$6,074.00
(375) Angela Morris.....	\$172.45
(376) Jamie Morris and Amy Morris	\$500.00
(377) Lori Mosley	\$891.67
(378) Khaldoun Mozahem	\$373.30
(379) Brian P. Mudry	\$285.78
(380) Craig P. Mueller and Kolten P. Mueller	\$424.10
(381) Dustin R. Mullins	\$320.39

(382) Sandra E. Murensky	\$103.06
(383) Winnie Murrin	\$174.89
(384) Suzan Music	\$164.78
(385) Catherine Muzelak.....	\$250.00
(386) Jeff Nelson.....	\$293.87
(387) Timothy R. Newman	\$170.13
(388) NFS, LLC dba Metro Limousine.....	\$1,000.00
(389) Baochung Ng	\$3,664.62
(390) Morgan Nichols	\$500.00
(391) Brent Niner	\$500.00
(392) Anastasia Nixon.....	\$500.00
(393) Richard Bryan Nixon.....	\$200.00
(394) Larry Leon Noe	\$148.09
(395) Robert C. Nolen, Jr.	\$179.49
(396) Traci Norman.....	\$500.00
(397) Emily O’Grady	\$488.23
(398) Seana O’Hare.....	\$500.00
(399) Deborah O’Neal.....	\$172.70
(400) Terri L. Outlaw	\$375.00
(401) Tisha Owens	\$171.20
(402) Louis N. Pahountis	\$500.00
(403) Kyla Palmer and Brooklyn Palmer	\$124.12

(404) Christine Parker	\$500.00
(405) Brian Parks	\$125.08
(406) David D. Pauley.....	\$348.70
(407) Darrell T. Payne.....	\$776.34
(408) James Payne.....	\$800.99
(409) Jesse Alburto Perez and Sandra Carol Perez	\$79.91
(410) Emma Perkins.....	\$347.11
(411) Charles B. Perry, Jr.....	\$70.00
(412) Virginia Persinger and Kermit E. Persinger, Jr.	\$1,000.00
(413) Jeff A. Peters.....	\$103.83
(414) Charles B. Petry.....	\$294.60
(415) Betty A. Pfleegor and Mark Snodgrass	\$500.00
(416) Isiah Phares and Lindsay Phares	\$500.00
(417) Kirstin G. Phillips.....	\$317.00
(418) Carmelita Pierce	\$431.99
(419) Kristen L. Pierce	\$543.59
(420) Douglas Pincavitch.....	\$250.00
(421) Brian Pinkteron.....	\$124.64
(422) Christina Podolinski and Richard Podolinski	\$250.00
(423) Alexis Popa.....	\$500.00
(424) Exavier Posey and Jason Posey	\$347.70
(425) Sarah Lee Pow	\$322.24

(426) Sarah Lee Pow	\$138.84
(427) Sarah Lee Pow	\$377.36
(428) Julie E. Pratt and Jeff Pratt	\$1,000.00
(429) Wendy S. Printy.....	\$402.20
(430) Lucinda S. Rader and Joe Rader.....	\$297.84
(431) Randy Ratcliffe and Kathy Ratcliffe	\$500.00
(432) Cathy L. Reed-Vanata	\$503.50
(433) Mark E. Reichardt and Lynn Reichardt.....	\$500.00
(434) Jack Remaley.....	\$203.47
(435) Donald P. Reyburn	\$310.41
(436) Janet Riffle.....	\$250.00
(437) Larry G. Rine and Jana Rine	\$250.00
(438) Donna Kay Ritchie	\$182.32
(439) Stacy Jo Ritchie and Eric Ritchie	\$189.69
(440) Debra A. Roach	\$370.00
(441) Twila M. Roach	\$300.00
(442) Andrea L. Roberts.....	\$405.88
(443) Misty Robine	\$500.00
(444) Mark K. Rogers and Kelle M. Rogers	\$500.00
(445) Steven Rogers.....	\$500.00
(446) Kari Ross	\$981.60
(447) Linda L. Ross.....	\$100.00

(448) Melissa Ross	\$500.00
(449) April Rowe and Gary Rowe	\$364.31
(450) Kimberly Runion and Kevin Runion.....	\$283.89
(451) Joshua Russell and Tammy Russell.....	\$829.20
(452) Jordan Rutherford.....	\$274.34
(453) Matthew J. Rux and Hannah L. Rux	\$1,354.77
(454) Terry Salyers.....	\$725.69
(455) Tiffany Samuels.....	\$267.50
(456) Tiffany Samuels.....	\$267.50
(457) Jeanne L. San Julian	\$110.12
(458) Heather A. Sanchez	\$403.49
(459) Stacy A. Sanson.....	\$397.12
(460) Charity Sayre	\$270.14
(461) Loraine Schneider.....	\$521.97
(462) Brianna M. Schoolcraft.....	\$890.00
(463) Kelly J. Schoolcraft and Robert Schoolcraft	\$500.00
(464) Amanda Schumacher	\$456.25
(465) Holly Scotchel	\$250.00
(466) Holly Scotchel	\$250.00
(467) Debbie Seacrist.....	\$116.63
(468) John Bradley Settle.....	\$500.00
(469) Jeffrey Shafer and Shavonna Shafer.....	\$279.73

(470) Marissa Shaffer and Tim Shaffer.....	\$500.00
(471) Avital J. Shapiro	\$117.69
(472) Robert G. Sharp and Robin Sharp	\$369.10
(473) John Shawler.....	\$394.62
(474) Pamela Shiflett.....	\$500.00
(475) Jeffery Dean Short.....	\$3,000.00
(476) Mellisa D. Shorter and Brian Shorter	\$170.21
(477) Toni Marie Shreve-Barger.....	\$500.00
(478) Michael P. Shrewsbury.....	\$334.09
(479) James W. Shuman.....	\$507.00
(480) Matthew Shuttlesworth and Skyla Shuttlesworth	\$75.98
(481) Tyler P. Simmers	\$250.00
(482) Myra L. Simmons	\$438.25
(483) Wesley D. Simpson	\$199.93
(484) Sandra Sisler	\$320.10
(485) Sandra Sisler	\$500.00
(486) Benjamin Smith and Kristiaunna Smith	\$500.00
(487) Crystal Smith	\$254.40
(488) Emily Smith.....	\$256.80
(489) Gloria Smith	\$231.96
(490) Jeffrey G. Smith and Dina K. Smith.....	\$668.30
(491) Linda L. Smith and Donley Smith.....	\$250.00

(492) Matthew Smith	\$473.77
(493) Roy A. Smith	\$396.95
(494) Macilia Smith-Miller	\$495.13
(495) Adam Andrew Smolder and Eva Wilodene Smolder.....	\$100.00
(496) Tera Snodgrass	\$256.80
(497) Ronald K. Southern	\$391.30
(498) Sharon E. Souza.....	\$951.99
(499) Ryan Sparks.....	\$500.00
(500) Tyler L. Spear	\$105.95
(501) Adrian Spencer	\$183.91
(502) Todd Sperringer.....	\$158.59
(503) Charles E. Sperry.....	\$258.05
(504) Richter Sponseller and Marcella Sponseller.....	\$1,000.00
(505) Robert Stahl.....	\$297.97
(506) Paul Valachovic and Mary Stamatakis.....	\$494.98
(507) Candace Stanley	\$500.00
(508) Sharon Starcher.....	\$342.40
(509) Lisa Staubly	\$500.00
(510) Chris Steele.....	\$500.00
(511) Brad Stephens and Debra Stephens	\$1,000.00
(512) Kimra Stephens.....	\$217.99
(513) Stephanie Stevens	\$500.00

(514) Brenda A. Stewart.....	\$421.19
(515) Kimberly A. Stewart.....	\$793.16
(516) Christina Stone	\$159.82
(517) Catrina Stout	\$500.00
(518) Stacy Straight.....	\$288.26
(519) JeanClaude Stryffeler	\$184.15
(520) John Stull	\$191.23
(521) Jason Sturtevant.....	\$237.92
(522) Amy Summers	\$500.00
(523) Kenneth Tallman, Jr.	\$419.50
(524) Anthony David Tartell and Mark DeMary	\$170.13
(525) David J. Taylor	\$1,000.00
(526) Kevin Teel and Lisa Teel.....	\$375.02
(527) Ronald Teet.....	\$4,000.00
(528) Terry Templeton	\$989.33
(529) James Tennant and Della Tennant.....	\$3,108.81
(530) Leslie J. Tennant.....	\$500.00
(531) Debbie Thaxton	\$165.84
(532) The Appliance Connection and Robert Hauch	\$500.00
(533) The Traffic Group, Inc.....	\$150,140.00
(534) Jeremy Thode	\$2,000.00
(535) Melody Thomas and Tracy Thomas	\$1,000.00

(536) Rebecca Thomas.....	\$250.00
(537) Tammy Tittle and Jeff Tittle.....	\$478.52
(538) Donna Tomblin and Sherman Tomblin.....	\$50.00
(539) Avereé Torres and Carla White-Phillips	\$140.95
(540) Jerri M. Trent.....	\$500.00
(541) Russell R. Trickett.....	\$194.62
(542) Emily Rebecca Trifaro.....	\$250.00
(543) Trisha Trylch	\$500.00
(544) Jennifer Tucker.....	\$1,831.96
(545) Kelly Turner	\$175.23
(546) Melissa Turner.....	\$387.62
(547) Brandon Ullman and Colleen Ullman	\$210.91
(548) Tony G. Underwood.....	\$1,800.00
(549) Amanda Vaden	\$338.46
(550) Amanda N. Vaden	\$220.50
(551) Jenson Valentine.....	\$343.42
(552) Robert Mike Veres and Sharon K. Veres	\$1,000.00
(553) Erik Vetter, III	\$500.00
(554) Mary K. Vincent.....	\$182.27
(555) Tabitha Waggy	\$979.00
(556) Tamara Walker and Robert L. Walker, Jr.....	\$913.02
(557) Karl L. Wallace.....	\$750.00

(558) Mary J. Wallace	\$823.47
(559) Tessie Stephanie Doty Wallace	\$100.00
(560) Mark J. Wansack and Karen M. Wansack.....	\$104.86
(561) Mandy Ware	\$274.40
(562) Jason Warner and Kristin Warner	\$250.00
(563) Ronald Warren and Linda Warren.....	\$500.00
(564) Waste Management	\$3,648.61
(565) Robert Watson	\$228.65
(566) Shelly Allen Weaver.....	\$500.00
(567) Tonya Wells.....	\$100.00
(568) Thomas M. Westbrook	\$306.72
(569) Jeffrey A. Westfall.....	\$500.00
(570) Wheeling Linen Service	\$1,794.37
(571) Alisha Lanette White	\$674.41
(572) Denise White	\$250.00
(573) Kenneth Whitt and Kaylene Whitt	\$242.31
(574) Ronnie D. Whittington	\$500.00
(575) Kyle Wiggs	\$250.00
(576) Sean Wilcoxson	\$500.00
(577) Ronald L. Wilkinson.....	\$500.00
(578) Dana G. Williams	\$1,000.00
(579) Jimmy Williams.....	\$317.08

(580) Jimmy Williams.....	\$240.19
(581) Mary F. Williams.....	\$500.00
(582) Thomas E. Williams and Maureen E. Williams	\$259.52
(583) Charles Matthew Withrow.....	\$672.24
(584) Roger D. Wolfe and Tanya H. Wolfe.....	\$214.51
(585) Mark Woodruff.....	\$291.04
(586) David L. Woodrum.....	\$500.00
(587) David L. Woodrum.....	\$429.05
(588) Goldie Woodrum and Randy L. Woodrum	\$500.00
(589) Diana L. Wright.....	\$500.00
(590) George Henry Wright, IV.....	\$1,000.00
(591) RuBen C. Wright and Tina Wright.....	\$206.59
(592) Nathalie Wujtow.....	\$349.16
(593) Jay Wyatt and Danielle Wyatt.....	\$250.00
(594) Betty J. Wyrick.....	\$114.69
(595) David G. Yeater.....	\$96.45
(596) Sean Zelesnick	\$990.04
(597) Rosanne Zeni.....	\$250.00
(598) Matthew Zimmerman	\$435.34
<i>(h) Claim against the Department of Transportation, Division of Motor Vehicles:</i>	
(TO BE PAID FROM STATE ROAD REVENUE FUND)	
Marsha Whitlach.....	\$95.00

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants and that prior to the payments to any claimant provided in this bill, the Legislative Claims Commission shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The Legislative Claims Commission shall deliver all releases obtained from claimants to the department against which the claim was allowed.

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CHAPTER 69

(H. B. 2029 - By Delegates Summers, Tully, Rohrbach and Foster)

[Passed February 1, 2023; in effect from passage.]
[Approved by the Governor on February 13, 2023.]

AN ACT to repeal §33-4A-1, §33-4A-2, §33-4A-3, §33-4A-4, §33-4A-5, §33-4A-6, §33-4A-7, and §33-4A-8 of the Code of West Virginia, 1931, as amended, all relating to repealing the creation of an all-payer claims database.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating the all-payer claims database.

That §33-4A-1, §33-4A-2, §33-4A-3, §33-4A-4, §33-4A-5, §33-4A-6, §33-4A-7, and §33-4A-8 of the Code of West Virginia, 1931, as amended, are repealed.

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CHAPTER 70

(H. B. 2564 - By Delegate Linville)

[By Request of the Department of Transportation]

[Passed February 3, 2023; in effect ninety days from passage.]
[Approved by the Governor on February 14, 2023.]

AN ACT to repeal §17C-5A-2 of the Code of West Virginia, 1931, as amended; and to repeal §17C-5C-1, §17C-5C-1a, §17C-5C-2, §17C-5C-3, §17C-5C-4, §17C-5C-4a, §17C-5C-4b, and §17C-5C-5 of said code, relating to repeal of administrative hearing procedures for DUI offenses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.

§1. Repeal of the section relating to administrative hearings for driving under the influence held by the Office of Administrative Hearings.

That §17C-5A-2 of the Code of West Virginia, 1931, as amended, be repealed.

ARTICLE 5C. OFFICE OF ADMINISTRATIVE HEARINGS.

§1. Repeal of article creating Office of Hearings

That §17C-5C-1 through §17C-5C-5 of the code of West Virginia, 1931, as amended, are repealed.



CHAPTER 71

**(H. B. 2835 - By Delegates Rohrbach, Linville, Worrell,
Hornbuckle, Crouse, Griffith, Lucas, Skaff and Capito)**

[Passed February 6, 2023; in effect ninety days from passage.]
[Approved by the Governor on February 17, 2023.]

AN ACT to repeal §18B-1-8b of the Code of West Virginia, 1931, as amended, relating to the repeal of an outdated section of code providing for the merger and consolidation of the West Virginia graduate college with Marshall University.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GOVERNANCE.

§18B-1-8b. Repeal of section relating to Marshall University Graduate College.

That §18B-1-8b of the Code of West Virginia, 1931, as amended, is repealed.

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CHAPTER 72

(Com. Sub. for H. B. 2845 - By Delegates Summers and Tully)

[Passed February 20, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 1, 2023.]

AN ACT to repeal §16-29F-1 of the Code of West Virginia, 1931, as amended, relating to repealing the section regulating the now-expired uninsured and underinsured pilot program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29F. UNINSURED AND UNDERINSURED PILOT PROGRAMS.

§1. Repeal of section authorizing and regulating the now-expired uninsured and underinsured pilot program.

That §16-29F-1 of the Code of West Virginia, 1931, as amended, is repealed.

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CHAPTER 73

(H. B. 2899 - By Delegate Westfall)

[Passed March 2, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to repeal §24-2B-1 and §24-2B-2 of the Code of West Virginia, 1931, as amended, relating to gas utility rates that were set for a period of 12 months during 1983.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2B. TEMPORARY SUSPENSION OF RATE INCREASES.

§1. Repeal of article for temporary suspension of rate increases.

That §24-2B-1 and §24-2B-2 of the Code of West Virginia, 1931, as amended, are repealed.



CHAPTER 74

(Com. Sub. for H. B. 3077 - By Delegates Tully, Summers, Brooks, Jennings, Longanacre, Foster, Barnhart, Kelly, Hott, Rohrbach and Burkhammer)

[Passed March 10, 2023; in effect from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to repeal §60A-10-16 of the Code of West Virginia, 1931, as amended, relating to eliminating the expiration date of the Multi-State Real-Time Tracking System.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§1. Repeal of section setting an expiration date for the Multi-State Real-Time Tracking System.

That §60A-10-16 of the Code of West Virginia, 1931, as amended, is repealed.

CHAPTER 75

(Com. Sub. for H. B. 3135 - By Delegates Westfall and Riley)

[Passed March 11, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §6-7-2 of the Code of West Virginia, 1931, as amended, relating to compensation of designated constitutional officers, including for the Governor, Attorney General, Auditor, Secretary of State, Commissioner of Agriculture, and State Treasurer, beginning in the calendar year 2025, and beginning in the calendar year of each fourth year thereafter; providing for a means to calculate salaries of constitutional officers based upon certain federal salary tables; and providing for a salary modification when modifications are made to those salary tables at the beginning of each calendar year in which those officers' terms begin.

Be it enacted by the Legislature of West Virginia:

§6-7-2. Salaries of certain state officers.

(a) Beginning in the calendar year 2005, and for each calendar year after that, salaries for each of the state Constitutional officers are as follows:

- (1) The salary of the Governor is \$95,000 per year;
- (2) The salary of the Attorney General is \$80,000 per year;
- (3) The salary of the Auditor is \$75,000 per year;
- (4) The salary of the Secretary of State is \$70,000 per year;
- (5) The salary of the Commissioner of Agriculture is \$75,000 per year; and

(6) The salary of the state Treasurer is \$75,000 per year.

(b) Notwithstanding the provisions of subsection (a) of this section, beginning in the calendar year 2009, and for each calendar year thereafter, salaries for each of the state Constitutional officers shall be as follows:

(1) The salary of the Governor shall be \$150,000 per year;

(2) The salary of the Attorney General shall be \$95,000 per year;

(3) The salary of the Auditor shall be \$95,000 per year;

(4) The salary of the Secretary of State shall be \$95,000 per year;

(5) The salary of the Commissioner of Agriculture shall be \$95,000 per year; and

(6) The salary of the state Treasurer shall be \$95,000 per year.

(c) Notwithstanding the provisions of subsection (a) or subsection (b) of this section, beginning calendar year 2025, and beginning in the calendar year of each fourth year thereafter, the salary of the Governor shall be set by the Salary Table For Locality Pay Area of Rest of U.S. as published by the United States Office of Personnel Management. The salary of the Governor shall be equal to the amount set as Grade 15, Step 10 on the Salary Table For Locality Pay Area of Rest of U.S. at the beginning of that calendar year and shall not be increased or diminished for the duration of the four year term of office beginning in that calendar year.

(d) Notwithstanding the provisions of subsection (a) or subsection (b) of this section, beginning calendar year 2025, and beginning in the calendar year of each fourth year thereafter, the salary of the Attorney General, Auditor, Secretary of State, Commissioner of Agriculture, and the Treasurer shall be set by the Salary Table General Schedule Increase as published by the United States Office of Personnel Management. The salary of the Attorney

General, Auditor, Secretary of State, Commissioner of Agriculture, and the Treasurer shall be equal to the amount set as Grade 15, Step 4 on the Salary Table General Schedule Increase at the beginning of that calendar year and shall not be increased or diminished for the duration of the four year terms of each of those offices beginning in that calendar year.

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CHAPTER 76

**(Com. Sub. for S. B. 546 - By Senators Stuart, Woodrum,
Deeds, Taylor, Maynard, and Hamilton)**

[Passed March 10, 2023; in effect 90 days from passage (June 8, 2023)]

[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §60A-2-204, §60A-2-206, §60A-2-210, and §60A-2-212 of the Code of West Virginia, 1931, as amended, all relating to classifying additional drugs and substances to Schedules I, II, IV, and V of the Uniform Controlled Substances Act; removing a substance from Schedule V; modifying language for clarity, that unless expressly exempted by law, all delta tetrahydrocannabinols are included in schedule I; and declaring that the provisions related to tetrahydrocannabinols are inapplicable to products lawfully manufactured, distributed, or possessed pursuant to the Industrial Hemp Development Act and the Medical Cannabis Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section including their isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

(b) Opiates.

Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidiny]—phenylacetamide);

Acetylmethadol;

Allylprodine;

Alphacetylmethadol (except levoalphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

Alphameprodine;

Alphamethadol;

Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-((propanilido) piperidine);

Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidiny]—phenylpropanamide);

Benzethidine;

Betacetylmethadol;

Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidiny]-N-phenylpropanamide);

Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidiny]-N-phenylpropanamide);

Betameprodine;

Betamethadol;

Betaprodine;

Clonitazene;

Dextromoramide;

Diampromide;

Diethylthiambutene;

Difenoxin;

Dimenoxadol;

Dimepheptanol;

Dimethylthiambutene;

Dioxaphetyl butyrate;

Dipipanone;

Ethylmethylthiambutene;

Etonitazene;

Etoxidine;

Furethidine;

Hydroxypethidine;

Ketobemidone;

Levomoramide;

Levophenacymorphan;

3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);

3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl) ethyl-4-piperidiny]—phenylpropanamide);

Morpheridine;

N-Methylnorfentanyl (N-(1-Methyl-4-piperidiny)-N-phenylpropanamide, monohydrochloride);

Norfentanyl (N-Phenyl-N-4-piperidiny-propanamide);

MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

Noracymethadol;

Norlevorphanol;

Normethadone;

Norpipanone;

Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);

PEPAP(1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

Phenadoxone;

Phenampromide;

Phenomorphane;

Phenoperidine;

Piritramide;

Proheptazine;

Properidine;

Propiram;

Racemoramide;

Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);

Tilidine;

Trimeperidine.

(c) Opium derivatives,

Acetorphine;

Acetyldihydrocodeine;
Benzylmorphine;
Codeine methylbromide;
Codeine-N-Oxide;
Cyprenorphine;
Desomorphine;
Dihydromorphine;
Drotebanol;
Etorphine (except HCl Salt);
Heroin;
Hydromorphanol;
Methyldesorphine;
Methyldihydromorphine;
Morphine methylbromide;
Morphine methylsulfonate;
Morphine-N-Oxide;
Myrophine;
Nicocodeine;
Nicomorphine;
Normorphine;
Pholcodine;
Thebacon.

(d) Hallucinogenic substances.

Alpha-ethyltryptamine; some trade or other names: etryptamine; Monase; alpha-ethy-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

4-bromo-2, 5-dimethoxy-amphetamine; some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo- 2,5-DMA;

4-Bromo-2,5-dimethoxyphenethylamine; some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus;

N-(2-Methoxybenzyl)-4-bromo-2, 5-dimethoxyphenethylamine. The substance has the acronym 25B-NBOMe;

2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C-NBOMe);

2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe);

2,5-dimethoxyamphetamine; some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA;

2,5-dimethoxy-4-ethylamphet-amine; some trade or other names: DOET;

2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7);

4-methoxyamphetamine; some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA;

3-Hydroxy-phencyclidine (other name hydroxy PCP);

5-methoxy-3, 4-methylenedioxy-amphetamine;

4-methyl-2,5-dimethoxy-amphetamine; some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP";

3,4-methylenedioxy amphetamine;

3,4-methylenedioxymethamphetamine (MDMA);

3,4-methylenedioxy-N-ethylamphetamine (also known as (ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA);

N-hydroxy-3,4-methylenedioxyamphetamine (also known as (hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and (hydroxy MDA);

3,4,5-trimethoxy amphetamine;

5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT);

Alpha-methyltryptamine (other name: AMT);

Bufotenine; some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;

Diethyltryptamine; some trade and other names: N, N-Diethyltryptamine; DET;

Dimethyltryptamine; some trade or other names: DMT;

5-Methoxy-N,N-disopropyltryptamine (5-MeO-DIPT);

Ibogaine; some trade and other names: 7-Ethyl-6, 6 Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H- pyrido [1', 2': 1, 2] azepino [5,4-b] indole; Tabernanthe iboga;

Lysergic acid diethylamide;

Marihuana; Marijuana (Cannabis, sp.);

Mescaline;

Parahexyl-7374; some trade or other names: 3-Hexyl -1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl;

Peyote; meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, immediate derivative, mixture, or preparation of such plant, its seeds or extracts;

N-ethyl-3-piperidyl benzilate;

N-methyl-3-piperidyl benzilate;

Psilocybin;

Psilocyn;

Tetrahydrocannabinols; synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, immediate derivatives and their isomers with similar chemical structure and pharmacological activity including, but not limited to the following:

delta-1 Cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 Cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3,4 Cis or trans tetrahydrocannabinol, and its optical isomers;

delta-8 Cis or trans tetrahydrocannabinol and its optical isomers; and

delta-10 Cis or trans tetrahydrocannabinol and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

Delta-8-tetrahydrocannabinol-O (delta-8-THC-0), Delta-9-tetrahydrocannabinol (delta-9-THC-0) and Synthetic and non-naturally occurring cannabinoids.

The provisions of this section related to tetrahydrocannabinols are inapplicable to products or substances lawfully manufactured, distributed, or possessed under the provisions of §19-12E-1 *et seq.* and Chapter 16H of this code.

Ethylamine analog of phencyclidine; some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

Pyrrolidine analog of phencyclidine; some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

Thiophene analog of phencyclidine; some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine; TPCP, TCP;

1[1-(2-thienyl)cyclohexyl]pyrrolidine; some other names: TCPy;

4-methylmethcathinone (Mephedrone);

3,4-methylenedioxypropylvalerone (MDPV);

2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);

2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D);

2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C);

2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I);

2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2);

2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4);

2-(2,5-Dimethoxyphenyl)ethanamine (2C-H);

2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N);

2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P);

3,4-Methylenedioxy-N-methylcathinone (Methylone);

2,5-dimethoxy-4-(n)-propyltghiophenethylamine (2C-T-7, itsoptical isomers, salts and salts of isomers;

5-methoxy-N,N-dimethyltryptamine some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT(5-MeO-DMT);

Alpha-methyltryptamine (other name: AMT);

5-methoxy-N,N-diisopropyltryptamine (other name: 5-MeO-DIPT);

Synthetic Cannabinoids as follows:

2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol {also known as CP 47,497 and homologues};

rel-2-[(1S,3R)-3-hydroxycyclohexyl] -5-(2-methylnonan-2-yl)phenol {also known as CP 47,497-C8 homolog};

[(6aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol] {also known as HU-210};

(dexanabinol);

(6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzol[c]chromen-1-ol] {also known as HU-211};

1-Pentyl-3-(1-naphthoyl)indole {also known as JWH-018};

1-Butyl-3-(1-naphthoyl)indole {also known as JWH-073};

(2-methyl-1-propyl-1H-indol-3-yl)-1-napthalenyl-methanone {also known as JWH-015};

(1-hexyl-1H-indol-3-yl)-1-naphthalenyl-methanone {also known as JWH-019};

[1-[2-(4-morpholinyl) ethyl] -1H-indol-3-yl]-1-naphthalenyl-methanone {also known as JWH-200};

1-(1-pentyl-1H-indol-3-yl)-2-(3-hydroxyphenyl)-ethanone {also known as JWH-250};

2-((1S,2S,5S)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl)-5-(2-methyloctan-2-yl)phenol {also known as CP 55,940};

(4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) -methanone {also known as JWH-122};

(4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) -methanone {also known as JWH-398};

(4-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone {also known as RCS-4};

1-(1-(2-cyclohexylethyl) -1H-indol-3-yl) -2-(2-methoxyphenyl) ethanone {also known as RCS-8};

1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081);

1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201); and

1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694).

Synthetic cannabinoids:

CP 47,497 AND homologues, 2-[(1R,3S)-3-Hydroxycyclohexyl]-5-(2-methyloctan-2-

YL)phenol);

HU-210, [(6AR,10AR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-Methyloctan-2-YL)-6A,7,10, 10A-tetrahydrobenzo[C]chromen-1-OL)];

HU-211, (dexanabinol, (6AS,10AS)-9-(hydroxymethyl)-6,6-Dimethyl-3-(2-methyloctan-2-YL)-6A,7,10,10atetrahydrobenzo[C]chromen-1-OL);

JWH-018, 1-pentyl-3-(1-naphthoyl)indole;

JWH-019, 1-hexyl-3-(1-naphthoyl)indole;

JWH-073, 1-butyl-3-(1-naphthoyl)indole;

JWH-200, (1-(2-morpholin-4-ylethyl)indol-3-yl)- Naphthalen-1-ylmethanone;

JWH-250, 1-pentyl-3-(2-methoxyphenylacetyl)indole.]

Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (5F-ADB);

Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (5F-AMB);

Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (FUB-AMB);

N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide (5F-APINACA);

N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (ADB-FUBINACA);

Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate (MDMB-CHMICA);

Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (MDMB-FUBINACA);

Tetrahydrocannabinols:

DELTA-1 CIS OR trans tetrahydrocannabinol and their Optical isomers.

DELTA-6 CIS OR trans tetrahydrocannabinol and their optical isomers.

DELTA-3,4 CIS or their trans tetrahydrocannabinol and their optical isomers.

Synthetic Phenethylamines

2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe/ 2C-I-NBOMe);

2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe/2C-C-NBOMe);

2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe/ 2C-B-NBOMe);

Synthetic Opioids (including their isomers, esters, ethers, salts and salts of isomers, esters and ethers):

N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (acetyl fentanyl);

furanyl fentanyl;

3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (also known as U-47700);

N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, also known as N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide, (butyryl fentanyl);

N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, also known as N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide, (beta-hydroxythiofentanyl);

N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide (acryl fentanyl);

N-(1-phenethylpiperidin-4-yl)-N-phenylisobutyramide (isobutyryl fentanyl);

N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopentanecarboxamide (cyclopropyl fentanyl);

2-(2,4-dichlorophenyl)-N-((1S,2S)-2-(dimethylamino)cyclohexyl)-N-methylacetamide (also known as U-48800);

Trans-3,4-dichloro-N-[2-(diethylamino)cyclohexyl]-N-methyl-benzamide (also known as U-49900);

Trans-3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methyl-benzeneacetamide (also known as U-51754);

2-(2-(4-butoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)-N,N-diethylethan-1-amine (butonitazene);

2-(2-(4-ethoxybenzyl)-1H-benzimidazol-1-yl)-N,N-diethylethan-1-amine (etodesnitazene);

N,N-diethyl-2-(2-(4-fluorobenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine (flunitazene);

N,N-diethyl-2-(2-(4-methoxybenzyl)-1H-benzimidazol-1-yl)ethan-1-amine (metodesnitazene);

N,N-diethyl-2-(2-(4-methoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine (metonitazene);

2-(4-ethoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1H-benzimidazole (N-pyrrolidino etonitazene, etonitazepyne);

N,N-diethyl-2-(5-nitro-2-(4-propoxybenzyl)-1H-benzimidazol-1-yl)ethan-1-amine (protonitazene);

N-pyrrolidino etonitazene;

Etodesnitazene;

Isotonitazene;

Protonitazene;

Metonitazene;

Butonitazene;

Metodesnitazene;

Flunitazene;

Opioid Receptor Agonist

AH-7921 (3,4-dichloro-N-(1-dimethylamino)cyclohexylmethyl]benzamide).

Naphthoylindoles or any compound containing a 3-(1-Naphthoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include the following:

JWH 015;

JWH 018;

JWH 019;

JWH 073;

JWH 081;

JWH 122;

JWH 200;

JWH 210;

JWH 398;

AM 2201; and

WIN 55,212.

Naphylmethylindoles or any compound containing a 1-hindol-3-yl-(1-naphthyl) methane structure with a substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 175 and JWH 184.

Naphthoylpyrroles or any compound containing a 3-(1-Naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 147 and JWH 307.

Naphthylmethylindenes or any compound containing a Naphthylideneindene structure with substitution at the 3- Position of the indene ring whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 176.

Phenylacetylindoles or any compound containing a 3-Phenylacetylindole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include the following:

RCS-8, SR-18 OR BTM-8;

JWH 250;

JWH 203;

JWH 251; and

JWH 302.

Cyclohexylphenols or any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with a substitution at the 5-position of the phenolic ring whether or not substituted in the cyclohexyl ring to any extent. This shall include the following:

CP 47,497 and its homologues and analogs;

Cannabicyclohexanol; and

CP 55,940.

Benzoylindoles or any compound containing a 3-(benzoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include the following:

AM 694;

Pravadoline WIN 48,098;

RCS 4; and

AM 679.

[2,3-dihydro-5 methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-DE]-1, 4-benzoxazin-6-YL]-1-naphthalenymethanone. This shall include WIN 55,212-2.

Dibenzopyrans or any compound containing a 11-hydroxydelta 8-tetrahydrocannabinol structure with substitution on the 3-pentyl group. This shall include HU-210, HU-211, JWH 051, and JWH 133.

Adamantoylindoles or any compound containing a 3-(-1-Adamantoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the adamantoyl ring system to any extent. This shall include AM1248.

Tetramethylcyclopropylindoles or any compound containing a 3-tetramethylcyclopropylindole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropyl ring to any extent. This shall include UR-144 and XLR-11.

N-(1-Adamantyl)-1-pentyl-1h-indazole-3-carboxamide. This shall include AKB48.

Any other synthetic chemical compound that is a Cannabinoid receptor type 1 agonist as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV, and V,

not federal Food and Drug Administration approved drug or used within legitimate, approved medical research. Since nomenclature of these substances is not internationally standardized, any immediate precursor or immediate derivative of these substances shall be covered.

Tryptamines:

5- methoxy- N- methyl-N-isopropyltryptamine (5-MeO-MiPT);

4-hydroxy-N,N-diisopropyltryptamine (4-HO-DiPT);

4-hydroxy-N-methyl-N-isopropyltryptamine (4-HO-MiPT);

4-hydroxy-N-methyl-N-ethyltryptamine (4-HO-MET);

4-acetoxy-N,N-diisopropyltryptamine (4-AcO-DiPT);

5-methoxy- α -methyltryptamine (5-MeO-AMT);

4-methoxy-N,N-Dimethyltryptamine (4-MeO-DMT);

4-hydroxy Diethyltryptamine (4-HO-DET);

5- methoxy- N,N- diallyltryptamine (5-MeO-DALT);

4-acetoxy-N,N-Dimethyltryptamine (4-AcO DMT);

4-hydroxy Diethyltryptamine (4-HO-DET);

FDU-PB-22 (1-Naphthyl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate);

FUB-PB-22 (Quinolin-8-yl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate);

5-Fluoro-MN-24 (1-(5-Fluoropentyl)-N-(naphthalen-1-yl)-1H-indole-3-carboxamide);

MN-24 (N-(naphthalen-1-yl)-1-pentyl-1H-indole-3-carboxamide);

SDB-005 (Naphthalen-1-yl 1-pentyl-1H-indazole-3-carboxylate);

SDB-006 (1-Pentyl-N-(phenylmethyl)-1H-indole-3-carboxamide);

Methyl-Ethylaminopentiophenone;

FUB-AMB (Methyl(1-(4-fluorobenzyl)-1H-indazole-3-carbonyl)-L-valinate);

5-Fluoro-SDB-005 Indole (Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate);

5F-AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide);

MMB-CHMICA (Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoat);

MN-24 (N-(naphthalen-1-yl)-1-pentyl-1H-indole-3-carboxamide);

SDB-005 (Naphthalen-1-yl 1-pentyl-1H-indazole-3-carboxylate);

SDB-006 (1-Pentyl-N-(phenylmethyl)-1H-indole-3-carboxamide);

Ethcathinone (2-(ethylamino)-1-phenyl-1-propanone, monohydrochloride);

Methyl-Ethylaminopentiophenone;

FUB-AMB (Methyl(1-(4-fluorobenzyl)-1H-indazole-3-carbonyl)-L-valinate);

5-Fluoro-SDB-005 Indole (Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate);

5F-AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide);

MMB-CHMICA (Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate);

Bromazolam (8-bromo-1-methyl-6-phenyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine);

Clonazolam (6-(2-chlorophenyl)-1-methyl-8-nitro-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine);

Cloniprazepam (5-(2-chlorophenyl)-1-(cyclopropylmethyl)-1,3-dihydro-7-nitro-2H-1,4-benzodiazepin-2-one);

Etizolam (4-(2-chlorophenyl)-2-ethyl-9-methyl-6H-thieno[3,2-f][1,2,4]triazolo[4,3-a][1,4]diazepine);

Flualprazolam (8-chloro-6-(2-fluorophenyl)-1-methyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine);

Flubromazepam (7-bromo-5-(2-fluorophenyl)-1,3-dihydro-2H-1,4-benzodiazepin-2-one);

Flubromazolam (8-bromo-6-(2-fluorophenyl)-1-methyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine);

Flunitrazolam (6-(2-fluorophenyl)-1-methyl-8-nitro-4H-benzo[f][1,2,4]triazolo[4,3-a][1,4]diazepine);

Nifoxipam (5-(2-fluorophenyl)-1,3-dihydro-3-hydroxy-7-nitro-2H-1,4-benzodiazepin-2-one);

Nitrazolam (1-methyl-8-nitro-6-phenyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine); and

Pyrazolam (8-bromo-1-methyl-6-(2-pyridinyl)-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine).

(e) Depressants.

4-CN-CUMYL-BUTINACA (1-(4-Cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide);

Alpha-Phenylacetonitrile (3-Oxo-2-phenylbutanenitrile);

2-Fluoro Deschloroketamine (2-(2-Fluorophenyl)-2-(methylamino)-cyclohexanone, monohydrochloride);

4-MEAP (2-(Ethylamino)-1-(4-methylphenyl)pentan-1-one);

Mecloqualone;

Methaqualone;

Bromazolam (8-bromo-1-methyl-6-phenyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine);

Clonazolam (6-(2-chlorophenyl)-1-methyl-8-nitro-4 H-[1,2,4]triazolo[4,3 a][1,4]benzodiazepine);

Cloniprazepam (5-(2-chlorophenyl)-1-(cyclopropylmethyl)-1,3-dihydro-7-nitro-2H-1,4-benzodiazepin-2-one);

Etizolam (4-(2-chlorophenyl)-2-ethyl-9-methyl-6H-thieno[3,2-f] [1,2,4]triazolo[4,3-a][1,4]diazepine);

Flualprazolam (8-chloro-6-(2-fluorophenyl)-1-methyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine);

Flubromazepam (7-bromo-5-(2-fluorophenyl)-1,3-dihydro-2H-1,4-benzodiazepin-2-one);

Flubromazolam (8-bromo-6-(2-fluorophenyl)-1-methyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine);

Flunitrazolam (6-(2-fluorophenyl)-1-methyl-8-nitro-4H-benzo[f][1,2,4]triazolo[4,3-a][1,4]diazepine);

Nifoxipam (5-(2-fluorophenyl)-1,3-dihydro-3-hydroxy-7-nitro-2H-1,4-benzodiazepin-2-one);

Nitrazolam (1-methyl-8-nitro-6-phenyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine);

Pyrazolam (8-bromo-1-methyl-6-(2-pyridinyl)-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine);

Declazepam (7-Chloro-5-(2-chlorophenyl)-1-methyl-1,3-dihydro-2H-1,4-benzodiazepin-2-one); and

Deschloroetizolam (2-Ethyl-9-methyl-4-phenyl-6H-thieno[3,2-f][1,2,4]triazolo[4,3-a][1,4]diazepine);

(f) Stimulants.

Aminorex; some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

Cathinone; some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone;

Fenethylamine;

Methcathinone, its immediate precursors and immediate derivatives, its salts, optical isomers and salts of optical isomers; some other names: (2-(methylamino)-propyl)phenone; alpha-

(methylamino)propylphenone; 2-(methylamino)-1-phenylpropan-1-one; alpha—methylaminopropylphenone; monomethylpropion; 3,4-methylenedioxypropylphenone and/or mephedrone; 3,4-methylenedioxypropylphenone (MPVD); ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR1432;

(+/-) cis-4-methylaminorex; ((-)-cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

N-ethylamphetamine;

N,N-dimethylamphetamine; also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine;

Alpha-pyrrolidinopropylphenone, also known as alpha-PVP, optical isomers, salts and salts of isomers;

Substituted amphetamines:

2-Fluoroamphetamine;

3-Fluoroamphetamine;

4-Fluoroamphetamine;

2-chloroamphetamine;

3-chloroamphetamine;

4-chloroamphetamine;

2-Fluoromethamphetamine;

3-Fluoromethamphetamine;

4-Fluoromethamphetamine;

4-chloromethamphetamine;

Ethcathinone (2-(ethylamino)-1-phenyl-1-propanone,
monohydrochloride);

Alpha-PHP (1-Phenyl-2-(pyrrolidin-1-yl)hexan-1-one);

MPHP (1-(4-Methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one);

PV8 (1-Phenyl-2-(pyrrolidin-1-yl)heptan-1-one);

4-Chloro-Alpha-PVP (1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one);

N-Ethylhexedrone (2-(Ethylamino)-1-phenylhexan-1-one);

Methoxetamine (2-(Ethylamino)-2-(3-methoxyphenyl)-cyclohexanone); and

3-Fluorophenmetrazine (2-(3-Fluorophenyl)-3-methylmorpholine);

(g) Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture, or preparation which contains any quantity of the following substances:

N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers;

N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thienylfentanyl), its optical isomers, salts, and salts of isomers.

N-benzylpiperazine, also known as BZP;

Cyclopentyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopentanecarboxamide);

4-fluorobutyryl fentanyl (N-(4-fluorophenyl)-N-[1-(2-phenylethyl)piperidin-4-yl]-butyramide);

Isobutyryl fentanyl (2-methyl-N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]-propanamide);

Methoxyacetyl fentanyl (2-methoxy-N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]-acetamide);

3-methylbutyryl fentanyl (N-[3-methyl-1-(2-phenylethyl)piperidin-4-yl]-N-phenylbutyramide);

4-methoxybutyryl fentanyl (N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-yl)butyramide);

Ocfentanil (N-(2-fluorophenyl)-2-methoxy-N-[1-(2-phenylethyl)piperidin-4-yl]-acetamide);

Tetrahydrofuran fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide); and

Valeryl fentanyl (N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]pentanamide).

(h) The following controlled substances are included in Schedule I:

Synthetic Cathinones or any compound, except bupropion or compounds listed under a different schedule, or compounds used within legitimate and approved medical research, structurally derived from 2- Aminopropan-1-one by substitution at the 1-

position with Monocyclic or fused polycyclic ring systems, whether or not the compound is further modified in any of the following ways:

By substitution in the ring system to any extent with Alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl, or halide Substituents whether or not further substituted in the ring system by one or more other univalent substituents;

By substitution at the 3-position with an acyclic alkyl substituent;

By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or methoxybenzyl groups;

By inclusion of the 2-amino nitrogen atom in a cyclic structure;
or

Any other synthetic chemical compound that is a Cannabinoid receptor type 1 agonist as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV, and V, not federal Food and Drug Administration approved drug or used within legitimate, approved medical research.

§60A-2-206. Schedule II.

(a) Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including their isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

(b) *Substances, vegetable origin or chemical synthesis.* — Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or

independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone and naltrexone, and their respective salts, but including the following:

Raw opium;

Opium extracts;

Opium fluid;

Powdered opium;

Granulated opium;

Tincture of opium;

Codeine;

Dihydroetorphine;

Ethylmorphine;

Etorphine hydrochloride;

Hydrocodone;

Hydromorphone;

Metopon;

Morphine;

Oripavine;

Oxycodone;

Oxymorphone; and

Thebaine;

Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (1) of this subsection, except that these substances shall not include the isoquinoline alkaloids of opium;

Opium poppy and poppy straw;

Coca leaves and any salt, compound, derivative, or preparation of coca leaves (including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers and derivatives), and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine or ecgonine;

Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy).

(c) Opiates.

Alfentanil;

Alphaprodine;

Anileridine;

Bezitramide;

Bulk dextropropoxyphene (nondosage forms);

Carfentanil;

Dihydrocodeine;

Diphenoxylate;

Fentanyl;

Isomethadone;

Levo-alphaacetylmethadol; some other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM;

Levomethorphan;

Levorphanol;

Metazocine;

Methadone;

Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

Moramide-Intermediate, 2-methyl-3-morpholino-1;

Norfentanyl;

Oliceridine;

1-diphenylpropane-carboxylic acid;

Pethidine; (meperidine);

Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

Phenazocine;

Piminodine;

Racemethorphan;

Racemorphan;

Remifentanil;

Sufentanil;

Tapentadol; and

Thiafentanil (4-(methoxycarbonyl)-4-(N-phenmethoxyacetamido)-1-2-(thienyl)ethylpiperidine), including its isomers, esters, ethers, salts and salts of isomers, esters and ethers.

(d) Stimulants.

Amphetamine, its salts, optical isomers, and salts of its optical isomers;

Methamphetamine, its salts, isomers, and salts of its isomers;

Methylphenidate;

Phenmetrazine and its salts; and

Lisdexamfetamine.

(e) Depressants.

Amobarbital;

Glutethimide;

Pentobarbital;

Phencyclidine; and

Secobarbital.

(f) Hallucinogenic substances:

Dronabinol [(-)-delta-9-trans tetrahydrocannabinol] if in an FDA approved oral solution; and

Nabilone: [Another name for nabilone: (+)-trans-3-(1, 1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo [b,d] pyran-9-one].

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture,

or preparation which contains any quantity of the following substances:

Immediate precursor to amphetamine and methamphetamine:

Phenylacetone;

Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;

Immediate precursors to phencyclidine (PCP):

1-phenylcyclohexylamine; and

1-piperidinocyclohexanecarbonitrile (PCC).

Immediate precursor to fentanyl:

4-anilino-N-phenethyl-4-piperidine (ANPP).

§60A-2-210. Schedule IV.

(a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including their isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

(b) *Narcotic drugs.* — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and

Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

(c) Depressants.

Alprazolam;

Barbital;

Bromazepam;

Camazepam;

Carisoprodol;

Chloral betaine;

Chloral hydrate;

Chlordiazepoxide;

Clobazam;

Clonazepam;

Clorazepate;

Clotiazepam;

Cloxazolam;

Delorazepam;

Diazepam;

Dichloralphenazone;

Estazolam;

Ethchlorvynol;

Ethinamate;

Ethyl loflazepate;

Fludiazepam;

Flunitrazepam;

Flurazepam;

Fospropofol;

Halazepam;

Haloxazolam;

Ketazolam;

Lemborexant.

Loprazolam;

Lorazepam;

Lormetazepam;

Mebutamate;

Medazepam;

Meprobamate;

Methohexital;

Methylphenobarbital (mephobarbital);

Midazolam;

Nimetazepam;

Nitrazepam;

Nordiazepam;

Oxazepam;

Oxazolam;

Paraldehyde;

Petrichloral;

Phenobarbital;

Pinazepam;

Prazepam;

Quazepam;

Remimazolam.

Temazepam;

Tetrazepam;

Triazolam;

Xylazine;

Zaleplon;

Zolpidem;

Zopiclone; and

Suvorexant ([[(7R)-4-(5-chloro-1,3-benzoxazol-2-yl)-7-methyl-1,4-diazepan-1-yl] [5-methyl-2-(2H-1,2,3-triazol-2-yl)phenyl]methanone).

(d) Any material, compound, mixture, or preparation which contains any quantity of Fenfluramine and Dexfenfluramine.

(e) Stimulants.

Cathine ((+)-norpseudoephedrine);

Diethylpropion;

Fencamfamin;

Fenproporex;

Mazindol;

Mefenorex;

Modafinil;

Pemoline (including organometallic complexes and chelates thereof);

Phentermine;

Pipradrol;

Serdexmethylphenidate;

Sibutramine;

SPA ((-)-1-dimethylamino-1,2-diphenylethane); and

Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl [(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid);

(f) Other substances.

Pentazocine;

Butorphanol;

Tramadol (2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol); and

Amyl nitrite, butyl nitrite, isobutyl nitrite, and the other organic nitrites are controlled substances and no product containing these compounds as a significant component shall be possessed, bought, or sold other than pursuant to a bona fide prescription or for industrial or manufacturing purposes.

§60A-2-212. Schedule V.

(a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Unless specifically

excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation.

(b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture or preparation containing any of the following narcotic drugs or their salts calculated as the free anhydrous base or alkaloid in limited quantities as set forth below, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone.

Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

Not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) Stimulants:

Pyrovalerone.

(d) Any compound, mixture, or preparation containing as its single active ingredient ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of

optical isomers except products which are for pediatric use primarily intended for administration to children under the age of 12: *Provided*, That neither the offenses set forth in section four hundred one, article four of this chapter, nor the penalties therein, shall be applicable to ephedrine, pseudoephedrine or phenylpropanolamine which shall be subject to the provisions of article ten of this chapter.

(e) Depressants:

Ezogabine [N-[2-amino-4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester];

Lacosamide [(R)-2-acetoamido- N -benzyl-3-methoxypropionamide]; and

Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl]butanamide) (also referred to as BRV; UCB-34714; Briviact).

(f) Other substances:

Gabapentin;

Pregabalin;

Cenobamate; and

Lasmiditan.



CHAPTER 77

(Com. Sub. for S. B. 232 - By Senators Trump and Rucker)

[Passed March 11, 2023; in effect from passage]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §27-6A-12, relating to creating a multi-disciplinary study group to make recommendations regarding the diversion of persons with mental illness, developmental disabilities, cognitive disabilities, substance abuse problems, and other disabilities from the criminal justice system; setting forth findings; listing the membership makeup of the study group; promoting appropriate interventions and placements for inmates and persons with disabilities; developing a plan to coordinate care, treatment, and placement for persons with disabilities in the criminal justice system and in the community; directing a report be made to Legislature on or before November 30, 2023; and authorizing per diem expenses for nongovernmental members.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6A. COMPETENCY AND CRIMINAL RESPONSIBILITY OF PERSONS CHARGED OR CONVICTED OF A CRIME.

§27-6A-12. Development of a strategic plan for a Sequential Intercept Model to divert adults and juveniles with mental illness, developmental disabilities, cognitive disabilities, and substance use disorders away from the criminal justice system into treatment and to promote continuity of care and interventions; directing submission of a report to the Legislature.

(a) The Legislature finds that the state's adult and juvenile forensic patient populations continue to increase and that the placement of forensic patients at state health care facilities, diversion facilities, group homes, transitional living facilities, in the community, and other settings continues to rapidly escalate. The Legislature further finds that persons with mental illness, developmental disabilities, cognitive disabilities, and/or substance use disorder may be overrepresented in the criminal justice system, and many of these people might not present a danger to the public if they could participate in a functioning community behavioral health continuum of care. The Legislature further finds that the increasing adult and juvenile forensic patient populations, the placement and treatment of adult and juvenile forensic patients, and the release of persons with mental illness, developmental disabilities, and other disabilities creates significant clinical, public safety, staffing, and fiscal needs and burdens for the judiciary, law enforcement, state health care facilities, correctional facilities, behavioral health professionals, hospitals, and the public. The Legislature further finds that there is a need for improved coordination among the Department of Health and Human Resources, the Division of Corrections and Rehabilitation, and the Division of Rehabilitation Services to promote the identification, safe discharge, and effective community intervention and placement of persons who suffer from mental illness, a developmental disability, a cognitive disability, and/or substance use disorder. The Legislature further finds that there is a need to develop functional standards and protocols for the identification, management, qualified assessment, and treatment of adult and juvenile forensic patients.

(b) The Chairman of the Dangerousness Assessment Advisory Board (DAAB) shall convene a multi-disciplinary study group of the following persons:

- (1) The Statewide Forensic Clinical Director;
- (2) The Statewide Forensic Coordinator;
- (3) The two forensic psychiatrists who are members of the board;

- (4) The two psychologists who are members of the board;
- (5) The Director of the Office of Drug Control Policy;
- (6) A designee of the Supreme Court of Appeals;
- (7) A designee of the Bureau of Children and Families with experience in juvenile forensic matters;
- (8) A designee of the Division of Corrections and Rehabilitation;
- (9) A designee of the Division of Rehabilitation Services;
- (10) A designee of the Prosecuting Attorneys Institute;
- (11) A designee of the Public Defender Services;
- (12) A designee of the West Virginia Behavioral Healthcare Providers Association who is a licensed clinician with forensic patient experience;
- (13) A designee of the West Virginia Hospital Association;
- (14) A designee of the West Virginia Housing Development Fund;
- (15) A designee of Disability Rights of West Virginia;
- (16) A designee of the West Virginia Sheriff's Association;
- (17) A designee of the Juvenile Justice Commission; and
- (18) A designee of the West Virginia University Center for Excellence in Disabilities.

(c) The purpose of the multi-disciplinary study group is to provide opinion, guidance, and informed objective expertise to the Legislature regarding each of the following areas:

- (1) The development and implementation of a Sequential Intercept Model to divert adults and juveniles with mental illness, developmental disabilities, cognitive disabilities, and/or substance

use disorders away from the criminal justice system and into community-based treatment or other settings where appropriate;

(2) The review and recommendation of standards and protocols for the evaluation, treatment, management, and stabilization of adult and juvenile forensic patients;

(3) A recommendation regarding standards and protocols to promote continuity of care and interventions for adult and juvenile forensic patients and inmates released from correctional facilities;

(4) The recommendation of a model to coordinate services and interventions among the Department of Health and Human Resources, the Division of Corrections and Rehabilitation, the Division of Rehabilitation Services, behavioral healthcare providers, law enforcement, and the court system to facilitate the appropriate diversion, identification, evaluation, assessment, management, and placement of adults and juveniles who suffer from mental illness, a development disability, a cognitive disability, and/or substance use disorder to ensure public safety and the effective clinical management of such persons;

(5) The identification of potential funding sources and the scope of resources needed for the implementation of the study group's recommendations; and

(6) Any other issues related to addressing the Legislature's findings.

(d) The provisions of §6-9A-1 *et seq.* and §29B-1-1 *et seq.* of this code are inapplicable to the operation of the study group.

(e) The written recommendations of the study group shall be submitted to the President of the Senate and the Speaker of the House of Delegates on or before November 30, 2023.

(f) Each member of the multi-disciplinary study group whose regular salary is not paid by the State of West Virginia shall be paid the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation

Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Reimbursement for expenses shall not be made, except upon an itemized account, properly certified by the members of the study group. All reimbursement for expenses shall be paid out of the State Treasury upon a requisition upon the State Auditor.

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CHAPTER 78

**(Com. Sub. for S. B. 495 - By Senators Trump, Takubo,
Clements, Woelfel, Deeds, and Rucker)**

[Passed March 11, 2023; in effect from passage]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §15A-4-8a of the Code of West Virginia, 1931, as amended, relating generally to correctional institutions and juvenile facilities; deeming certain video and audio recordings records and reports to be confidential; creating exceptions to confidentiality; requiring court or administrative tribunal orders directing disclosure to contain a provision limiting disclosure to the purposes necessary to the proceeding and prohibiting unauthorized use and publication; requiring the Commissioner of the Division of Corrections and Rehabilitation to permit the viewing of certain records to licensed attorneys under certain conditions; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. CORRECTIONS MANAGEMENT.

§15A-4-8a. Facility video and security records confidential; exceptions.

(a) The contents of all records necessary for the safe and secure management of inmates and residents committed to state correctional and juvenile facilities are confidential and may only be disclosed or released:

(1) Pursuant to this section;

(2) As required by the provisions of §29B-1-1 *et seq.* of this code;

(3) In accordance with the discovery provisions of the West Virginia Rules of Civil Procedure or the West Virginia Rules of Criminal Procedure; or

(4) In accordance with the provisions of §49-5-101 of this code.

(b) As used in this section, "records necessary for the safe and secure management of inmates and residents" means:

(1) Video and audio recordings produced in a correctional or juvenile facility;

(2) Incident reports and attachments thereto;

(3) Investigation reports and any attachments thereto, including, but not limited to, witness statements; and

(4) Any document or recording generated within a facility containing information which would reasonably place the safety of an employee, inmate, or resident in jeopardy.

(c) Records protected pursuant to the provisions of this section may be disclosed:

(1) To the Secretary of the Department of Homeland Security, his or her designees, and the commissioner or his or her designees for official use;

(2) To law enforcement when release is determined by the commissioner or his or her designees to be necessary for the investigation, prevention, or prosecution of a crime or crimes;

(3) To the Juvenile Justice Commission and its designees acting in the course of their official duties; and

(4) Pursuant to a lawful order of a court of record or an administrative tribunal for use in a civil, criminal, or administrative matter: *Provided*, That the order shall contain a provision limiting disclosure or publication of the records to purposes necessary to the proceeding and prohibiting its unauthorized use and reproduction.

(5) The commissioner shall authorize an attorney, licensed to practice law in this state and who is representing a person with a potential claim for personal injury or a violation of the United States Constitution or West Virginia Constitution allegedly caused by the division, to view facility video, incident reports, or investigation reports related to the safe and secure management of inmates and residents for purposes of determining the validity of a claim against the division: *Provided*, That such video, incident reports, or investigation reports related to the safe and secure management of inmates and residents shall not be released to the licensed attorney prior to institution of a suit or petition for pre-suit discovery in the appropriate forum and after the entry of an appropriate protective order prohibiting the misuse and reproduction of disclosed records.

(d) The commissioner shall authorize an attorney, licensed to practice in this state and who is representing a person related by consanguinity or affinity to an inmate or resident who has suffered an alleged injury or death while in the custody of the division to view facility video, incident reports, or investigation reports related to the safe and secure management of inmates and residents under the conditions set forth in subdivision (5), subsection (c) of this section.

(e) The confidentiality provisions of this section extend to any person receiving such records and may not be used for any unauthorized purpose except upon order of a court of record or administrative tribunal.



CHAPTER 79

(H. B. 3552 - By Delegates Brooks, Phillips, Honaker, Hott and Heckert)

[Passed March 11, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §15A-3-16 of the Code of West Virginia, 1931, as amended, relating to per diem jail costs; providing authority for counties to seek reimbursement from certain municipalities for certain per diem costs; providing for the payment of housing and maintenance of inmates; setting a per day, per inmate base rate for payments; establishing a means of calculating fees; providing for a reduced rate in certain circumstances; providing for an enhanced rate in certain circumstances; providing for recalculation every decennial; requiring publication on the agency webpage; and establishing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.

§15A-3-16. Funds for operations of jails under the jurisdiction of the commissioner.

(a) Any special revenue funds previously administered by the Regional Jail and Correctional Facility Authority or its executive director are continued, and shall be administered by the commissioner.

(b) Funds that have been transferred by §15A-3-16(a) of this code shall be limited in use to operations of jail functions, and for payment to the Regional Jail and Correctional Facility Authority Board, for payment of indebtedness. In no case shall a fund be

utilized to offset or pay operations of nonjail parts of the facility: *Provided*, That funds may be utilized on a pro rata basis for shared staff and for operational expenses of facilities being used as both prisons and jails.

(c) Whenever the commissioner determines that the balance in these funds is more than the immediate requirements of this article, he or she may request that the excess be invested until needed. Any excess funds so requested shall be invested in a manner consistent with the investment of temporary state funds. Interest earned on any moneys invested pursuant to this section shall be credited to these funds.

(d) These funds consist of the following:

(1) Moneys collected and deposited in the State Treasury which are specifically designated by Acts of the Legislature for inclusion in these funds;

(2) Contributions, grants, and gifts from any source, both public and private, specifically directed to the operations of jails under the control of the commissioner;

(3) All sums paid pursuant to §15A-3-16(g) of this code; and

(4) All interest earned on investments made by the state from moneys deposited in these funds.

(e) The amounts deposited in these funds shall be accounted for and expended in the following manner:

(1) Amounts deposited shall be pledged first to the debt service on any bonded indebtedness;

(2) After any requirements of debt service have been satisfied, the commissioner shall requisition from these funds the amounts that are necessary to provide for payment of the administrative expenses of this article, as limited by this section;

(3) The commissioner shall requisition from these funds, after any requirements of debt service have been satisfied, the amounts

that are necessary for the maintenance and operation of jails under his or her control. These funds shall make an accounting of all amounts received from each county by virtue of any filing fees, court costs, or fines required by law to be deposited in these funds and amounts from the jail improvement funds of the various counties;

(4) Notwithstanding any other provisions of this article, sums paid into these funds by each county pursuant to §15A-3-16(g) of this code for each inmate shall be placed in a separate account and shall be requisitioned from these funds to pay for costs incurred; and

(5) Any amounts deposited in these funds from other sources permitted by this article shall be expended based on particular needs to be determined by the commissioner.

(f)(1) After a jail facility becomes available pursuant to this article for the incarceration of inmates, each county within the region shall incarcerate all persons whom the county would have incarcerated in any jail prior to the availability of the jail facility in the jail facility, except those whose incarceration in a local jail facility used as a local holding facility is specified as appropriate under the previously promulgated, and hereby transferred standards and procedures developed by the Jail Facilities Standards Commission, and whom the sheriff or the circuit court elects to incarcerate therein.

(2) Notwithstanding the provisions of §15A-3-16(f)(1) of this code, circuit and magistrate courts are authorized to:

(A) Detain persons who have been arrested or charged with a crime in a county or municipal jail specified as appropriate under the standards and procedures referenced in §15A-3-16(f)(1) of this code, for a period not to exceed 96 hours; or

(B) Commit persons convicted of a crime in a county or municipal jail, specified as appropriate under the standards and procedures referenced in §15A-3-16(f)(1) of this code, for a period not to exceed 14 days.

(g) When inmates are placed in a jail facility under the jurisdiction of the commissioner pursuant to §15A-3-16(f) of this code, the county, and municipality if the incarceration is a municipal violation, shall pay into this fund a cost per day for each incarcerated inmate, to be determined as set forth in subsection (k) of this section. Beginning July 1, 2018, and continuing through June 30, 2023, in no case shall any county or municipality be required to pay a rate that exceeds \$48.25 per day, per inmate.

(h) The per diem costs for incarcerating inmates may not include the cost of construction, acquisition, or renovation of the regional jail facilities: *Provided*, That each jail facility or unit operating in this state shall keep a record of the date and time that an inmate is incarcerated, and a county may not be charged for a second day of incarceration for an individual inmate until that inmate has remained incarcerated for more than 24 hours. After that, in cases of continuous incarceration, subsequent per diem charges shall be made upon a county only as subsequent intervals of 24 hours pass from the original time of incarceration.

(i) The county is responsible for costs incurred by the division for housing and maintaining inmates in its facilities who are pretrial inmates and convicted misdemeanants. The costs of housing shall be borne by the division on a felony conviction on which an inmate is incarcerated beginning the calendar day following the day of sentencing: *Provided*, That beginning July 1, 2019, the costs of housing shall be borne by the division on a felony conviction when an inmate is incarcerated beginning the calendar day following the day of conviction. In no case shall the county be responsible for any costs of housing and maintaining felony convicted inmate populations.

(j) The county is responsible for the costs incurred by the authority for housing and maintaining an inmate who, prior to a felony conviction on which the inmate is incarcerated and is awaiting transportation to a state correctional facility for a 60-day evaluation period as provided in §62-12-7a of this code.

(k) (1) Effective July 1, 2023, the cost per day, per inmate for an incarcerated inmate shall be determined as set forth in this

subsection. The base rate per day, per inmate rate shall be set at \$54.48. The State Budget Office shall annually examine the most recent three fiscal years of costs submitted by the commissioner for the cost of operating the jail facilities and units under his or her jurisdiction, and taking an average per day, per inmate cost of maintaining the operations of the jail facilities or units shall adjust the per day, per inmate rate annually. Notice of the adjusted per day, per inmate rate shall be provided to each county commission.

(2) Beginning July 1, 2023, the commissioner shall determine the pro rata share of inmate days per county. This figure shall be calculated by multiplying each counties population as contained in the 2020 United States Census by .52.

(3) Each county shall pay as its annual per diem jail cost:

(A) Eighty percent of the current per diem rate for the first 80 percent of its pro rata share of total billed inmate days;

(B) One hundred percent of the current per diem rate for its inmate days that are greater than 80 percent and up to 100 percent of its pro rata share of total billed inmate days; and

(C) One hundred twenty percent of the current per diem rate for its inmate days that exceed 100 percent of its pro rata share of total billed inmate days.

(4) Beginning July 1, 2031, and every 10 years thereafter the pro rata share of inmate days per county shall be calculated by dividing the number of inmate days from the previous calendar year by the state's population according to the most recent United States Census data and then multiplying that number by each counties population.

(5) The commissioner shall post on the Division of Corrections and Rehabilitations webpage by county:

(i) The pro rata share of inmate days;

(ii) The base number of pro rata days;

(iii) The reduced rate of the per day, per inmate costs;

(iv) The increased per day, per inmate; and

(v) Any other information deemed necessary by the commissioner.

(l) In cases in which the incarcerated inmate was placed in a jail facility by the municipal police of a Class I or Class II municipal corporation as defined in §8-1-3 of this code, or of a Class III municipal corporation as defined in §8-1-3 of this code but with a population in excess of 4,000 according to the most recent census taken under the authority of the United States, and the incarceration is not a municipal violation, the county commission responsible for paying the cost per day pursuant to this subsection may seek reimbursement from the municipal corporation of actual expenditures for one day of per diem costs borne by the county commission by memorandum of understanding.

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CHAPTER 80

**(S. B. 131 - By Senators Nelson, Woodrum, Jeffries, Phillips,
Trump, Deeds, Stuart, Queen, Smith, Rucker, Hamilton, and
Maroney)**

[Passed March 4, 2023; in effect 90 days from passage (June 2, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-15-28, relating to municipal fire departments; providing for municipal fire departments to provide service weapons to municipal fire marshal upon retirement in certain circumstances; and allowing the sale of retired service weapons to active and retired fire marshals.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND
DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE
DEPARTMENTS.**

§8-15-28. Awarding service weapon upon retirement.

(a) Upon the retirement of a municipal fire marshal, any full-time deputy fire marshal, or any full-time assistant fire marshal employed pursuant to this article, the municipal fire department shall award to the retiring member his or her service weapon, without charge, upon determining:

(1) That the retiring employee is retiring honorably with at least 20 years of service; or

(2) The retiring employee is retiring with less than 20 years of service based upon a determination that the employee is totally

physically disabled as a result of his or her service with the municipal fire department.

(b) Notwithstanding the provisions of subsection (a) of this section, the municipal fire department may not award a service weapon to any employee whom the municipal fire department knows is prohibited from possessing a firearm, finds to be mentally incapacitated, or who constitutes a danger to any person or the community.

(c) If a service weapon is taken out of service due to routine wear, the municipal fire department may offer the service weapon for sale to any active or retired municipal fire marshal, assistant fire marshal, or deputy fire marshal, at fair market value, with the proceeds from any sales used to offset the cost of new service weapons. The disposal of service weapons pursuant to this subsection does not fall within the jurisdiction of the Purchasing Division of the Department of Administration.



CHAPTER 81

(Com. Sub. for S. B. 294 - By Senators Woodrum and Deeds)

[Passed March 9, 2023; in effect 90 days from passage (June 7, 2023)]
[Approved by the Governor on March 15, 2023.]

AN ACT to amend and reenact §7-14-17c of the Code of West Virginia, 1931, as amended, relating to clarifying the amount of a deputy sheriff's annual monetary payment for years of service; setting date for calculation and payment of supplement; providing for eligibility requirement for monetary supplement; and establishing that supplement is to be considered in calculating deputy sheriff's benefits.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-17c. Annual monetary supplement.

(a) A deputy sheriff shall receive an annual monetary supplement in the sum of \$5 multiplied by each month of service. Any incremental monetary supplement in effect prior to the effective date of this section that is more favorable to the deputy sheriffs entitled to such increase shall remain in full force and effect to the exclusion of the provisions of this section.

(b) The annual monetary supplement shall be calculated and payable on the date when the deputy sheriff completes a year of service: *Provided*, That a deputy sheriff who does not complete one year of service is not eligible for the annual monetary supplement or a portion thereof provided in this section.

(c) For each additional year of service that a deputy sheriff completes following his or her first year of service, the annual

monetary supplement shall be calculated and payable on the date when the deputy sheriff completes the additional year of service.

(d) The annual monetary supplement shall be considered for purposes of calculating a deputy sheriff's benefits, including, but not limited to, retirement benefits.

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CHAPTER 82

**(S. B. 465 - By Senators Clements, Azinger, Caputo,
Chapman, Maroney, Oliverio, Weld, Woodrum, Deeds,
Plymale, and Jeffries)**

[Passed March 9, 2023; in effect 90 days from passage (June 7, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §7-21-3 of the Code of West Virginia, 1931, as amended, relating to increase the maximum amount of money in a county's financial stabilization fund from 30 percent of the county's most recent General Fund budget to 50 percent of that fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. COUNTY FINANCIAL STABILIZATION FUND ACT.

§7-21-3. Budget stabilization fund; creation; appropriation; maximum.

(a) A county commission may create a "financial stabilization fund" by a majority vote of the members. The fund may receive appropriations, gifts, grants, and any other funds made available.

(b) The county commission may appropriate a sum to the fund from any surplus in the General Fund at the end of each fiscal year or from any other money available.

(c) The amount of money in the fund may not exceed 50 percent of the county's most recent General Fund budget, as originally adopted. When the fund exceeds the 50 percent, the county commission shall transfer the excess to any fund it considers appropriate.

CHAPTER 83

(Com. Sub. for S. B. 475 - By Senators Nelson and Plymale)

[Passed March 6, 2023; to take effect July 1, 2023]

[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §8-22-23a of the Code of West Virginia, 1931, as amended, relating to examinations for disability pensions; modifying examinations for disability pensions; and providing the oversight board discretion in the method of medical examinations of a member applying for disability benefits.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY;
POLICEMEN'S PENSION AND RELIEF FUND;
FIREMEN'S PENSION AND RELIEF FUND; PENSION
PLANS FOR EMPLOYEES OF WATERWORKS
SYSTEM, SEWERAGE SYSTEM OR COMBINED
WATERWORKS AND SEWERAGE SYSTEM.**

§8-22-23a. Eligibility for total and temporary disability pensions and total and permanent disability pensions; reporting; light duty.

(a) All members applying for total and temporary or total and permanent disability benefits after June 30, 1981, shall be examined by at least two physicians under the direction of the staff at Marshall University, West Virginia University, Morgantown, or West Virginia University, Charleston: *Provided*, That if a member's medical condition cannot be agreed on by the two physicians, a third physician shall examine the member: *Provided, however*, That beginning January 1, 2010, and continuing thereafter, a member applying for total and temporary or total and

permanent disability benefits shall be examined by two physicians, one of which shall be chosen and paid by the member, and one of which shall be chosen and paid by the oversight board. If the two physicians disagree, the oversight board shall select and pay for a third examining physician: *Provided further*, That starting July 1, 2023, and continuing thereafter, the physician(s) chosen by the oversight board to perform the independent medical examination(s) may perform an in-person or virtual examination of a member's physical or mental health, or both, or at the discretion of the oversight board, a medical record review of the member's physical or mental health, or both. The selection of the method of examination is at the discretion of the oversight board in consultation with the physician.

(1) Disability benefits shall be awarded if in the opinion of two of the examining physicians the member is by reason of the disability unable to perform adequately the job duties required.

(2) Each medical examination shall include the review of the member's medical history, but an examining physician may not have access to the disability examination report or disability recommendation of another physician.

(3) The physicians shall send copies of their reports to both the board of trustees of the member's pension and relief fund and the oversight board.

(4) The expense of the member's transportation to medical examinations shall be paid by the board of trustees. Medical expense shall not exceed the reasonable and customary charges for similar services.

(5) Beginning January 1, 2010, and thereafter, if a member is charged with an offense that has the potential to lead to the member's termination, the member's municipal pensions and relief fund board of trustees may not consider the member's eligibility for disability benefits until after investigation of the charge is completed and any disciplinary decision is implemented.

(6) No later than January 1, 2011, and annually thereafter, each board of trustees shall report to the oversight board the total number of disability applications received during the prior fiscal year, the status of each application as of the end of the fiscal year, total applications granted and denied, and the percentage of disability-benefit recipients to the total number of active members of the fund.

(b) Effective for members becoming eligible for total and temporary disability benefits after June 30, 1981, initially or previously under this subsection allowance for initial or additional total and temporary disability payments, the amount thereof to be determined as specified in section twenty-four of this article shall be paid to the member during the disability for a period not exceeding 26 weeks if after a medical examination in accordance with subsection (a) of this section two examining physicians report in writing to the board of trustees that: (1) The member has become so totally, physically or mentally disabled, from any reason, as to render the member totally, physically or mentally, incapacitated for employment as a police officer or firefighter; and (2) it has not been determined if the disability is permanent or it has been determined that the disability may be alleviated or eliminated if the member follows a reasonable medical treatment plan or reasonable medical advice: *Provided*, That, in any event, a member is not eligible for total and temporary disability payments following the fourth consecutive 26-week period of total and temporary disability unless subsequent disability results from a cause unrelated to the cause of the four previous periods of total and temporary disability. During the two-year period of total and temporary disability, the department is required to restore the member to his or her former position in the department at any time the member is determined to no longer be disabled: *Provided, however*, That the department may refill, on a temporary basis, the position vacated by the member after the first 26 weeks of his or her temporary disability.

(c) Effective for members becoming eligible for total and permanent disability benefits initially under this subsection or becoming eligible for total and temporary disability benefits under subsection (b) of this section after June 30, 1981, allowance for

total and permanent disability payments, the amount thereof to be determined as specified in section twenty-four of this article, shall be paid to the member after a medical examination in accordance with subsection (a) of this section, two examining physicians report in writing to the board of trustees that the member has become so totally, physically or mentally, and permanently disabled, as a proximate result of service rendered in the performance of his or her duties in the department, as to render the member totally, physically or mentally, and permanently incapacitated for employment as a police officer or firefighter or, if the member has been a member of either of the departments for a period of not less than five consecutive years preceding the disability, the member has become so totally, physically or mentally, and permanently disabled, from any reason other than service rendered in the performance of his or her duties in the department, as to render the member totally, physically or mentally, and permanently incapacitated for employment as a police officer or firefighter. The phrase "totally, physically or mentally, and permanently disabled" shall not be construed to include a medical condition which may be corrected if the member follows a reasonable medical treatment plan or reasonable medical advice.

(d) Effective for members becoming eligible for total and temporary disability benefits after June 30, 1981, under the provisions of subsection (b) of this section, any payments for total and temporary disability for a period during the disability not exceeding 26 weeks shall cease at the end of the 26-week period under the following conditions:

(1) The member fails to be examined as provided in subsection (a) of this section; or (2) the member is examined or reexamined as provided in said subsection and two examining physicians report to the board of trustees that the member's medical condition does not meet the requirements of subsection (b) or (c) of this section. Effective for members becoming eligible for total and temporary disability benefits after June 30, 1981, under subsection (b) of this section, subsequent to the member's receipt of total and temporary disability payments for a period of two years, the payments shall cease at the end of the two-year period under the following

conditions: (A) The member fails to be examined as provided in subsection (a) of this section; or (B) the member is examined or reexamined as provided in said subsection and two examining physicians report to the board of trustees that the member's medical condition does not meet the requirements of subsection (c) of this section.

(e) Notwithstanding other provisions of this section to the contrary, a member of a municipal policemen's or firemen's pension and relief fund who is found to be disabled from performing the full range of tasks relevant to police officer or firefighter employment, but capable of performing a restricted or light-duty police officer or firefighter job made available at the discretion of the employing municipality may choose to continue working and retain an active membership in his or her pension and relief fund.

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CHAPTER 84

(S. B. 591 - By Senators Swope, Rucker, Trump, and Roberts)

[Passed March 4, 2023; in effect 90 days from passage (June 2, 2023)]
[Approved by the Governor on March 8, 2023.]

AN ACT to amend and reenact §7-12-9a of the Code of West Virginia, 1931, as amended, relating to allowing counties and municipalities the opportunity to jointly undertake economic development projects and to allow a pro-rata share in costs and revenues generated from said economic development projects.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.

§7-12-9a. Joint undertakings by municipal and county development authorities.

(a) The Legislature hereby finds and declares that the citizens of the state would benefit from coordinated economic development efforts and that to encourage cooperation and coordination, county and municipal economic development authorities should share in the tax revenues derived from joint programs regardless of the jurisdiction in which they are located.

(b) Any three or more county or municipal development authorities may contract to share expenses for and revenues derived from joint economic development projects within their respective geographic territories. Notwithstanding any other section of the code to the contrary, county and municipal development authorities may contract to distribute on a pro rata basis proceeds derived from joint economic development projects.

(c) Each county or municipal development authority participating in a joint economic development project contract must contribute at least \$15,000 in cash to the project.

(d) In the event that a county or municipal development authority desires to withdraw from participation, then the remaining participants may jointly choose a successor. No withdrawing county development authority shall be entitled to the return of any money or property advanced to the project, unless specifically provided for in the contract.

(e) In the event that a joint economic development project is terminated, all funds, property and other assets shall be returned to the county or municipal development authorities in the same proportion as contributions of funds, property and other assets were made by the county or municipal development authorities.

(f) A grant, which may not exceed \$100,000, may be made by the West Virginia Development Office to any county or municipal economic development authority which enters into such contracts.

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CHAPTER 85

**(Com. Sub. for H. B. 2026 - By Delegates Clark, Horst,
Honaker, Barnhart, Worrell and Espinosa)**

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-22A-33a, relating to additional opportunity for municipal police officers or firefighters to transfer into the Municipal Police Officers and Firefighters Retirement System; providing conditions upon which municipal police officers or firefighters may transfer into Municipal Police Officers and Firefighters Retirement System; providing for transfer of assets pertaining to municipal police officers or firefighters; requiring certain computations to be made by the Consolidated Public Retirement Board; requiring certain payments; and terminating liability of the Public Employees Retirement System.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-33a. Second special authorization for municipal police or firefighters hired after July 1, 2015.

(a) Notwithstanding any provision of this code to the contrary, any municipality or municipal subdivision that employs individuals as members of paid police departments or paid fire departments and whose current police officers or firefighters are participating in the Public Employees Retirement System may elect, as provided in same manner as provided in §8-22A-28(a) of

this code, to become a participating public employer in the plan and thereby include its police officers and firefighters in the membership of the plan subject to the restrictions provided in this section.

(b) The municipality or municipal subdivision may elect to include only police officers or firefighters who have been hired on or after July 1, 2015, to become members of the plan. Police officers or firefighters hired before July 1, 2015, will remain members of the Public Employees Retirement System.

(c) The municipality or municipal subdivision must make its election on or prior to July 1, 2025.

(d) Once a municipality or municipal subdivision makes its election to become a participating public employer pursuant to this section, all police officers or firefighters hired by the municipality or municipal subdivision after the date of election shall be members of the plan: *Provided*, That police officers or firefighters hired by the municipality or municipal subdivision on or after July 1, 2015, who are members of the Public Employees Retirement System, may choose to become a member of the plan by notifying the municipality or municipal subdivision on a form provided by the Consolidated Public Retirement Board: *Provided, however*, That he or she make this decision within ninety days of the municipality or municipal subdivision's decision to participate in the plan. A municipality or municipal subdivision making an election to become a participating public employer pursuant to this section that has hired any police officer or firefighter on or after July 1, 2015, shall notify each police officer or firefighter hired on or after July 1, 2015, of its election to become a participating public employer within thirty days of making the election. This notice shall include instructions as to how a police officer or firefighter may make notification to the municipality or municipal subdivision of his or her decision to become a member in the plan. The municipality or municipal subdivision shall notify the Consolidated Public Retirement Board in writing of any police officer or firefighter hired after July 1, 2015, who has decided to become a member of the plan and terminate his or her membership in the Public Employees Retirement System within thirty days of

notification by the police officer or firefighter on forms provided by the Consolidated Public Retirement System.

(e) Notwithstanding any other provision of the code to the contrary, any police officer or firefighter hired by a participating public employer on or after July 1, 2015, who chooses pursuant to this section to be a member of the plan, shall be a member of the plan upon acceptance by the Consolidated Public Retirement Board of the notification by the municipality required by this section.

(1) The Consolidated Public Retirement Board shall transfer assets and service credit earned on or after July 1, 2015, from the Public Employees Retirement System Trust Fund into the West Virginia Municipal Police Officers and Firefighters Retirement Fund for those police officers or firefighters who elect to be a member of the plan and were members in the Public Employees Retirement System no later than sixty days from receipt of notification by the municipality or municipal subdivision of the police officer or firefighter's election to become a member. The amount of service credit recognized by the plan for the transferring employees shall be the service credit transferred and recognized by the Public Employees Retirement System.

(2) The amount of assets to be transferred for each police officer or firefighter shall be computed as of the actuarial valuation date preceding the notification to the Consolidated Public Retirement Board by the municipality or municipal subdivision of the police officer or firefighter's election to become a member and updated with seven and one-half percent annual interest to the date of the actual asset transfer. For purposes of this section, the actuarial valuation date is the most recent actuarial valuation of the Public Employees Retirement System approved by the Consolidated Public Retirement Board. The market value of the assets of the transferring employees 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 Consolidated Public Retirement Board shall:

(A) Compute the market value of the Public Employees Retirement System assets using the actuarial valuation date;

(B) Compute the actuarial accrued liabilities for all Public Employees Retirement System retirees, beneficiaries, disabled retirees and terminated inactive members using the actuarial valuation date:

(C) Compute the market value of active member assets in the Public Retirement System as of the actuarial valuation date by reducing the assets value under paragraph (A) of this subdivision by the inactive liabilities under paragraph (B) of this subdivision;

(D) Compute the actuarial accrued liability for all active Public Employees Retirement System members using the actuarial valuation date immediately preceding the computation date;

(E) Compute the funded percentage of the active members' actuarial accrued liabilities under the Public Employees Retirement System as of the actuarial valuation date by dividing the active members' market value of assets under paragraph (C) of this subdivision by the active members' actuarial accrued liabilities under paragraph (D) of this subsection;

(F) Compute the actuarial accrued liabilities under the Public Employees Retirement System as of the actuarial valuation date for active employees transferring to the plan;

(G) Determine the assets to be transferred from the Public Employees Retirement System to the plan by multiplying the active members' funded percentage determined under paragraph (E) of this subdivision by the transferring active members' actuarial accrued liabilities under the Public Employees Retirement System under paragraph (F) of this subdivision and adjusting the asset transfer amount by interest at seven and five-tenths percent for the period from the calculation date of July 1 through the first day of the month in which the asset transfer is to be completed.

(3) Any police officer or firefighter who elects to become a member of the plan must also pay to the plan a four percent contribution no later than June 30, 2027. The contribution shall be

calculated as four percent of the member's total earnings for which assets are transferred, plus interest of seven and one-half percent accumulated from the date of the police officer's or firefighter's initial participation in the Public Employees Retirement System through the calculation date. Installment payments may be made over no more than a twenty-four month period plus seven and one-half percent interest shall accrue on the outstanding balance due from the calculation date until paid in full.

(4) Once an employee transfers from the Public Employees Retirement System to the plan, the Public Employees Retirement System shall bar any further liability and said transfer will constitute an agreement whereby the transferring employee forever indemnifies and holds harmless the Public Employees Retirement System from providing him or her any form of retirement benefit whatsoever until that employee obtains other employment which would make him or her eligible to reenter the Public Employees Retirement System with no credit whatsoever for the amounts transferred to the plan.

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CHAPTER 86

(H. B. 2283 - By Delegate Statler)

[Passed March 8, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §8-15-8b of the Code of West Virginia, 1931, as amended, relating to authorized expenditures of revenues from certain state funds for fire departments; clarifying and expanding categories of allowable expenditures; permitting state grant funds to be deposited into a state account and be transferred from the account for unrestricted use; and setting forth a 60-day time frame for fire departments receiving grant funds to transfer unrestricted funds from a restricted account.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-8b. Authorized expenditures of revenues from the Municipal Pensions and Protection Fund and the Fire Protection Fund; deductions for unauthorized expenditures; record retention.

(a) Money received from the state for volunteer and part-volunteer fire companies and departments, pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code, shall be deposited into a bank account dedicated to state received funds and may not be commingled with moneys received from any source other than the state. Distributions from the Municipal Pensions and Protection Fund and the Fire Protection Fund allocated to volunteer and part-

volunteer fire companies and departments may be expended only for the following:

(1) Personal protective equipment, including helmet, bunker coats, pants, boots, gloves, or combination of bunker pants and boots, coats, and gloves;

(2) Equipment for compliance with the national fire protection standard or automotive fire apparatus, NFPA-1901;

(3) Compliance with insurance service office recommendations relating to fire departments;

(4) Rescue equipment, communications equipment, and ambulance equipment: *Provided*, That no moneys received from the Municipal Pensions and Protection Fund or the Fire Protection Fund may be used for equipment for personal vehicles owned or operated by volunteer or part-volunteer fire company or department members;

(5) The direct costs incurred due to the purchase of land, the construction of new facilities, or the expansion of current facilities, when these costs can be demonstrated by the department to increase the effectiveness and efficiency of the fire protection services; as well as maintenance required to maintain the functionality of physical facilities of the department;

(6) Retirement of debts, but only if the debts were incurred exclusively for the purchase of the goods and services allowed under this subsection;

(7) Payment of utility bills, including internet and telephone bills which may include cell phones when the cell phone is used for fire department related work only;

(8) Payment of the cost of immunizations, including any laboratory work incident to the immunizations, for firefighters against hepatitis-b and other blood-borne pathogens only when: (A) purchased through the state immunization program or lowest-cost provider; and (B) no-cost or low-cost administration from local boards of health or other similar programs are unavailable;

(9) Insurance policies, including:

(A) Property/casualty insurance premiums for protection and indemnification against loss or damage or liability;

(B) Life insurance premiums to provide a benefit not to exceed \$20,000 for firefighters;

(C) Accident and sickness insurance premiums which may be offered to cover individual members of a volunteer or part-volunteer fire company; or

(D) Umbrella policies that contain various types of insurance policies to protect against loss and liability, so long as life insurance premiums in the amounts prescribed above and property/casualty insurance are part of any umbrella policy;

(10) Operating expenses reasonably required in the normal course of providing effective and efficient fire protection service, which include, but are not limited to, gasoline, bank fees, postage, and accounting costs;

(11) Dues paid to national, state, and county associations;

(12) Workers' compensation premiums;

(13) Educational and training supplies and fire prevention promotional materials, not to exceed \$500 per year; and

(14) Food, bottled water, and food-related items, like disposable plates and utensils, to provide necessary meals and water to a fire company when responding to an emergency and is in no way connected to any fundraising events.

(b) If a volunteer or part-volunteer fire company or department uses any amount of money received from the Municipal Pensions and Protection Fund or the Fire Protection Fund for an item, service, or purpose not authorized by this section, that amount, when determined by an official audit, review, or investigation, shall be deducted from future distributions to the volunteer fire company or part-volunteer fire department.

(c) If a volunteer or part-volunteer fire company or department purchases goods or services authorized by this section, but then returns the goods or cancels the services for a refund, then any money refunded shall be deposited back into the same, dedicated bank account used for the deposit of distributions from the Municipal Pensions and Protection Fund and the Fire Protection Fund.

(d) A volunteer or part-volunteer fire company or department shall have a dedicated bank account for all funds received from the Municipal Pensions and Protection Fund, the Fire Protection Fund, and any other state distribution, including state grant money.

(1) Any distributions received from the Municipal Pensions and Protection Fund or the Fire Protection Fund shall remain in the bank account dedicated to receiving state funds and be used in accordance with this section.

(2) All other moneys, including state grants, must be transferred out of the account used to receive state funds and transferred into another bank account within 60 days of receipt and such transfer must be in the exact amount of the deposit. If any money is received from sources other than the Municipal Pensions and Fire Protection Fund or the Fire Protection Fund and is not transferred to another account within 60 days, the money may only be used in accordance with this section.

(e) Each volunteer or part-volunteer fire company and department shall retain, for five calendar years, all invoices, receipts, and payment records for the goods and services paid with money received from the state for volunteer and part-volunteer fire companies and departments, pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code and money received as a grant from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code.

(f) Volunteer and part-volunteer fire companies and departments may also invest the received moneys, described in subsection (a) of this section, and collect interest thereon: *Provided*, That volunteer and part-volunteer fire companies and

departments shall not commingle the received moneys with funds received from any other source, shall not use the invested money as collateral or security for any loan, and shall retain all resulting statements of accounts and earnings for a minimum of five years from the date of the statements.

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CHAPTER 87

(Com. Sub. for H. B. 2900 - By Delegates Hanshaw (Mr. Speaker), Hott, Phillips, Heckert, Riley, Rohrbach and Pinson)

[Passed March 11, 2023; in effect from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §7-14D-24a of the Code of West Virginia, 1931, as amended, relating to the Deputy Sheriff Retirement System; allowing certain retired members to be re-employed without the suspension of annuity benefits; setting forth conditions for the re-employment of retired members; and providing a sunset date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-24a. Return to covered employment by retired member.

(a) The annuity of any member who retires under the provisions of this article and who resumes service in covered employment shall be suspended while the member continues in covered employment. The monthly annuity payment for the month in which the service resumes shall be prorated to the date of commencement of service, and the member shall again become a contributing member during resumption of service. At the conclusion of resumed service in covered employment the member shall have his or her annuity recalculated to take into account the entirety of service in covered employment.

(b) Notwithstanding the provisions of subsection (a) of this section, the annuity of a member who retires under the provisions

of this article shall not be suspended if the member resumes covered employment and the following conditions are met:

(1) The member has been retired for at least 180 days;

(2) The retired member did not retire as a result of a disability pursuant to the provisions of §7-14D-14 of this code;

(3) The retired member is a certified, or certifiable, law-enforcement officer as provided in §30-29-5 of this code;

(4) The sheriff of the county seeking to re-employ the retired member has fewer than five deputies in his or her employ and has been unable to recruit additional qualified deputy sheriffs despite the exercise of due diligence;

(5) The re-employment of the retired member is for a period not to exceed five years or until such time as the sheriff may recruit additional deputy sheriffs to provide for five full-time deputy sheriffs not hired pursuant to this subsection, whichever is sooner; and the sheriff is required to post the vacancy until it is filled by a non-retirant;

(6) The retired member may not again become a contributing member of the Deputy Sheriff Retirement System while performing services under the provisions of this subsection; and

(7) The employer of any deputy sheriff rehired pursuant to this subsection shall remit an employer contribution pursuant to §7-14D-7 of this code on the deputy sheriff's monthly salary.

(c) Any retired member who is seeking re-employment pursuant to the provisions of this section shall not be subject to the maximum age restriction set forth in §7-14-8 of this code.

(d) Unless acted upon by the Legislature, the provisions of subsections (b) and (c) of this section will sunset on July 1, 2026. On or before October 1, 2025, any employer of a member of the Deputy Sheriff Retirement System rehired pursuant to subsection (b) of this section must make a report to the Joint Standing Committee on Pensions and Retirement.

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CHAPTER 88

**(Com. Sub. for H. B. 3013 - By Delegates Espinosa,
Ridenour, Householder, Hardy, Clark, Criss, Hite, Horst,
Hanshaw (Mr. Speaker), Hornby and Summers)**

[Passed March 7, 2023; in effect from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §7-22-9 of the Code of West Virginia, 1931, as amended, all relating to county economic opportunity development districts; providing when the University Town Centre Economic Opportunity Development District may be abolished or terminated; authorizing the Jefferson County Commission to levy a special district excise tax; authorizing the special district excise tax for the benefit of the Hill Top House Hotel Economic Opportunity District; setting forth the land area within the special district subject to the special district excise tax; authorizing the commission to create the district and levy the special district excise tax without the approval of the executive director of the development office; authorizing the commission to determine the base district tax, the base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount; and requiring the Tax Commissioner to provide the commission with certification of the base tax revenue amount.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§7-22-9. Authorization to levy special district excise tax.

(a) General. – County commissions have no inherent authority to levy taxes and have only that authority expressly granted to them

by the Legislature. The Legislature is specifically extended, and intends by this article, to exercise certain relevant powers expressed in section six-a, article X of the Constitution of this state as follows: (1) The Legislature may appropriate state funds for use in matching or maximizing grants-in-aid for public purposes from the United States or any department, bureau, commission or agency thereof, or any other source, to any county, municipality or other political subdivision of the state, under such circumstances and subject to such terms, conditions and restrictions as the Legislature may prescribe by law; and (2) the Legislature may impose a state tax or taxes or dedicate a state tax or taxes or any portion thereof for the benefit of and use by counties, municipalities or other political subdivisions of the state for public purposes, the proceeds of any such imposed or dedicated tax or taxes or portion thereof to be distributed to such counties, municipalities or other political subdivisions of the state under such circumstances and subject to such terms, conditions and restrictions as the Legislature may prescribe.

Because a special district excise tax would have the effect of diverting, for a specified period of years, tax dollars which to the extent, if any, are not essentially incremental to tax dollars currently paid into the General Revenue Fund of the state, the Legislature finds that in order to substantially ensure that such special district excise taxes will not adversely impact the current level of the General Revenue Fund of the state, it is necessary for the Legislature to separately consider and act upon each and every economic development district which is proposed, including the unique characteristics of location, current condition and activity of and within the area included in such proposed economic opportunity development district and that for such reasons a statute more general in ultimate application is not feasible for accomplishment of the intention and purpose of the Legislature in enacting this article. Therefore, no economic opportunity development district excise tax may be levied by a county commission until after the Legislature expressly authorizes the county commission to levy a special district excise tax on sales of tangible personal property and services made within district boundaries approved by the Legislature.

(b) Authorizations. — The Legislature authorizes the following county commissions to levy special district excise taxes on sales of tangible personal property and services made from business locations in the following economic opportunity development districts:

(1) The Ohio County Commission may levy a special district excise tax for the benefit of the Fort Henry Economic Opportunity Development District which comprises five hundred contiguous acres of land. Notwithstanding the time limitations provisions of subdivision (2), subsection (a), section fifteen of this article, the Fort Henry Economic Opportunity Development District shall not be abolished under subdivision (2), subsection (a), section fifteen of this article until the year 2044, unless sooner abolished and terminated in accordance with the provisions of subdivision (1), subsection (a), section fifteen of this article or any other provision of this code, or sooner abolished for any other reason: *Provided*, That on December 31, 2044, the provisions of subdivision (2), subsection (a), section fifteen of this article shall apply to abolish the Fort Henry Economic Opportunity Development District, if the district has not been abolished prior to that date.

(2) The Harrison County Commission may levy a special district excise tax for the benefit of the Charles Pointe Economic Opportunity Development District which comprises 437 acres of land.

(3) The Monongalia County Commission may levy a special district excise tax for the benefit of the University Town Centre Economic Opportunity Development District which comprises approximately 1,450 contiguous acres of land. Notwithstanding the time limitations provisions of §7-22-15(a)(2) of this code, the University Town Centre Economic Opportunity Development District shall not be abolished pursuant to §7-22-15(a)(2) of this code until the year 2053, unless sooner abolished and terminated in accordance with the provisions of subdivision §7-22-15(a)(1) of this code or any other provision of this code, or sooner abolished for any other reason: *Provided*, That on December 31, 2053, the provisions of §7-22-15(a)(2) of this code shall apply to abolish the

University Town Centre Economic Opportunity Development District, if the district has not been abolished prior to that date.

(4) The Jefferson County Commission may levy a special district excise tax for the benefit of the Hill Top House Hotel Economic Opportunity District which comprises approximately 11 contiguous acres of land: *Provided*, That notwithstanding any other provision of this article to the contrary:

(A) The Jefferson County Commission may create the district and levy the special district excise tax by order entered of record as provided in §7-22-10 of this code without the approval of the executive director of the development office; and

(B) The Jefferson County Commission may determine the base district tax, the base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount in lieu of that determination by the development office as provided in §7-22-7 of this code. For purposes of determining the base tax revenue amount, the Jefferson County Commission shall promptly request a certification from the Tax Commissioner of the base tax revenue amount and the Tax Commissioner shall provide the certification to the Jefferson County Commission within thirty days.

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CHAPTER 89

**(Com. Sub. for H. B. 3148 - By Delegates Storch, Marple,
Anderson, E. Pritt and C. Pritt)**

[By Request of Municipal Pensions Oversight Board]

[Passed March 6, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §8-22-16 and §8-22-20 of the Code of West Virginia, 1931, as amended, all relating to financing options for municipal policemen's and firemen's pensions and relief funds; prohibiting municipalities from using the conservation method of financing for their municipal policemen's and firemen's pension and relief funds; and providing that certain municipalities may convert to either the optional method or optional II method of financing under certain circumstances.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY;
POLICEMEN'S PENSION AND RELIEF FUND;
FIREMEN'S PENSION AND RELIEF FUND; PENSION
PLANS FOR EMPLOYEES OF WATERWORKS
SYSTEM, SEWERAGE SYSTEM OR COMBINED
WATERWORKS AND SEWERAGE SYSTEM.**

**§8-22-16. Pension and relief funds for policemen and firemen;
creation of boards of trustees; definitions; continuance of
funds; average adjusted salary.**

(a) Except as provided in subsection (e) of this section, passed into law during the fourth extraordinary session of the Legislature in 2009, in every Class I and Class II city having, or which may

hereafter have, a paid police department and a paid fire department, or either of such departments, the governing body shall, and in every Class III city and Class IV town or village having, or which may hereafter have, a paid police department and a paid fire department, or either of such departments, the governing body may, by ordinance provide for the establishment and maintenance of a policemen's pension and relief fund and for a firemen's pension and relief fund for the purposes hereinafter enumerated and, thereupon, there shall be created boards of trustees which shall administer and distribute the moneys authorized to be raised by this section and the following sections of this article. For the purposes of this section and §8-22-17 through §8-22-28, inclusive, of this code, the term "paid police department" or "paid fire department" means only a municipal police department or municipal fire department, as the case may be, maintained and paid for out of public funds and whose employees are paid on a full-time basis out of public funds. The term may not be taken to mean any department whose employees are paid nominal salaries or wages or are only paid for services actually rendered on an hourly basis.

(b) Any policemen's pension and relief fund and any firemen's pension and relief fund established in accordance with the provisions of former §8-6-1 *et seq.* of this code or this article shall be or remain mandatory and shall be governed by §8-22-16 through §8-22-28, inclusive, of this code (with like effect, in the case of a Class III city or Class IV town or village, as if such Class III city or Class IV town or village were a Class I or Class II city) and may not be affected by the transition from one class of municipal corporation to a lower class as specified in §8-1-3 of this code: *Provided*, That any Class III or Class IV town or village that hereafter becomes a Class I or Class II city may not be required to establish a pension and relief fund if the town or village is a participant in an existing pension plan regarding paid firemen and/or policemen.

(c) After June 30, 1981, for the purposes of §8-22-16 through §8-22-28, inclusive, of this code, the word "member" means any paid police officer or firefighter who at time of appointment to a paid police or fire department met the medical requirements of

chapter 2-2 of the National Fire Protection Association Standards Number 1001 — Firefighters Professional Qualifications >74 as updated from year to year: *Provided*, That any police officer or firefighter who was a member of the fund prior to July 1, 1981, shall be considered a member after June 30, 1981.

(d) (1) For purposes of §8-22-16 through §8-22-28, inclusive, of this code, the words “salary or compensation” mean remuneration actually received by a member, plus the member’s deferred compensation under sections 125, 401(k), 414(h)(2) and 457 of the United States Internal Revenue Code of 1986, as amended: *Provided*, That the remuneration received by the member during any 12-consecutive-month period used in determining benefits which is in excess of an amount which is 20 percent greater than the “average adjusted salary” received by the member in the two consecutive 12-consecutive-month periods immediately preceding the 12-consecutive-month period used in determining benefits shall be disregarded: *Provided, however*, That the “average adjusted salary” means the arithmetic average of each year’s adjusted salary, the adjustment made to reflect current salary rate and such average adjusted salary shall be determined as follows: Assuming “year-one” means the second 12-consecutive-month period preceding such 12-consecutive-month period used in determining benefits, “year-two” means the 12-consecutive-month period immediately preceding the 12-consecutive-month period used in determining benefits and “year-three” means the 12-consecutive-month period used in determining benefits, year-one total remuneration shall be multiplied by the ratio of year-three base salary, exclusive of all overtime and other remuneration, to year-one base salary, exclusive of all overtime and other remuneration, such product shall equal “year-one adjusted salary”; year-two total remuneration shall be multiplied by the ratio of year-three base salary, exclusive of all overtime and other remuneration, to year-two base salary, exclusive of all overtime and other remuneration, such product shall equal “year-two adjusted salary”; and the arithmetic average of year-one adjusted salary and year-two adjusted salary shall equal the average adjusted salary. For inclusion in base salary or overtime and other remuneration, any

payments to a member shall have pension deductions withheld from the payment to the member.

(2) “Base salary” means the pay the member receives for his or her regularly scheduled shift. The regularly scheduled shift includes all scheduled hours, all scheduled overtime hours, all holiday pay received by the member during the regularly scheduled shift, and hours of paid leave taken in lieu of work. Base salary also includes longevity pay for years of service, pay for perfect attendance, and any hourly adjustments for position title or special skill sets.

(3) “Overtime and other remuneration” mean all unscheduled hours worked which includes any hours not on the member’s regular work schedule paid at straight time rates and or overtime rates, all payouts of accrued paid time off not used in lieu of work (i.e. payouts of accrued holiday hours, compensatory time, vacation time, sick time), and any bonuses granted and paid to the member. Any payment to a member that is not part of the member’s regularly scheduled work cycle is overtime and other remuneration. Any other payments to members where pension deductions are made that do not meet the definition of base salary.

(e)(1) Any municipality, as that term is defined in §8-1-2 of this code, or municipal subdivision as defined in §8-22A-2 of this code may, by a majority vote of its governing body, close its existing policemen’s or firemen’s pension and relief fund to employees newly hired on or after January 1, 2010, if the municipality enrolls those newly hired police officers or firefighters in a retirement plan created in §8-22A-1 *et seq.* of this code and approved and administered by the West Virginia Consolidated Public Retirement Board. On and after July 1, 2010, no new policemen’s or firemen’s pension and relief fund may be established under this section. A Class I or Class II municipality forming a new paid police department or paid fire department after June 30, 2010, shall, notwithstanding the provisions of §8-22A-2 of this code, enroll the department members in the Municipal Police Officers and Firefighters Retirement System established in §8-22A-1 *et seq.* of this code.

(2) Any municipality using the alternative method of financing that elects to close an existing pension and relief fund to new hires pursuant to this subsection shall also adopt either the optional method of financing the unfunded actuarial accrued liability of the existing policemen's or firemen's pension and relief fund as provided in §8-22-20(e) of this code, or the conservation method as provided in §8-22-20 (f) of this code: *Provided*, That after July 1, 2023, any municipality using the alternative method of financing that elects to close an existing pension and relief fund to new hires shall adopt either the optional method of financing as provided in §8-22-20(e) of this code, or the optional-II method of financing as provided in §8-22-20(g) of this code to finance the unfunded actuarial accrued liability of the existing policemen's or firemen's pension and relief fund.

(3) Except as provided in §8-22A-32 of this code, if the qualifying municipality elects to close enrollment in an existing municipal pension and relief fund to newly hired police officers and firefighters pursuant to this section, all current active members, retirees, and other beneficiaries covered by the existing policemen's or firemen's pension and relief fund shall remain covered by that plan and shall be paid all benefits of that plan in accordance with Part III of this article.

§8-22-20. Actuary; actuarial valuation report; minimum standards for annual municipality contributions to the fund; definitions; actuarial review and audit.

(a) The West Virginia Municipal Pensions Oversight Board shall contract with or employ a qualified actuary to annually prepare an actuarial valuation report on each pension and relief fund. The selection of contract vendors to provide actuarial services, including the reviewing actuary as provided in subsection (c) of this section, shall be by competitive bid process but is specifically exempt from the purchasing provisions of §5A-3-1 *et seq.* of this code. The expense of the actuarial report shall be paid from moneys in the Municipal Pensions Security Fund. Uses of the actuarial valuations from the qualified actuary shall include, but not be limited to, determining a municipal policemen's or

firemen's pension and relief fund's eligibility to receive state money and to provide supplemental benefits.

(b) The actuarial valuation report provided pursuant to subsection (a) of this section shall consist of, but is not limited to, the following disclosures: (1) The financial objective of the fund and how the objective is to be attained; (2) the progress being made toward realization of the financial objective; (3) recent changes in the nature of the fund, benefits provided or actuarial assumptions or methods; (4) the frequency of actuarial valuation reports and the date of the most recent actuarial valuation report; (5) the method used to value fund assets; (6) the extent to which the qualified actuary relies on the data provided and whether the data was certified by the fund's auditor or examined by the qualified actuary for reasonableness; (7) a description and explanation of the actuarial assumptions and methods; (8) an evaluation of each plan using the alternative funding method, to assess advantages of changing to other funding methods as provided in this article; and (9) any other information required in §8-22-20a of this code or that the qualified actuary feels is necessary or would be useful in fully and fairly disclosing the actuarial condition of the fund.

(c)(1) Except as provided in subsections (e), (f), and (g) of this section, beginning June 30, 1991, and thereafter, the financial objective of each municipality shall not be less than to contribute to the fund annually an amount which, together with the contributions from the members and, if no pension funding revenue bonds of a building commission of such municipality are outstanding, the allocable portion of the Municipal Pensions and Protection Fund for municipal pension and relief funds established under §33-3-14d of this code or a municipality's allocation from the Municipal Pensions Security Fund created in §8-22-18b of this code and other income sources as authorized by law will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than forty years beginning from July 1, 1991: *Provided*, That in the fiscal year ending June 30, 1991, the municipality may elect to make its annual contribution to the fund using an alternative contribution in an amount not less than: (i) One hundred seven percent of the

amount contributed for the fiscal year ending June 30, 1990; or (ii) an amount equal to the average of the contribution payments made in the five highest fiscal years beginning with the fiscal year ending 1984, whichever is greater: *Provided, however*, That contribution payments in subsequent fiscal years under this alternative contribution method may not be less than 107 percent of the amount contributed in the prior fiscal year: *Provided further*, That in order to avoid penalizing municipalities and to provide flexibility when making contributions, municipalities using the alternative contribution method may exclude a one-time additional contribution made in any one year in excess of the minimum required by this section: *And provided further*, That the governing body of any municipality may elect to provide an employer continuing contribution of one percent more than the municipality's required minimum under the alternative contribution plan authorized in this subsection: *And provided further*, That if any municipality decides to contribute an additional one percent, then that municipality may not reduce the additional contribution until the respective pension and relief fund no longer has any actuarial deficiency: *And provided further*, That any decision and any contribution payment by the municipality is not the liability of the State of West Virginia: *And provided further*, That if any municipality or any pension fund board of trustees makes a voluntary election and thereafter fails to contribute the voluntarily increase as provided in this section and in §8-22-19(c) of this code, then the board of trustees is not eligible to receive funds allocated under §33-3-14d of this code: *And provided further*, That prior to using this alternative contribution method the actuary of the fund shall certify in writing that the fund is projected to be solvent under the alternative contribution method for the next consecutive 15-year period. For purposes of determining this minimum financial objective: (i) The value of the fund's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value; and (ii) all costs, deficiencies, rate of interest and other factors under the fund shall be determined on the basis of actuarial assumptions and methods which, in aggregate, are reasonable (taking into account the experience of the fund and reasonable expectations) and which, in combination, offer the qualified actuary's best estimate of

anticipated experience under the fund: *And provided further*, That any municipality which elected the alternative funding method under this section and which has an unfunded actuarial liability of not more than 25 percent of fund assets, may, beginning September 1, 2003, elect to revert to the standard funding method, which is to contribute to the fund annually an amount which is not less than an amount which, together with the contributions from the members and, if no pension funding revenue bonds of a building commission of such municipality are outstanding, the allocable portion of the Municipal Pensions and Protection Fund for municipal pension and relief funds established under §33-3-14d of this code and other income sources as authorized by law, will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than 40 years, beginning from July 1, 1991.

(2) No municipality may anticipate or use in any manner any state funds accruing to the police or fireman's pension fund to offset the minimum required funding amount for any fiscal year.

(3) Notwithstanding any other provision of this section or article to the contrary, each municipality shall contribute annually to its policemen's pension and relief fund and its firemen's pension and relief fund an amount which may not be less than the normal cost, as determined by the annual actuarial valuation report required by this section: *Provided*, That in any fiscal year in which the actuarial valuation report determines that a municipality's policemen's pension and relief fund or firemen's pension and relief fund is funded at 125 percent or higher and the Municipal Pensions Oversight Board's actuary provides an actuarial recommendation that the normal cost does not need to be paid by the employer for that fiscal year, that municipality may elect to make no contribution for that fiscal year. A municipality's election not to contribute the normal cost in any year does not affect the payments required by §8-22-19 of this code by members to a pension and relief fund and these payments are to continue as required by that section.

(4) The actuarial process, which includes the selection of methods and assumptions, shall be reviewed by the qualified actuary no less than once every five years. Furthermore, the

qualified actuary shall provide a report to the oversight board with recommendations on any changes to the actuarial process.

(5) The oversight board shall hire an independent reviewing actuary to perform an actuarial audit of the work performed by the qualified actuary no less than once every seven years.

(d) For purposes of this section, the term "qualified actuary" means only an actuary who is a member of the Society of Actuaries or the American Academy of Actuaries. The qualified actuary shall be designated a fiduciary and shall discharge his or her duties with respect to a fund solely in the interest of the members and members' beneficiaries of that fund. In order for the standards of this section to be met, the qualified actuary shall certify that the actuarial valuation report is complete and accurate and that in his or her opinion the technique and assumptions used are reasonable and meet the requirements of this section.

(e)(1) Beginning January 1, 2010, municipalities may choose the optional method of financing municipal policemen's or firemen's pension and relief funds as outlined in this subsection in lieu of the standard or alternative methods as provided in subdivision (1), subsection (c) of this section or the conservation method of financing as outlined in subdivision (1), subsection (f) of this section.

(2) For those municipalities choosing the optional method of finance, the minimum standard for annual municipality contributions to each policemen's or firemen's pension and relief fund shall be an amount which, together with the contributions from the members and, if no pension funding revenue bonds of a building commission of such municipality are outstanding, the allocable portion of the Municipal Pensions Security Fund created in §8-22-18b of this code, and other income sources as authorized by law, will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than 40 years beginning January 1, 2010: *Provided*, That those municipalities using the standard method of financing in 2009 shall continue to amortize their actuarial deficiencies over a period of not more than 40 years beginning July 1, 1991. The required

contribution shall be determined each plan year as described above by the actuary retained by the oversight board, based on an actuarial valuation reflecting actual demographic and investment experience and consistent with the Actuarial Standards of Practice published by the Actuarial Standards Board.

(3) A municipality choosing the optional method of financing a policemen's or firemen's pension and relief fund as provided in this subsection shall close the fund to police officers or fire fighters newly hired on or after January 1, 2010, and provide for those employees to be members of the Municipal Police Officers and Firefighters Retirement System as established in §8-22A-1 *et seq.*, of this code.

(f)(1) Beginning April 1, 2011, any municipality using the alternative method of financing may choose a conservation method of financing its municipal policemen's and firemen's pension and relief funds as outlined in this subsection, in lieu of the alternative method as provided in subdivision (1), subsection (c), or the optional method as provided in subsection (e) of this section. Effective July 1, 2023, the conservation method of financing shall no longer be able to be chosen by a municipality using the alternative method of financing its municipal policemen's and firemen's pension and relief funds.

(2) For those municipalities choosing the conservation method of finance, until a plan is funded at 100 percent a part of each plan member's employee contribution to the fund equal to one and one-half percent of the employee's compensation, shall be deposited into and remain in the trust and accumulate investment return. In addition, until a plan is funded at 100 percent and all pension funding revenue bonds issued by a municipality's building commission are paid in full, an actuarially determined portion of the premium tax allocation to each fund provided in accordance with §33-3-14d and §33-12C-7 of this code shall also be deposited into and remain in the trust and accumulate investment return. This variable percentage of premium tax allocation to be retained in each fund shall be determined annually by the qualified actuary provided pursuant to subsection (a) of this section to be an amount required, along with other assets of the fund as necessary to reach

a funded level of 100 percent in 35 years from the time of adoption of the conservation financing method. The variable percentage shall be calculated using a prospective four-year rolling average.

(3) Upon adoption of the conservation method of finance, the municipality shall close its pension and relief funds to new members and shall place police officers and firefighters newly hired after adoption of the conservation method into the Municipal Police Officers and Firefighters Retirement System created in §8-22A-1 *et seq.* of this code.

(4) Upon adoption of the conservation method of financing, the minimum standard for annual municipality contributions to each policemen's or firemen's pension and relief fund shall be an amount which, together with member contributions and premium tax proceeds not required to be retained in the trust pursuant to this subsection, and if no pension funding revenue bonds of a building commission of such municipality are outstanding, and other income sources as authorized by law, is sufficient to meet the annual benefit and administrative expense payments from the funds on a pay-as-you-go basis: *Provided*, That at the time the actuarial report required by this section indicates no actuarial deficiency in the municipal policemen's or firemen's pension and relief fund, the minimum annual required contribution of the municipality may not be less than an amount which together with all member contributions and other income authorized by law, is sufficient to pay normal cost.

(5) If a municipality using the conservation method fully funds its pension and relief fund or funds by a pension funding program authorized by §8-33-4a of this code, then the trustees of the policemen's or firemen's pension and relief fund are to pay pension obligations out of the pension and relief fund; and the minimum standard for annual municipality contributions to each policemen's or firemen's pension and relief fund shall be an amount which, together with member contributions and other income sources as authorized by law, is sufficient to meet the normal cost of the fund.

(g)(1) Beginning July 1, 2023, any municipality using the alternative method of financing provided in subdivision (1),

subsection (c) of this section, or the conservation method of financing provided in subdivision (1), subsection (f) of this section, may choose to convert to the optional method of financing provided in subdivision (1), subsection (e) of this section, or the optional-II method of financing its municipal policemen's and firemen's pension and relief funds as provided in this subsection, in lieu of the method of financing it is currently using.

(2) For those municipalities choosing the optional-II method of finance, the minimum standard for annual municipality contributions to each policemen's or firemen's pension and relief fund shall be an amount which, together with the contributions from the members and, if no pension funding revenue bonds of a building commission of such municipality are outstanding, the allocable portion of the Municipal Pensions Security Fund created in §8-22-18b of this code, and other income sources as authorized by law, will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than 40 years beginning July 1, 2023. The required contribution shall be determined each plan year as described in subsections (b) and (d) of this section by the actuary retained by the oversight board, based on an actuarial valuation reflecting actual demographic and investment experience and consistent with the Actuarial Standards of Practice published by the Actuarial Standards Board.

(h) Beginning with the July 1, 2020, actuarial valuation, the existing actuarial deficiency, prior to reflecting any new gains or losses as of July 1, 2020, such as those due to investment experience, differences between actual and expected contributions, demographic experience, and changes to actuarial assumptions, shall continue to be amortized as required by subsections (c) and (e) of this section: *Provided*, That on July 1, 2020, and each successive annual valuation date thereafter, the annual impacts on the funding deficiency due to: (i) New gains or losses on assets and liabilities; and (ii) changes in actuarial assumptions, shall each be amortized over a closed period of 15 years, thereby creating layers of amortization bases rather than amortizing the entire actuarial deficiency over the same single and decreasing period: *Provided, however*, That impacts on the funding deficiency due to plan

changes shall be amortized over closed five year periods. The management of these amortization bases by the actuary should entail the consideration, at least every five years, of whether to implement strategies, such as the synchronization of certain amortization layers, to help avoid volatility to the sum of the amortization payments generally resulting from the expiration of charge and credit layers at different times. The required contribution shall be determined each plan year as described above by the actuary retained by the oversight board, based on an actuarial valuation reflecting actual demographic and investment experience and consistent with the Actuarial Standards of Practice published by the Actuarial Standards Board.

(i) Notwithstanding the foregoing until any pension funding revenue bonds issued by a municipality's building commission are paid in full, the allocable portion of money from the Municipal Pension Security Fund from the premium tax allocation for such municipality's policemen's and firemen's pension and relief funds, as applicable, shall be deposited pursuant to §8-22-19(d)(2) with the trustee for the pension funding revenue bonds and shall not be deposited into the applicable policemen's or firemen's pension and relief funds of such municipality.

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CHAPTER 90

**(Com. Sub. for H. B. 3211 - By Delegates Storch, Anderson,
Kump, Reynolds, Ferrell, Hite, C. Pritt, Marple, Hornbuckle,
E. Pritt and Fluharty)**

[Passed March 8, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-22A-27a, relating to authorizing service credit for unused accrued annual or sick leave days in the West Virginia Municipal Police Officers and Firefighters Retirement System; defining an annual leave or sick leave day as eight hours; authorizing service credit for unused accrued annual or sick leave days in the West Virginia Municipal Police Officers and Firefighters Retirement System; and limiting credit for accrued annual or sick leave days to the policy offered by the State of West Virginia for its state employees who are covered by the rules of the West Virginia Division of Personnel.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-27a. Credit toward retirement for member's accrued annual or sick leave days.

(a) For purposes of this section, an annual leave or sick leave day shall be the equivalent of eight hours of leave.

(b) Any member accruing annual leave or sick leave days may, after the effective date of this section, elect to use the days which stand to the member's credit with the member's last covered

employment employer at the time of retirement to acquire additional credited service in this retirement system. The days shall be applied on the basis of one days' credit granted for each one day of accrued annual or sick leave days, with each month of retirement service credit to equal 20 days and with any remainder of 10 days or more to constitute a full month of additional credit and any remainder of less than 10 days to be dropped and not used, notwithstanding any provisions of this code to the contrary. The credited service shall be allowed and not considered to controvert the requirement of no more than 12 months' credited service in any year's period.

(c) Members employed by any covered employment employer with a policy for the accrual of unused sick and annual leave which is more generous than that of the State of West Virginia for its state agency employees shall receive service credit only for accrued unused sick and annual leave as provided for by the State of West Virginia for state employees who are covered by the rules of the West Virginia Division of Personnel. If the member is paid in a lump sum for accrued unused leave, the Board shall not consider the lump sum payment as annual compensation in computing a member's final average salary.

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CHAPTER 91

**(H. B. 3244 - By Delegates Storch, Marple, C. Pritt, Anderson
and Hornbuckle)**

[By Request of the Municipal Pensions Oversight Board]

[Passed March 6, 2023; in effect from passage.]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §8-33-4b of the Code of West Virginia, 1931, as amended, relating to require the municipal pensions oversight board to propose legislative rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 33. INTERGOVERNMENTAL RELATIONS — BUILDING COMMISSIONS.

§8-33-4b. Approval of municipal pension oversight board of certain pension funding revenue bonds; propose rules.

(a) In addition to the requirements otherwise provided in this article, any issuance of pension funding revenue bonds by a building commission (1) for a Class III municipality or (2) for a Class I or Class II municipality with either a policemen's or firemen's pension and relief fund if the municipality only has one such pension and relief fund, or with both policemen's and firemen's pension and relief funds that are not funded at a funding ratio of 40 percent or greater based on the most recent actuarial valuation reports prepared by an actuary contracted with or employed by the municipal pensions oversight board for such funds, with appropriate adjustments for timing, experience and other factors, as applicable, shall, prior to such issuance, be approved by the municipal pension oversight board and provided

to the Joint Committee on Government and Finance for prior review.

(b) The applicable building commission shall, at least 90 days prior to the proposed issuance date of the pension funding revenue bonds, provide the following to the municipal pension oversight board:

(1) A report setting forth a detailed summary of the then projected terms of the proposed bond issuance and projected impact on the unfunded pension liability of the applicable fund or funds; and

(2) A copy of the municipality's most recent actuarial valuation reports prepared by an actuary contracted with or employed by the oversight board relating to its policemen's and firemen's pension and relief funds.

(c) The municipal pension oversight board shall meet, review the information provided pursuant to subsection (b) of this section and provide its approval or rejection of the proposed issuance of pension funding revenue bonds within 60 days of receipt of the reports required in subsection (b) of this section. The municipal pension oversight board shall issue a written decision within 30 days of the meeting.

(d) Should the municipal pension oversight board approve the issuance of pension funding revenue bonds by a building commission, then it shall promptly provide a copy of its decision and the supporting documents, including a copy of the municipality's most recent actuarial valuation reports prepared by an actuary contracted with or employed by the oversight board relating to its policemen's and firemen's pension and relief funds, to the Joint Committee on Government and Finance.

(e) The municipal pensions oversight board shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code as necessary to implement the provisions of this section, and may initially promulgate emergency rules pursuant to §29A-3-15 of this code.

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CHAPTER 92

**(Com. Sub. for H. B. 3265 - By Delegates Heckert, Adkins,
Ross, Maynor, Foggin, Cooper, Miller, Crouse and Kump)**

[Passed March 10, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §59-1-14 of the Code of West Virginia, 1931, as amended, relating to service of process by sheriff; and requiring a county sheriff to owe fees to another sheriff’s department or law enforcement agency for service.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-14. Fees to be charged by sheriffs.

(a) The county commission shall determine the amount which the sheriff may charge, which charges shall not exceed the following:

For serving on any person an order, notice, summons or other process where the body is not taken, except a subpoena served on a witness, and making return thereof	\$25.00
For summoning a witness	25.00
For serving on any person an attachment or other process under which the body is taken	25.00
For levying an attachment on real estate and making the return	25.00
For making any other levy	25.00
For serving a writ of possession	25.00

(b) Notwithstanding any provision of this code to the contrary, a county sheriff shall owe the fees set forth in subsection (a) of this section to another sheriff's department or law-enforcement agency for service of an order, notice, summons, or other process, or for service of an attachment once the requested service has been completed.

(c) The county commission shall determine the amount which the sheriff may charge, which charges shall not exceed the following:

- For conveying a prisoner to or from jail, for each mile of necessary travel either in going or returning..... .25
- For taking any bond..... 1.00
- When a jury is sworn in court, for summoning and impaneling such jury..... 1.00
- For issuing receipt to purchaser at delinquent tax sale 1.00

(d) The county commission, giving due regard to the cost thereof, may from time to time prescribe the amount which the sheriff may charge for keeping any property or in removing any property. When, after distraining or levying, he or she neither sells nor receives payment, and either takes no bond or takes one which is not forfeited, he or she shall, if guilty of no default, have (in addition to the \$1 for a bond, if one was taken) a fee of \$3, unless this be more than half of what his or her commission would have amounted to if he or she had received payment; in which case he or she shall (whether a bond was taken or not) have a fee of \$1 at the least, and so much more as is necessary to make the said half of his or her commission. The commission to be included in a forthcoming bond (when one is taken) shall be five percent on the first \$300 of the money for which the distress or levy is made, and two percent on the residue of the money; but the commission shall not be received, in whole or in part, except as hereinbefore provided, unless the bond be forfeited, or the amount (including the commission) be paid to the plaintiff. An officer receiving payment in money, or selling property, shall have the like commission of

five percent on the first \$300 of the money paid or proceeds from the sale, and two percent on the residue, except that when the payment or sale is on an execution on a forthcoming bond, his or her commission shall be only half what it would be if the execution were not on the bond.

(e) Any amounts collected by the sheriff pursuant to this section shall be deposited in a separate account of the county general fund and used by the sheriff for the expenses of providing the services herein described: *Provided*, That \$2 of each fee collected pursuant to the provisions of subsection (a) of this section shall be deposited by the county commission in the "West Virginia Deputy Sheriff Retirement Fund" created in section six, article fourteen-d, chapter seven of this code and \$3 of each fee collected pursuant to the provisions of subsection (a) of this section shall be deposited by the county commission in the general revenue account of the county commission. Any surplus funds that remain in the separate account of the county general fund required by the provisions of this subsection on the last day of the fiscal year, and have not been expended for the purposes herein described, shall revert to the county general fund.

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CHAPTER 93

**(H. B. 3340 - By Delegates Hardy, Espinosa, Storch, Statler,
Hott, Hite, Horst and Toney)**

[Passed February 27, 2023; in effect from passage.]

AN ACT to amend and reenact §7-11B-3, §7-11B-7, §7-11B-8, §7-11B-9, and §7-11B-10 of the Code of West Virginia, 1931, as amended, all relating generally to property tax increment financing; amending definition of tax increment financing; modifying the existing authorization for a county commission or municipality to extend the termination time of certain districts; providing for certain notice to other levying bodies prior to a new project plan or project plan amendment for certain property tax districts being considered for approval; and eliminating certain approval of other levying bodies prior to amendment of an existing district by the county commission or governing body of the municipality making the amendment.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 11B. WEST VIRGINIA TAX INCREMENT
FINANCING ACT.**

§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 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 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.

"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 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. No consent or approval from the local levying bodies having the power to levy taxes on property within the development or redevelopment district shall be required in order to amend such order or ordinance for the purposes herein described, aside from the county commission or the governing body of the municipality which is amending such order or ordinance. 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-8. Project plan — approval.

(a) The county commission or municipality creating the district shall cause the preparation of a project plan for each development or redevelopment district and the project plan shall be adopted by order of the county commission, or ordinance adopted by the governing body of the municipality, after it is approved by the executive director of the Development Office. This process shall conform to the procedures set forth in this section.

(b) Each project plan shall include:

(1) A statement listing the kind, number and location of all proposed public works or other improvements within the district and on land outside but contiguous to the district;

(2) A cost-benefit analysis showing the economic impact of the plan on each levying body that is at least partially within the boundaries of the development or redevelopment district. This analysis shall show the impact on the economy if the project is not built and is built pursuant to the development or redevelopment plan under consideration. The cost-benefit analysis shall include a fiscal impact study on every affected levying body and sufficient information from the developer for the agency, if any proposing the plan, the county commission being asked to approve the project and the Development Office to evaluate whether the project as proposed is financially feasible;

(3) An economic feasibility study;

(4) A detailed list of estimated project costs;

(5) A description of the methods of financing all estimated project costs, including the issuance of tax increment obligations and the time when the costs or monetary obligations related thereto are to be incurred;

(6) A certification by the county assessor of the base assessed value of real and tangible personal property having a tax situs in a development or redevelopment district: *Provided*, That if such certification is made during the months of January or February of

each year, the county assessor may certify an estimated base assessed value of real and tangible personal property having a tax situs in a development or redevelopment district: *Provided, however,* That prior to issuance of tax increment obligations, the county assessor shall certify a final base assessed value for the estimated base assessed value permitted by this section;

(7) The type and amount of any other revenues that are expected to be deposited to the tax increment financing fund of the development or redevelopment district;

(8) A map showing existing uses and conditions of real property in the development or redevelopment district;

(9) A map of proposed improvements and uses in the district;

(10) Proposed changes of zoning ordinances, if any;

(11) Appropriate cross-references to any master plan, map, building codes and municipal ordinances or county commission orders affected by the project plan;

(12) A list of estimated nonproject costs;

(13) A statement of the proposed method for the relocation of any persons, businesses or organizations to be displaced;

(14) A certificate from the executive director of the workers' compensation commission, the commissioner of the Bureau of Employment Programs and the State Tax Commissioner that the project developer is in good standing with the workers' compensation commission, the Bureau of Employment Programs and the state Tax Division; and

(15) A certificate from the sheriff of the county or counties in which the development or redevelopment district is located that the project developer is not delinquent on payment of any real and personal property taxes in such county.

(c) If the project plan is to include tax increment financing, the tax increment financing portion of the plan shall set forth:

(1) The amount of indebtedness to be incurred pursuant to this article;

(2) An estimate of the tax increment to be generated as a result of the project;

(3) The method for calculating the tax increment, which shall be in conformance with the provisions of this article, together with any provision for adjustment of the method of calculation;

(4) Any other revenues, such as payment in lieu of tax revenues, to be used to secure the tax increment financing; and

(5) Any other provisions as may be deemed necessary in order to carry out any tax increment financing to be used for the development or redevelopment project.

(d) If less than all of the tax increment is to be used to fund a development or redevelopment project or to pay project costs or retire tax increment financing, the project plan shall set forth the portion of the tax increment to be deposited in the tax increment financing fund of the development or redevelopment district and provide for the distribution of the remaining portion of the tax increment to the levying bodies in whose jurisdiction the district lies.

(e) The county commission or governing body of the municipality that established the tax increment financing fund shall hold a public hearing at which interested parties shall be afforded a reasonable opportunity to express their views on the proposed project plan being considered by the county commission or the governing body of the municipality.

(1) Notice of the hearing shall be published as a Class II legal advertisement in accordance with §59-3-2 of this code.

(2) At least 30 days prior to the public hearing, a copy of the notice shall be sent by first-class mail to the chief executive officer of all other levying bodies having the power to levy taxes on property located within the proposed development or redevelopment district.

(f) Approval by the county commission or the governing body of a municipality of an initial development or redevelopment project plan must be within one year after the date of the county assessor's certification required by subdivision (6), subsection (b) of this section: *Provided*, That additional development or redevelopment project plans may be approved by the county commission or the governing body of a municipality in subsequent years, so long as the development or redevelopment district continues to exist. The approval shall be by order of the county commission or ordinance of the municipality, which shall contain a finding that the plan is economically feasible.

§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 §59-3-2 of this code.

(2) At least 30 days prior to the public hearing, 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 30 years (unless two or more districts are combined as described in §7-11B-9(c) of this code) 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 15 years.

(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, combining, 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 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.

●

CHAPTER 94

**(Com. Sub. for H. B. 3354 - By Delegates Rowe, Hanshaw
(Mr. Speaker), Foster and Steele)**

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §8-12-5 of the Code of West Virginia, 1931, as amended, relating to the power and duties of municipalities; authorizing municipalities to combine operations with other municipalities and counties to provide governmental services; removing authority for regulation of keeping gunpowder and other combustibles; and clarifying that a firearm violation is a violation of only state law.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 12. GENERAL AND SPECIFIC POWERS,
DUTIES AND ALLIED RELATIONS OF
MUNICIPALITIES, GOVERNING BODIES AND
MUNICIPAL OFFICERS AND EMPLOYEES; SUITS
AGAINST MUNICIPALITIES.**

§8-12-5. General powers of every municipality and the governing body thereof.

In addition to the powers and authority granted by: (i) The Constitution of this state; (ii) other provisions of this chapter; (iii) other general law; and (iv) any charter, and to the extent not inconsistent or in conflict with any of the foregoing except special legislative charters, every municipality and the governing body thereof shall have plenary power and authority therein by ordinance or resolution, as the case may require, and by appropriate action based thereon:

(1) To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks, drains and gutters, for the use of the public, and to improve and light the same, and have them kept free from obstructions on or over them which have not been authorized pursuant to the succeeding provisions of this subdivision; and, subject to such terms and conditions as the governing body shall prescribe, to permit, without in any way limiting the power and authority granted by the provisions of article sixteen of this chapter, any person to construct and maintain a passageway, building or other structure overhanging or crossing the airspace above a public street, avenue, road, alley, way, sidewalk or crosswalk, but before any permission for any person to construct and maintain a passageway, building or other structure overhanging or crossing any airspace is granted, a public hearing thereon shall be held by the governing body after publication of a notice of the date, time, place and purpose of the public hearing has been published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the municipality: *Provided*, That any permit so granted shall automatically cease and terminate in the event of abandonment and nonuse thereof for the purposes intended for a period of ninety days, and all rights therein or thereto shall revert to the municipality for its use and benefit;

(2) To provide for the opening and excavation of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality and regulate the conditions under which any such opening may be made;

(3) To prevent by proper penalties the throwing, depositing or permitting to remain on any street, avenue, road, alley, way, sidewalk, square or other public place any glass, scrap iron, nails, tacks, wire, other litter or any offensive matter or anything likely to injure the feet of individuals or animals or the tires of vehicles;

(4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality, including the naming or renaming thereof, and to consult with local postal authorities, the Division of Highways and

the directors of county emergency communications centers to assure uniform, nonduplicative addressing on a permanent basis;

(5) To regulate the width of streets, avenues and roads, and, subject to the provisions of article eighteen of this chapter, to order the sidewalks, footways and crosswalks to be paved, repaved, curbed or recurbed and kept in good order, free and clean, by the owners or occupants thereof or of the real property next adjacent thereto;

(6) To establish, construct, alter, operate and maintain, or discontinue, bridges, tunnels and ferries and approaches thereto;

(7) To provide for the construction and maintenance of water drains, the drainage of swamps or marshlands and drainage systems;

(8) To provide for the construction, maintenance and covering over of watercourses;

(9) To control and administer the waterfront and waterways of the municipality and to acquire, establish, construct, operate and maintain and regulate flood control works, wharves and public landings, warehouses and all adjuncts and facilities for navigation and commerce and the utilization of the waterfront and waterways and adjacent property;

(10) To prohibit the accumulation and require the disposal of garbage, refuse, debris, wastes, ashes, trash and other similar accumulations whether on private or public property: *Provided*, That, in the event the municipality annexes an area which has been receiving solid waste collection services from a certificated solid waste motor carrier, the municipality and the solid waste motor carrier may negotiate an agreement for continuation of the private solid waste motor carrier services for a period of time, not to exceed three years, during which time the certificated solid waste motor carrier may continue to provide exclusive solid waste collection services in the annexed territory;

(11) To construct, establish, acquire, equip, maintain and operate incinerator plants and equipment and all other facilities for

the efficient removal and destruction of garbage, refuse, wastes, ashes, trash and other similar matters;

(12) To regulate or prohibit the purchase or sale of articles intended for human use or consumption which are unfit for use or consumption, or which may be contaminated or otherwise unsanitary;

(13) To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome;

(14) To make regulations guarding against danger or damage by fire;

(15) To arrest, convict and punish any individual for carrying about his or her person any revolver or other pistol, dirk, bowie knife, razor, slingshot, billy, metallic or other false knuckles or any other dangerous or other deadly weapon of like kind or character: *Provided*, That with respect to any firearm a municipality may only arrest, convict and punish someone if they are in violation of a state law proscribing certain conduct with a firearm;

(16) To arrest, convict and punish any person for importing, printing, publishing, selling or distributing any pornographic publications;

(17) To arrest, convict and punish any person for keeping a house of ill fame, or for letting to another person any house or other building for the purpose of being used or kept as a house of ill fame, or for knowingly permitting any house owned by him or her or under his or her control to be kept or used as a house of ill fame, or for loafing, boarding or loitering in a house of ill fame, or frequenting same;

(18) To prevent and suppress conduct and practices which are immoral, disorderly, lewd, obscene and indecent;

(19) To prevent the illegal sale of intoxicating liquors, drinks, mixtures and preparations;

(20) To arrest, convict and punish any individual for driving or operating a motor vehicle while intoxicated or under the influence of liquor, drugs or narcotics;

(21) To arrest, convict and punish any person for gambling or keeping any gaming tables, commonly called "A, B, C," or "E, O," table or faro bank or keno table, or table of like kind, under any denomination, whether the gaming table be played with cards, dice or otherwise, or any person who shall be a partner or concerned in interest, in keeping or exhibiting the table or bank, or keeping or maintaining any gaming house or place, or betting or gambling for money or anything of value;

(22) To provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance;

(23) To license, or for good cause to refuse to license in a particular case, or in its discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for hire of pool and billiard tables notwithstanding the general law as to state licenses for any such business and the provisions of section four, article thirteen of this chapter; and when the municipality, in the exercise of its discretion, refuses to grant a license to operate a pool or billiard room, mandamus may not lie to compel the municipality to grant the license unless it shall clearly appear that the refusal of the municipality to grant a license is discriminatory or arbitrary; and in the event that the municipality determines to license any business, the municipality has plenary power and authority and it shall be the duty of its governing body to make and enforce reasonable ordinances regulating the licensing and operation of the businesses;

(24) To protect places of divine worship and to preserve peace and order in and about the premises where held;

(25) To regulate or prohibit the keeping of animals or fowls and to provide for the impounding, sale or destruction of animals or fowls kept contrary to law or found running at large;

(26) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly beating, torturing, mutilating, killing, or overloading or overdriving or willfully depriving of necessary sustenance any domestic animal;

(27) To provide for the regular building of houses or other structures, for the making of division fences by the owners of adjacent premises and for the drainage of lots by proper drains and ditches;

(28) To provide for the protection and conservation of shade or ornamental trees, whether on public or private property, and for the removal of trees or limbs of trees in a dangerous condition;

(29) To prohibit with or without zoning the location of occupied house trailers or mobile homes in certain residential areas;

(30) To regulate the location and placing of signs, billboards, posters and similar advertising;

(31) To erect, establish, construct, acquire, improve, maintain and operate a gas system, a waterworks system, an electric system or sewer system and sewage treatment and disposal system, or any combination of the foregoing (subject to all of the pertinent provisions of articles nineteen and twenty of this chapter and particularly to the limitations or qualifications on the right of eminent domain set forth in articles nineteen and twenty), within or without the corporate limits of the municipality, except that the municipality may not erect any system partly without the corporate limits of the municipality to serve persons already obtaining service from an existing system of the character proposed and where the system is by the municipality erected, or has heretofore been so erected, partly within and partly without the corporate limits of the municipality, the municipality has the right to lay and collect charges for service rendered to those served within and those served without the corporate limits of the municipality and to prevent injury to the system or the pollution of the water thereof and its maintenance in a healthful condition for public use within the corporate limits of the municipality;

(32) To acquire watersheds, water and riparian rights, plant sites, rights-of-way and any and all other property and appurtenances necessary, appropriate, useful, convenient or incidental to any system, waterworks or sewage treatment and disposal works, as aforesaid, subject to all of the pertinent provisions of articles nineteen and twenty of this chapter;

(33) To establish, construct, acquire, maintain and operate and regulate markets and prescribe the time of holding the same;

(34) To regulate and provide for the weighing of articles sold or for sale;

(35) To establish, construct, acquire, maintain and operate public buildings, municipal buildings or city halls, auditoriums, arenas, jails, juvenile detention centers or homes, motor vehicle parking lots or any other public works;

(36) To establish, construct, acquire, provide, equip, maintain and operate recreational parks, playgrounds and other recreational facilities for public use and in this connection also to proceed in accordance with the provisions of article two, chapter ten of this code;

(37) To establish, construct, acquire, maintain and operate a public library or museum or both for public use;

(38) To provide for the appointment and financial support of a library board in accordance with the provisions of article one, chapter ten of this code;

(39) To establish and maintain a public health unit in accordance with the provisions of section two, article two, chapter sixteen of this code, which unit shall exercise its powers and perform its duties subject to the supervision and control of the West Virginia Board of Health and State Bureau for Public Health;

(40) To establish, construct, acquire, maintain and operate hospitals, sanitariums and dispensaries;

(41) To acquire, by purchase, condemnation or otherwise, land within or near the corporate limits of the municipality for providing and maintaining proper places for the burial of the dead and to maintain and operate the same and regulate interments therein upon terms and conditions as to price and otherwise as may be determined by the governing body and, in order to carry into effect the authority, the governing body may acquire any cemetery or cemeteries already established;

(42) To exercise general police jurisdiction over any territory without the corporate limits owned by the municipality or over which it has a right-of-way;

(43) To protect and promote the public morals, safety, health, welfare and good order;

(44) To adopt rules for the transaction of business and the government and regulation of its governing body;

(45) Except as otherwise provided, to require and take bonds from any officers, when considered necessary, payable to the municipality, in its corporate name, with such sureties and in a penalty as the governing body may see fit, conditioned upon the faithful discharge of their duties;

(46) To require and take from the employees and contractors such bonds in a penalty, with such sureties and with such conditions, as the governing body may see fit;

(47) To investigate and inquire into all matters of concern to the municipality or its inhabitants;

(48) To establish, construct, require, maintain and operate such instrumentalities, other than free public schools, for the instruction, enlightenment, improvement, entertainment, recreation and welfare of the municipality's inhabitants as the governing body may consider necessary or appropriate for the public interest;

(49) To create, maintain and operate a system for the enumeration, identification and registration, or either, of the

inhabitants of the municipality and visitors thereto, or the classes thereof as may be considered advisable;

(50) To require owners, residents or occupants of factory-built homes situated in a factory-built rental home community with at least ten factory-built homes, to visibly post the specific numeric portion of the address of each factory-built home on the immediate premises of the factory-built home of sufficient size to be visible from the adjoining street: *Provided*, That in the event no numeric or other specific designation of an address exists for a factory-built home subject to the authorization granted by this subdivision, the municipality has the authority to provide a numeric or other specific designation of an address for the factory-built home and require that it be posted in accordance with the authority otherwise granted by this section.

(51) To appropriate and expend not exceeding twenty-five cents per capita per annum for advertising the municipality and the entertainment of visitors;

(52) To conduct programs to improve community relations and public relations generally and to expend municipal revenue for such purposes;

(53) To reimburse applicants for employment by the municipality for travel and other reasonable and necessary expenses actually incurred by the applicants in traveling to and from the municipality to be interviewed;

(54) To provide revenue for the municipality and appropriate the same to its expenses;

(55) To create and maintain an employee benefits fund which may not exceed one tenth of one percent of the annual payroll budget for general employee benefits and which is set up for the purpose of stimulating and encouraging employees to develop and implement cost-saving ideas and programs and to expend moneys from the fund for these purposes;

(56) To enter into reciprocal agreements with governmental subdivisions or agencies of any state sharing a common border for

the protection of people and property from fire and for emergency medical services and for the reciprocal use of equipment and personnel for these purposes;

(57) To provide penalties for the offenses and violations of law mentioned in this section, subject to the provisions of section one, article eleven of this chapter, and such penalties may not exceed any penalties provided in this chapter and chapter sixty-one of this code for like offenses and violations;

(58) To participate in a purchasing card program for local governments authorized and administered by the State Auditor as an alternative payment method; and

(59) To enter into agreements with one or more other municipalities, and with county commissions to combine and share selected governmental services by combining operations, equipment, and employees into a unified government service.



CHAPTER 95

(Com. Sub. for H. B. 3364 - By Delegate Storch)

[By Request of the Municipal Pensions Oversight Board]

[Passed March 3, 2023; in effect from passage.]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §8-33-4a of the Code of West Virginia, 1931, as amended, relating to the issuance of pension funding revenue bonds; and requiring the closure of certain municipal policemen's and firemen's pension and relief funds as condition of issuance of pension funding revenue bonds.

Be it enacted by the Legislature of West Virginia:

ARTICLE 33. INTERGOVERNMENTAL RELATIONS — BUILDING COMMISSIONS.

§8-33-4a. Issuance of pension funding revenue bonds to fund a pension funding program.

(a) In addition to the powers set forth in §8-33-4 of this code and subject to the requirements set forth in this section and in §8-33-4b of this code, a commission formed by a Class I, Class II or Class III municipality may issue pension funding revenue bonds to raise funds for the funding of a pension funding program in the manner provided by this section. A "pension funding program" means a program established by a municipality for reducing the unfunded actuarial accrued liability of a policemen's or firemen's pension and relief fund of the municipality with the proceeds of pension funding revenue bonds issued pursuant to this section.

(b) Before any commission shall fund any pension funding program through the issuance of pension funding revenue bonds, the commission shall enact an ordinance or ordinances, which shall

(1) set forth a brief and general description of the pension funding program; (2) set forth the estimated cost thereof; (3) order the funding of the pension funding program; (4) direct that pension funding revenue bonds be issued pursuant to this section, in such amount as may be found necessary to pay the cost of the pension funding program; (5) contain such provisions as the commission determines are necessary or desirable with regard to the establishment and setting aside of a debt service reserve fund if deemed beneficial to the commission and for the administration and disposition of the debt service reserve fund; (6) contain provisions establishing and setting aside a debt service contingency reserve fund with the municipality in an amount at least equal to 10 percent of the original principal amount of the pension funding revenue bonds from cash contributed by the municipality or from the proceeds of the pension funding revenue bonds, providing for the replenishment of any amounts drawn from the debt service contingency reserve fund in a reasonable time period, and for the administration and disposition of the debt service contingency reserve fund; and (7) contain such other provisions as may be necessary or proper in the premises. Before any such ordinance shall become effective, an abstract of the ordinance, determined by the commission to contain sufficient information as to give notice of the contents of such ordinance, together with the following described notice, shall be 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 such publication shall be the municipality which formed the commission. The notice to be published with the abstract of the ordinance shall specify a date, time and place for a public hearing, the date being not less than 10 days after the first publication of the abstract and notice and not prior to the last publication of the abstract and notice, at which time and place all parties and interests may appear before the commission and may be heard as to whether or not said ordinance shall be put into effect, and said notice shall also identify the office in which a certified copy of such ordinance shall be on file for review by interested persons during the office hours of the office. At the public hearing all objections and suggestions shall be heard, and the commission shall take such action as it deems proper in the premises.

(c) (1) The cost of a pension funding program shall include the cost of providing funding of all of the unfunded liability of a policemen's or firemen's pension plan; the costs of issuance of pension funding revenue bonds issued to fund a pension funding program, the amount of any debt service reserve and debt service contingency reserve funds funded from the proceeds of pension funding revenue bonds; actuarial, financial advisory and legal expenses associated with the pension funding program and the issuance of the pension funding revenue bonds; expenses for estimates of cost and of revenues; expenses for actuarial studies; and such other expenses as may be necessary or incidental to the financing authorized pursuant to this section, the pension funding program and the performance of the actions required or permitted in connection with any thereof.

(2) Actuarial studies must be performed by a contracted actuary of the Municipal Pension Oversight Board as required by §8-22-20 of this code.

(d) Pension funding revenue bonds shall be in an amount at least equal to the applicable policemen's and/or firemen's pension and relief funds then unfunded liability based upon the most recent actuarial valuation reports prepared by an actuary contracted with or employed by the oversight board as required by §8-22-20 of this code for the applicable funds with appropriate adjustments for timing, experience and other factors. The pension funding revenue bonds shall bear interest at not more than 12 percent per annum, payable semiannually, or at shorter intervals, and the bonds allocable to a specific policemen's or firemen's pension and relief fund shall mature over a period of time not exceeding the then estimated amortization period for the municipality's unfunded actuarial accrued liability as set forth in the municipality's most recent actuarial valuation reports prepared by an actuary contracted with or employed by the oversight board relating to the applicable funds with appropriate adjustments for timing, experience and other factors, as may be determined by the ordinance or ordinances authorizing the issuance of such bonds. The annual principal and interest payments on pension funding revenue bonds shall, to the extent possible, provide for level debt service and be proportionate

to the funding requirements for the applicable policemen's or firemen's pension and relief funds as shown on the municipality's most recent actuarial valuation report for the policemen's or firemen's pension and relief funds prepared by an actuary contracted with or employed by the oversight board with appropriate adjustments for timing, experience and other factors, as applicable. The bonds may be made redeemable before maturity, at the option of the commission issuing the bonds, to be exercised by the commission, at not more than the par value thereof, and at a premium of not more than five percent, under terms and conditions as may be fixed by the ordinance or ordinances authorizing the issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. The ordinance or ordinances shall determine the form of the bonds, shall set forth any registration or conversion privileges, and shall fix the denomination or denominations of such bonds, and the place or places of the payment of the principal and interest thereof, which may be at any banking institution or trust company within or without the state and which is a vendor of the state. All such bonds shall be, shall have and are hereby declared to have all the qualities and incidents of negotiable instruments, under the Uniform Commercial Code of this state. The bonds shall be executed in the manner the commission may direct. The bonds shall be sold by the commission in a manner as may be determined to be in the best interest of the municipality which created the commission. Any surplus of the bond proceeds over and above the cost of the pension funding program shall be paid into the sinking fund established for the payment of such bonds.

(e) The bonds shall be secured by a trust indenture by and between the commission and a corporate trustee, which may be a trust company or banking institution having powers of a trust company within or without the state and which is a vendor of the state. The ordinance or ordinances authorizing the issuance of the pension funding revenue bonds, and fixing the details thereof, may provide that the trust indenture may contain provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, including security interests in any real property owned or leased by the commission regardless of

whether such real property is being improved with the proceeds of such indebtedness, not in violation of law. The indenture may set forth the rights and remedies of the bondholders or the trustee, or both. The commission may provide by ordinance or ordinances or in the trust indenture for the payment of the proceeds of the sale of the bonds and the revenues received by the commission with respect to the pension funding program to a depository, as the commission may determine for the custody thereof, and for the method of distribution thereof, with such safeguards and restrictions as the commission may determine. The trust indenture shall provide for a subaccount of the debt service fund into which all premium tax allocations received by the trustee shall, upon receipt, be deposited into for use solely in paying principal and interest on any outstanding pension funding revenue bonds. All interest earnings on the subaccount shall be credited to the subaccount and used solely for the payment of principal and interest on any outstanding pension funding revenue bonds.

(f) Upon the payment in full of an issue of pension funding revenue bonds (other than with the proceeds of refunding bonds) and any final costs related thereto, any amounts remaining in any debt service reserve or contingency reserve funds shall be paid by the trustee of the bonds to the municipality which formed the commission. Any excess moneys held in the subaccount of the debt service fund into which premium tax allocations have been deposited shall be paid to the Municipal Pension Oversight Board. Any other excess moneys held by the trustee at that time shall be paid to the municipality.

(g) Notwithstanding any provision of this code to the contrary, if a municipality with a policemen's or firemen's pension and relief fund is using the alternative method of funding provided in §8-22-20(e) of this code, the municipality may only issue pension funding revenue bonds if, on the date of the issuance of the bonds, the fund is closed to participation by police officers or firefighters, as applicable, hired on or after the date of the issuance of the bonds.

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CHAPTER 96

(H. B. 3387 - By Delegates Hardy, Storch, Westfall and Espinosa)

[Passed March 6, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §7-18-13a of the Code of West Virginia, 1931, as amended, relating to extending the moratorium on the authorization of new convention and visitors bureaus for an additional two years and clarifying when and how a new convention and visitors bureau can qualify for a distribution of the hotel occupancy tax proceeds.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. HOTEL OCCUPANCY TAX.

§7-18-13a. Annual reports by convention and visitor's bureaus; eligibility for hotel occupancy tax proceeds.

(a) On or before 90 days after the end of its fiscal year, every convention and visitor's bureau which receives any appropriation of hotel occupancy tax from one or more counties or municipalities shall file with each such county or municipality, the State Auditor, the Joint Committee on Government and Finance, and the West Virginia Association of Convention and Visitors Bureaus a report, including an income statement and balance sheet, showing all amounts of hotel occupancy tax appropriated to the convention and visitor's bureau and all expenditures of hotel occupancy tax made by the convention and visitor's bureau for the prior fiscal year, as well as any such information required by subsection (b) of this section. A convention and visitor's bureau that has not filed a report in accordance with the provisions of this section shall be ineligible

to receive additional appropriations of hotel occupancy tax proceeds until such report has been filed.

(b) In order to qualify for a distribution of net proceeds pursuant to §7-18-14 of this code, a convention and visitor's bureau shall satisfy the following requirements:

(1) The convention and visitor's bureau shall have a minimum annual budget;

(2) The convention and visitor's bureau shall establish a marketing plan targeting markets outside of a 50-mile radius of the bureau's municipality or county of operation;

(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;

(4) The convention and visitor's bureau has a full-time executive director that maintains the minimum number of continuing education hours recommended annually by industry standards;

(5) The convention and visitor's bureau has a physical office and/or visitor center that is accessible at least 40 hours per week and has a dedicated phone line;

(6) The convention and visitor's bureau maintains a website and appropriate marketing materials;

(7) The convention and visitor's bureau has received accreditation from an accrediting body; and

(8) The convention and visitor's bureau submits an annual report to all of its funding entities, which shall include, but not be limited to, the information provided for in this subsection.

Nothing in this section may be construed as to interfere with the ability of a county or municipality to enter into any agreements or partnerships with convention and visitor's bureaus in neighboring counties or municipalities for the purposes of distributing net tax proceeds pursuant to §7-18-14 of this code, so long as all other requirements of this section are met.

(c) At least once every three years, any bureau that receives any appropriation of hotel occupancy tax from one or more counties or municipalities shall cause an audit or financial review, in a form as is appropriate to the particular bureau, to be made by an independent certified public accountant of all its books, accounts, and records relating to all receipts and expenditures of any hotel occupancy tax appropriations for the three prior fiscal years of the bureau. A copy of the audit or financial review shall be filed with each county or municipality from which the bureau received an appropriation of hotel occupancy tax, the State Auditor, the Joint Committee on Government and Finance, and the West Virginia Association of Convention and Visitors Bureaus. After July 1, 2024, a bureau that has not caused such an audit or financial review to be made is ineligible to receive an appropriation of hotel occupancy tax proceeds pursuant to §7-18-14 of this code.

(d) In order to encourage counties and municipalities to work within the existing framework of convention and visitor's bureaus, there shall be a moratorium on the authorization of new convention and visitors bureaus until June 30, 2026. A county or municipality may not appropriate any net proceeds of hotel occupancy taxes, pursuant to §7-18-14 of this code, to any convention or visitor's bureau created on or after the amendments to this section enacted during the regular session of the Legislature, 2021, and prior to the end of the moratorium imposed by this subsection. On or after June 30, 2026, any new convention and visitor's bureau which meets all of the requirements of subsection (b) of this section shall qualify for a distribution of net proceeds pursuant to §7-18-14 of this code.

(e) Nothing in this section may prohibit either the State Auditor or the Legislative Auditor from conducting regular reviews or audits of the operations or finances of a convention and visitor's bureau to ensure compliance with this code.

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CHAPTER 97

**(Com. Sub. for H. B. 2621 - By Delegates Burkhammer,
Foster and Hott)**

[Passed March 10, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §33-1-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §51-10-1 and §51-10-8 of said code, all relating to professional bondsmen in criminal cases; defining terms and setting forth approved securities; modifying requirements for bondsmen; and requiring the Insurance Commissioner to formulate testing requirements for initial license applicants.

Be it enacted by the Legislature of West Virginia:

CHAPTER 33 INSURANCE.

ARTICLE 1. DEFINITIONS.

§33-1-10. Kinds of insurance defined.

The following definitions of kinds of insurance are not mutually exclusive and, if reasonably adaptable thereto, a particular coverage may be included under one or more of such definitions:

(a) *Life insurance.* — Life insurance is insurance on human lives including endowment benefits, additional benefits in the event of death or dismemberment by accident or accidental means, additional benefits for disability and annuities.

(b) *Accident and sickness.* — Accident and sickness insurance is insurance against bodily injury, disability or death by accident or accidental means, or the expense thereof, or against disability or

expense resulting from sickness and insurance relating thereto. Group credit accident and health insurance may also include loss of income insurance, which is insurance against the failure of a debtor to pay his or her monthly obligation due to involuntary loss of employment. For the purposes of this definition, involuntary loss of employment means the debtor loses employment income (salary or wages) as a result of unemployment caused by individual or mass layoff, general strikes, labor disputes, lockout, or termination by employer for other than willful or criminal misconduct. Any or all of the above-mentioned perils may be included in an insurance policy, at the discretion of the policyholder.

(c) *Fire.* — Fire insurance is insurance on real or personal property of every kind and interest therein, against loss or damage from any or all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual liability for any such loss or damage. Fire insurance shall also include miscellaneous insurance as defined in paragraph (12), subdivision (e) of this section.

(d) *Marine insurance is insurance:*

(1) Against any and all kinds of loss or damage to vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation, including war risks, on or under any seas or other waters, on land (above or below ground), or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same, or during any delays, storage, transshipment, or reshipment incident thereto, including marine builders' risks and all personal property floater risks;

(2) Against any and all kinds of loss or damage to persons or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for

loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance or use of automobiles);

(3) Against any and all kinds of loss or damage to precious stones, jewels, jewelry, gold, silver, and other precious metals, whether used in business or trade or otherwise, and whether the same be in course of transportation or otherwise;

(4) Against any and all kinds of loss or damage to bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, windstorm, sprinkler leakage, hail, explosion, earthquake, riot, or civil commotion, or any or all of them are the only hazards to be covered;

(5) Against any and all kinds of loss or damage to piers, wharves, docks, and ships, excluding the risks of fire, windstorm, sprinkler leakage, hail, explosion, earthquake, riot, and civil commotion and each of them;

(6) Against any and all kinds of loss or damage to other aids to navigation and transportation, including dry docks and marine railways, dams, and appurtenant facilities for control of waterways; and

(7) Marine protection and indemnity insurance, which is insurance against, or against legal liability of the insured for loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death, or for loss of or damage to the property of another person.

(e) *Casualty*. — Casualty insurance includes:

(1) Vehicle insurance, which is insurance against loss of or damage to any land vehicle or aircraft, or any draft or riding animal, or to property while contained therein or thereon or being loaded therein or therefrom, from any hazard or cause, and against any loss, liability or expense resulting from or incident to ownership, maintenance, or use of any such vehicle, aircraft or animal; together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing, or cranking, or caused by being struck by any vehicle, aircraft, or draft or riding animal, if such insurance is issued as a part of insurance on the vehicle, aircraft, or draft or riding animal;

(2) Liability insurance, which is insurance against legal liability for the death, injury, or disability of any human being, or for damage to property; and provisions for medical, hospital, surgical, disability benefits to injured persons, and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;

(3) Burglary and theft insurance, which is insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal, or concealment, or from any attempt at any of the foregoing, including supplemental coverages for medical, hospital, surgical, and funeral benefits sustained by the named insured or other person as a result of bodily injury during the commission of a burglary, robbery, or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents resulting from any cause;

(4) Personal property floater insurance, which is insurance upon personal effects against loss or damage from any cause;

(5) Glass insurance, which is insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;

(6) Boiler and machinery insurance, which is insurance against any liability and loss or damage to property or interest resulting from accidents to or explosion of boilers, pipes, pressure containers, machinery, or apparatus and to make inspection of and issue certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured;

(7) Leakage and fire extinguishing equipment insurance, which is insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus, water mains, pipes, and containers, or by water entering through leaks or openings in buildings, and insurance against loss or damage to such sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus;

(8) Credit insurance, which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured. Credit insurance shall include loss of income insurance, which is insurance against the failure of a debtor to pay his or her monthly obligation due to involuntary loss of employment. For the purpose of this definition, involuntary loss of employment means the debtor loses employment income (salary or wages) as a result of unemployment caused by individual or mass layoff, general strikes, labor disputes, lockout, or termination by employer for other than willful or criminal misconduct; any or all of the above-mentioned perils may be included in an insurance policy, at the discretion of the policyholder;

(9) Malpractice insurance, which is insurance against legal liability of the insured and against loss, damage or expense incidental to a claim of such liability, and including medical, hospital, surgical and funeral benefits to injured persons, irrespective of legal liability of the insured arising out of the death, injury or disablement of any person, or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional service;

(10) Entertainment insurance, which is insurance indemnifying the producer of any motion picture, television, radio, theatrical,

sport, spectacle, entertainment or similar production, event, or exhibition against loss from interruption, postponement, or cancellation thereof due to death, accidental injury or sickness of performers, participants, directors, or other principals;

(11) Mine subsidence insurance as provided for in article thirty of this chapter;

(12) Miscellaneous insurance, which is insurance against any other kind of loss, damage, or liability properly a subject of insurance and not within any other kind of insurance as defined in this chapter, if such insurance is not disapproved by the commissioner as being contrary to law or public policy; and

(13) Federal flood insurance, which is insurance provided by the Federal Insurance Administration or by private insurers through the Write Your Own Program within the National Flood Insurance Program, instituted by the Federal Insurance Administration pursuant to the provision of 42 U.S.C. § 4071, on real or personal property of every kind and interest therein, against loss or damage from flood or mudslide and against loss consequential to such loss or damage, other than noncontractual liability for any loss or damage.

(14) Workers' compensation insurance, which is insurance providing all compensation and benefits required by chapter 23 of this code.

(f) *Surety*. — Surety insurance includes:

(1) Fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(2) Insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship: *Provided*, That surety insurance does not include the guaranteeing and executing of bonds by individuals not in the business of becoming a surety for compensation upon bonds;

(3) Insurance indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while they are being transported in armored motor vehicles or by messenger, but not including any other risks of transportation or navigation, and also insurance against loss or damage to such an insured's premises or to his or her furnishings, fixtures, equipment, safes and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt to commit such crimes; and

(4) Title insurance, which is insurance of owners of property or others having an interest therein, or liens or encumbrances thereon, against loss by encumbrance, defective title, invalidity, or adverse claim to title.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 10. PROFESSIONAL BONDSMEN IN CRIMINAL CASES.

§51-10-1. Definitions.

When used in this article:

"Approved securities" means cash, irrevocable letter of credit, bond issued by an insurance company licensed and in good standing in this state, or qualified power of attorney issued by an insurer pursuant to a producer underwriting agreement, or real estate located in this state that is unencumbered in, at least, the amount of minimum financial responsibility required as set forth by the insurance commissioner: *Provided*, That a pledge of real estate by a bondsman as an approved security is not permitted after July 1, 2024: *Provided, however*, That a bondsman who is licensed by the commissioner as of July 1, 2024, and has pledged real estate as security to conduct bonding business may continue to pledge

real estate to operate as a bondsman until his or her license is voluntarily surrendered or revoked by the commissioner;

“Bonding business” means the business of becoming surety for compensation upon bonds in criminal cases in the State of West Virginia;

“Bondsman” means any person engaged in the bonding business 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;

“Commissioner” means the Insurance Commissioner of West Virginia, as defined in §33-1-5 of this code; and

“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 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 commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to carry out the intent, administration, and enforcement of this article. The commissioner may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code as 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 formulate testing requirements for all initial license applicants. The commissioner shall require a biennial fee of \$200 for all bondsmen 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) 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.

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.

(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.

(i) After July 1, 2022, a person may 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.



CHAPTER 98

**(Com. Sub. for H. B. 3332 - By Delegates Hanshaw (Mr. Speaker),
C. Pritt and Vance)**

[By Request]

[Passed March 11, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §3-1-16 of the Code of West Virginia, 1931, as amended; to amend and reenact §50-1-2, §50-1-8, §50-1-9, and §50-1-9a of said code; to amend said code by adding thereto a new section, designated §50-1-9c; to amend and reenact §51-2-1 of said code; and to amend and reenact §51-2A-3 and §51-2A-6 of said code; all relating generally to judicial officers and judicial staff; establishing runoff elections for circuit court judges in certain circumstances; establishing the number of magistrates per county before and after a date certain; establishing magisterial term length and election dates; setting forth process for Supreme Court of Appeals to undertake magistrate caseload study and submit administrative order regarding magistrate allocation; eliminating limit on maximum number of magistrates; eliminating restriction against reducing number of magistrates; removing payment of magistrates salaries based on population; establishing certain magistrate staff salaries and payment periods; authorizing additional magistrate assistants per magistrate based on workload, subject to certain restrictions; altering the county composition of certain circuit court circuits; establishing the number of circuit court judges per circuit before and after a date certain; providing for concurrent jurisdiction in single judge circuit; altering the county composition of certain family court circuits; establishing the number of family court judges per family court circuit before and after a date certain; establishing salaries of

family court judges; establishing certain family court staff salaries and payment periods; permitting Supreme Court of Appeals to increase number of family case coordinators; authorizing the Supreme Court of Appeals to create staff classifications and to appoint additional support staff to family court judges based on workload, subject to certain restrictions; and providing internal effective dates.

Be it enacted by the Legislature of West Virginia:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-17. Election of circuit judges; county and district officers; magistrates.

(a) There shall be elected, at the time of the primary election to be held in 2016, and every eighth year thereafter, one judge of the circuit court of every judicial circuit entitled to one judge, and one judge for each numbered division of the judicial circuit in those judicial circuits entitled to two or more circuit judges; and at the time of the primary election to be held in 2016, and in every fourth year thereafter, the number of magistrates prescribed by law for the county. Beginning with the election held in the year 2016, an election for the purpose of electing judges of the circuit court, or an election for the purpose of electing magistrates, shall be upon a nonpartisan ballot printed for the purpose.

(b) There shall be elected, at the general election to be held in 1992, and every fourth year thereafter, a sheriff, prosecuting attorney, surveyor of lands, and the number of assessors prescribed by law for the county; and at the general election to be held in 1990, and every second year thereafter, a commissioner of the county commission for each county; and at the general election to be held in 1992, and every sixth year thereafter, a clerk of the county commission and a clerk of the circuit court for each county.

(c) Effective with the primary election of 2016, all elections for judge of the circuit courts in the respective circuits and magistrates

in each county will be elected on a nonpartisan basis and by division as set forth more fully in article five of this chapter.

(d) Beginning with the judicial election in 2024, and in every judicial election thereafter, if no candidate in a division for judge of a circuit court receives more than 30 percent of the votes cast in the election, there shall be a runoff election at the subsequent general election between the two candidates who received the highest and next-highest number of votes cast in that division.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-2. Number of magistrates.

(a) The number of magistrates to be elected in each county of this state shall be determined in accordance with the provisions of this section.

(b) Beginning on the effective date of this subsection and until December 31, 2024, the number of magistrates in each county of the state shall be as follows:

- (1) Barbour County shall have two magistrates;
- (2) Berkeley County shall have six magistrates;
- (3) Boone County shall have two magistrates;
- (4) Braxton County shall have two magistrates;
- (5) Brooke County shall have two magistrates;
- (6) Cabell County shall have seven magistrates;
- (7) Calhoun County shall have two magistrates;
- (8) Clay County shall have two magistrates;
- (9) Doddridge County shall have two magistrates;
- (10) Fayette County shall have four magistrates;

- (11) Gilmer County shall have two magistrates;
- (12) Grant County shall have two magistrates;
- (13) Greenbrier County shall have three magistrates;
- (14) Hampshire County shall have two magistrates;
- (15) Hancock County shall have three magistrates;
- (16) Hardy County shall have two magistrates;
- (17) Harrison County shall have five magistrates;
- (18) Jackson County shall have two magistrates;
- (19) Jefferson County shall have three magistrates;
- (20) Kanawha County shall have 10 magistrates;
- (21) Lewis County shall have two magistrates;
- (22) Lincoln County shall have two magistrates;
- (23) Logan County shall have three magistrates;
- (24) Marion County shall have four magistrates;
- (25) Marshall County shall have three magistrates;
- (26) Mason County shall have two magistrates;
- (27) McDowell County shall have three magistrates;
- (28) Mercer County shall have five magistrates;
- (29) Mineral County shall have two magistrates;
- (30) Mingo County shall have three magistrates;

(31) Monongalia County shall have four magistrates: *Provided*, That effective July 1, 2023, Monongalia County shall have five magistrates, and the initial appointment for the additional

magistrate shall be made in accordance with the provisions of §50-1-6 of this code;

- (32) Monroe County shall have two magistrates;
- (33) Morgan County shall have two magistrates;
- (34) Nicholas County shall have three magistrates;
- (35) Ohio County shall have four magistrates;
- (36) Pendleton County shall have two magistrates;
- (37) Pleasants County shall have two magistrates;
- (38) Pocahontas County shall have two magistrates;
- (39) Preston County shall have three magistrates;
- (40) Putnam County shall have three magistrates;
- (41) Raleigh County shall have five magistrates;
- (42) Randolph County shall have three magistrates;
- (43) Ritchie County shall have two magistrates;
- (44) Roane County shall have two magistrates;
- (45) Summers County shall have two magistrates;
- (46) Taylor County shall have two magistrates;
- (47) Tucker County shall have two magistrates;
- (48) Tyler County shall have two magistrates;
- (49) Upshur County shall have two magistrates;
- (50) Wayne County shall have three magistrates;
- (51) Webster County shall have two magistrates;
- (52) Wetzel County shall have two magistrates;

(53) Wirt County shall have two magistrates;

(54) Wood County shall have four magistrates; and

(55) Wyoming County shall have three magistrates.

(c) Beginning on January 1, 2025, the number of magistrates in each county of the state shall be as follows:

(1) Barbour County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(2) Berkeley County shall have seven magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(3) Boone County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(4) Braxton County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(5) Brooke County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(6) Cabell County shall have seven magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(7) Calhoun County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(8) Clay County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(9) Doddridge County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(10) Fayette County shall have four magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(11) Gilmer County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(12) Grant County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(13) Greenbrier County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(14) Hampshire County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(15) Hancock County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(16) Hardy County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(17) Harrison County shall have five magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(18) Jackson County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(19) Jefferson County shall have four magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(20) Kanawha County shall have 13 magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(21) Lewis County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(22) Lincoln County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(23) Logan County shall have four magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(24) Marion County shall have four magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(25) Marshall County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(26) Mason County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(27) McDowell County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(28) Mercer County shall have five magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(29) Mineral County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(30) Mingo County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(31) Monongalia County shall have six magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(32) Monroe County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(33) Morgan County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(34) Nicholas County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(35) Ohio County shall have four magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(36) Pendleton County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(37) Pleasants County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(38) Pocahontas County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(39) Preston County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(40) Putnam County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(41) Raleigh County shall have six magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(42) Randolph County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(43) Ritchie County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(44) Roane County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(45) Summers County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(46) Taylor County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(47) Tucker County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(48) Tyler County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(49) Upshur County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(50) Wayne County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(51) Webster County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(52) Wetzel County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(53) Wirt County shall have two magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter;

(54) Wood County shall have five magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter; and

(55) Wyoming County shall have three magistrates, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every fourth year thereafter.

(d) In the year 2026, the Supreme Court of Appeals shall conduct or otherwise arrange for a caseload study of the magistrate courts of this state for the purpose of determining how many magistrates are needed in each county. Based upon the results of this study and upon consideration of county population data from the most recent decennial census, the Supreme Court of Appeals shall enter an administrative order on or before January 5, 2027, containing the Supreme Court of Appeal's recommendations as to the number of magistrates who are needed in each of the state's 55 counties for the four-year terms of office to be filled by election in the year 2028. Attested copies of the administrative order shall be provided to the President of the West Virginia Senate, the Clerk of

the Senate, the Clerk and the Speaker of the West Virginia House of Delegates, and the West Virginia Secretary of State.

(e) The West Virginia Legislature may reject the allocation of magistrates recommended by the Supreme Court of Appeals in its administrative order entered for the judicial elections to be held in 2028, and allocate magistrates for the four-year terms commencing in January of 2029, and serving through December of 2032, as the Legislature may choose by enactment of a bill containing such an allocation.

(f) If the Legislature does not enact a different allocation of the magistrates to be elected in 2028, pursuant to subsection (e) of this section, then the administrative order of the Supreme Court of Appeals required by subsection (d) of this section shall become the certification to the ballot commissioners of each county in this state of the number of magistrates to be elected in each county of this state at the judicial elections to be held concurrently with the primary election.

(g) The process set forth in this section shall be repeated every four years in the first and second years immediately preceding the quadrennial election of magistrates.

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.

(a) In each county having three or more magistrates, the judge of the circuit court or the chief judge of the circuit court, if there is more than one judge of the circuit court, shall appoint a magistrate court clerk. In all other counties the judge may appoint a magistrate court clerk or may, by rule, require the duties of the magistrate court clerk to be performed by the clerk of the circuit court, in which event the circuit court clerk is entitled to additional compensation in the amount of \$2,500 per year. The magistrate court clerk serves at the will and pleasure of the circuit judge.

(b) Magistrate court clerks shall be paid at least twice per month by the state. The annual salary of all magistrate court clerks is \$52,296. Beginning July 1, 2023, the annual salary of a

magistrate court clerk shall be \$54,596. Magistrate court clerks may receive any general salary increase granted to state employees, whose salaries are not set by statute, expressed as a percentage increase or an across-the-board increase, implemented after July 1, 2023.

(c) In addition to other duties that may be imposed by the provisions of this chapter or by the rules of the Supreme Court of Appeals or the judge of the circuit court or the chief judge of the circuit court if there is more than one judge of the circuit court, it is the duty of the magistrate court clerk to establish and maintain appropriate dockets and records in a centralized system for the magistrate court, to assist in the preparation of the reports required of the court and to carry out on behalf of the magistrates or chief magistrate if a chief magistrate is appointed, the administrative duties of the court.

(d) The magistrate court clerk, or if there is no magistrate court clerk in the county, the clerk of the circuit court, may issue all manner of civil process and require the enforcement of subpoenas and subpoenas duces tecum in magistrate court.

§50-1-9. Magistrate assistants; salary; duties.

(a) In each county there shall be at least one magistrate assistant for each magistrate; however, the Supreme Court of Appeals may authorize additional magistrate assistants if the workload of a county's magistrate court requires extra staff support. Each magistrate assistant shall be appointed by the magistrate under whose authority and supervision and at whose will and pleasure he or she shall serve. If more than one magistrate assistant per magistrate is approved by the Supreme Court of Appeals, then the chief magistrate, or chief circuit judge if no chief magistrate is designated, shall appoint, supervise, and assign job duties for any additional magistrate assistant as needed for that county. The assistant shall not be a member of the immediate family of any magistrate and shall not have been convicted of a felony or any misdemeanor involving moral turpitude and shall reside in the State of West Virginia. For the purpose of this section, "immediate

family" means the relationships of mother, father, sister, brother, child, or spouse.

(b) A magistrate assistant shall have the duties, clerical or otherwise, assigned by the magistrate and prescribed by the rules of the Supreme Court of Appeals or the judge of the circuit court, or the chief judge of the circuit court if there is more than one judge of the circuit court. In addition to these duties, magistrate assistants shall perform and are accountable to the magistrate court clerks with respect to the following duties:

(1) The preparation of summons in civil actions;

(2) The assignment of civil actions to the various magistrates;

(3) The collection of all costs, fees, fines, forfeitures, and penalties which are payable to the court;

(4) The submission of moneys, along with an accounting of the moneys, to appropriate authorities as provided by law;

(5) The daily disposition of closed files which are to be located in the magistrate clerk's office;

(6) All duties related to the gathering of information and documents necessary for the preparation of administrative reports and documents required by the rules of the Supreme Court of Appeals, the judge of the circuit court or the chief judge of the circuit court if there is more than one judge of the circuit court;

(7) All duties relating to the notification, certification, and payment of jurors serving pursuant to the terms of this chapter; and

(8) All other duties or responsibilities whereby the magistrate assistant is accountable to the magistrate court clerk as determined by the magistrate.

(c) Magistrate assistants shall be paid at least twice per month by the state. The annual salary of all magistrate assistants is \$46,932. Beginning July 1, 2023, the annual salary of a magistrate assistant shall be \$49,232. Magistrate assistants may receive any

general salary increase granted to state employees, whose salaries are not set by statute, expressed as a percentage increase or an across-the-board increase enacted after July 1, 2023.

§50-1-9a. Magistrate court deputy clerks; duties; salary.

(a) Whenever required by workload and upon the recommendation of the judge of the circuit court, or the chief judge of the circuit court if there is more than one judge of the circuit court, the Supreme Court of Appeals may provide by rule for the appointment of magistrate court deputy clerks. The magistrate court deputy clerks shall be appointed by the judge of the circuit court, or the chief judge of the circuit court if there is more than one judge of the circuit court, to serve at his or her will and pleasure under the immediate supervision of the magistrate court clerk.

(b) Magistrate court deputy clerks shall have the duties, clerical or otherwise, as may be assigned by the magistrate court clerk and as may be prescribed by the rules of the Supreme Court of Appeals, the judge of the circuit court, or the chief judge of the circuit court, if there is more than one judge of the circuit court. Magistrate court deputy clerks may also exercise the power and perform the duties of the magistrate court clerk as may be delegated or assigned by the magistrate court clerk.

(c) A magistrate court deputy clerk may not be an immediate family member of any magistrate, magistrate court clerk, magistrate assistant, or judge of the circuit court within the same county; may not have been convicted of a felony or any misdemeanor involving moral turpitude; and must reside in this state. For purposes of this subsection, "immediate family member" means a mother, father, sister, brother, child, or spouse.

(d) Magistrate court deputy clerks shall be paid at least twice per month by the state. The annual salary of all magistrate court deputy clerks is \$46,932. Beginning July 1, 2023, the annual salary of a magistrate court deputy clerk shall be \$49,232. Magistrate court deputy clerks may receive any general salary increase granted to state employees whose salaries are not set by statute, expressed

as a percentage increase or an across-the-board increase implemented after July 1, 2023.

§50-1-9c. Additional magistrate court support staff; duties; salary.

The Supreme Court of Appeals is authorized to create additional classifications of support staff that it deems necessary to adequately and efficiently staff the magistrate courts of this state, including, but not limited to cashiers, data entry clerks, and deputy magistrate assistants. The Supreme Court of Appeals may determine the authority to hire and terminate, supervise, and assign job duties for these positions pursuant to its own employment rules, policies, and procedures. The annual salary of additional support staff authorized by this section shall not exceed the regular annual salary of a magistrate assistant and shall be paid by the state on the same basis and in the same amounts established for magistrate assistants in each county, as provided in §50-1-9 of this code.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.

(a) Beginning on the effective date of this subsection and until December 31, 2024, the state shall be divided into the following judicial circuits with the following number of judges:

(1) The counties of Brooke, Hancock, and Ohio shall constitute the first circuit and shall have four judges;

(2) The counties of Marshall, Tyler, and Wetzel shall constitute the second circuit and shall have two judges;

(3) The counties of Doddridge, Pleasants, and Ritchie shall constitute the third circuit and shall have one judge;

(4) The counties of Wood and Wirt shall constitute the fourth circuit and shall have three judges;

(5) The counties of Calhoun, Jackson, Mason, and Roane shall constitute the fifth circuit and shall have three judges;

(6) The county of Cabell shall constitute the sixth circuit and shall have four judges;

(7) The county of Logan shall constitute the seventh circuit and shall have two judges;

(8) The county of McDowell shall constitute the eighth circuit and shall have two judges;

(9) The county of Mercer shall constitute the ninth circuit and shall have three judges;

(10) The county of Raleigh shall constitute the tenth circuit and shall have four judges;

(11) The counties of Greenbrier and Pocahontas shall constitute the eleventh circuit and shall have two judges;

(12) The county of Fayette shall constitute the twelfth circuit and shall have two judges;

(13) The county of Kanawha shall constitute the thirteenth circuit and shall have seven judges;

(14) The counties of Braxton, Clay, Gilmer, and Webster shall constitute the fourteenth circuit and shall have two judges;

(15) The county of Harrison shall constitute the fifteenth circuit and shall have three judges;

(16) The county of Marion shall constitute the sixteenth circuit and shall have two judges;

(17) The county of Monongalia shall constitute the seventeenth circuit and shall have three judges;

(18) The county of Preston shall constitute the eighteenth circuit and shall have one judge;

(19) The counties of Barbour and Taylor shall constitute the nineteenth circuit and shall have two judges;

(20) The county of Randolph shall constitute the twentieth circuit and shall have one judge;

(21) The counties of Grant, Mineral, and Tucker shall constitute the twenty-first circuit and shall have two judges;

(22) The counties of Hampshire, Hardy, and Pendleton shall constitute the twenty-second circuit and shall have two judges;

(23) The counties of Berkeley, Jefferson, and Morgan shall constitute the twenty-third circuit and shall have six judges;

(24) The county of Wayne shall constitute the twenty-fourth circuit and shall have two judges;

(25) The counties of Lincoln and Boone shall constitute the twenty-fifth circuit and shall have two judges;

(26) The counties of Lewis and Upshur shall constitute the twenty-sixth circuit and shall have two judges;

(27) The county of Wyoming shall constitute the twenty-seventh circuit and shall have one judge;

(28) The county of Nicholas shall constitute the twenty-eighth circuit and shall have one judge;

(29) The county of Putnam shall constitute the twenty-ninth circuit and shall have two judges;

(30) The county of Mingo shall constitute the thirtieth circuit and shall have one judge; and

(31) The counties of Monroe and Summers shall constitute the thirty-first circuit and shall have one judge.

(b) Effective January 1, 2025, the state shall be divided into the following judicial circuits with the following number of judges

who shall be elected by the voters of the entire circuit, but in separate divisions, as required by §3-5-6b of this code.

(1) The counties of Brooke, Hancock, and Ohio shall constitute the first circuit and shall have four judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(2) The counties of Marshall, Tyler, and Wetzel shall constitute the second circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(3) The counties of Doddridge, Pleasants, Ritchie, and Wirt shall constitute the third circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter: *Provided*, That no more than one judge shall be a resident of any county comprising the third circuit: *Provided, however*, That if the highest vote recipients in both divisions are also both residents of the same county, then the candidate with the highest overall number of votes shall be declared the winner of the division in which he or she ran: *Provided, further*, That the candidate who has the highest number of votes in the other division who is not a resident of the same county as the highest overall vote recipient shall be declared the winner of the division in which he or she ran;

(4) The county of Wood shall constitute the fourth circuit and shall have three judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(5) The counties of Calhoun, Jackson, Mason, and Roane shall constitute the fifth circuit and shall have three judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter: *Provided*, That Division 1 in the fifth circuit shall be for a judge who resides in Jackson County at the time of his or her filing and for the duration of his or her service, Division 2 in the fifth circuit shall be for a judge who resides in Mason County at the time of his or her filing and for the

duration of his or her service, and Division 3 in the fifth circuit shall be for a judge who resides in either Calhoun County or Roane County at the time of his or her filing and for the duration of his or her service;

(6) The county of Cabell shall constitute the sixth circuit and shall have four judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(7) The county of Putnam shall constitute the seventh circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(8) The county of Kanawha shall constitute the eighth circuit and shall have eight judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(9) The counties of Boone and Lincoln shall constitute the ninth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(10) The county of Wayne shall constitute the tenth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(11) The counties of Logan and Mingo shall constitute the eleventh circuit and shall have three judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter: *Provided*, That Division 1 in the eleventh circuit shall be for a judge who will reside at the time of his or her filing and during his or her service in Mingo County, Division 2 in the eleventh circuit shall be for a judge who will reside at the time of his or her filing and during his or her service in Logan County, and Division 3 in the eleventh circuit shall be for

a judge who will reside at the time of his or her filing and during his or her service in Logan County;

(12) The counties of McDowell and Wyoming shall constitute the twelfth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter: *Provided*, That Division 1 in the twelfth circuit shall be for a judge who will reside at the time of his or her filing and during his or her service in McDowell County, and Division 2 in the twelfth circuit shall be for a judge who will reside at the time of his or her filing and during his or her service in Wyoming County;

(13) The county of Mercer shall constitute the thirteenth circuit and shall have three judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(14) The county of Raleigh shall constitute the fourteenth circuit and shall have four judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(15) The county of Fayette shall constitute the fifteenth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(16) The county of Nicholas shall constitute the sixteenth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(17) The counties of Braxton, Clay, Gilmer, and Webster shall constitute the seventeenth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter: *Provided*, That no more than one judge shall be a resident of any county comprising the seventeenth circuit: *Provided, however*, That if the highest vote recipients in both divisions are also both residents of the same

county, then the candidate with the highest overall number of votes shall be declared the winner of the division in which he or she ran: *Provided, further,* That the candidate who has the highest number of votes in the other division who is not a resident of the same county as the highest overall vote recipient shall be declared the winner of the division in which he or she ran;

(18) The counties of Lewis and Upshur shall constitute the eighteenth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter: *Provided,* That Division 1 in the eighteenth circuit shall be for a judge who will reside at the time of his or her filing and during his or her service in Upshur County, and Division 2 in the eighteenth circuit shall be for a judge who will reside at the time of his or her filing and during his or her service in Lewis County;

(19) The county of Harrison shall constitute the nineteenth circuit and shall have three judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(20) The county of Marion shall constitute the twentieth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(21) The county of Monongalia shall constitute the twenty-first circuit and shall have three judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(22) The counties of Preston and Tucker shall constitute the twenty-second circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(23) The counties of Barbour and Taylor shall constitute the twenty-third circuit and shall have two judges, who shall be elected

at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(24) The county of Randolph shall constitute the twenty-fourth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(25) The counties of Grant and Mineral shall constitute the twenty-fifth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(26) The counties of Hampshire, Hardy, and Pendelton shall constitute the twenty-sixth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(27) The counties of Berkley and Morgan shall constitute the twenty-seventh circuit and shall have five judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(28) The county of Jefferson shall constitute the twenty-eighth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(29) The counties of Greenbrier and Pocahontas shall constitute the twenty-ninth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter; and

(30) The counties of Monroe and Summers shall constitute the thirtieth circuit and shall have one judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter.

(c) The Raleigh County circuit court shall be a court of concurrent jurisdiction with the remaining single-judge circuit

where the sitting judge in the single-judge circuit is unavailable by reason of sickness, vacation, or other reason.

(d) Any judge in office on the effective date of the reenactment of this section shall continue as a judge of the circuit as constituted under prior enactments of this section, unless sooner removed or retired as provided by law, until December 31, 2024.

(e) The term of office of all circuit court judges shall be for eight years. The term of office for all circuit court judges elected during an election conducted in the year 2024, shall commence on January 1, 2025, and end on December 31, 2032.

(f) For election purposes, in every judicial circuit having two or more judges there shall be numbered divisions corresponding to the number of circuit judges in each circuit. Each judge shall be elected at large from the entire circuit. In each numbered division of a judicial circuit, the candidates for election shall be voted upon, and the votes cast for the candidates in each division shall be tallied separately from the votes cast for candidates in other numbered divisions within the circuit. The candidate receiving the highest number of the votes cast within a numbered division shall be elected, except as provided above with respect to the third and seventeenth circuits.

(g) The Supreme Court of Appeals shall, by rule, establish the terms of court of circuit judges.

ARTICLE 2A. FAMILY COURTS.

§51-2A-3. Number of family court judges; assignment of family court judges by family court circuits.

(a) Beginning on the effective date of this subsection and until December 31, 2024, 47 family court judges shall serve throughout the state, allocated among a total of 27 family court circuits as follows:

(1) The counties of Brooke, Hancock, and Ohio shall constitute the first family court circuit and have two family court judges;

(2) The counties of Marshall, Wetzel, and Tyler shall constitute the second family court circuit and have one family court judge;

(3) The counties of Pleasants and Wood shall constitute the third family court circuit and have two family court judges;

(4) The counties of Roane, Calhoun, Gilmer, and Ritchie shall constitute the fourth family court circuit and have one family court judge;

(5) The counties of Mason, Jackson, and Wirt shall constitute the fifth family court circuit and have two family court judges;

(6) The county of Cabell shall constitute the sixth family court circuit and have three family court judges;

(7) The county of Wayne shall constitute the seventh family court circuit and have one family court judge;

(8) The county of Mingo shall constitute the eighth family court circuit and have one family court judge;

(9) The county of Logan shall constitute the ninth family court circuit and have two family court judges;

(10) The counties of Lincoln and Boone shall constitute the tenth family court circuit and have two family court judges;

(11) The county of Kanawha shall constitute the eleventh family court circuit and have five family court judges;

(12) The counties of McDowell and Mercer shall constitute the twelfth family court circuit and have three family court judges;

(13) The counties of Raleigh, Summers, and Wyoming shall constitute the thirteenth family court circuit and have three family court judges;

(14) The county of Fayette shall constitute the fourteenth family court circuit and have one family court judge;

(15) The counties of Greenbrier and Monroe shall constitute the fifteenth family court circuit and have one family court judge;

(16) The counties of Clay and Nicholas shall constitute the sixteenth family court circuit and have one family court judge;

(17) The counties of Braxton, Lewis, and Upshur shall constitute the seventeenth family court circuit and have one family court judge;

(18) The counties of Harrison and Doddridge shall constitute the eighteenth family court circuit and have two family court judges;

(19) The county of Marion shall constitute the nineteenth family court circuit and have one family court judge;

(20) The counties of Monongalia and Preston shall constitute the twentieth family court circuit and have two family court judges;

(21) The counties of Barbour and Taylor shall constitute the twenty-first family court circuit and have one family court judge;

(22) The counties of Tucker and Randolph shall constitute the twenty-second family court circuit and have one family court judge;

(23) The counties of Mineral, Hampshire and Morgan shall constitute the twenty-third family court circuit and have two family court judges;

(24) The counties of Berkeley and Jefferson shall constitute the twenty-fourth family court circuit and have three family court judges;

(25) The counties of Hardy, Pendleton, and Grant shall constitute the twenty-fifth family court circuit and have one family court judge;

(26) The county of Putnam shall constitute the twenty-sixth family court circuit and have one family court judge; and

(27) The counties of Webster and Pocahontas shall constitute the twenty-seventh family court circuit and have one family court judge.

(b) Effective January 1, 2025, 48 family court judges shall serve throughout the state, allocated among a total of 27 family court circuits as follows:

(1) The counties of Brooke, Hancock, and Ohio shall constitute the first family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(2) The counties of Marshall, Wetzel, and Tyler shall constitute the second family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(3) The counties of Pleasants and Wood shall constitute the third family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(4) The counties of Roane, Calhoun, Gilmer, and Ritchie shall constitute the fourth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(5) The counties of Mason, Jackson, and Wirt shall constitute the fifth family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(6) The county of Cabell shall constitute the sixth family court circuit and have three family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(7) The county of Wayne shall constitute the seventh family court circuit and have one family court judge, who shall be elected

at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(8) The county of Mingo shall constitute the eighth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(9) The county of Logan shall constitute the ninth family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(10) The counties of Lincoln and Boone shall constitute the tenth family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(11) The county of Kanawha shall constitute the eleventh family court circuit and have five family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(12) The counties of McDowell and Mercer shall constitute the twelfth family court circuit and have three family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(13) The counties of Raleigh, Summers, and Wyoming shall constitute the thirteenth family court circuit and have three family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(14) The county of Fayette shall constitute the fourteenth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(15) The counties of Greenbrier and Monroe shall constitute the fifteenth family court circuit and have one family court judge,

who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(16) The counties of Clay and Nicholas shall constitute the sixteenth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(17) The counties of Lewis and Upshur shall constitute the seventeenth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(18) The counties of Harrison and Doddridge shall constitute the eighteenth family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(19) The county of Marion shall constitute the nineteenth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(20) The counties of Monongalia and Preston shall constitute the twentieth family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(21) The counties of Barbour and Taylor shall constitute the twenty-first family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(22) The counties of Tucker and Randolph shall constitute the twenty-second family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(23) The counties of Mineral, Hampshire, and Morgan shall constitute the twenty-third family court circuit and have two family court judges, who shall be elected at the regularly scheduled

election(s) to be held in the year 2024, and every eighth year thereafter;

(24) The counties of Berkeley and Jefferson shall constitute the twenty-fourth family court circuit and have four family court judges with the additional family court judge to be elected at the regularly scheduled election held in 2024, and every eighth year thereafter;

(25) The counties of Hardy, Pendleton, and Grant shall constitute the twenty-fifth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(26) The county of Putnam shall constitute the twenty-sixth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter; and

(27) The counties of Webster, Braxton, and Pocahontas shall constitute the twenty-seventh family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter.

(c) Family court judges taking office January 1, 2025, shall be elected at the regularly scheduled election(s) occurring in the year 2024, and shall serve for a term of eight years.

(d) The Legislature has the authority and may determine to realign the family court circuits and has the authority and may determine to increase or decrease the number of family court judges within a family court circuit, from time to time. Any person appointed or elected to the office of family court judge acknowledges the authority of the Legislature to realign family court circuits and the authority of the Legislature to increase or decrease the number of family court judges within a family court circuit.

§51-2A-6. Compensation and expenses of family court judges and their staffs.

(a) A family court judge is entitled to receive as compensation for his or her services an annual salary of \$62,500: *Provided*, That beginning July 1, 2005, a family court judge is entitled to receive as compensation for his or her services an annual salary of \$82,500: *Provided, however*, That beginning July 1, 2011, the annual salary of a family court judge shall be \$94,500: *Provided further*, That beginning July 1, 2020, the annual salary of a family court judge shall be \$103,950.

(b) The secretary-clerk of the family court judge is appointed by the family court judge and serves at his or her will and pleasure. The secretary-clerk of the family court shall be paid at least twice per month by the state. The annual salary of all secretary-clerks of the family court is \$42,576. Beginning July 1, 2023, the annual salary of a family court secretary-clerk shall be \$44,876. Family court secretary-clerks may receive any general salary increase granted to state employees, whose salaries are not set by statute, expressed as a percentage increase or an across-the-board increase enacted after July 1, 2023.

(c) The family court judge may employ not more than one family case coordinator who serves at his or her will and pleasure: *Provided*, That the Supreme Court of Appeals may authorize additional family case coordinators if the workload of a circuit's family court requires extra staff support. The annual salary of the family case coordinator of the family court judge shall be established by the Administrative Director of the Supreme Court of Appeals but may not exceed \$54,576. Beginning July 1, 2023, the annual salary of a family court case coordinator shall not exceed \$56,876. Family court case coordinators may receive any general salary increase granted to state employees, whose salaries are not set by statute, expressed as a percentage increase or an across-the-board increase enacted after July 1, 2023. If more than one family case coordinator is approved by the Supreme Court of Appeals, then the chief family court judge of that circuit shall appoint, supervise, and assign job duties for any additional family case coordinator as needed for that circuit.

(d) The sheriff or his or her designated deputy shall serve as a bailiff for a family court judge. The sheriff of each county shall serve or designate persons to serve so as to assure that a bailiff is available when a family court judge determines the same is necessary for the orderly and efficient conduct of the business of the family court.

(e) Disbursement of salaries for family court judges and members of their staffs are made by or pursuant to the order of the Director of the Administrative Office of the Supreme Court of Appeals.

(f) Family court judges and members of their staffs staff are allowed their actual and necessary expenses incurred in the performance of their duties. The expenses and compensation will be determined and paid by the Director of the Administrative Office of the Supreme Court of Appeals under such guidelines as he or she may prescribe, as approved by the Supreme Court of Appeals.

(g) The Supreme Court of Appeals is authorized to create additional classifications of support staff that it deems necessary to adequately and efficiently staff the family courts of this state, including, but not limited to, receptionists, assistant case coordinators, and assistant secretary-clerks. The Supreme Court of Appeals may determine the authority to hire and terminate, supervise, and assign job duties for these positions pursuant to its own employment rules, policies, and procedures. The annual salary of additional support staff authorized by this section shall not exceed the regular annual salary of a secretary-clerk and shall be paid by the state on the same basis established for secretary-clerks as provided in this section.

●

CHAPTER 99

**(S. B. 132 - By Senators Boley, Hamilton, Clements, Grady,
Jeffries, Karnes, Nelson, Roberts, Stover, Trump, Weld,
Woelfel, Phillips, Plymale, Martin, Rucker, Takubo, Smith,
Woodrum, Deeds, Oliverio, Azinger, Stuart, Barrett, Queen,
and Maroney)**

[Passed February 1, 2023; in effect 90 days from passage (May 2, 2023)]
[Approved by the Governor on February 6, 2023.]

AN ACT to amend and reenact §61-2-9a of the Code of West Virginia, 1931, as amended, relating to clarifying the criminal offense of harassment; and clarifying that stalking and harassment are separate crimes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9a. Stalking, harassment; penalties; definitions.

(a) *Stalking*. — Any person who engages in a course of conduct directed at another person with the intent to cause the other person to fear for his or her personal safety, the safety of others, or suffer substantial emotional distress, or causes a third person to so act, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, confined in jail for not more than six months, or both fined and confined.

(b) *Harassment*. — Any person who harasses, or repeatedly makes credible threats against another is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months, or fined not more than \$1,000, or both fined and confined.

(c) Notwithstanding any provision of this code to the contrary, any person who violates the provisions of subsection (a) or (b) of this section in violation of an order entered by a circuit court, magistrate court, or family court judge, in effect and entered pursuant to §48-5-501, §48-5-601, or §48-27-403 of this code, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than 90 days nor more than one year, or fined not less than \$2,000 nor more than \$5,000, or both fined and confined.

(d) A second or subsequent conviction for a violation of subsection (a) or (b) of this section is a felony punishable by imprisonment in a state correctional facility for not less than one year nor more than five years, or fined not less than \$3,000 nor more than \$10,000, or both fined and imprisoned.

(e) Notwithstanding any provision of this code to the contrary, any person against whom a protective order is in effect for injunctive relief pursuant to the provisions of §48-5-608 or §48-27-501 of this code, who has been served with a copy of said order, who commits a violation of the provisions of this section, in which the subject in the protective order is the victim, shall be guilty of a felony and, upon conviction thereof, be imprisoned in a state correctional facility for not less than one year nor more than five years, or fined not less than \$3,000 nor more than \$10,000, or both fined and imprisoned.

(f) Notwithstanding any provision of this code to the contrary, any person against whom a protective order is in effect pursuant to the provisions of §53-8-7 of this code, who has been previously served with a copy of said order, who commits a violation of the provisions of this section, in which the subject in the protective order is the victim, is guilty of a felony and , upon conviction thereof, punishable by imprisonment in a state correctional facility for not less than one year nor more than five years, or fined not less than \$3,000 nor more than \$10,000, or both fined and confined.

(g) Notwithstanding any provision of this code to the contrary, any person who harasses or stalks another person with the intent to cause the person to physically injure himself or herself, or to take

his or her own life, or who continues to harass or stalk another, knowing or having reason to know that the person is likely to physically injure himself or herself, or to take his or her own life based, in whole or in part, on such harassment or stalking, is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two years nor more than 10 years.

(h) For the purposes of this section:

(1) "Bodily injury" means substantial physical pain, illness, or any impairment of physical condition;

(2) "Course of conduct" means a pattern of conduct composed of two or more acts in which a defendant directly, indirectly, or through a third party by any action, method, device, or means:

(A) Follows, monitors, observes, surveils, or threatens a specific person or persons;

(B) Engages in other nonconsensual contact and/or communications, including contact through electronic communication, with a specific person or persons; or

(C) Interferes with or damages a person's property or pet;

(3) "Credible threat" means a threat of bodily injury made with the apparent ability to carry out the threat and with the result that a reasonable person would believe that the threat could be carried out;

(4) "Harasses" means a willful course of conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress and which serves no legitimate or lawful purpose;

(5) "Immediate family" means a spouse, parent, stepparent, mother-in-law, father-in-law, child, stepchild, sibling, or any person who regularly resides in the household or within the prior six months regularly resided in the household; and

(6) "Repeatedly" means on two or more occasions.

(i) Any person convicted under the provisions of this section who is granted probation or for whom execution or imposition of a sentence or incarceration is suspended, shall have as a condition of probation or suspension of sentence that he or she participate in counseling or medical treatment as directed by the court.

(j) Upon conviction, the court may issue an order restraining the defendant from any contact with the victim for a period not to exceed 10 years. The length of any restraining order shall be based upon the seriousness of the violation before the court, the probability of future violations, and the safety of the victim or his or her immediate family. The duration of the restraining order may be longer than five years only in cases when a longer duration is necessary to protect the safety of the victim or his or her immediate family.

(k) It is a condition of bond for any person accused of the offenses described in this section that the person is to have no contact, direct or indirect, verbal or physical, with the alleged victim.

(l) Nothing in this section may be construed to preclude a sentencing court from exercising its power to impose home confinement with electronic monitoring as an alternative sentence.

(m) The Governor's Committee on Crime, Delinquency, and Correction, after consultation with representatives of labor, licensed domestic violence programs, and rape crisis centers which meet the standards of the West Virginia Foundation for Rape Information and Services, is authorized to promulgate legislative rules and emergency rules pursuant to §29A-3-1 *et seq.* of this code, establishing appropriate standards for the enforcement of this section by state, county, and municipal law-enforcement officers and agencies.

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CHAPTER 100

**(Com. Sub. for Com. Sub. for S. B. 187 - By Senators
Clements, Woelfel, Roberts, Stuart, Plymale, Hunt, Rucker,
Deeds, and Grady)**

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8B-11b, relating to making it a felony offense for any school employee or volunteer to engage in sexual intercourse, sexual intrusion, or sexual contact with any student in the school where the person is employed regardless of age; defining terms; declaring that neither consent nor location where an offense occurs is a defense to prosecution specifying the criminal penalties for this offense; and declaring that a final conviction under this section causes the permanent revocation of any education related certificate the school employee may hold.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-11b. Prohibiting sexual intercourse sexual intrusion or sexual contact, or intrusion against students by school employees; penalties.

(a) Any teacher, principal, counselor, coach, other employee, or volunteer of any private or public elementary or secondary school who engages in sexual intercourse, sexual intrusion, or sexual contact, as those terms are defined in §61-8B-1 of this code, with any student enrolled in the school regardless of the age of the student is guilty of a felony and upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor

more than five years or fined not more than \$5,000 or both imprisoned and fined. The fact that the student may have consented to such an act or that the act did not occur on school property or during a school function is not a defense.

(b) For purposes of this section:

(1) A private elementary or secondary school means any school enrolling students who are exempt from compulsory school attendance under either §18-8-1(b) of this code or §18-8-1 (k) of this code; and

(2) A public elementary or secondary school means any school under the general supervision of the West Virginia Board of Education pursuant to section two, article XII of the West Virginia Constitution.

(c) This is a separate and distinct criminal offense from any other applicable offense under this code. The penalties set forth, in this section, are in addition to any other penalties for any other applicable offense.

(d) A final conviction under this section shall cause the permanent forfeiture of any teaching or other certificate issued pursuant to §18A-3-2a of this code.

CHAPTER 101

(Com. Sub. for S. B. 270 - By Senator Takubo)

[Passed March 2, 2023; in effect 90 days from passage (May 31, 2023)]
[Approved by the Governor on March 11, 2023.]

AN ACT to amend and reenact §61-12-9 of the Code of West Virginia, 1931, as amended, relating to adding an exemption to the permit requirement for cremation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. POSTMORTEM EXAMINATIONS.

§61-12-9. Permits required for cremation; fee.

(a) It is the duty of any person cremating, or causing, or requesting the cremation of, the body of any dead person who died in this state, to secure a permit for the cremation from the Chief Medical Examiner, the county medical examiner, or county coroner of the county wherein the death occurred. Any person, excluding those persons set forth in subsection (d) of this section, who willfully fails to secure a permit for a cremation, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$200. A permit for cremation shall be acted upon by the Chief Medical Examiner, the county medical examiner, or the county coroner after review of the circumstances surrounding the death, as indicated by the death certificate. The person requesting issuance of a permit for cremation shall pay a reasonable fee, as determined by the Chief Medical Examiner, to the county medical examiner or coroner, or to the Office of the Chief Medical Examiner, as appropriate, for issuance of the permit.

(b) Any person operating a crematory who does not perform a cremation pursuant to the terms of a cremation contract, or

pursuant to the order of a court of competent jurisdiction, within the time contractually agreed upon, or, if the cremation contract does not specify a time period, within 21 days of receipt of the deceased person's remains by the crematory, whichever time is less, is guilty of a misdemeanor.

(c) Any person operating a crematory who fails to deliver the cremated remains of a deceased person, pursuant to the terms of a cremation contract, or pursuant to the order of a court of competent jurisdiction, within the time contractually agreed upon, or, if the cremation contract does not specify a time period, within 35 days of receipt of the deceased person's remains by the crematory, whichever time is less, is guilty of a misdemeanor.

(d) Any representative of an institution who is charged with arranging the final disposition of a decedent who donated his or her body to science is exempt from the provisions of this section: *Provided*, That all representatives charged with arranging the final disposition of a decedent who donated his or her body to science shall make the Office of Chief Medical Examiner aware of any foul play regarding the decedent prior to any final disposition.

(e) Any person convicted of a violation of the provisions of subsection (b) or (c) of this section shall be fined not less than \$1,000 nor more than \$5,000 or confined in jail for a period not to exceed six months, or both.

(f) In any criminal proceeding alleging that a person violated the time requirements of this section, it is a defense to the charge that a delay beyond the time periods provided for in this section were caused by circumstances wholly outside the control of the defendant.

(g) For purposes of this section, "cremation contract" means an agreement to perform a cremation, as a "cremation" is defined in §30-6-3 of this code. A cremation contract is an agreement between a crematory and any authorized person or entity, including, but not limited to, the following persons in order of precedence:

(1) The deceased, who has expressed his or her wishes regarding the disposal of their remains through a last will and testament, an advance directive, or preneed funeral contract, as defined in §47-14-2 of this code;

(2) The surviving spouse of the deceased, unless a petition to dissolve the marriage was pending at the time of decedent's death;

(3) An individual previously designated by the deceased as the person with the right to control disposition of the deceased's remains in a writing signed and notarized by the deceased: *Provided*, That no person may be designated to serve in such capacity for more than one nonrelative at any one time;

(4) The deceased person's next of kin;

(5) A public official charged with arranging the final disposition of an indigent deceased person or an unclaimed corpse;

(6) A representative of an institution who is charged with arranging the final disposition of a deceased who donated his or her body to science;

(7) A public officer required by statute to arrange the final disposition of a deceased person;

(8) Another funeral establishment; or

(9) An executor, administrator, or other personal representative of the deceased.

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CHAPTER 102

**(Com. Sub. for S. B. 490 - By Senators Deeds, Hamilton,
Hunt, Jeffries, Karnes, Maroney, Martin, Phillips, Stuart,
Trump Weld, Woodrum, Plymale, Swope, Roberts, Grady,
Nelson, and Taylor)**

[Passed March 6, 2023; in effect 90 days from passage (June 4, 2023)]
[Approved by the Governor on March 13, 2023.]

AN ACT to amend the Code of West Virginia 1931, as amended, by adding thereto a new section, designated §61-5-17a, relating to creating the offense of obstructing a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, a deputy or assistant fire marshal, firefighter, or emergency medical service personnel causing death; requiring proof of knowingly, willfully and forcibly obstructing or hindering a law enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, a deputy or assistant fire marshal, firefighter, or emergency medical service personnel engaged in their official capacity and thereby proximately causing the death of the person acting in his or her official capacity; establishing the criminal penalty therefor as life imprisonment with parole eligibility after service of 15 years; and providing a definition.

PREAMBLE: THIS LAW IS DESIGNATED AND MAY BE REFERRED TO AS THE PATROL OFFICER CASSIE MARIE JOHNSON MEMORIAL ACT.

Be it enacted by the Legislature of West Virginia:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-17a. Obstructing a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, a deputy or assistant fire marshal, firefighter, or emergency medical service personnel causing death; penalty.

(a) Notwithstanding any provision of this code to the contrary, any person who knowingly, willfully, and forcibly obstructs or hinders a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, a deputy or assistant fire marshal, firefighter, or emergency medical service personnel lawfully acting in his or her official capacity and thereby proximately causes the death of a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, a deputy or assistant fire marshal, firefighter, or emergency medical service personnel so acting, is guilty of a felony, and upon conviction thereof, shall be imprisoned in a state correctional facility for a term of 15 years to life.

(b) For purposes of this section, "forcibly" means actions which involve the use of physical force.

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CHAPTER 103

(Com. Sub. for H. B. 3190 - By Delegate Steele)

[Passed March 11, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact § 61-3C-14b of the Code of West Virginia, 1931, as amended, to further amend said code by adding thereto a new section, designated §61-8-32; to amend and reenact §61-8A-1; and to amend and reenact §61-14-1 of said code, all relating to criminal law generally; updating certain criminal code definitions; extending criminal liability to certain adults that use computers to solicit, entice, seduce, lure, or attempt to solicit, entice, seduce, or lure a minor, or a person representing himself or herself to be a minor, as a means to engage in specific enumerated illegal acts contained in the West Virginia Code; defining the term “minor”; expanding criminal liability to include adults who contact minors by means other than by computer and additionally engage in an overt act which is designed to put the adult in the physical presence of the minor, or a person representing himself or herself to be a minor and creating criminal penalties and fines therein.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

§61-3C-14b. Soliciting, etc. a minor via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity; definition of minor; penalties.

(a) Any person over the age of 18, who knowingly uses a computer to solicit, entice, seduce, or lure, or attempt to solicit,

entice, seduce or lure, a minor known or believed to be at least four years younger than the person using the computer in order to engage in any illegal act proscribed by the provisions of §61-8-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this code, or any felony offense under §60A-4-401 of this code, is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility not less than two nor more than ten years, or both fined and imprisoned.

(b) Any person violating the provisions of subsection (a) of this section who engages in any overt act designed to bring himself or herself into the minor's, or a person believed to be a minor's physical presence with the intent to engage in any sexual activity or conduct with such a minor that is prohibited by law, is guilty of a felony and shall be fined not more than \$25,000 or imprisoned in a state correctional facility for a determinate sentence of not less than five nor more than thirty years, or both fined and imprisoned: *Provided*, That subsection (a) of this section shall be deemed a lesser included offense to that created by this subsection.

(c) For purposes of this section, "minor" means a person younger than 18 years of age, or a person representing himself or herself to be a minor. Any prosecution, pursuant to this article, relating to a person representing himself or herself to be a minor shall be limited to investigations being conducted or overseen by law enforcement officers.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-32. Soliciting, etc. a minor by means other than via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity; definition of minor; penalties.

(a) Any person over the age of 18, who by means other than those prohibited by §61-3C-14b of this code, who knowingly solicits, entices, seduces, or lures, or attempts to solicit, entice, seduce or lure, a minor known or believed to be at least four years younger than the person, or a person he or she believes to be such

a minor in order to engage in any illegal act proscribed by the provisions of §61-8-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this code, or any felony offense under §60A-4-401 of this code is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility not less than two nor more than ten years, or both fined and imprisoned.

(b) Any person who violates the provisions of subsection (a) of this section while outside the physical presence of the minor or person he or she knows or has reason to believe is a minor, who engages in any overt act designed to bring himself or herself into the minor's physical presence with the intent to engage in any sexual activity or conduct with the minor that is prohibited by law, is guilty of a felony and shall be fined not more than \$25,000 or imprisoned in a state correctional facility for a determinate sentence of not less than five nor more than thirty years, or both fined and imprisoned: *Provided*, That subsection (a) of this section shall be deemed a lesser included offense to that created by this subsection.

(c) For purposes of this section, "minor" means a person younger than 18 years of age or a person representing himself or herself to be a minor. Any prosecution, pursuant to this section, relating to a victim that is a person representing himself or herself to be a minor shall be limited to investigations being conducted or overseen by law enforcement officers.

ARTICLE 8A. PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE MATTER TO MINORS.

§61-8A-1. Definitions.

When used in this article, the following words, and any variations thereof required by the context, shall have the meaning ascribed to them in this section:

(a) "Adult" means a person eighteen years of age or older.

(b) "Computer" means an electronic, magnetic, optical, electrochemical or other high-speed data processing device

performing logical, arithmetic or storage functions and includes any data storage facility or communication facility directly related to or operating in conjunction with such device. As used in this article, computer includes file servers, mainframe systems, desktop personal computers, laptop personal computers, tablet personal computers, cellular telephones, game consoles and any electronic data storage device or equipment. The term “computer” includes any connected or directly related device, equipment or facility which enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device, but such term does not include an automated typewriter or typesetter, a portable hand-held calculator or other similar device.

(c) “Computer network” means the interconnection of hardware or wireless communication lines with a computer through remote terminals, or a complex consisting of two or more interconnected computers.

(d) “Display” means to show, exhibit or expose matter, in a manner visible to general or invited public, including minors. As used in this article, display shall include the placing or exhibiting of matter on or in a billboard, viewing screen, theater, marquee, newsstand, display rack, window, showcase, display case or similar public place.

(e) “Distribute” means to transfer possession, transport, transmit, sell or rent, whether with or without consideration.

(f) “Employee” means any individual who renders personal services in the course of a business, who receives compensation and who has no financial interest in the ownership or operation of the business other than his or her salary or wages.

(g) “Internet” means the international computer network of both federal and nonfederal interoperable packet switched data networks.

(h) “Knowledge of the character of the matter” means having awareness of or notice of the overall sexual content and character of matter as depicting, representing or describing obscene matter.

(i) “Matter” means any visual, audio, or physical item, article, production transmission, publication, exhibition, or live performance, or reproduction thereof, including any two- or three-dimensional visual or written material, film, picture, drawing, video, graphic, or computer generated or reproduced image; or any book, magazine, newspaper or other visual or written material; or any motion picture or other pictorial representation; or any statue or other figure; or any recording, transcription, or mechanical, chemical, or electrical reproduction; or any other articles, video laser disc, computer hardware and software, or computer generated images or message recording, transcription, or object, or any public or commercial live exhibition performed for consideration or before an audience of one or more.

(j) “Minor” means an person under eighteen years of age or a person representing himself or herself to be a minor. Any prosecution under this article relating to a victim who is representing himself or herself to be a minor shall be limited to investigations being conducted or overseen by law enforcement.

(k) “Obscene matter” means matter that:

(1) An average person, applying contemporary adult community standards, would find, taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is pandered to a prurient interest;

(2) An average person, applying community standards, would find depicts or describes, in a patently offensive way, sexually explicit conduct; and

(3) A reasonable person would find, taken as a whole, lacks serious literary, artistic, political or scientific value.

(l) “Parent” includes a biological or adoptive parent, legal guardian or legal custodian.

(m) "Person" means any adult, partnership, firm, association, corporation or other legal entity.

(n) "Sexually explicit conduct" means an ultimate sexual act, normal or perverted, actual or simulated, including sexual intercourse, sodomy, oral copulation, sexual bestiality, sexual sadism and masochism, masturbation, excretory functions and lewd exhibition of the genitals.

ARTICLE 14. HUMAN TRAFFICKING.

§61-14-1. Definitions.

When used in this article, the following words and terms shall have the meaning specified unless the context clearly indicates a different meaning:

(1) "Adult" means an individual 18 years of age or older.

(2) "Coercion" means:

(A) The use or threat of force against, abduction of, serious harm to, or physical restraint of an individual;

(B) The use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, physical restraint of, or deportation of an individual;

(C) The abuse or threatened abuse of law or legal process;

(D) The destruction or taking of, or the threatened destruction or taking of, an individual's identification document or other property; or

(E) The use of an individual's physical or mental impairment when the impairment has a substantial adverse effect on the individual's cognitive or volitional function.

As used in this article, "coercion" does not include statements or actions made by a duly authorized state or federal law-

enforcement officer as part of a lawful law enforcement investigation or undercover action.

(3) "Commercial sexual activity" means sexual activity for which anything of value is given to, promised to, or received by a person.

(4) "Debt bondage" means inducing an individual to provide:

(A) Commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

(B) Labor or services in payment toward or satisfaction of a real or purported debt if:

(i) The reasonable value of the labor or services is not applied toward the liquidation of the debt; or

(ii) The length of the labor or services is not limited, and the nature of the labor or services is not defined.

(5) "Forced labor" means labor or services that are performed or provided by another person and are obtained or maintained through the following:

(A) Threat, either implicit or explicit, deception or fraud, scheme, plan, or pattern or other action intended to cause a person to believe that, if the person did not perform or provide the labor or services, that person or another person would suffer serious bodily harm, physical restraint, or deportation;

(B) Physically restraining or threatening to physically restrain a person;

(C) Abuse or threatened abuse of the legal process; or

(D) Destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document of another person: *Provided*, That "forced labor" does not mean labor or services required to be performed by

a person in compliance with a court order or as a required condition of probation, parole, or imprisonment.

As applied in this article, forced labor shall not include labor, work, or services provided by a minor to the minor's parent, legal custodian, or legal guardian, so long as the legal guardianship or custody of the minor was not obtained for the purpose of compelling the minor to participate in commercial sex acts or sexually explicit performance, or perform forced labor or services; nor shall it include physical restraint of a minor, or the threat of physical restraint to a minor, by his or her parents, legal custodian or legal guardian if conducted in an otherwise lawful manner and for the purpose of discipline, supervision, or teaching.

(6) "Human trafficking", "trafficking", or "traffics" means knowingly recruiting, transporting, transferring, harboring, receiving, providing, obtaining, isolating, maintaining, or enticing an individual to engage in debt bondage, forced labor, or sexual servitude.

(7) "Identification document" means a passport, driver's license, immigration document, travel document or other government-issued identification document, including a document issued by a foreign government.

(8) "Labor or services" means activity having economic value.

(9) "Minor" means a person younger than 18 years of age or a person representing himself or herself to be a minor. Any prosecution, pursuant to this article, relating to a person that is representing himself or herself to be a minor shall be limited to investigations being conducted or overseen by law enforcement officers.

(10) "Patronize" means giving, agreeing to give, or offering to give anything of value to another person in exchange for commercial sexual activity.

(11) "Person" means an individual, estate, business or nonprofit entity, or other legal entity. The term does not include a public

corporation or government or governmental subdivision, agency, or instrumentality.

(12) "Serious harm" means harm, whether physical or nonphysical, including psychological, economic or reputational, to an individual which would compel a reasonable individual of the same background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm.

(13) "Sexual activity" means sexual contact, sexual intercourse, or sexual intrusion, as defined in §61-8b-1 of this code, or sexually explicit conduct, as defined in §61-8-1 of this code.

(14) "Sexual servitude" means:

(A) Maintaining or making available a minor for the purpose of engaging the minor in commercial sexual activity; or

(B) Using coercion to compel an adult to engage in commercial sexual activity.

(15) "Victim" means an individual who is subjected to human trafficking, regardless of whether a perpetrator is prosecuted or convicted.

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CHAPTER 104

**(Com. Sub. for H. B. 3302 - By Delegates Westfall,
Burkhammer, Pinson, Capito, Kelly, Steele, Fast, Kimble,
Martin, Kump and C. Pritt)**

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 15, 2023.]

AN ACT to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, and to amend and reenact §61-2-30 of said code; all relating to including an embryo or fetus as a distinct unborn victim for certain driving under the influence of alcohol or drugs offenses; including an embryo or fetus as a distinct unborn victim for the offenses of driving under the influence of alcohol or drugs causing death and driving under the influence of alcohol or drugs causing serious bodily injury; clarifying that a pregnant woman and the embryo or fetus she is carrying in the womb constitute separate and distinct victims as applied to the offenses of driving under the influence of alcohol or drugs causing death and driving under the influence of alcohol or drugs causing serious bodily injury; and establishing criminal penalties.

PREAMBLE: THIS LAW SHALL BE KNOWN AS LIAM'S LAW

Be it enacted by the Legislature of West Virginia:

CHAPTER 17C. TRAFFIC REGULATIONS AND RULES OF THE ROAD.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances, or drugs; penalties.

(a) *Definitions.* —

(1) "Impaired state" means a person:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug or inhalant substance;

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight.

(2) "Bodily injury" means injury that causes substantial physical pain, illness, or any impairment of physical condition.

(3) "Controlled substance" has the meaning provided in §60A-1-101 of this code.

(4) "Serious bodily injury" means bodily injury that creates a substantial risk of death, that causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(5) "Test and lock program" means the Motor Vehicle Test and Lock Program, established in §17C-5A-3a and administered by the Division of Motor Vehicles.

(b) Any person who drives a vehicle in this state while he or she is in an impaired state, and such impaired state proximately causes the death of any person, including an embryo or fetus as defined in §61-2-30 of this code, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than 15 years and shall be fined not less than \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of 10 years or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code:

Provided, That any death charged under this subsection must occur within one year of the offense: *Provided, however*, That if the person has previously been convicted under this section, the person shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code.

(c) Any person who drives a vehicle in this state while he or she is in an impaired state, and such impaired state proximately causes serious bodily injury to any person, including an embryo or fetus as defined in §61-2-30 of this code, other than himself or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than 10 years and shall be fined not less than \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of five years or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That if the person has previously been convicted under this section, the person shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code.

(d) Any person who drives a vehicle in this state while he or she is in an impaired state, and such impaired state proximately causes a bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than one year and shall be fined not less than \$200 nor more than \$1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of two years or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That if the person has previously been convicted under this section, the person shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of

Motor Vehicles for life or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code. Any jail term imposed pursuant to this subsection shall include actual confinement of not less than 24 hours: *Provided, however,* That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(e) Any person who drives a vehicle on any public highway or private road in this state: (1) while he or she is in an impaired state; or (2) while he or she is in an impaired state but has an alcohol concentration in his or her blood of less than fifteen hundredths of one percent, by weight, is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for up to six months and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided,* That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(f) Any person who drives a vehicle on any public highway or private road in this state while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than six months, which jail term is to include actual confinement of not less than 24 hours, and shall be fined not less than \$200 nor more than \$1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code. A person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(g) Any person who, being a habitual user of narcotic drugs or amphetamines, or any derivative thereof, drives a vehicle on any public highway or private road in this state is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term is to include actual confinement of not less than 24 hours, and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months. A person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(h) Any person who knowingly permits his or her vehicle to be driven on any public highway or private road in this state by any other person who is in an impaired state is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code.

(i) Any person who knowingly permits his or her vehicle to be driven on any public highway or private road in this state by any other person who is a habitual user of narcotic drugs or amphetamines, or any derivative thereof, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months.

(j) (1) Any person under the age of 21 years who drives a vehicle on any public highway or private road in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction

thereof, shall be fined not less than \$25 nor more than \$100, and have his or her license to operate a motor vehicle suspended by the Commissioner of the Division of Motor Vehicles for a period of 60 days or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code. For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for 24 hours and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year or until the person's 21st birthday, whichever period is longer, or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings, from time to time, to allow the person to participate in the test and lock program as provided in §17C-5A-3a of this code. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection may not be construed as an admission or be used as evidence.

(2) (A) Notwithstanding subdivision (1) of this subsection, a person shall have his or her license to operate a motor vehicle suspended or revoked for a minimum period of one year or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code, if the person:

(i) Has previously been convicted under this subsection and is subsequently convicted of an offense under another subsection of this section; or

(ii) Is convicted under this subsection and has previously been convicted of an offense under another subsection of this section.

(B) Nothing in this subdivision permits a shorter period of license revocation, license suspension, or participation in the test

and lock program than is mandatory for the specific offense for which the person is convicted.

(3) A person arrested and charged with an offense under the provisions of this subsection or subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(k) Any person who drives a vehicle on any public highway or private road in this state while he or she is in an impaired state and has within the vehicle one or more other persons who are unemancipated minors who have not yet reached their 16th birthday is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than 12 months, and shall be fined not less than \$200 nor more than \$1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That such jail term shall include actual confinement of not less than 48 hours: *Provided, however*, That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(l) A person convicted of an offense under this section, who has previously been convicted of any offense under this section on one occasion, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than six months nor more than one year, may be fined not less than \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for 10 years or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That if the second conviction is for an offense as described in subsections (b), (c), or (d) of this section and the subsection creating the offense requires a period of incarceration, period of license revocation, or fine that is greater than what is required for a conviction under this subsection, the

greater period of incarceration, period of revocation, or fine shall be imposed: *Provided, however,* That this section does not apply to a second conviction that is subject to a period of license revocation under subsection (j) of this section.

(m) A person convicted of an offense under this section, who has previously been convicted of any offense under this section on two or more occasions, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than five years, shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code, and the court may, in its discretion, impose a fine of not less than \$3,000 nor more than \$5,000: *Provided,* That if the third or subsequent conviction is for an offense as described in subsections (b), (c), or (d) of this section and the subsection creating the offense requires a period of incarceration, period of license revocation, or fine that is greater than what is required for a conviction under this subsection, the greater period of incarceration, period of revocation, and fine shall be imposed: *Provided, however,* That this section does not apply to a third or subsequent conviction that is subject to a period of license revocation under subsection (j) of this section.

(n) For purposes of subsections (l) and (m) of this section relating to second, third, and subsequent offenses, the following events shall be regarded as offenses and convictions under this section:

(1) Any conviction under the provisions of subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section, or under a prior enactment of this section, for an offense which occurred within the 10-year period immediately preceding the date of arrest in the current proceeding;

(2) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section,

which offense occurred within the 10-year period immediately preceding the date of arrest in the current proceeding; and

(3) Any period of conditional probation imposed pursuant to §17C-5-2b of this code for violation of subsection (e) of this section, which violation occurred within the 10-year period immediately preceding the date of arrest in the current proceeding.

(o) A person may be charged in a warrant, indictment, or information for a second or subsequent offense, as described in subsection (j), (l), or (m) of this section, if the person has been previously arrested for, or charged with, a violation of this section which is alleged to have occurred within the applicable time period for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that case, the warrant or indictment or information must set forth the date, location, and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final, or the person has previously had a period of conditional probation imposed pursuant to §17C-5-2b of this code.

(p) The fact that any person charged with a violation of subsection (b), (c), (d), (e), (f), or (g) of this section, or any person permitted to drive as described under subsection (h) or (i) of this section, is or has been legally entitled to use alcohol, a controlled substance, or a drug does not constitute a defense against any charge of violating subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section.

(q) The sentences provided in this section upon conviction for a violation of this article are mandatory and are not subject to suspension or probation: *Provided*, That the court may apply the provisions of §62-11A-1 *et seq.* of this code to a person sentenced or committed to a term of one year or less for a first offense under this section: *Provided, however*, That the court may impose a term of conditional probation pursuant to §17C-5-2b of this code to persons adjudicated thereunder. An order for home detention by the court pursuant to the provisions of §62-11B-1 *et seq.* of this code may be used as an alternative sentence to any period of incarceration required by this section for a first or subsequent offense: *Provided further*, That for any period of home incarceration ordered for a

person convicted of a second offense under this section, electronic monitoring shall be required for no fewer than five days of the total period of home confinement ordered and the offender may not leave home for those five days notwithstanding the provisions of §62-11B-5 of this code: *And provided further*, That for any period of home incarceration ordered for a person convicted of a third or subsequent violation of this section, electronic monitoring shall be included for no fewer than 10 days of the total period of home confinement ordered and the offender may not leave home for those 10 days notwithstanding §62-11B-5 of this code.

(r) A person whose license to operate a motor vehicle has been revoked or suspended by the Commissioner of the Division of Motor Vehicles pursuant to this section must complete a comprehensive safety and treatment program as set forth in §17C-5A-3 of this code before his or her license to operate a motor vehicle can be reinstated and his or her driving privileges restored.

(s) For any offense for which an alternative revocation period is permitted conditioned upon participation in the test and lock program, an alternative sentence may not be imposed without the consent of the driver.

(t) Upon entering the order of conviction for an offense under this section, or the imposition of conditional probation as provided in §17C-5-2b of this code, the clerk of the court shall immediately transmit the order to the Commissioner of the Division of Motor Vehicles.

(u) The amendments made to this section during the 2020 regular session of the Legislature shall become effective on July 1, 2020.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-30. Recognizing an embryo or fetus as a distinct unborn victim of certain crimes of violence against the person.

(a) This section may be known and cited as the Unborn Victims of Violence Act.

(b) For the purposes of this article, the following definitions shall apply: *Provided*, That these definitions only apply for purposes of prosecution of unlawful acts under this section and may not otherwise be used: (i) To create or to imply that a civil cause of action exists; or (ii) for purposes of argument in a civil cause of action, unless there has been a criminal conviction under this section.

(1) "Embryo" means the developing human in its early stages. The embryonic period commences at fertilization and continues to the end of the embryonic period and the beginning of the fetal period, which occurs eight weeks after fertilization or ten weeks after the onset of the last menstrual period.

(2) "Fetus" means a developing human that has ended the embryonic period and thereafter continues to develop and mature until termination of the pregnancy or birth.

(c) For purposes of enforcing the provisions of §61-2-1, §61-2-4, §61-2-7, §61-2-9(a), §61-2-9(c), §61-2-10, §61-2-10b, 61-2-28(a), and §17C-5-2(b) or §17C-5-2(c) of this code, a pregnant woman and the embryo or fetus she is carrying in the womb constitute separate and distinct victims.

(d) *Exceptions.* — The provisions of this section do not apply to:

(1) Acts committed during a legal abortion to which the pregnant woman, or a person authorized by law to act on her behalf, consented or for which the consent is implied by law;

(2) Acts or omissions by medical or health care personnel during or as a result of medical or health-related treatment or services, including, but not limited to, medical care, abortion, diagnostic testing or fertility treatment;

(3) Acts or omissions by medical or health care personnel or scientific research personnel in performing lawful procedures involving embryos that are not in a stage of gestation in utero;

(4) Acts involving the use of force in lawful defense of self or another, but not an embryo or fetus; and

(5) Acts or omissions of a pregnant woman with respect to the embryo or fetus she is carrying.

(e) For purposes of the enforcement of the provisions of this section, a violation of the provisions of article two-i, chapter sixteen of this code shall not serve as a waiver of the protection afforded by the provisions of subdivision (1), subsection (d) of this section.

(f) *Other convictions not barred.* — A prosecution for or conviction under this section is not a bar to conviction of or punishment for any other crime committed by the defendant arising from the same incident.

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CHAPTER 105

**(Com. Sub. for H. B. 3479 - By Delegates Fehrenbacher,
Espinosa, Mallow, Adkins, DeVault, Riley, Fast, Hillenbrand,
Westfall, Anderson and Zatezalo)**

[Passed March 9, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §61-16-1 and §61-16-2 of the Code of West Virginia, 1931, as amended, all relating to unmanned aerial vehicles; adding definitions; updating terminology to be consistent with the new definitions; establishing the crime of operating an unmanned aerial vehicle over the property of a targeted facility; establishing exceptions to the prohibitions contained in the article for law enforcement activity conducted in accordance with the provisions of this article and the federal and state constitutions; clarifying that these regulations do not prohibit the authorized operation of drones by landowners or third parties hired by a landowner to surveil, photograph, or otherwise involving their own land; and requiring compliance with federal laws and regulations relating to unmanned aerial vehicles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. USE OF UNMANNED AERIAL VEHICLE.

§61-16-1. Definitions.

As used in this article:

(1) "Aircraft" means any device now known or subsequently invented, used, or designed for flight in the air, including, but not limited to, unmanned aerial vehicles;

(2) "Targeted facility" means a critical infrastructure facility, as defined in §61-10-34 of this Code.

(3) "Unmanned aerial vehicles" means an aircraft that is operated without direct human intervention from inside or on the aircraft and includes the crewmember, the associated support equipment, the control station, data links, telemetry, communications, and navigation equipment necessary to operate the unmanned aircraft, including, but not limited to, drones;

(4) "Unmanned aerial vehicle operator" or "operator" means a person exercising control over an unmanned aerial vehicle during flight.

§61-16-2. Prohibited use of an unmanned aerial vehicle; criminal penalties.

(a) Except as authorized by the provisions of this article, it is unlawful for any person to operate an unmanned aerial vehicle:

(1) To knowingly and intentionally capture or take photographs, images, video, or audio of another person or the private property of another, without the other person's permission, in a manner that would invade the individual's reasonable expectation of privacy, including, but not limited to, capturing, or recording through a window;

(2) To knowingly and intentionally view, follow, or contact another person or the private property of another without the other person's permission in a manner that would invade the individual's reasonable expectation of privacy, including, but not limited to, viewing, following, or contacting through a window;

(3) To knowingly and intentionally harass another person;

(4) To violate a restraining order or similar judicial order;

(5) To act with a willful wanton disregard for the safety of persons or property; or

(6) To knowingly and intentionally operate an unmanned aerial vehicle in a manner that interferes with the official duties of law enforcement personnel or emergency medical personnel.

(b) It is unlawful for any person to operate an unmanned aerial vehicle over the property of a targeted facility to:

(A) intentionally deploy any substance, material, projectile, or object,

(B) to conduct surveillance of, or gather evidence and information about such facility, with the intent to do harm to such facility the public or any person, or

(C) to engage in any attempt to obtain:

(i) business trade secrets, proprietary information, or,

(ii) protected Federal or state information for the operator's own use or profit.

(c) Nothing in this section prohibits a person from operating an unmanned aerial vehicle to conduct surveillance of, gather evidence and information about, or photographically or electronically record the person's own property or immovable property owned by another person under a valid lease, servitude, right-of-way, right of use, permit, license, or other right: *Provided*, That nothing in this section prohibits third persons retained by the owner of immovable property from operating an unmanned aerial vehicle over, or to otherwise conduct surveillance of, gather evidence and information about, or to photographically or electronically record the property: *Provided, however*, That nothing in this section prohibits a person from operating an unmanned aerial vehicle in connection with production of a motion picture, television program, or similar production if the operation of the unmanned aerial vehicle is authorized by the property owner.

(d) The provisions of this section do not apply to a law-enforcement agency acting in compliance with the provisions of this article: *Provided*, That a law enforcement agency's operation of an unmanned aerial vehicle for the purpose of surveillance,

investigation into crime, or any other purpose related to the enforcement of the criminal laws of this state or those of the United States shall be in accordance with the Fourth Amendment to the United States Constitution and Article III, § 6 of the constitution of this state.

(e) The provisions of this section do not apply to a news organization using a camera-carrying unmanned aerial vehicle at altitudes greater than 400 feet over private property for legitimate newsgathering purposes.

(f) Any person violating the provisions of subsection (a) or (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined in jail for not more than one year, or both fined and confined.

(g) Any person who equips an unmanned aerial vehicle with any deadly weapon or operates any unmanned aerial vehicle equipped with any deadly weapon, other than for military purposes in an official capacity, 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 nor more than five years, or both fined and imprisoned.

(h) Any person who operates an unmanned aerial vehicle with the intent to cause damage to or disrupt in any way the flight of a manned aircraft is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 imprisoned for not less than one nor more than five years, or both fined and imprisoned.

(i) A person that is authorized by the Federal Aviation Administration to operate unmanned aerial vehicles for commercial purposes may operate an unmanned aerial vehicle in this state for such purposes if the unmanned aerial vehicle is operated in a manner consistent with federal law.

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CHAPTER 106

(S. B. 136 - By Senators Trump, Deeds, Oliverio, Stuart, Phillips, Woodrum, and Grady)

[Passed March 2, 2023; in effect 90 days from passage (May 31, 2023)]
[Approved by the Governor on March 11, 2023.]

AN ACT to amend and reenact §62-12-2 and §62-12-9 of the Code of West Virginia, 1931, as amended, all relating generally to judicial treatment of sex offenses; requiring persons convicted of certain offenses to undergo psychological or psychiatric testing and have a treatment plan to be eligible for probation; and expanding the list of offenses for which a defendant has been convicted which precludes the defendant from residing with minor children or having any contact with the victims.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-2. Eligibility for probation.

(a) All persons who are found guilty of or plead guilty to any felony, the maximum penalty for which is less than life imprisonment, and all persons who are found guilty of or plead guilty to any misdemeanor are eligible for probation, notwithstanding the provisions of §61-11-18 and §61-11-19 of this code.

(b) The provisions of subsection (a) of this section to the contrary notwithstanding, any person who commits or attempts to commit a felony with the use, presentment, or brandishing of a firearm is not eligible for probation. Nothing in this section may apply 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.

(c)(1) The existence of any fact which would make any person ineligible for probation under subsection (b) of this section because of the commission or attempted commission of a felony with the use, presentment, or brandishing of a firearm may not be applicable unless the fact is clearly stated and included in the indictment or presentment by which that person is charged and is either:

(A) Found by the court upon a plea of guilty or nolo contendere;

(B) Found by the jury, if the matter is tried before a jury, upon submitting to the jury a special interrogatory for that purpose; or

(C) Found by the court, if the matter is tried by the court, without a jury.

(2) The amendments to this subsection adopted in the year 1981:

(A) Apply to all applicable offenses occurring on or after August 1 of that year;

(B) 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;

(C) 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 shall give notice in writing of its intent to seek that finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which the finding is sought as fully as such grounds are otherwise required to be stated in an indictment, unless the grounds therefor are alleged in the indictment or presentment upon which the matter is being tried; and

(D) May not apply with respect to cases not affected by the amendment and in those cases the prior provisions of this section shall apply and be construed without reference to the amendment.

Insofar as the amendments relate to mandatory sentences without probation, all matters requiring that sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(d) 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.

(e) Any person who has been found guilty of, or pleaded guilty to, a violation of §61-3C-14b, §61-8-12, §61-8A-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-5 of this code may only be eligible for probation after undergoing a physical, mental, and psychiatric or psychological study and diagnosis which shall include an ongoing treatment plan requiring active participation in sexual abuse counseling at a mental health facility or through some other approved program: *Provided*, That nothing disclosed by the person during that study or diagnosis may be made available to any law-enforcement agency or other party without that person's consent, or admissible in any court of this state, unless the information disclosed indicates the intention or plans of the probationer to do harm to any person, animal, institution, or property, in which case the information may be released only to those persons necessary for protection of the person, animal, institution, or property.

Within 90 days of the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, the Secretary of the Department of Health and Human Resources shall propose rules and emergency rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code, establishing qualifications for sex offender treatment programs and counselors based on accepted treatment protocols among licensed mental health professionals.

(f) Any person who has been convicted of a violation of §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, §61-8D-5, §61-8D-6, §61-2-14, §61-8-12, and §61-8-13 of this code, or of a felony violation involving a minor of §61-8-6 or §61-8-7 of this code, or of a similar provision in another jurisdiction, shall register upon release on probation. Any person who has been convicted of an attempt to commit any of the offenses set forth in this subsection shall also be registered upon release on probation.

(g) The probation officer shall within three days of release of the offender send written notice to the State Police of the release of the offender. The notice shall include:

- (1) The full name of the person;
- (2) The address where the person shall reside;
- (3) The person's Social Security number;
- (4) A recent photograph of the person;

(5) A brief description of the crime for which the person was convicted;

(6) Fingerprints; and

(7) For any person determined to be a sexually violent predator as defined in §15-12-2a of this code, the notice shall also include:

(i) Identifying factors, including physical characteristics;

(ii) A history of the offense; and

(iii) Documentation of any treatment received for the mental abnormality or personality disorder.

§62-12-9. Conditions of release on probation.

(a) Release on probation is conditioned upon the following:

(1) That the probationer may not, during the term of his or her probation, violate any criminal law of this or any other state or of the United States;

(2) That the probationer may not, during the term of his or her probation, leave the state without the consent of the court which placed him or her on probation;

(3) That the probationer complies with the conditions prescribed by the court for his or her supervision by the probation officer;

(4) That in every case in which the probationer has been convicted of an offense set forth in §61-3C-14b, §61-8-12, §61-8A-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, and §61-8D-1 *et seq.* of this code against a child, the probationer may not live in the same residence as any minor child, nor exercise visitation with any minor child, and may have no contact with the victim of the offense: *Provided*, That the probationer may petition the court of the circuit in which he or she was convicted for a modification of this term and condition of his or her probation and the burden rests upon the probationer to demonstrate that a modification is in the best interest of the child;

(5) That the probationer pay a fee, not to exceed \$20 per month, to defray costs of supervision: *Provided*, That the court conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay the fee without undue hardship. All moneys collected as fees from probationers pursuant to this subdivision shall be deposited with the circuit clerk who shall, on a monthly basis, remit the moneys collected to the State Treasurer for deposit in the state General Revenue Fund; and

(6) That the probationer is required to pay the fee described in §62-11C-4 of this code: *Provided*, That the court conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay the fee without undue hardship.

(b) In addition, the court may impose, subject to modification at any time, any other conditions which it may determine advisable, including, but not limited to, any of the following:

(1) That the probationer make restitution or reparation, in whole or in part, immediately or within the period of probation, to any party injured by the crime for which he or she has been convicted: *Provided*, That the court conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay restitution without undue hardship;

(2) That the probationer pays any fine assessed and the costs of the proceeding in installments directed by the court: *Provided*, That the court conduct a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay the costs without undue hardship;

(3) That the probationer makes contributions from his or her earnings, in sums directed by the court, for the support of his or her dependents; and

(4) That the probationer, in the discretion of the court, is required to serve a period of confinement in the jail of the county in which he or she was convicted for a period not to exceed one third of the minimum sentence established by law or one third of the least possible period of confinement in an indeterminate sentence, but in no case may the period of confinement exceed six consecutive months. The court may sentence the defendant within the six-month period to intermittent periods of confinement including, but not limited to, weekends or holidays and may grant to the defendant intermittent periods of release in order that he or she may work at his or her employment or for other reasons or purposes as the court may determine appropriate: *Provided*, That the provisions of §62-11A-1 *et seq.* of this code do not apply to intermittent periods of confinement and release except to the extent directed by the court. If a period of confinement is required as a condition of probation, the court shall make special findings that other conditions of probation are inadequate and that a period of confinement is necessary.

(c) Circuit courts may impose, as a condition of probation, participation in a day report center.

(1) To be eligible, the probationer shall be identified as moderate to high risk of reoffending and moderate to high criminogenic need, as determined by the standardized risk and needs assessment adopted by the Supreme Court of Appeals of West Virginia under §62-12-6(d) of this code, and applied by a probation officer or day report staff. In eligible cases, circuit courts may impose a term of up to one year: *Provided*, That notwithstanding the results of the standardized risk and needs assessment, a judge may impose, as a term of probation, participation in a day report center program upon making specific written findings of fact as to the reason for departing from the requirements of this subdivision.

(2) The day report center staff shall determine which services a person receives based on the results of the standardized risk and needs assessment and taking into consideration the other conditions of probation set by the court.

(d) For the purposes of this article, "day report center" means a court-operated or court-approved facility where persons ordered to serve a sentence in this type of facility are required to report under the terms and conditions set by the court for purposes which include, but are not limited to, counseling, employment training, alcohol or drug testing, or other medical testing.

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CHAPTER 107

(Com. Sub. for S. B. 191 - By Senators Trump and Hunt)

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §62-11C-9 of the Code of West Virginia, 1931, as amended, relating to community corrections generally; making participation in a community corrections program a possible condition of deferred adjudication; clarifying conditions of deferred adjudication; clarifying terms of pretrial diversion agreements; clarifying that no contest pleas may be a part of a pretrial diversion or deferred adjudication agreement; setting forth offenses which require a defendant's actual appearance before a court in deferred adjudication matters; clarifying judicial options where a defendant does not successfully complete his or her program; and providing that inability to pay court costs or and restitution is not a basis for denying a person deferred adjudication.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.

§62-11C-9. Use of community corrections programs for those not under court supervision.

(a) Subject to the availability of community corrections programs in the county, a written pretrial diversion agreement, entered into pursuant to the provisions of §61-11-22 of this code, may require participation or supervision in a community corrections program as part of the prosecution and resolution of charges. A court ordered deferred adjudication proceeding, pursuant to the provisions of §61-11-22a of this code, may require,

through terms and conditions imposed upon a defendant, participation or supervision in a community corrections program.

(b) Any pretrial diversion program for a defendant where the alleged victim is a family or household member, shall require the person charged to appear before the presiding judge or magistrate and acknowledge his or her understanding of the terms of the agreement to the charge or charges. Upon the defendant's motion, the court shall continue the matter for the period of time necessary for the person charged to complete the pretrial diversion program. If the person charged successfully completes the pretrial diversion program, the matter is to be resolved pursuant to the terms of the pretrial diversion agreement. If the person charged fails to successfully complete the pretrial diversion program, the matter shall be returned to the court's docket for resolution.

(c) No provision of this article may be construed to limit the prosecutor's discretion to prosecute an individual who has not fulfilled the terms of a written pretrial diversion by not completing the required supervision or participation in a community corrections program.

(d) Notwithstanding any provision of this code to the contrary, any person whose case is disposed of by entering into a pretrial diversion agreement, pursuant to the provisions of §61-11-22 of this code is liable for any applicable court costs. Payment of the court costs shall be made a condition of the pretrial diversion agreement: *Provided*, That financial inability to pay court costs may not be a basis for denying a person a pretrial diversion.

(e) Subject to the availability of community corrections programs in the county, a written pretrial diversion agreement, entered into pursuant to the provisions of §61-11-22 of this code, may require participation or supervision in a community corrections program as part of the prosecution and resolution of charges. A deferred adjudication proceeding, pursuant to the provisions of §61-11-22a of this code, may require, through terms and conditions imposed upon a defendant, participation or supervision in a community corrections program.

(f) Any deferred adjudication where the alleged victim is a family or household member, or the provisions of §17C-5-2 of this code shall require the person charged to appear before the presiding judge or magistrate and either acknowledge his or her understanding of the terms of the agreement and tender a plea of guilty or nolo contendere to the charge or charges. Upon the defendant's motion, the court shall continue the matter and defer adjudication for the period of time necessary for the person charged to complete the period of deferred adjudication. If the person charged successfully completes the period of deferred adjudication, the matter is to be resolved pursuant to the terms and conditions of the deferred adjudication as outlined by the court. If it is determined by the court that the defendant did not successfully complete the period of deferred adjudication, the court may accept the tendered plea of guilty or nolo contendere and proceed to sentencing or impose such other terms and conditions as the court deems appropriate, pursuant to the provisions of §61-11-22a of this code.

(g) Notwithstanding any provision of this code to the contrary, any person whose case is disposed of by entering into a deferred adjudication, pursuant to the provisions of §61-11-22a of this code is liable for any applicable court costs. Payment of the court costs shall be made a term and condition of the deferred adjudication. Payment of restitution may be made a term and condition of the deferred adjudication: *Provided*, That financial inability to pay court costs and restitution may not be a basis for denying a person deferred adjudication.

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CHAPTER 108

(Com. Sub. for S. B. 558 - By Senators Weld, Woelfel, and Woodrum)

[Passed March 9, 2023; in effect 90 days from passage (June 7, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §62-1-6a, relating to prohibiting law enforcement agencies of the state from posting on social media the booking photographs of individuals alleged to have committed a minor offense; clarifying that the Division of Corrections and Rehabilitation and its subordinate organizations may not be considered a law enforcement agency for purposes of this section; providing exceptions; and requiring removal of booking photographs in certain instances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PRELIMINARY PROCEDURE.

§62-1-6a. Booking photographs of criminal defendants.

(a) Except as authorized by the provisions of this section, a law enforcement agency may not share on social media the booking photograph of an individual arrested for the alleged commission of a minor offense.

(b) As used in this section, unless context clearly indicates, otherwise:

"Booking photograph" means a photograph or still, non-video image of an individual taken, generated, or otherwise created by a law enforcement agency pursuant to an arrest or while an individual is in the agency's lawful custody.

"Law enforcement agency" means any duly authorized state, county, or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality of the state: *Provided*, That the Division of Corrections and Rehabilitation and its subordinate organizations may not be considered a law enforcement agency for purposes of this section.

"Social media" means a publicly available Internet-based platform that allows a user to produce, post, or curate content and interact with other users via text, images, video, and audio, for the purpose of informing, sharing, promoting, collaborating, or networking.

"Minor offense" means an offense that:

Is a misdemeanor or nonviolent felony eligible for expungement as provided by §61-11-26(a) of this code, and not excepted from eligibility for expungement under §61-11-26(c) of this code: *Provided*, That, for purposes of this section, offenses under §17B-4-3 of this code and misdemeanor offenses under §17C-5-2 of this code, shall be considered minor offenses for purposes of this section.

(c) *Exceptions.* — A law enforcement agency may share on social media the booking photograph of an individual arrested for the alleged commission a minor offense, if:

(1) The individual is convicted of a criminal offense based upon the conduct for which the individual was in custody for at the time the booking photograph was taken;

(2) A law-enforcement agency has determined that the suspect is a fugitive or an imminent threat to an individual or to public safety and reasonably believes that releasing or disseminating the suspect's booking photograph will assist in locating or apprehending the suspect or reducing or eliminating that threat; or

(3) A court of competent jurisdiction orders the release or dissemination of the booking photograph based upon a finding that doing so is in furtherance of a legitimate interest.

(d) A law-enforcement agency may not be subject to civil action or be held liable when the publication, release, or dissemination of a booking photograph was made by mistake of fact or error, and that publication, release, or dissemination was done in good faith.

(e) A law-enforcement agency that shares on social media a booking photograph of an individual arrested for the suspected commission of any crime shall remove the booking photograph from its social media page within 14 days upon the request of the individual who is the subject of the social media post, or that individual's authorized representative, if any of the following have occurred:

(1) The criminal charge for which the booking photograph was taken has been dismissed;

(2) A grand jury has declined to return an indictment on the charge for which the booking photograph was taken; or

(3) A circuit court or jury has entered a judgment of acquittal on the charge for which the booking photograph was taken, or a court of competent jurisdiction has issued an order or opinion reversing, vacating, or otherwise nullifying the conviction for which the booking photograph was taken.



CHAPTER 109

(Com. Sub. for S. B. 633 - By Senators Woodrum, Trump, Deeds, Caputo, Woelfel, and Rucker)

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §62-1-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §62-1C-17b of said code; and to amend and reenact §62-2-17 of said code, all relating to failure to appear; requiring compliance with the magistrate court criminal rules; requiring transport to the regional jail serving the charging county if an arrest occurs in a county other than the charging county and the defendant remains incarcerated after the arraignment; requiring prompt court appearances for persons detained on capiases or warrants for failure to appear; providing procedures for issuing bench warrants and capiases for nonappearance at scheduled court hearings or other proceeding; providing for purposes of capiases for failure to appear after indictment, that newspaper publication alone does not constitute effective notice; allowing a grace period after a failure to appear to allow certain defendants to appear except in defined circumstances; providing procedures following execution of bench warrants for nonappearance; providing that in all cases where a defendant is arrested and held under a capias for failure to appear in the county wherein the charge or charges is pending, and he or she is entitled to admission to bail, an initial appearance shall be held as soon as practicable, or within five days whichever is sooner, and bail shall be considered; and requiring courts to ensure that all inactive warrants and capiases for failure to appear are removed from law-enforcement databases.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PRELIMINARY PROCEDURE.

§62-1-7. Offense arising in other county.

In all cases where a person is arrested in a county other than where the indictment or charge is pending, an arraignment shall be held pursuant to the Rules of Criminal Procedure for Magistrate Courts in West Virginia. If the person remains incarcerated after the arraignment, he or she shall be transported to the regional jail serving the charging county within five days of arrest.

ARTICLE 1C. BAIL.

§62-1C-17b. Procedures for failure to appear; penalties.

(a) Any person, who, having been released upon his or her personal recognizance pursuant to §62-1-1a of this code or having been otherwise admitted to bail and released in accordance with this article, and who shall willfully and without just cause fail to appear as and when it may be required of him or her, shall be guilty of the offense as hereinafter prescribed, and, upon conviction thereof, shall be punished in the manner hereinafter provided.

(b) If any such person was admitted to bail or released after being arrested for, charged or convicted of a felony and, shall thereafter be convicted for a violation of the provisions of subsection (a) of this section, such persons shall be guilty of a felony and, shall be fined not more than \$5,000 or imprisoned not less than one nor more than five years, or both such fine and imprisonment.

(c) If any such person was admitted to bail or released after being arrested for, charged or convicted of a misdemeanor and, shall thereafter be convicted for a violation of the provision of subsection (a) of this section, such persons shall be guilty of a misdemeanor and, shall be fined not more the \$1,000 or confined in the county jail for not more than one year, or both such fine and confinement.

(d) If any such person was admitted to bail or released pending appearance as a material witness and shall thereafter fail to appear when and where it shall have been required of him or her, such persons shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more the \$1,000 or confined in the county jail not more than one year, or both such fine and confinement.

(e) Any penalty authorized by this section shall be in addition to any forfeiture authorized or mandated by this article or by any other provision of law.

(f) If any defendant admitted to bail and released in accordance with this article fails to appear at a scheduled court appearance, the court may issue a *capias* or bench warrant for failure to appear if it determines that the defendant was provided effective notice of the court appearance by the court.

(g) For the purposes of this subsection, "effective notice of the court appearance" means a notice stating the date, time, location, and purpose of the hearing, transmitted to the defendant or defendant's counsel, no fewer than 10 days prior to the scheduled court appearance. The court may waive the 10 day requirement upon a finding of emergent circumstances.

(h) For purposes of *capiases* for failure to appear after indictment, newspaper publication alone does not constitute effective notice.

(i) Notwithstanding the provisions of subsections (a) through (d) of this section, where the record does not reflect that the person failing to appear received effective notice to appear from the court or where he or she has no documented history of failure to appear, a court, absent good cause shown, may not issue a *capias* until no fewer than 24 hours have elapsed since the failure to appear. If the defendant voluntarily appears within 24 hours, he or she is not subject to prosecution under this section.

(j) Nothing in subsection (f) of this section may be construed to limit a court's ability to issue a *capias* upon credible information

of danger to a person or the community, new criminal conduct or a bail violation other than failure to appear.

(k) Upon the arrest of a defendant pursuant to a capias in the county in which the indictment or charge is pending, a hearing pursuant to §62-1C-1a of this code shall be scheduled and held within five days of the arrest.

(l) Upon the appearance in the county in which the indictment or charge is pending of a defendant against whom a capias has been issued the court shall provide written notice to the sheriff for his or her dissemination to all appropriate law-enforcement agencies, that the warrant or capias is no longer active and order it to be immediately removed from all databases.

ARTICLE 2. PRESENTMENTS AND INDICTMENTS.

§62-2-17. Delivery of prisoner to court, magistrate or jailer.

(a) An officer who, under a capias from a court, arrests a person accused of an offense other than murder in the first degree shall deliver the accused to such court, if sitting, and if such court is not sitting, the officer shall deliver the accused to a magistrate who may admit the accused to bail: *Provided*, That any such bail granted by a magistrate shall be conditioned upon the appearance by the accused before the court on the date provided in the capias for such appearance, or, if no such date is provided in the capias, then such bail shall be conditioned upon the appearance of the accused on the next day on which such court is sitting.

(b) No magistrate shall admit to bail any person arrested under an alias capias.

(c) Bail set by a magistrate may be made and posted before the magistrate court clerk and the recognizance and record thereof, together with any money received therefor, shall be forthwith delivered to the clerk of the circuit court.

(d) An officer who, under a capias from a court, arrests a person accused of an offense not bailable, or for which bail is not given,

shall deliver the accused to such court, if sitting, or to the jailer thereof, who shall receive and imprison him or her.

(e) In all cases where a defendant is arrested and held under a *capias* for failure to appear in the county wherein the charge or charges is pending, and he or she is entitled to admission to bail, an initial appearance shall be held as soon as practicable, or within five days whichever is sooner, and bail shall be considered pursuant to §62-1C-1a of this code.

(f) Upon the appearance of a defendant upon an indictment or complaint upon which a warrant or *capias* has been issued, the court shall provide written notice to the sheriff for his or her dissemination to all appropriate law-enforcement agencies that the warrant or *capias* is no longer active and order that it be immediately removed from all databases.

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CHAPTER 110

**(H. B. 3156 - By Delegates Steele, Nestor, Fast, Kirby, Riley,
C. Pritt, Hanna, Holstein, Dean, Shamblin and Householder)**

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §29-21-13a of the Code of West Virginia, 1931, as amended, by raising the compensation rates of panel attorneys; and for dismissed or not guilty charge expungement only, providing the panel attorney to continue providing representation after the dismissal to achieve the expungement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-13a. Compensation and expenses for panel attorneys.

(a) All panel attorneys shall maintain detailed and accurate records of the time expended and expenses incurred on behalf of eligible clients, and which records are to be maintained in a form that will enable the attorney to determine for any day the periods of time expended in tenths of an hour on behalf of any eligible client and the total time expended in tenths of an hour on that day on behalf of all eligible clients: *Provided*, That in no event may panel attorneys be required to maintain or submit the actual start and finish times of work performed.

(b) Upon completion of each case, exclusive of appeal, panel attorneys shall submit to Public Defender Services a voucher for services. Public Defender Services shall electronically acknowledge the submission of a voucher. Claims for fees and expense reimbursements shall be submitted to Public Defender Services on forms approved by the executive director. The

executive director shall establish guidelines for the submission of vouchers and claims for fees and expense reimbursements under this section. Claims submitted more than 90 business days after the last date of service shall be rejected unless, for good cause, the appointing court authorizes in writing an extension.

(c) Public Defender Services shall review the voucher to determine if the time and expense claims are reasonable, necessary, and valid. A voucher found to be correct shall be processed and payment promptly directed within 45 business days of submission of the voucher.

(d)(1) If Public Defender Services rejects a voucher, the attorney submitting the voucher shall be notified electronically of the rejection and provided detailed reasons for the rejection within 30 business days of submission of the voucher. The attorney may resubmit the voucher accompanied by copies of his or her records supporting the voucher and certification from the appointing court that the services or expenses were performed or incurred, and were reasonable and necessary, within 15 business days of receipt of notification. The executive director shall make a final agency decision regarding the rejection of the voucher within 15 business days of receipt of the submitted records and certification. Under no circumstances may the executive director have the authority or require any panel attorney to submit privileged client information.

(2) If the final agency decision is to reject the voucher, Public Defender Services shall request review of the final agency decision by motion to the appointing court filed within 15 business days of notice of the final agency decision. After a hearing providing the attorney and Public Defender Services an opportunity to be heard, the appointing court shall have final authority to resolve the issue of payment and to order all remedies available under the West Virginia Rules of Civil Procedure.

(e) If Public Defender Services reduces the amount of compensation claimed or reimbursement requested, the attorney submitting the voucher shall be notified electronically of the reduction and detailed reasons for the reduction within 30 business days of the submission of the voucher. The attorney may:

(1) Agree with the reduction and certify his or her agreement electronically to Public Defender Services which shall then proceed to process payment; or

(2) Disagree with the reduction and request payment of the reduced amount while preserving the ability to contest the reduction;

(3) An attorney proceeding pursuant to this subsection shall inform Public Defender Services of his or her decision by electronic means within 15 business days of receipt of the notice of reduction. If there is no communication from the attorney within 15 business days of receipt of the notice of reduction, then the reduction is deemed to be accepted by the attorney;

(4) The attorney may submit records and certification from the appointing court that the services or expenses reflected in the amount reduced were performed or incurred and were reasonable and necessary. The executive director shall then make a final agency decision regarding the reduction within 15 business days of receipt of the submitted records and certification. Under no circumstances may the executive director have the authority to require any panel attorney to submit privileged client information;

(5) If the attorney disagrees with the final agency decision, and the attorney and the executive director cannot reach an agreement regarding the reduction within 15 business days of the receipt of the notice of the final agency decision, Public Defender Services shall request review of the final agency decision by motion to the appointing court filed within 15 business days of notice of the final agency decision. After a hearing providing the attorney and Public Defender Services an opportunity to be heard, the appointing court shall have final authority to resolve the issue of payment, and to order all remedies available under the West Virginia Rules of Civil Procedure;

(6) If there is no communication from Public Defender Services within 30 business days of the submission of the voucher, the voucher is deemed to have been approved for payment without reduction.

(f) Notwithstanding any provisions of this code to the contrary, the executive director may employ in-house counsel to represent Public Defender Services in hearings held pursuant to this article.

(g) Except for the emergency rule-making provision set forth in §29-21-6(h) of this code, the provisions of the amendments to this article enacted during the 2019 regular session of the Legislature shall be effective July 1, 2019.

(h) Notwithstanding any other provision of this section to the contrary, Public Defender Services may pay by direct bill, prior to the completion of the case, litigation expenses incurred by attorneys appointed under this article.

(i) Notwithstanding any other provision of this section to the contrary, a panel attorney may be compensated for services rendered and reimbursed for expenses incurred prior to the completion of the case where: (1) More than six months have expired since the commencement of the panel attorney's representation in the case; and (2) no prior payment of attorney fees has been made to the panel attorney by Public Defender Services during the case. The executive director, in his or her discretion, may authorize periodic payments where ongoing representation extends beyond six months in duration. The amounts of any fees or expenses paid to the panel attorney on an interim basis, when combined with any amounts paid to the panel attorney at the conclusion of the case, shall not exceed the limitations on fees and expenses imposed by this section.

(j) In each case in which a panel attorney provides legal representation under this article, and in each appeal after conviction in circuit court, the panel attorney shall be compensated at the following rates for actual and necessary time expended for services performed and expenses incurred subsequent to the effective date of this article:

(1) For attorney's work performed out of court, compensation shall be at the rate of \$60 per hour.

Out-of-court work includes, but is not limited to, travel, interviews of clients or witnesses, preparation of pleadings, and prehearing or pretrial research;

(2) For attorney's work performed in court, compensation shall be at the rate of \$80 per hour.

In-court work includes, but is not limited to, all time spent awaiting hearing or trial before a judge, magistrate, special master, or other judicial officer;

(3) Compensation for legal services performed for a panel attorney by a paralegal out-of-court is to be calculated using a rate of \$20 per hour and no such compensation is to be paid for in-court services performed for a panel attorney by a paralegal absent prior approval of the circuit court before whom the panel attorney is appearing and subject to maximum reimbursement amounts set by agency rule;

(4) The maximum amount of compensation for out-of-court and in-court work under this subsection is as follows: For proceedings of any kind involving felonies for which a penalty of life imprisonment may be imposed, the amount as the court may approve; for all other eligible proceedings, \$4,500 unless the court, for good cause shown, approves payment of a larger sum.

(k) Actual and necessary expenses incurred in providing legal representation for proceedings of any kind involving felonies for which a penalty of life imprisonment may be imposed, including, but not limited to, expenses for travel, transcripts, salaried or contracted investigative services, and expert witnesses, shall be reimbursed in an amount as the court may approve. For all other eligible proceedings, actual and necessary expenses incurred in providing legal representation, including, but not limited to, expenses for travel, transcripts, salaried or contracted investigative services and expert witnesses, shall be reimbursed to a maximum of \$2,500 unless the court, for good cause shown, approves reimbursement of a larger sum.

(1) Expense vouchers shall specifically set forth the nature, amount, and purpose of expenses incurred and shall provide receipts, invoices, or other documentation required by the executive director and the State Auditor as follows:

(1) Reimbursement of expenses for production of transcripts of proceedings reported by a court reporter is limited to the cost per original page and per copy page as set forth in §51-7-4 of this code;

(2) There may be no reimbursement of expenses for or production of a transcript of a preliminary hearing before a magistrate or juvenile referee, or of a magistrate court trial, where the hearing or trial has also been recorded electronically in accordance with the provisions of §50-5-8 of this code or court rule;

(3) Reimbursement of the expense of an appearance fee for a court reporter who reports a proceeding other than one described in subdivision (2) of this subsection is limited to \$25. Where a transcript of a proceeding is produced, there may be no reimbursement for the expense of any appearance fee;

(4) Except for the appearance fees provided in this subsection, there may be no reimbursement for hourly court reporters' fees or fees for other time expended by the court reporter, either at the proceeding or traveling to or from the proceeding;

(5) Reimbursement of the cost of transcription of tapes electronically recorded during preliminary hearings or magistrate court trials is limited to \$1 per page;

(6) Reimbursement for any travel expense incurred in an eligible proceeding is limited to the rates for the reimbursement of travel expenses established by rules promulgated by the Governor pursuant to the provisions of §12-8-11 of this code and administered by the Secretary of the Department of Administration pursuant to the provisions of §5A-3-48 of this code;

(7) Reimbursement for investigative services is limited to a rate of \$30 per hour for work performed by an investigator.

(m) For purposes of compensation under this section, an appeal from magistrate court to circuit court, an appeal from a final order of the circuit court, or a proceeding seeking an extraordinary remedy made to the Supreme Court of Appeals shall be considered a separate case.

(n) Vouchers submitted under this section shall specifically set forth the nature of the service rendered, the stage of proceeding or type of hearing involved, the date and place the service was rendered, and the amount of time expended in each instance. All time claimed on the vouchers shall be itemized to the nearest tenth of an hour. If the charge against the eligible client for which services were rendered is one of several charges involving multiple warrants or indictments, the voucher shall indicate the fact and sufficiently identify the several charges so as to enable Public Defender Services to avoid a duplication of compensation for services rendered. The executive director shall refuse to requisition payment for any voucher which is not in conformity with the recordkeeping, compensation, or other provisions of this article or the voucher guidelines established issued pursuant to this article and in such circumstance shall return the voucher to the court or to the service provider for further review or correction.

(o) Vouchers submitted under this section shall be reimbursed within 90 days of receipt. Reimbursements after 90 days shall bear interest from the 91st day at the legal rate in effect for the calendar year in which payment is due.

(p) Vouchers submitted for fees and expenses involving child abuse and neglect cases shall be processed for payment before processing vouchers submitted for all other cases.

(q) Upon a dismissal of or a finding of not guilty concerning a criminal charge, should the charge or charges for which the indigent defendant was afforded counsel qualify for an expungement of charges under §61-11-25 of this code, the defendant shall be afforded continued representation upon the terms specified in this section. The Panel Attorney shall include the services performed by panel attorneys in regard to an expungement on the same voucher or a subsequent voucher submitted concerning

the same case number as the one submitted to Public Defender Services for the underlying criminal charge or charges. The maximum amount of compensation for out-of-court and in-court work under this section shall be limited to \$1,000 for expungement services in addition to the limits imposed on the underlying criminal charge or charges, unless the court, for good cause shown, approves payment of a larger sum. The actual and necessary expenses incurred in providing legal representation for expungement proceedings under this section shall be reimbursed to a maximum of \$500 unless the court, for good cause shown, approves reimbursement of a larger sum.

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CHAPTER 111

(H. B. 3448 - By Delegates Kelly and Hott)

[Passed March 7, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §62-12-5 of the Code of West Virginia, 1931, as amended, relating to probation officer field training; and granting field training probation officers the power of a full probation officer while on duty.

Be it enacted by the Legislature of West Virginia:

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 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.

(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) 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, may 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 the duties of their employment supervising confinement and supervised release, and the inherent arrest powers for violation of the same which constitute law enforcement, state

probation officers are determined to be qualified law-enforcement officers as that term is used in 18 U.S.C. § 926B.

(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:

(1) The Supreme Court of Appeals has a written policy authorizing probation officers to carry a concealed firearm for self-defense purposes.

(2) There is in place a requirement that the state 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;

(3) The Supreme Court of Appeals issues a photographic identification and certification card which identify the state probation officers as qualified law-enforcement employees pursuant to the provisions of §30-29-12 of this code.

(j) Any policy instituted pursuant to this subsection shall include provisions which:

(1) Preclude or remove a person from participation in the concealed firearm program;

(2) Preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and;

(3) 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.

(k) Any state 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.

(l) It is the intent of the Legislature in enacting the amendments to this section during the 2022 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.

(m) The privileges authorized by the amendments to this section enacted during the 2022 regular session of the Legislature are wholly within the discretion of the Supreme Court of Appeals.

(n) The Administrative Director of the Supreme Court of Appeals, or his or her designee, may hire field training probation officers to provide uniform training to new and current probation officers statewide. A field training probation officer shall have all the powers granted to a probation officer under this code while performing his or her duties.

●

CHAPTER 112

(Com. Sub. for S. B. 573 - By Senator Maroney)

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §48-1-205 of the Code of West Virginia, 1931, as amended; and to amend and reenact §48-13-202, §48-13-301, §48-13-302, §48-13-303, §48-13-403, §48-13-404, §48-13-501, and §48-13-502 of said code, all relating generally to the child support guidelines and the Support Enforcement Commission; allowing a deduction for student loan payments under specific circumstances, clarifying circumstances and factors for attributed income; updating monthly basic child support obligations to reflect 2022 financial data; updating income amount requiring manual calculation to determine basic child support obligation; updating amount for the ability to pay calculation and self-support reserve; and amending the multiplier for extended shared parenting adjustment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

PART II. DEFINITIONS.

§48-1-205. Attributed income defined.

(a) "Attributed income" means income not actually earned by a parent, but which may be attributed to the parent because he or she is unemployed, is not working full time, or is working below full earning capacity, or has nonperforming or underperforming assets. Income may be attributed to a parent if the court evaluates the specific circumstances of the parent to the extent known,

including such factors as the parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, physical and mental health, criminal record, and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the parent, prevailing earnings level in the local community, and other relevant background factors in the case. Income may also be attributed to a parent if the court finds that the obligor has nonperforming or underperforming assets.

(b) If an obligor: (1) Voluntarily leaves employment or voluntarily alters his or her pattern of employment so as to be unemployed, underemployed, or employed below full earning capacity; (2) is able to work and is available for full-time work for which he or she is fitted by prior training or experience; and (3) is not seeking employment in the manner that a reasonably prudent person in his or her circumstances would do, then an alternative method for the court to determine gross income is to attribute to the person an earning capacity based on his or her previous income. If the obligor's work history, qualifications, education, or physical or mental condition cannot be determined, or if there is an inadequate record of the obligor's previous income, the court may, as a minimum, base attributed income on full-time employment (at 40 hours per week) at the federal minimum wage in effect at the time the support obligation is established. In order for the court to consider attribution of income, it is not necessary for the court to find that the obligor's termination or alteration of employment was for the purpose of evading a support obligation.

(c) Income shall not be attributed to an obligor who is unemployed, underemployed, or is otherwise working below full earning capacity if any of the following conditions exist:

(1) The parent is providing care required by the children to whom both of the parties owe a legal responsibility for support and the children are of preschool age, or are handicapped, or otherwise in a situation requiring particular care by the parent;

(2) The parent is pursuing a plan of economic self-improvement which will result, within a reasonable time, in an

economic benefit to the children to whom the support obligation is owed, including, but not limited to, self-employment or education: *Provided*, That if the parent is involved in an educational program, the court shall ascertain that the person is making substantial progress toward completion of the program;

(3) The parent is, for valid medical reasons, earning an income in an amount less than previously earned; or

(4) The court makes a written finding that other circumstances exist which would make the attribution of income inequitable: *Provided*, That in the case the court may decrease the amount of attributed income to an extent required to remove inequity.

(d) The court may attribute income to a parent's nonperforming or underperforming assets, other than the parent's primary residence. Assets may be considered to be nonperforming or underperforming to the extent that they do not produce income at a rate equivalent to the current six-month certificate of deposit rate or any other rate that the court determines is reasonable.

(e) Income shall not be attributed to an obligor who is incarcerated. Incarceration shall not be treated as voluntary unemployment in establishing or modifying a support obligation.

ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS.

§48-13-202. Application of expenses and credits in determining child support.

In determining the total child support obligation, the court shall:

(1) Add to the basic child support obligation any unreimbursed child health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or ordered by the court; and

(2) Subtract any extraordinary credits agreed to by the parents or ordered by the court.

(3) Deduct from a parent's adjusted gross income the reasonable monthly amount of a student loan payment actually being paid to the lending institution that originally issued the loan by a parent for a student loan debt owed in his or her own name and for his or her own educational expenses; provided that the total amount of the student loan payment deducted may not exceed 25 percent of the parent's total gross income determined before the deduction. The family court shall have discretion to exclude all or a portion of the student loan deduction if the parent with the student loan debt is in child support arrears, if the parent is not current or is in arrears on the student loan payment, if the student loan is being paid by a third party and not the parent, or if the child is not receiving or expected to receive a financial benefit from the education associated with the student loan expenses incurred. If the student loan deduction is awarded:

(a) The parent shall have a duty to immediately disclose to the court, the BCSE, and any other party any changes in the monthly amount of the student loan payment, including any payment deferrals or student loan forgiveness.

(b) The court may require a parent to annually disclose to the court, the BCSE, and any other party a statement showing a history of student loan payments for the prior year.

(c) Failure to timely make the disclosures above may be a basis for the court to modify child support to exclude the student loan deduction, including retroactively to the first of the month following any unreported change.

PART III. BASIC CHILD SUPPORT ORDER.

§48-13-301. Determining the basic child support obligation.

The basic child support obligation is determined from the following table of monthly basic child support obligations:

<p style="text-align: center;">West Virginia Monthly Basic Child Support Obligations (Adjusted for West Virginia's Income Relative to U.S. Averages)</p>						
COMBINED GROSS MONTHLY INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
550	101	153	185	207	228	247
600	110	167	202	226	248	270
650	119	181	219	244	269	292
700	128	195	235	263	289	314
750	137	208	252	281	310	337
800	146	222	269	300	330	359
850	155	236	285	319	351	381
900	164	250	302	337	371	403
950	173	264	319	356	392	426
1000	182	277	335	375	412	448
1050	191	291	352	393	432	470
1100	200	304	368	411	452	491
1150	208	316	382	427	470	510
1200	216	328	397	443	488	530
1250	223	340	411	460	506	549
1300	231	352	426	476	523	569
1350	239	365	441	492	541	589
1400	247	377	455	509	563	608
1450	255	389	470	525	577	628
1500	263	401	485	541	595	647
1550	271	413	499	558	613	667
1600	279	425	514	574	631	686
1650	287	437	528	590	649	706
1700	295	449	543	607	667	725
1750	303	461	558	623	685	745
1800	311	473	572	639	703	764
1850	319	485	587	656	721	784
1900	327	498	602	672	739	803
1950	335	510	616	688	757	823

2000	342	521	630	704	774	842
2050	350	533	645	720	792	861
2100	358	545	659	736	809	880
2150	366	557	673	752	827	899
2200	373	569	687	768	844	918
2250	381	580	702	784	862	937
2300	389	592	716	799	879	956
2350	396	604	730	815	897	975
2400	404	615	744	831	914	994
2450	412	627	758	847	932	1013
2500	420	639	772	863	949	1031
2550	427	651	786	878	966	1050
2600	435	662	801	894	984	1069
2650	443	674	815	910	1001	1088
2700	450	686	829	923	1018	1107
2750	458	697	843	942	1036	1126
2800	466	709	857	958	1053	1145
2850	473	721	871	973	1071	1164
2900	481	733	886	989	1088	1183
2950	489	744	900	1005	1105	1202
3000	496	756	914	1021	1123	1221
3050	504	768	928	1037	1140	1239
3100	512	779	942	1052	1158	1258
3150	520	791	956	1068	1175	1277
3200	527	803	970	1084	1192	1296
3250	535	814	985	1100	1210	1315
3300	543	826	999	1116	1227	1334
3350	550	838	1013	1131	1245	1353
3400	558	850	1027	1147	1262	1372
3450	566	861	1041	1163	1279	1391
3500	573	873	1055	1179	1297	1410
3550	581	885	1069	1194	1314	1428
3600	588	896	1083	1210	1331	1447
3650	596	907	1097	1225	1348	1465
3700	603	919	1111	1241	1365	1484
3750	611	930	1124	1255	1381	1501

3800	619	940	1135	1268	1395	1516
3850	626	950	1146	1281	1409	1531
3900	634	960	1158	1293	1423	1546
3950	641	970	1169	1306	1437	1562
4000	649	979	1181	1319	1451	1577
4050	656	989	1192	1331	1465	1592
4100	664	999	1203	1344	1479	1607
4150	671	1009	1215	1357	1493	1622
4200	679	1019	1226	1370	1507	1638
4250	686	1029	1238	1382	1521	1653
4300	694	1039	1249	1395	1535	1668
4350	701	1049	1260	1408	1549	1683
4400	708	1060	1274	1423	1565	1701
4450	715	1071	1287	1437	1581	1719
4500	722	1083	1300	1452	1597	1736
4550	729	1094	1313	1467	1613	1754
4600	735	1104	1325	1480	1628	1769
4650	741	1113	1336	1492	1642	1785
4700	747	1123	1348	1505	1656	1800
4750	752	1132	1359	1518	1670	1815
4800	758	1142	1370	1531	1684	1830
4850	764	1152	1382	1543	1698	1845
4900	770	1161	1393	1556	1712	1861
4950	776	1171	1404	1569	1726	1876
5000	782	1181	1416	1581	1740	1891
5050	787	1189	1426	1593	1752	1905
5100	792	1197	1435	1602	1763	1916
5150	797	1204	1443	1612	1773	1927
5200	802	1211	1452	1621	1784	1939
5250	807	1218	1460	1631	1794	1950
5300	811	1225	1468	1640	1804	1961
5350	816	1232	1477	1650	1815	1973
5400	821	1239	1485	1659	1825	1984
5450	826	1246	1494	1668	1835	1995
5500	830	1254	1502	1678	1846	2006
5550	835	1261	1511	1687	1856	2018

5600	840	1268	1519	1697	1866	2029
5650	845	1275	1527	1706	1877	2040
5700	850	1282	1536	1716	1887	2051
5750	854	1289	1544	1725	1897	2063
5800	857	1293	1549	1731	1904	2069
5850	860	1298	1554	1736	1909	2076
5900	863	1302	1559	1741	1915	2082
5950	866	1306	1564	1747	1921	2088
6000	869	1310	1568	1752	1927	2095
6050	872	1315	1573	1757	1933	2101
6100	875	1319	1578	1763	1939	2107
6150	878	1323	1583	1768	1945	2114
6200	881	1327	1587	1773	1951	2120
6250	884	1331	1592	1779	1956	2127
6300	887	1336	1597	1784	1962	2133
6350	890	1340	1602	1789	1968	2139
6400	893	1344	1607	1795	1974	2146
6450	895	1348	1611	1800	1980	2152
6500	898	1352	1615	1804	1984	2157
6550	901	1355	1617	1807	1987	2160
6600	904	1358	1620	1809	1990	2164
6650	906	1361	1622	1812	1993	2167
6700	909	1364	1625	1815	1997	2170
6750	911	1367	1627	1818	2000	2174
6800	914	1370	1630	1821	2003	2177
6850	917	1373	1632	1823	2006	2180
6900	919	1376	1635	1826	2009	2183
6950	922	1379	1637	1829	2012	2187
7000	925	1382	1640	1832	2015	2190
7050	927	1385	1642	1834	2018	2193
7100	930	1388	1645	1837	2021	2197
7150	933	1391	1647	1840	2024	2200
7200	935	1395	1650	1843	2027	2204
7250	939	1401	1658	1852	2038	2215
7300	943	1407	1667	1861	2048	2226
7350	946	1413	1675	1871	2058	2237

7400	950	1419	1683	1880	2068	2248
7450	954	1426	1691	1889	2078	2259
7500	957	1432	1699	1898	2088	2270
7550	961	1438	1708	1907	2098	2281
7600	965	1444	1716	1917	2108	2292
7650	969	1450	1724	1926	2118	2303
7700	972	1457	1732	1935	2129	2314
7750	976	1463	1741	1944	2139	2325
7800	980	1469	1749	1953	2149	2336
7850	983	1475	1757	1963	2159	2347
7900	987	1482	1765	1972	2169	2358
7950	990	1485	1770	1977	2174	2364
8000	992	1488	1772	1979	2177	2366
8050	994	1491	1774	1981	2180	2369
8100	997	1493	1776	1984	2182	2372
8150	999	1496	1778	1986	2185	2375
8200	1001	1498	1780	1988	2187	2378
8250	1003	1501	1782	1991	2190	2380
8300	1006	1503	1784	1993	2192	2383
8350	1008	1506	1786	1995	2195	2386
8400	1010	1509	1788	1998	2198	2389
8450	1012	1511	1791	2000	2200	2391
8500	1014	1514	1793	2002	2203	2394
8550	1017	1516	1795	2005	2205	2397
8600	1019	1519	1797	2007	2208	2400
8650	1021	1521	1799	2009	2210	2403
8700	1024	1525	1803	2014	2215	2408
8750	1027	1529	1807	2018	2220	2413
8800	1030	1533	1811	2023	2225	2419
8850	1033	1537	1815	2027	2230	2424
8900	1036	1541	1819	2032	2235	2430
8950	1039	1545	1823	2036	2240	2435
9000	1042	1549	1827	2041	2245	2440
9050	1045	1553	1831	2045	2250	2446
9100	1048	1557	1835	2050	2255	2451
9150	1051	1561	1839	2054	2260	2456

9200	1054	1565	1843	2059	2265	2462
9250	1057	1569	1847	2063	2270	2467
9300	1060	1573	1851	2068	2275	2473
9350	1063	1577	1855	2072	2280	2478
9400	1067	1581	1860	2077	2285	2484
9450	1071	1588	1867	2085	2294	2493
9500	1076	1594	1874	2093	2302	2503
9550	1080	1600	1881	2101	2311	2512
9600	1085	1607	1888	2109	2320	2521
9650	1089	1613	1895	2116	2328	2531
9700	1094	1619	1902	2124	2337	2540
9750	1098	1626	1909	2132	2345	2549
9800	1103	1632	1916	2140	2354	2559
9850	1107	1638	1923	2148	2363	2568
9900	1112	1645	1930	2156	2371	2577
9950	1116	1651	1937	2163	2380	2587
10000	1121	1657	1944	2171	2388	2596
10050	1125	1663	1951	2179	2397	2605
10100	1130	1670	1958	2187	2405	2615
10150	1134	1676	1965	2195	2414	2624
10200	1139	1682	1972	2202	2423	2633
10250	1143	1689	1979	2210	2431	2643
10300	1148	1695	1986	2218	2440	2652
10350	1152	1701	1993	2226	2448	2661
10400	1157	1708	2000	2234	2457	2671
10450	1161	1714	2007	2241	2466	2680
10500	1166	1720	2014	2249	2474	2689
10550	1169	1726	2021	2257	2483	2699
10600	1172	1731	2028	2265	2492	2708
10650	1176	1737	2035	2273	2500	2718
10700	1179	1742	2042	2281	2509	2727
10750	1182	1748	2049	2289	2517	2737
10800	1186	1753	2056	2296	2526	2746
10850	1189	1758	2063	2304	2535	2755
10900	1192	1764	2070	2312	2543	2765
10950	1195	1769	2077	2320	2552	2774

11000	1199	1775	2084	2328	2561	2784
11050	1202	1780	2091	2336	2569	2793
11100	1205	1785	2098	2344	2578	2802
11150	1209	1791	2105	2352	2587	2812
11200	1212	1796	2112	2359	2595	2821
11250	1215	1802	2119	2367	2604	2831
11300	1219	1807	2126	2375	2613	2840
11350	1222	1813	2133	2383	2621	2849
11400	1225	1818	2140	2391	2630	2859
11450	1228	1823	2148	2399	2639	2868
11500	1232	1829	2155	2407	2647	2878
11550	1235	1834	2162	2415	2656	2887
11600	1238	1840	2169	2422	2665	2896
11650	1241	1844	2174	2429	2672	2904
11700	1244	1848	2178	2433	2676	2909
11750	1246	1851	2182	2437	2681	2914
11800	1249	1855	2186	2442	2686	2920
11850	1251	1858	2190	2446	2691	2925
11900	1254	1862	2194	2450	2696	2930
11950	1257	1866	2198	2455	2700	2935
12000	1259	1869	2202	2459	2705	2941
12050	1262	1873	2206	2464	2710	2946
12100	1264	1876	2209	2468	2715	2951
12150	1267	1880	2213	2472	2720	2956
12200	1269	1883	2217	2477	2724	2961
12250	1272	1887	2222	2482	2730	2967
12300	1275	1891	2225	2486	2734	2972
12350	1278	1895	2230	2491	2740	2978
12400	1280	1899	2234	2495	2745	2984
12450	1283	1903	2238	2500	2750	2990
12500	1286	1907	2243	2505	2756	2995
12550	1289	1911	2247	2510	2761	3001
12600	1292	1914	2251	2515	2766	3007
12650	1295	1918	2256	2520	2771	3013
12700	1297	1922	2260	2524	2777	3018
12750	1301	1927	2265	2530	2783	3025

12800	1305	1932	2270	2535	2789	3032
12850	1308	1937	2275	2541	2795	3038
12900	1312	1942	2280	2547	2801	3045
12950	1316	1946	2285	2552	2807	3052
13000	1319	1951	2290	2558	2813	3058
13050	1323	1956	2295	2563	2819	3065
13100	1326	1961	2300	2569	2826	3071
13150	1330	1966	2305	2574	2832	3078
13200	1334	1971	2310	2580	2838	3085
13250	1337	1975	2315	2585	2844	3091
13300	1341	1980	2320	2591	2850	3098
13350	1345	1985	2325	2596	2856	3015
13400	1348	1990	2329	2602	2862	3111
13450	1352	1995	2334	2608	2868	3118
13500	1355	1999	2339	2613	2874	3125
13550	1359	2004	2344	2619	2881	3131
13600	1363	2009	2349	2624	2887	3138
13650	1366	2014	2354	2630	2893	3144
13700	1370	2019	2359	2635	2899	3151
13750	1374	2024	2364	2641	2905	3158
13800	1377	2028	2369	2646	2911	3164
13850	1381	2033	2374	2652	2917	3171
13900	1385	2038	2379	2658	2923	3178
13950	1388	2043	2384	2663	2929	3184
14000	1392	2048	2389	2669	2935	3191
14050	1395	2053	2394	2674	2942	3198
14100	1398	2056	2397	2678	2945	3202
14150	1400	2059	2400	2681	2949	3205
14200	1403	2061	2403	2684	2952	3209
14250	1405	2064	2405	2687	2956	3213
14300	1407	2067	2408	2690	2959	3216
14350	1409	2070	2411	2693	2962	3220
14400	1412	2073	2414	2696	2966	3224
14450	1414	2076	2417	2699	2969	3227
14500	1416	2079	2419	2702	2973	3231
14550	1419	2082	2422	2705	2976	3235

14600	1421	2085	2425	2709	2979	3239
14650	1423	2088	2428	2712	2983	3242
14700	1426	2091	2430	2715	2986	3246
14750	1428	2093	2256	2718	2990	3250
14800	1430	2096	2436	2721	2993	3253
14850	1433	2099	2439	2724	2996	3257
14900	1435	2102	2442	2727	3000	3261
14950	1437	2105	2444	2730	3003	3265
15000	1439	2108	2447	2733	3007	3268
15050	1442	2111	2450	2736	3010	3272
15100	1444	2114	2453	2740	3014	3276
15150	1446	2117	2455	2743	3017	3279
15200	1449	2120	2458	2746	3020	3283
15250	1451	2123	2461	2749	3024	3287
15300	1453	2125	2463	2752	3027	3290
15350	1455	2128	2466	2754	3030	3293
15400	1457	2130	2468	2757	3033	3297
15450	1460	2134	2472	2761	3038	3302
15500	1464	2139	2479	2769	3046	3311
15550	1467	2145	2485	2776	3054	3319
15600	1471	2151	2492	2784	3062	3328
15650	1475	2156	2499	2791	3070	3337
15700	1479	2162	2505	2798	3078	3346
15750	1482	2167	2512	2806	3086	3355
15800	1486	2173	2518	2813	3094	3363
15850	1490	2179	2525	2820	3102	3372
15900	1494	2184	2531	2828	3110	3381
15950	1497	2190	2538	2835	3118	3390
16000	1501	2195	2545	2842	3127	3399
16050	1505	2201	2551	2850	3135	3407
16100	1509	2207	2558	2857	3143	3416
16150	1513	2212	2564	2864	3151	3425
16150	1516	2218	2571	2872	3159	3434
16200	1520	2223	2577	2879	3167	3442
16250	1524	2229	2584	2886	3175	3451
16300	1528	2234	2591	2894	3183	3460

16350	1531	2240	2597	2901	3191	3469
16400	1535	2246	2604	2908	3199	3478
16450	1539	2190	2538	2835	3118	3390
16500	1539	2251	2610	2916	3207	3486
16550	1543	2257	2617	2923	3215	3495
16600	1546	2262	2624	2930	3224	3504
16650	1550	2268	2630	2938	3232	3513
16700	1554	2274	2637	2945	3240	3522
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16800	1561	2285	2650	2960	3256	3539
16850	1565	2290	2656	2967	3263	3547
16900	1569	2296	2663	2974	3271	3556
16950	1573	2301	2669	2981	3279	3565
17000	1576	2307	2675	2989	3287	3573
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17100	1584	2318	2688	3003	3303	3591
17150	1587	2323	2695	3010	3311	3599
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17300	1599	2340	2714	3032	3335	3625
17350	1602	2345	2721	3039	3343	3634
17400	1606	2351	2727	3046	3351	3643
17450	1610	2356	2734	3054	3359	3651
17500	1613	2362	2740	3061	3367	3660
17550	1617	2367	2747	3068	3375	3669
17600	1621	2373	2753	3075	3383	3677
17650	1625	2378	2760	3083	3391	3686
17700	1628	2384	2766	3090	3399	3695
17750	1632	2389	2773	3097	3407	3703
17800	1635	2393	2777	3102	3412	3709
17850	1638	2397	2781	3106	3417	3714
17900	1641	2401	2785	3111	3422	3719
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18000	1647	2409	2793	3120	3432	3730
18050	1650	2413	2797	3124	3436	3735
18100	1653	2417	2801	3129	3441	3741

18150	1656	2420	2805	3133	3446	3746
18200	1659	2424	2809	3138	3451	3752
18250	1662	2428	2813	3142	3456	3757
18300	1665	2432	2817	3146	3461	3762
18350	1668	2436	2821	3151	3466	3768
18400	1670	2440	2825	3155	3471	3773
18450	1673	2444	2829	3160	3476	3778
18500	1676	2448	2833	3164	3481	3784
18550	1679	2452	2837	3169	3486	3789
18600	1682	2456	2841	3173	3491	3794
18650	1685	2460	2845	3178	3496	3800
18700	1688	2464	2849	3182	3501	3805
18750	1691	2467	2853	3187	3505	3810
18800	1694	2471	2857	3191	3510	3816
18850	1697	2475	2861	3196	3515	3821
18900	1700	2479	2865	3200	3520	3827
18950	1703	2483	2869	3205	3525	3832
19000	1706	2487	2873	3209	3530	3837
19050	1709	2491	2877	3214	3535	3843
19100	1712	2495	2881	3218	3540	3848
19150	1715	2498	2885	3222	3545	3853
19200	1717	2502	2889	3227	3549	3858
19250	1720	2506	2892	3231	3554	3863
19300	1723	2510	2896	3235	3559	3868
19350	1726	2513	2900	3239	3563	3873
19400	1729	2517	2904	3244	3568	3878
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19600	1740	2532	2919	3261	3587	3899
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19750	1748	2543	2931	3273	3601	3914
19800	1751	2547	2934	3278	3605	3919
19850	1754	2550	2938	3282	3610	3924
19900	1757	2554	2942	3286	3615	3929

19950	1760	2558	2946	3290	3619	3934
20000	1762	2562	2950	3295	3624	3939
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20100	1768	2569	2957	3303	3633	3950
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20250	1776	2580	2969	3316	3648	3965
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20350	1782	2588	2976	3324	3657	3975
20400	1785	2591	2980	3329	3662	3980
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20750	1805	2617	3007	3358	3694	4016
20800	1807	2621	3011	3363	3699	4021
20850	1810	2625	3014	3367	3704	4026
20900	1813	2628	3018	3371	3708	4031
20950	1816	2632	3022	3375	3713	4036
21000	1818	2636	3027	3381	3719	4043
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21100	1823	2645	3039	3394	3733	4058
21150	1826	2649	3044	3400	3740	4066
21200	1828	2653	3050	3407	3747	4074
21250	1831	2657	3056	3413	3755	4081
21300	1833	2662	3061	3420	3762	4089
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21550	1846	2683	3090	3452	3797	4127
21600	1848	2687	3096	3458	3804	4135
21650	1850	2691	3101	3464	3811	4142
21700	1853	2696	3107	3471	3818	4150

21750	1855	2700	3113	3477	3825	4158
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21900	1863	2713	3130	3496	3846	4181
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22000	1868	2721	3142	3509	3860	4196
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22150	1875	2734	3159	3528	3881	4219
22200	1878	2738	3164	3535	3888	4226
22250	1880	2742	3170	3541	3895	4234
22300	1883	2747	3176	3547	3902	4242
22350	1885	2751	3182	3554	3909	4249
22400	1888	2755	3187	3560	3916	4257
22450	1890	2759	3193	3567	3923	4265
22500	1892	2764	3199	3573	3930	4272
22550	1895	2768	3204	3579	3937	4280
22600	1897	2772	3210	3586	3944	4288
22650	1900	2776	3216	3592	3951	4295
22700	1902	2781	3222	3599	3958	4303
22750	1905	2785	3227	3605	3965	4310
22800	1907	2789	3233	3611	3972	4318
22850	1910	2793	3239	3618	3979	4326
22900	1912	2798	3245	3624	3987	4333
22950	1915	2802	3250	3631	3994	4341
23000	1917	2806	3256	3637	4001	4349
23050	1920	2810	3262	3643	4008	4356
23100	1922	2814	3267	3650	4015	4364
23150	1925	2819	3273	3656	4022	4372
23200	1927	2823	3279	3662	4029	4379
23250	1930	2827	3285	3669	4036	4387
23300	1932	2831	3290	3675	4043	4394
23350	1934	2836	3296	3682	4050	4402
23400	1937	2840	3302	3688	4057	4410
23450	1939	2844	3307	3694	4064	4417
23500	1942	2848	3313	3701	4071	4425

23550	1944	2853	3319	3707	4078	4433
23600	1947	2857	3325	3714	4085	4440
23650	1949	2861	3330	3720	4092	4448
23700	1952	2865	3336	3726	4099	4456
23750	1954	2870	3342	3733	4106	4463
23800	1957	2874	3348	3739	4113	4471
23850	1959	2878	3353	3746	4120	4479
23900	1962	2882	3359	3752	4127	4486
23950	1964	2887	3365	3758	4134	4494
24000	1967	2891	3370	3765	4141	4501
24050	1969	2895	3376	3771	4148	4509
24100	1972	2899	3382	3778	4155	4517
24150	1974	2904	3388	3784	4162	4524
24200	1976	2908	3393	3790	4169	4532
24250	1979	2912	3399	3797	4176	4540
24300	1981	2916	3405	3803	4183	4547
24350	1984	2921	3410	3809	4190	4555
24400	1986	2925	3416	3816	4197	4563
24450	1989	2929	3422	3822	4204	4570
24500	1991	2933	3428	3829	4212	4578
24550	1994	2938	3433	3835	4219	4586
24600	1996	2942	3439	3841	4226	4593
24650	1999	2946	3445	3848	4233	4601
24700	2001	2950	3451	3854	4240	4608
24750	2004	2955	3456	3861	4247	4616
24800	2006	2959	3462	3867	4254	4624
24850	2009	2963	3468	3873	4261	4631
24900	2011	2967	3473	3880	4268	4639
24950	2013	2972	3479	3886	4275	4647
25000	2016	2976	3485	3893	4282	4654
25050	2018	2980	3491	3899	4289	4662
25100	2021	2984	3496	3905	4296	4670
25150	2023	2988	3502	3912	4303	4677
25200	2026	2993	3508	3918	4310	4685
25250	2028	2997	3513	3925	4317	4693
25300	2031	3001	3519	3931	4324	4700

25350	2033	3005	3525	3937	4331	4708
25400	2036	3010	3531	3944	4338	4715
25450	2038	3014	3536	3950	4345	4723
25500	2041	3018	3542	3956	4352	4731
25550	2043	3022	3548	3963	4359	4738
25600	2046	3027	3554	3969	4366	4746
25650	2048	3031	3559	3976	4373	4754
25700	2051	3035	3565	3982	4380	4761
25750	2053	3039	3571	3988	4387	4769
25800	2055	3044	3576	3995	4394	4777
25850	2058	3048	3582	4001	4401	4784
25900	2060	3052	3588	4007	4408	4792
25950	2063	3056	3592	4012	4413	4797
26000	2066	3059	3596	4017	4418	4803
26050	2068	3063	3600	4021	4423	4808
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26150	2073	3070	3608	4030	4434	4819
26200	2076	3074	3612	4035	4439	4825
26250	2078	3078	3617	4040	4444	4830
26300	2081	3081	3621	4044	4449	4836
26350	2083	3085	3625	4049	4454	4841
26400	2086	3089	3629	4054	4459	4847
26450	2089	3092	3633	4058	4464	4852
26500	2091	3096	3637	4063	4469	4858
26550	2094	3100	3641	4068	4474	4864
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26650	2099	3107	3650	4077	4484	4875
26700	2101	3111	3654	4081	4490	4880
26750	2104	3114	3658	4086	4495	4886
26800	2107	3118	3662	4091	4500	4891
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26950	2114	3129	3675	4105	4515	4908
27000	2117	3133	3679	4109	4520	4913
27050	2119	3136	3683	4114	4525	4919
27100	2122	3140	3687	4118	4530	4924

27150	2125	3144	3691	4123	4535	4930
27200	2127	3147	3695	4128	4541	4936
27250	2130	3151	3700	4132	4546	4941
27300	2132	3155	3704	4137	4551	4947
27350	2135	3158	3708	4142	4556	4952
27400	2137	3162	3712	4146	4561	4958
27450	2140	3166	3716	4151	4566	4963
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27600	2148	3177	3729	4165	4581	4980
27650	2150	3180	3733	4169	4586	4985
27700	2153	3184	3737	4174	4591	4991
27750	2155	3188	3741	4179	4597	4996
27800	2158	3191	3745	4183	4602	5002
27850	2160	3195	3749	4188	4607	5008
27900	2163	3199	3753	4193	4612	5013
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28000	2168	3206	3762	4202	4622	5024
28050	2171	3210	3766	4206	4627	5030
28100	2173	3213	3770	4211	4632	5035
28150	2176	3217	3774	4216	4637	5041
28200	2178	3221	3778	4220	4642	5046
28250	2181	3224	3782	4225	4647	5052
28300	2183	3228	3787	4230	4653	5057
28350	2186	3232	3791	4234	4658	5063
28400	2189	3235	3795	4239	4663	5068
28450	2191	3239	3799	4244	4668	5074
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28600	2199	3250	3811	4257	4683	5091
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28800	2209	3265	3828	4276	4704	5113
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28900	2214	3272	3836	4285	4714	5124

28950	2217	3276	3840	4290	4719	5129
29000	2219	3279	3845	4294	4724	5135
29050	2222	3283	3849	4299	4729	5140
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29150	2227	3290	3857	4308	4739	5151
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29250	2232	3298	3865	4318	4749	5163
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29550	2248	3320	3890	4345	4780	5196
29600	2250	3323	3894	4350	4785	5201
29650	2253	3327	3899	4355	4790	5207
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30000	2271	3353	3928	4387	4826	5246
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30150	2278	3364	3940	4401	4841	5262
30200	2281	3367	3944	4406	4846	5268
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30300	2286	3375	3952	4415	4856	5279
30350	2289	3378	3957	4419	4861	5284
30400	2291	3382	3961	4424	4867	5290
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30500	2296	3389	3969	4433	4877	5301
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30750	2309	3408	3990	4457	4902	5329
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30850	2314	3415	3998	4466	4912	5340
30900	2317	3419	4002	4470	4917	5345
30950	2319	3422	4006	4475	4923	5351
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31050	2324	3430	4015	4484	4933	5362
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31150	2330	3437	4023	4494	4943	5373
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31250	2335	3444	4031	4503	4953	5384
31300	2337	3448	4035	4507	4958	5390
31350	2340	3452	4039	4512	4963	5395
31400	2342	3455	4044	4517	4968	5401
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31700	2358	3477	4068	4544	4999	5434
31750	2360	3481	4073	4549	5004	5439
31800	2363	3485	4077	4554	5009	5445
31850	2365	3488	4081	4558	5014	5450
31900	2368	3492	4085	4563	5019	5456
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32000	2373	3499	4093	4572	5030	5467
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32150	2381	3510	4106	4586	5045	5484
32200	2383	3514	4110	4591	5050	5489
32250	2386	3518	4114	4595	5055	5495
32300	2389	3521	4118	4600	5060	5500
32350	2391	3525	4122	4605	5065	5506
32400	2394	3529	4127	4609	5070	5511
32450	2396	3532	4131	4614	5075	5517
32500	2399	3536	4135	4619	5080	5522

32550	2401	3540	4139	4623	5086	5528
32600	2404	3543	4143	4628	5091	5534
32650	2407	3547	4147	4632	5096	5539
32700	2409	3550	4151	4637	5101	5545
32750	2412	3554	4156	4642	5106	5550
32800	2414	3558	4160	4646	5111	5556
32850	2417	3561	4164	4651	5116	5561
32900	2419	3565	4168	4656	5121	5567
32950	2422	3569	4172	4660	5126	5572
33000	2424	3572	4176	4665	5131	5578
33050	2427	3576	4180	4670	5136	5583
33100	2430	3580	4185	4674	5142	5589
33150	2432	3583	4189	4679	5147	5594
33200	2435	3587	4193	4683	5152	5600
33250	2437	3591	4197	4688	5157	5606
33300	2440	3594	4201	4693	5162	5611
33350	2442	3598	4205	4697	5167	5617
33400	2445	3602	4209	4702	5172	5622
33450	2448	3605	4214	4707	5177	5628
33500	2450	3609	4218	4711	5182	5633
33550	2453	3613	4222	4716	5187	5639
33600	2455	3616	4226	4720	5193	5644
33650	2458	3620	4230	4725	5198	5650
33700	2460	3624	4234	4730	5203	5655
33750	2463	3627	4238	4734	5208	5661
33800	2465	3631	4243	4739	5213	5666
33850	2468	3635	4247	4744	5218	5672
33900	2471	3638	4251	4748	5223	5677
33950	2473	3642	4255	4753	5228	5683
34000	2476	3646	4259	4758	5233	5689
34050	2478	3649	4263	4762	5238	5694
34100	2481	3653	4267	4767	5243	5700
34150	2483	3657	4272	4771	5249	5705
34200	2486	3660	4276	4776	5254	5711
34250	2489	3664	4280	4781	5259	5716
34300	2491	3668	4284	4785	5264	5722

34350	2494	3671	4288	4790	5269	5727
34400	2496	3675	4292	4795	5274	5733
34450	2499	3679	4296	4799	5279	5738
34500	2501	3682	4301	4804	5284	5744
34550	2504	3686	4305	4808	5289	5749
34600	2506	3690	4309	4813	5294	5755
34650	2509	3693	4313	4818	5299	5761
34700	2512	3697	4317	4822	5305	5766
34750	2514	3701	4321	4827	5310	5772
34800	2517	3704	4326	4832	5315	5777
34850	2519	3708	4330	4836	5320	5783
34900	2522	3712	4334	4841	5325	5788
34950	2524	3715	4338	4845	5330	5794
35000	2527	3719	4342	4850	5335	5799

§48-13-303. Incomes above the table for determining basic child support obligations.

If combined adjusted gross income is above \$35,000 per month, which is the highest amount of income considered in the table of monthly basic child support obligations set forth in §48-13-301 of this code, the basic child support obligation shall not be less than it would be based on a combined adjusted gross income of \$35,000. The court may also compute the basic child support obligation for combined adjusted gross incomes above \$35,000 by the following:

(1) One child — $\$2,527 + 0.088 \times$ combined adjusted gross income above \$35,000 per month;

(2) Two children — $\$3,719 + 0.129 \times$ combined adjusted gross income above \$35,000 per month;

(3) Three children — $\$4,342 + 0.153 \times$ combined adjusted gross income above \$35,000 per month;

(4) Four children — $\$4,850 + 0.169 \times$ combined adjusted gross income above \$35,000 per month;

(5) Five children — $\$5,335 + 0.183 \times$ combined adjusted gross income above $\$35,000$ per month; and

(6) Six children — $\$5,799 + 0.196 \times$ combined adjusted gross income above $\$35,000$ per month.

PART IV. SUPPORT IN SOLE CUSTODY CASES.

§48-13-403. Worksheet for calculating basic child support obligation in basic shared parenting cases.

Child support for basic shared parenting cases shall be calculated using the following worksheet:

Worksheet A: BASIC SHARED PARENTING

IN THE FAMILY COURT OF _____ COUNTY, WEST VIRGINIA

CASE NO. _____

Mother: _____ SS No.: _____ Primary Custodial parent? [] Yes [] No

Father: _____ SS No.: _____ Primary Custodial parent? [] Yes [] No

Children	SSN	Date of Birth	Children	SSN	Date of Birth
PART I. CHILD SUPPORT ORDER			Mother	Father	Combined
1. MONTHLY GROSS INCOME (Exclusive of overtime compensation)			\$	\$	
a. Minus preexisting child support payment			-	-	
b. Minus maintenance paid			-	-	
c. Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48-1-228(b)(6)			+	+	
d. Additional dependents deduction			-	-	
2. MONTHLY ADJUSTED GROSS INCOME			\$	\$	\$

3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 divided by Combined Income)	%	%	100%
4. BASIC OBLIGATION (Use line 2 combined to find amount from schedule.)			\$
5. ADJUSTMENTS (Expenses paid directly by each parent)			
a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)	\$	\$	
b. Extraordinary Medical Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.	\$	\$	
c. Extraordinary Expenses (Agreed to by parents or by order of the court.)	\$	\$	
d. Minus Extraordinary Adjustments (Agreed to by parents or by order of court.)	-	-	
e. Total Adjustments (For each column, add 5a, 5b, and 5c. Subtract Line 5d. Add the parent's totals together for Combined amount.)	\$	\$	\$
6. TOTAL SUPPORT OBLIGATION (Add line 4 and line 5e Combined.)			\$
7. EACH PARENT'S SHARE OF THE TOTAL CHILD SUPPORT OBLIGATION (Line 3 x line 6 for each parent.)	\$	\$	
8. PAYOR PARENT ADJUSTMENT (Enter payor parent's line 5e.)	\$	\$	
9. RECOMMENDED CHILD SUPPORT ORDER (Subtract line 8 from line 7 for the payor parent only. Leave payee parent column blank.)	\$	\$	
PART II. ABILITY TO PAY CALCULATION (Complete if the payor parent's adjusted monthly gross income is below \$2,600.)			
10. Spendable Income (0.80 x line 2 for payor parent only.)			
11. Self Support Reserve	\$997	\$997	
12. Income Available for Support (Line 10 - line 11. If less than \$50, then \$50)			
13. Adjusted Child Support Order (Lessor of Line 9 and Line 12.)			
Comments, calculations, or rebuttals to schedule or adjustments if payor parent directly pays extraordinary expenses.			
PREPARED BY:			Date:

§48-13-404. Additional calculation to be made in basic shared parenting cases.

In cases where the payor parent's adjusted gross income is below \$2,600 per month, an additional calculation in Worksheet A, Part II, § 48-13-404 of this code, shall be made. This additional calculation sets the child support order at whichever is lower.

(1) Child support at the amount determined in Worksheet A, Part I, § 48-13-404 of this code; or

(2) The difference between 80 percent of the payor parent's adjusted gross income and \$997, or \$50, whichever is more.

PART V. SUPPORT IN EXTENDED SHARED PARENTING OR SPLIT PHYSICAL CUSTODY CASES.**§48-13-501. Extended shared parenting adjustment.**

Child support for cases with extended shared parenting is calculated using Worksheet B, §48-13-502 of this code. The following method is used only for extended shared parenting: That is, in cases where each parent has the child for more than 127 days per year (35 percent).

(1) The basic child support obligation is multiplied by 1.6 to arrive at a shared parenting basic child support obligation. The shared parenting basic child support obligation is apportioned to each parent according to his or her income. In turn, a child support obligation is computed for each parent by multiplying that parent's portion of the shared parenting child support obligation by the percentage of time the child spends with the other parent. The respective basic child support obligations are then offset, with the parent owing more basic child support paying the difference between the two amounts. The transfer for the basic obligation for the parent owing less basic child support shall be set at \$0.

(2) Adjustments for each parent's additional direct expenses on the child are made by apportioning the sum of the parent's direct expenditures on the child's share of any unreimbursed child health care expenses, work-related child care expenses, and any other

extraordinary expenses agreed to by the parents or ordered by the court less any extraordinary credits agreed to by the parents or ordered by the court to each parent according to his or her income share. In turn each parent’s net share of additional direct expenses is determined by subtracting the parent’s actual direct expenses on the child’s share of any unreimbursed child health care expenses, work-related child care expenses, and any other extraordinary expenses agreed to by the parents or by the court less any extraordinary credits agreed to by the parents or ordered by the court from their share. The parent with a positive net share of additional direct expenses owes the other parent the amount of his or her net share of additional direct expenses. The parent with zero or a negative net share of additional direct expenses owes \$0 for additional direct expenses.

(3) The final amount of the child support order is determined by summing what each parent owes for the basic support obligation and additional direct expenses as defined in subdivisions (1) and (2) of this section. The respective sums are then offset, with the parent owing more paying the other parent the difference between the two amounts.

§48-13-502. Extended shared parenting worksheet.

Child support for extended shared parenting cases shall be calculated using the following worksheet:

Worksheet B: extended shared parenting

IN THE FAMILY COURT OF _____ COUNTY, WEST VIRGINIA

CASE NO. _____

Mother: _____ SS No.: _____

Father: _____ SS No.: _____

Children	SSN	Date of Birth	Children	SSN	Date of Birth

PART I. BASIC OBLIGATION	Mother	Father	Combined
1. MONTHLY GROSS INCOME (Exclusive of overtime compensation)	\$	\$	
a. Minus preexisting child support payment	-	-	
b. Minus maintenance paid	-	-	
c. Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48-1-228(b)(6)	+	+	
d. Additional dependent deduction			
2. MONTHLY ADJUSTED GROSS INCOME	\$	\$	\$
3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 divided by Combined Income)	%	%	100%
4. BASIC OBLIGATION (Use line 2 Combined to find amount from Child Support Schedule.)			\$
PART II. SHARED PARENTING ADJUSTMENT			
5. Shared Parenting Basic Obligation (line 4 x 1.6)			\$
6. Each Parent's Share (Line 5 x each parent's line 3)	\$	\$	
7. Overnights with Each Parent (must total 365)			365
8. Percentage with Each Parent (Line 7 divided by 365)	%	%	100%
9. Amount Retained (Line 6 x line 8 for each parent)	\$	\$	
10. Each Parent's Obligation (Line 6 - line 9)	\$	\$	
11. AMOUNT TRANSFERRED FOR BASIC OBLIGATION (Subtract smaller amount on line 10 from larger amount on line 10. Parent with larger amount on line 10 owes the other parent the difference. Enter \$0 for other parent.)	\$	\$	

PART III. ADJUSTMENTS FOR ADDITIONAL EXPENSES (Expenses paid directly by each parent.)			
12a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)	\$	\$	
12b. Extraordinary Medical Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.	\$	\$	
12c. Extraordinary Additional Expenses (Agreed to by parents or by order of the court.)	\$	\$	
12d. Minus Extraordinary Adjustments (Agreed to by parents or by order of the court.)	\$	\$	
12e. Total Adjustments (For each column, add 11a, 11b, and 11c. Subtract line 11d. Add the parent's totals together for Combined amount.)	\$	\$	\$
13. Each Parent's Share of Additional Expenses (Line 3 x line 12e Combined.)	\$	\$	
14. Each Parent's Net Share of Additional Direct Expenses (Each parent's line 13-line 12e. If negative number, enter \$0)	\$	\$	
15. AMOUNT TRANSFERRED FOR ADDITIONAL EXPENSES (Subtract smaller amount on line 14 from larger amount on line 14. Parent with larger amount on line 14 owes the other parent the difference. Enter \$0 for other parent.)	\$	\$	
PART IV. RECOMMENDED CHILD SUPPORT ORDER			
16. TOTAL AMOUNT TRANSFERRED (Line 11 + line 15)	\$	\$	
17. RECOMMENDED CHILD SUPPORT ORDER (Subtract smaller amount on line 16 from larger amount on line 16. Parent with larger amount on line 16 owes the other parent the difference.)	\$	\$	
Comments, calculations, or rebuttals to schedule or adjustments			
PREPARED BY:			Date:

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CHAPTER 113

(Com. Sub. for H. B. 2509 - By Delegate Steele)

[Passed March 9, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §48-1A-101, §48-1A-201, §48-1A-301, §48-1A-401, §48-1A-501, §48-1A-601, §48-1A-701, §48-1A-801, §48-1A-901 §48-1A-1001, and §48-1A-1101 all relating to the Uniform Premarital Agreement Act; defining terms; providing requirements and content of agreement; providing for the effect of marriage; describing amendment, revocation and enforcement of such agreements; describing unenforceable terms; providing for tolling of statute of limitations; providing application and construction of article; providing effective date; and setting forth short title.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. UNIFORM PREMARITAL AGREEMENT ACT.

§48-1A-101. Definitions.

As used in this article:

(a) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage and includes the definition of the term prenuptial agreement as set forth in §48-1-203 of this code.

(b) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property including income and earnings.

§48-1A-201. Formalities.

A premarital agreement must be in writing and signed by both parties and contain an acknowledgement that both parties have had an opportunity to consult with separate legal counsel. It is enforceable without consideration.

§48-1A-301. Content.

(a) Parties to a premarital agreement may contract with respect to:

(1) The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;

(2) The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of or otherwise manage and control property;

(3) The disposition of property upon separation, marital dissolution, death or the occurrence or nonoccurrence of any other event;

(4) The modification or elimination of spousal support;

(5) The making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(6) The ownership rights in and disposition of the death benefit from a life insurance policy;

(7) The choice of law governing the construction of the agreement; and

(8) Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(b) The right of a child to support may not be adversely affected by premarital agreement.

§48-1A-401. Effect of marriage.

A premarital agreement becomes effective upon marriage.

§48-1A-501. Amendment; revocation.

After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement, or the revocation, is enforceable without consideration.

§48-1A-601. Enforcement.

(a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(1) That party did not execute the agreement voluntarily;

(2) Either party was under the age of 18 when the marriage occurred; or

(3) The agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(A) Was not provided adequate financial disclosures of the other party as set forth in subsection (b) of this section;

(B) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(C) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) A party has adequate financial disclosure under this section if the party:

(1) Receives a reasonably accurate description and good-faith estimate of value of the property, liabilities, and income of the other party;

(2) Expressly waives, in a separate signed record, the right to financial disclosure beyond the disclosure provided; or

(3) Has adequate knowledge, or a reasonable basis for having adequate knowledge, of the information described in subdivision (1) of this section.

(c) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, the family court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(d) A court may refuse to enforce a term of a premarital agreement if, in the context of the agreement taken as a whole:

(1) The term was unconscionable at the time of signing; or

(2) Enforcement of the term would result in substantial hardship for a party because of a material change in circumstances arising after the agreement was signed.

(e) The issues of unconscionability of a premarital agreement or substantial hardship shall be decided by the family court as a matter of law.

§48-1A-701. Unenforceable terms.

(a) A term in a premarital agreement or marital agreement is not enforceable to the extent that it:

(1) Adversely affects a child's right to support;

(2) Limits or restricts a remedy available to a victim of domestic violence under law of this state;

(3) Purports to modify the grounds for a court-decreed separation or marital dissolution available under the law of this state; or

(4) Penalizes a party for initiating a legal proceeding leading to a court-decreed separation or marital dissolution.

(b) A term in a premarital agreement or marital agreement which defines the rights or duties of the parties regarding custodial responsibility is not binding on the court.

§48-1A-801. Enforcement; void marriage.

If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

§48-1A-901. Limitation of actions.

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

§48-1A-1001. Application; construction; and effective date.

(a) This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

(b) This article applies to premarital agreements signed on or after July 1, 2023.

§48-1A-1101. Short title.

This article may be cited as the "Uniform Premarital Agreement Act."

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CHAPTER 114

**(Com. Sub. for H. B. 3018 - By Delegates Young, Garcia,
Crouse, Chiarelli, Hornby, Fast, Worrell, Holstein and
Hansen)**

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to repeal §48-2-103 of the Code of West Virginia, 1931, as amended; and to amend and reenact §48-2-106 and §48-2-301 of the same, all related to the age of consent for marriage; setting the age of consent to marriage at 18; providing an exception allowing individuals younger than 18 but who have reached the age of 16 to marry with both their consent and the written, affirmative consent of their parents or legal guardian; establishing the manner by which a parent or guardian provides affirmative consent; further providing that an individual under the age of 18 cannot consent to a marriage with a person who is more than four years older than that individual; providing that a marriage involving an individual under the age of 18 can be annulled by petition of that individual until he or she reaches age 18; and clarifying that a marriage that was entered into legally prior to the re-enactment of this section, or in another jurisdiction outside of the State of West Virginia, although one or both of the parties was under the age of consent, is not nullified or voided.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. MARRIAGES.

§48-2-103. Waiting period before issuance of marriage license; issuance of license in case of emergency or extraordinary circumstances.

[Repealed.]

§48-2-106. Proof of age.

At the time of the execution of the application, the clerk or other person administering the oath to the applicants shall require evidence of the age of each of the applicants and shall not issue a license until it has been confirmed that each applicant satisfies the age requirements for marriage set forth by §48-2-301 of this code. Evidence of age may be as follows:

- (1) A certified copy of a birth certificate or a duplicate certificate produced by any means that accurately reproduces the original;
- (2) A voter's registration certificate;
- (3) An operator's or chauffeur's license;
- (4) The affidavit of both parents or the legal guardian of the applicant; or
- (5) Other good and sufficient evidence.

PART 3. CAPACITY TO MARRY.**§48-2-301. Age of consent for marriage; exception.**

(a) The age of consent for marriage for all persons, both male and female, is 18 years of age. A person under the age of 18 lacks the capacity to marry without the consents required by this section.

(b) The clerk of the county commission may issue a marriage license to an applicant who is under the age of 18 but at least 16 years of age if the clerk obtains valid written consent from the applicant and from the applicant's parent or parents or the applicant's legal guardian or guardians as outlined in this section: *Provided*, That a marriage license may not be issued to an applicant who is under the age of 18 but who is at least 16 years of age if the person whom the applicant seeks to marry is more than four years older than the applicant.

(c) An applicant who is under the age of 18 but who is at least 16 years of age must give his or her signed and acknowledged

affirmation that he or she is freely and voluntarily choosing to enter into a marriage with the person named in the application as part of the written consent required by this section. The applicant must also provide, as part of the same written consent, a signed and acknowledged affirmation that his or her decision to enter into the marriage is not the product of duress or coercion by any person.

(d) A consent to marry must be duly acknowledged before an officer authorized to acknowledge a deed. If the parents of the applicant are living together at the time the application for a marriage license is made and the consent is given, the signatures of both parents or the signature of the applicant's legal guardian or guardians is required. If one parent is dead, the signature of the surviving parent or the applicant's legal guardian or guardians is required. If both parents are dead, the signature of the applicant's legal guardian or guardians is required. If the parents of the applicant are living separate and apart, the signature of the parent or parents having decision-making authority for the applicant, or the applicant's legal guardian or guardians is required: *Provided*, That, if the applicant's parents are separate and apart or divorced but have substantially equal parenting rights over the applicant, the signature of both parents is required.

(e) A person who is under the age of 18 but at least 16 years of age and who is married in accordance with the provisions of this section may petition, without the consent of his or her parents or legal guardian or guardians, for an annulment of that marriage until he or she reaches 18 years of age.

(f) Nothing in this section may serve to annul or void a marriage entered into prior to the re-enactment of this statute during the 2023 Regular Session of the Legislature, nor shall it serve to annul or void an otherwise legal marriage entered into in a jurisdiction outside of the State of West Virginia.



CHAPTER 115

(Com. Sub. for S. B. 188 - By Senators Trump, Woelfel, Queen, Plymale, Hamilton, and Nelson)

[Passed March 6, 2023; in effect 90 days from passage (June 4, 2023)]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-2N-1, §5B-2N-2, §5B-2N-3, and §5B-2N-4; to amend said code by adding thereto a new section, designated §22-5-11b; and to amend and reenact §22B-1-7 of said code, all relating to the Grid Stabilization and Security Act of 2023; providing for a short title; making legislative findings and declarations; identifying economically viable sites for natural gas electric generation projects; establishing criteria for identifying economically viable sites; requiring Secretary of Department of Economic Development to notify the Department of Environmental Protection and the Public Service Commission of sites designated as economically viable for natural gas electric generation facility; providing for application for a siting certificate to Public Service Commission and final order on application within a certain time period; clarifying that Public Service Commission jurisdiction is not modified; requiring collection of additional data for modeling if necessary; requiring construction and operating permits for natural gas electric generation facilities; providing for expedited consideration of permit application; and requiring administrative review board to hold hearing and issue decision on natural gas electric generation facility permit appeal within a certain period of time.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF
1985.**

**ARTICLE 2N. GRID STABILIZATION AND SECURITY
ACT OF 2023.**

§5B-2N-1. Short title.

This article shall be known and cited as the Grid Stabilization and Security Act.

§5B-2N-2. Legislative findings; declaration of public policy.

(a) The Legislature finds that:

(1) The advent and advancement of new and existing technologies and drilling practices have created the opportunity for efficient development of natural gas in West Virginia, including opportunities for the production of electricity;

(2) Production of electricity utilizing natural gas produced in West Virginia is highly underdeveloped in comparison to nearby states with which West Virginia competes for economically beneficial projects. Natural gas electric generation projects have been undermined by existing regulatory requirements and related time delays;

(3) In developing regulatory actions and identifying appropriate approaches to encourage development of natural gas electric generation projects, agencies should attempt to promote coordination, simplification, and harmonization. Agencies should also seek to identify appropriate means to achieve regulatory goals that are designed to promote innovation and enhance West Virginia's competitiveness with surrounding states;

(4) Agencies should review their existing legislative and procedural rules to determine whether any such rules should be modified, streamlined, expanded, or repealed to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives related to natural gas electric generation projects. Agencies should also evaluate the data that they have to

determine what information might be useful to prompt permitting and approving natural gas generated electricity; and

(5) The West Virginia Department of Economic Development, established in §5B-2-1 *et seq.* of this code, is responsible for implementing this Grid Stabilization and Security Act and providing as much assistance as possible to grow and sustain the natural gas electric generation segment of the economy.

(b) The Legislature declares that facilitating the development of business activity directly and indirectly related to natural gas electric generation development, transportation, storage, and use serves the public interest of the citizens of this state by promoting economic development, improving economic opportunities for the citizens of this state, and providing additional opportunities to stabilize the price of electricity while increasing its reliability and availability.

§5B-2N-3. Identification of suitable sites for natural gas electric generation projects.

(a) The Secretary of the Department of Economic Development is authorized and directed to identify economically viable sites within the state that are:

(1) Located near a convenient and sufficient supply of natural gas; and

(2) Likely to create economically viable natural gas electric generation projects that provide economic benefits to the local and state governmental units and the citizens of the state.

(b) The Secretary of the Department of Economic Development shall use the following criteria in identifying economically viable sites for natural gas electric generation projects:

(1) Geographic locations near producing natural gas wells, or pipelines carrying natural gas produced in the state, capable of supplying and sustaining one or more natural gas electric generation facilities for the economic life of the facilities;

(2) Geographic locations near existing electric transmission infrastructure capable of transmitting the generated electricity to wholesale markets.

(3) Geographic locations that fulfill the air quality conditions imposed by the Division of Air Quality of the West Virginia Department of Environmental Protection for one or more natural gas electric generation facilities; and

(4) Geographic locations that can demonstrate that allowable emission increases from one or more natural gas electric generation facilities, in conjunction with all other applicable emission increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

(A) Any national or West Virginia ambient air quality standard in any air quality control region; or

(B) Any applicable maximum allowable increase over the baseline concentration in any area.

§5B-2N-4. Designation of sites suitable for natural gas electric generation projects.

(a) Following identification of economically viable sites that may be suitable for natural gas electric generation projects, the Secretary of the Department of Economic Development shall identify and designate each site it has determined to be suitable for natural gas electric generation projects as a "designated site", and shall communicate the designated sites to the West Virginia Department of Environmental Protection's Division of Air Quality and the West Virginia Public Service Commission as sites suitable for the construction and operation of natural gas electric generation projects.

(b) Any application for a siting certificate pursuant to §24-2-11c of the West Virginia Code filed with the Public Service Commission to construct or to construct and operate a natural gas electric generation project at a designated site shall be adjudicated, inclusive of public hearings, and a final order issued by the Public Service Commission, within 270 calendar days after the date of the

filing of the application, notwithstanding the requirements of any other provision of this code.

(c) Nothing in this section is intended to preclude, modify, or establish new Public Service Commission jurisdiction over:

(1) Any exercise of powers, duties, and obligations pursuant to the West Virginia Public Energy Authority Act;

(2) The right of end-user consumers of electricity to develop, invest in, or otherwise contract for on-site electric self-generation or cogeneration facilities, including those utilizing natural gas as a fuel source;

(3) This section does not alter, modify, or cancel any existing cogeneration tariffs authorized by the Public Service Commission; and

(4) This section does not authorize the sale of electricity to end-users in the state.

(d) Where a designated site has been identified, in accordance with §22-5-11b(b) of this code, as a location where additional data would be helpful for modeling or other evaluation of the potential emission of a natural gas electric generation project, the Department of Economic Development shall construct such facilities as are necessary to acquire such data.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-11b. Construction and operating permits required for natural gas electric generation facilities as stationary sources of air pollutants.

(a) This section applies to natural gas electric generation facilities as identified and communicated to the secretary by the Secretary of the Department of Economic Development as sites that may be suitable for one or more natural gas electric generation facilities in accordance with §5B-2N-1 *et seq.* of this code, or as

identified by an applicant for a construction and operating permit for one or more natural gas electric generation facilities.

(b) The secretary shall take all reasonable steps to expedite consideration of permit applications utilizing sites designated by the Secretary of the Department of Economic Development as a site suitable for use as a natural gas electric generation facility and communicated to the secretary in accordance with §5B-2N-1 *et seq.* of this code. Such steps shall include:

(1) An initial determination of whether the identified site is in compliance with national ambient air quality standards and the West Virginia State Implementation Plan; and

(2) Evaluation of whether there is sufficient data, meteorological and otherwise, that would allow acceptable modeling of the impacts of emissions from a natural gas electric generation facility, and if not, inform the Department of Economic Development where to initiate construction of sampling and measuring devices to acquire such data at the site.

(c) Unless otherwise specifically provided in this article, the secretary shall act on a permit for a natural gas electric generation facility which is determined to be a major stationary source within a reasonable time, not to exceed 270 calendar days, and for a minor stationary source, 90 days, after the secretary determines that the application is complete. The secretary must determine whether an application is complete within 30 days from the date the permit application is filed with the secretary and communicated to the permit applicant.

CHAPTER 22B. ENVIRONMENTAL BOARDS.

ARTICLE 1. GENERAL POLICY AND PURPOSE.

***§22B-1-7. Appeals to boards.**

(a) The provisions of this section are applicable to all appeals to the boards, with the modifications or exceptions set forth in this section.

*NOTE: This section was also amended by H. B. 3482 (Chapter 123), which passed subsequent to this act.

(b) Any person authorized by statute to seek review of an order, permit, or official action of the chief of air quality, the chief of water resources, the chief of waste management, the chief of mining and reclamation, the chief of oil and gas, or the secretary may appeal to the air quality board, the environmental quality board, or the surface mine board, as appropriate, in accordance with this section. The person so appealing shall be known as the appellant and the appropriate chief or the secretary shall be known as the appellee.

(c) An appeal filed with a board by a person subject to an order, permit, or official action shall be perfected by filing a notice of appeal with the board within 30 days after the date such order, permit, or official action was received by such person as demonstrated by the date of receipt of registered or certified mail or of personal service. For parties entitled to appeal other than the person subject to such order, permit, or official action, an appeal shall be perfected by filing a notice of appeal with the board within 30 days after the date upon which service was complete. For purposes of this subsection, service is complete upon tendering a copy to the designated agent or to the individual who, based upon reasonable inquiry, appears to oversee the facility or activity involved, or to the permittee; or by tendering a copy by registered or certified mail, return receipt requested to the last known address of the person on record with the agency. Service is not incomplete by refusal to accept. Notice of appeal must be filed in a form prescribed by the rule of the board for such purpose. Persons entitled to appeal may also file a notice of appeal related to the failure or refusal of the appropriate chief or the secretary to act within a specified time on an application for a permit; such notice of appeal shall be filed within a reasonable time.

(d) The filing of the notice of appeal does not stay or suspend the effectiveness or execution of the order, permit or official action appealed from, except that the filing of a notice of appeal regarding a notice of intent to suspend, modify, or revoke and reissue a permit, issued pursuant to the provisions of §22-5-5 of this code, does stay the notice of intent from the date of issuance pending a final decision of the board. If it appears to the appropriate chief, the

secretary, or the board that an unjust hardship to the appellant will result from the execution or implementation of a chief's or secretary's order, permit, or official action pending determination of the appeal, the appropriate chief, the secretary, or the board, as the case may be, may grant a stay or suspension of the order, permit or official action and fix its terms: *Provided*, That unjust hardship shall not be grounds for granting a stay or suspension of an order, permit or official action for an order issued pursuant to §22-3-1 *et seq.* of this code. A decision shall be made on any request for a stay within five days of the date of receipt of the request for stay. The notice of appeal shall set forth the terms and conditions of the order, permit, or official action complained of and the grounds upon which the appeal is based. A copy of the notice of appeal shall be filed by the board with the appropriate chief or secretary within seven days after the notice of appeal is filed with the board.

(e) Within 14 days after receipt of a copy of the notice of appeal, the appropriate chief or the secretary shall prepare and certify to the board a complete record of the proceedings out of which the appeal arises including all documents and correspondence in the applicable files relating to the matter in question. With the consent of the board and upon such terms and conditions as the board may prescribe, any person affected by the matter pending before the board may, by petition, intervene as a party appellant or appellee. In any appeal brought by a third party, the permittee or regulated entity shall be granted intervenor status as a matter of right where issuance of a permit or permit status is the subject of the appeal. The board shall hear the appeal *de novo*, and evidence may be offered on behalf of the appellant, appellee, and by any intervenors. The board may visit the site of the activity or proposed activity which is the subject of the hearing and take such additional evidence as it considers necessary: *Provided*, That all parties and intervenors are given notice of the visit and are given an opportunity to accompany the board. The appeal hearing shall be held at such location as may be approved by the board including Kanawha County, the county wherein the source, activity, or facility involved is located or such other location as may be agreed to among the parties.

(f) Any such hearing shall be held within 30 days after the date upon which the board received the timely notice of appeal, unless there is a postponement or continuance. The board may postpone or continue any hearing upon its own motion, or upon application of the appellant, the appellee, or any intervenors for good cause shown: *Provided*, That an appeal from an appeal of any permit pursuant to §22-5-14 of this code shall be heard by the Air Quality Board within 60 days of the filing of the notice of appeal, unless all parties to the appeal consent to a postponement or continuance, and issue its decision on the appeal as promptly as reasonably possible following the hearing, but in no event later than two months after the completion of the hearing. The chief or the secretary, as appropriate, may be represented by counsel. If so represented, they shall be represented by the Attorney General or with the prior written approval of the Attorney General may employ counsel who shall be a special assistant Attorney General. At any such hearing the appellant and any intervenor may represent themselves or be represented by an attorney-at-law admitted to practice before the Supreme Court of Appeals.

(g) After such hearing and consideration of all the testimony, evidence, and record in the case:

(1) The environmental quality board or the air quality board shall make and enter a written order affirming, modifying, or vacating the order, permit, or official action of the chief or secretary, or shall make and enter such order as the chief or secretary should have entered, or shall make and enter an order approving or modifying the terms and conditions of any permit issued; and

(2) The Surface Mine Board shall make and enter a written order affirming the decision appealed if the board finds that the decision was lawful and reasonable, or if the board finds that the decision was not supported by substantial evidence in the record considered as a whole, it shall make and enter a written order reversing or modifying the decision of the secretary.

(h) In appeals of an order, permit or official action taken pursuant to §22-6-1 *et seq.*, §22-11-1 *et seq.*, §22-12-1 *et seq.*, §22-

13-1 *et seq.*, or §22-15-1 *et seq.* of this code, the environmental quality board established in §22B-3-1 *et seq.* of this code shall take into consideration, in determining its course of action in accordance with subsection (g) of this section, not only the factors which the appropriate chief or the secretary was authorized to consider in issuing an order, in granting or denying a permit, in fixing the terms and conditions of any permit, or in taking other official action, but also the economic feasibility of treating, controlling, or both, the discharge of solid waste, sewage, industrial wastes, or other wastes involved.

(i) An order of a board shall be accompanied by findings of fact and conclusions of law as specified in §29A-5-3 of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, and any intervenors, and their attorneys of record, if any, and upon the appellee in person or by registered or certified mail.

(j) The board shall also cause a notice to be served with the copy of such order, which notice shall advise the appellant, the appellee, and any intervenors of their right to judicial review, in accordance with the provisions of this chapter. The order of the board shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of this chapter.

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CHAPTER 116

(S. B. 207 - By Senators Jeffries and Plymale)

[Passed February 1, 2023; in effect 90 days from passage (May 2, 2023)]
[Approved by the Governor on February 9, 2023.]

AN ACT to amend and reenact §5B-2-4a of the Code of West Virginia, 1931, as amended, relating to the state allocation of funding to regional councils; and eliminating the maximum state allocation allowed to each eligible regional council.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. DEPARTMENT OF ECONOMIC DEVELOPMENT.

§5B-2-4a. State allocation to regional councils.

The Department of Economic Development may enter into contractual agreements with the regional councils formed under §8-25-5 of this code to provide funding to the regional councils to be used to obtain federal matching grants and for other purposes determined to be appropriate by the department: *Provided*, That the amount of any allocation shall be determined by dividing the number of eligible regional councils into the total amount of funds made available for allocation by the Legislature. The Department of Economic Development shall develop criteria to determine a regional council's eligibility for the state allocation.

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CHAPTER 117

**(S. B. 231 - By Senators Swope, Hamilton, Jeffries, Martin,
Nelson, Roberts, Rucker, Tarr, Trump, Woelfel, Phillips,
Clements, Plymale, and Hunt)**

[Passed January 27, 2023; in effect from passage]
[Approved by the Governor on February 6, 2023.]

AN ACT to amend and reenact §5B-8-1 of the Code of West Virginia, 1931, as amended, relating to transferring the administration of the West Virginia Small Business Innovation Research (SBIR) and Small Business Technology Transfer (SBTT) Matching Funds Program from the Department of Commerce to the Department of Economic Development, including, but not limited to, the authority to propose legislative rules for promulgation.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 8. SMALL BUSINESS INNOVATION
RESEARCH AND SMALL BUSINESS TECHNOLOGY
TRANSFER MATCHING FUNDS PROGRAM.**

***§5B-8-1. Definitions.**

When used in this article:

"Department" means the West Virginia Department of Economic Development.

"SBIR" means the Small Business Innovation Research Program enacted under the Small Business Innovation Development Act of 1982, Pub. L. 97-219, 15 U.S.C. § 638.

***NOTE:** This section was also amended by S. B. 735 (Chapter 120), which passed subsequent to this act.

"STTR" means the Small Business Technology Transfer Program enacted under the Small Business Technology Transfer Act of 1992, Pub. L. 102-564, 15 U.S.C § 638.

"Small business" means a corporation, partnership, limited liability company, statutory or common law business trust, sole proprietorship, or individual, operating a business for profit, which qualifies as a small business and otherwise meets the requirements of the SBIR or STTR programs.

"West Virginia-based business" means a business that has its principal place of business in this state.

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CHAPTER 118

(S. B. 481 - By Senators Roberts, Caputo, Jeffries, Nelson, Smith, Stover, Woodrum, Phillips, and Deeds)

[Passed March 2, 2023; in effect 90 days from passage (May 31, 2023)]
[Approved by the Governor on March 11, 2023.]

AN ACT to amend and reenact §5B-2-15 of the Code of West Virginia, 1931, as amended, relating to extending the sunset provision of the Upper Kanawha Valley Resiliency and Revitalization Program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. DEPARTMENT OF ECONOMIC DEVELOPMENT.

***§5B-2-15. Upper Kanawha Valley Resiliency and Revitalization Program.**

(a) *Definitions.* —

(1) *General.* — Terms defined in this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition in this section.

(2) *Terms Defined.* —

"Contributing partners" means those entities or their representatives described in subsection (f) of this section.

"Prioritize" means, with regard to resources, planning, and technical assistance, that the members of the revitalization council are required to waive their discretionary program guidelines to

***NOTE:** This section was also amended by S. B. 735 (Chapter 120), which passed subsequent to this act.

allow funding requests that may fall outside of the program's guidelines but address the Upper Kanawha Valley communities' goals for revitalization: *Provided*, That properly filed funding applications by Upper Kanawha Valley communities shall be given preferential treatment.

"Program" means the Upper Kanawha Valley Resiliency and Revitalization Program established in this section.

"Revitalization council" means those entities or their representatives described in subsection (d) of this section.

"Technical assistance" means resources provided by the state, revitalization council, contributing partners, or any other individuals or entities providing programming, funding, or other support to benefit the Upper Kanawha Valley under the program.

"Upper Kanawha Valley" means an area historically known as the Upper Kanawha Valley including municipalities and surrounding areas from the Charleston city limits to Gauley Bridge or other communities in the vicinity of the West Virginia University Institute of Technology.

"Upper Kanawha Valley Resiliency and Revitalization Program" means the entire process undertaken to further the goals of this section, including collaboration development and implementation between the members, contributors, and technical assistance resource providers.

(b) *Legislative purpose, findings, and intent.* —

(1) The decision to relocate the historic campus of the West Virginia University Institute of Technology from Montgomery, West Virginia, to Beckley, West Virginia, will have a dramatic economic impact on the Upper Kanawha Valley.

(2) The purpose of this section is to establish the Upper Kanawha Valley Resiliency and Revitalization Program. To further this purpose, this program creates a collaboration among state government, higher education, and private and nonprofit sectors to streamline technical assistance capacity, existing

services, and other resources to facilitate community revitalization in the Upper Kanawha Valley.

(3) It is the intent of the Legislature to identify existing state resources that can be prioritized to support the Upper Kanawha Valley, generate thoughtful and responsible ideas to mitigate the negative effects of the departure of the West Virginia Institute of Technology from the Upper Kanawha Valley, and help chart a new course and prosperous future for the Upper Kanawha Valley.

(c) Upper Kanawha Valley Resiliency and Revitalization Program established; duration of program. —

(1) The Development Office shall establish the Upper Kanawha Valley Resiliency and Revitalization Program in accordance with the provisions of this section. The program shall inventory existing assets and resources, prioritize planning and technical assistance, and determine such other assistance as might be available to revitalize communities in the Upper Kanawha Valley.

(2) The program shall remain active until it concludes its work on June 30, 2029, and delivers a final report to the Joint Committee on Government and Finance no later than October 1, 2024.

(d) Revitalization council created. — There is hereby created a revitalization council to fulfill the purposes of this section. The revitalization council shall be coordinated by the Development Office in the Department of Commerce and be subject to oversight by the secretary of the department. The following entities shall serve as members of the revitalization council:

(1) The Secretary of the Department of Economic Development or their designee, who shall serve as chairperson of the council;

(2) The Secretary of the Department of Health and Human Resources or their designee;

(3) The Commissioner of the Department of Agriculture or their designee;

(4) The Executive Director of the West Virginia Housing Development Fund or their designee;

(5) A representative from the Kanawha County Commission;

(6) A representative from the Fayette County Commission;

(7) The mayor, or their designee, from the municipalities of Montgomery, Smithers, Pratt, and Gauley Bridge;

(8) A representative from Bridge Valley Community and Technical College; and

(9) A representative from West Virginia University.

(e) *Duties of the revitalization council.* —

(1) The council shall identify existing state resources that can be prioritized to support economic development efforts in the Upper Kanawha Valley.

(2) The council shall direct existing resources in a unified effort and in conjunction with contributing partners, as applicable, to support the Upper Kanawha Valley.

(3) The council shall develop a rapid response strategy to attract or develop new enterprises and job-creating opportunities in the Upper Kanawha Valley.

(4) The council shall conduct or commission a comprehensive assessment of assets available at the campus of the West Virginia Institute of Technology and determine how those assets will be preserved and repurposed.

(5) The council shall assist communities in the Upper Kanawha Valley by developing an economic plan to diversify and advance the community.

(6) Members of the council shall support both the planning and implementation for the program and shall give priority wherever possible to programmatic activity and discretionary,

noncompetitive funding during the period the program remains in effect.

(7) Members of the council shall work together to leverage funding or other agency resources to benefit efforts to revitalize the Upper Kanawha Valley.

(f) *Contributing partners.* — To the extent possible, the revitalization council shall incorporate the resources and expertise of additional providers of technical assistance to support the program, which shall include but not be limited to:

- (1) The West Virginia Small Business Development Center;
- (2) The Center for Rural Health Development;
- (3) The West Virginia University Brickstreet Center for Entrepreneurship;
- (4) The West Virginia University Land Use and Sustainability Law Clinic;
- (5) The West Virginia University Center for Big Ideas;
- (6) The New River Gorge Regional Development Authority;
- (7) The Appalachian Transportation Institute;
- (8) The Marshall University Center for Business and Economic Research;
- (9) TechConnect;
- (10) The West Virginia Community Development Hub;
- (11) The West Virginia University Northern Brownfields Assistance Center;
- (12) West Virginia State University Extension Service; and
- (13) West Virginia University Extension Service, Community, Economic and Workforce Development.

(g) *Reporting and agency accountability.* — The revitalization council, in coordination with its contributing partners, as applicable, shall report annually to the Governor and the Legislature detailing the progress of the technical assistance support provided by the program, the strategic plan for the Upper Kanawha Valley, and the results of these efforts. The annual report to the Legislature shall be made to the Joint Committee on Government and Finance regarding the previous fiscal year no later than October 1 of each year. Copies of the annual report to the Legislature shall be provided to the county commissions and the mayors of the Upper Kanawha Valley.

(h) *Economic incentives for businesses investing in the Upper Kanawha Valley.* — The Department of Economic Development and the revitalization council, as applicable, shall work to educate businesses investing, or interested in investing, in the Upper Kanawha Valley, about the availability of, and access to, economic development assistance, including, but not limited to, the economic opportunity tax credit provided in §11-13Q-19 of this code; the manufacturing investment tax credit provided under §11-13S-1 *et seq.* of this code; and any other applicable tax credit or development assistance.

(i) *Use of state property and equipment; faculty.* — The Department of Economic Development or other owner of state property and equipment in the Upper Kanawha Valley is authorized to provide for the low cost and economical use and sharing of state property and equipment, including computers, research labs, and other scientific and necessary equipment to assist any business within the Upper Kanawha Valley at a nominal or reduced-cost reimbursements to the state for that use.

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CHAPTER 119

(Com. Sub. for S. B. 523 - By Senators Tarr, Caputo, and Maroney)

[Passed March 10, 2023; in effect 90 days from passage (June 8, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §31-15-23a of the Code of West Virginia, 1931, as amended, relating to funding for infrastructure and economic development; clarifying the purposes and use of the Economic Development Project Fund; providing that funds may be used solely for loans; providing for repayment of loans; providing a maximum of amount of the funds that may be used for financing high impact development projects; allowing for traditional loans; setting a maximum amount of funding for traditional loans; allowing for retention loans; setting a maximum amount of funding for retention loans; and providing for interest to be retained in the loan programs.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-23a. Economic Development Project Fund.

(a) For the purposes of this section, the term "high impact development project" means a project meeting the following criteria, according to a resolution adopted by the authority:

(1) The Governor has requested, in writing, that the project be approved for financing by the authority in an amount of \$50 million or greater;

(2) The industrial development agency or enterprise undertaking the project will privately invest an amount of \$50 million or greater in the project; and

(3) The project meets or exceeds the loan per job ratio criteria for high-impact development projects that may be established, in consultation with the Secretary of the Department of Economic Development, by the board of directors.

(b) There is hereby created a special revenue fund in the State Treasury known as the Economic Development Project Fund. The fund shall consist of all moneys appropriated to the authority during the regular session of the Legislature, 2022, from available revenue surplus funds, transfers from the Industrial Development Loans fund, gifts, grants, contributions, any earnings or interest accruing to said fund, and any other moneys appropriated to said fund by the Legislature. The authority may invest and reinvest moneys in the fund with the West Virginia Investment Management Board or the Board of Treasury Investments.

(c) The authority may transfer funds in the Industrial Development Loans fund to the Economic Development Project Fund created by this section and any loan repayments or other amounts that would otherwise have been paid into the Industrial Development Loans fund may be paid into the Economic Development Project Fund created by this section.

(d) The authority may use moneys in the Economic Development Project Fund to offer incentives for business formation or expansion and provide assistance with site development or other concerns to industrial development agencies or enterprises according to the requirements of this article as set forth in this subsection.

(1) *High impact development projects.* — In addition to any powers granted to the authority under any other section of this code, the authority may finance any high impact development project under this section by offering incentives for business formation or expansion to industrial development agencies or enterprises in this state in the form of loans, grants, or other offers

of financial assistance or aid upon such terms as the Governor may request and the authority shall deem appropriate: *Provided*, That money available to fund such high impact development projects may not exceed \$300 million dollars annually, unless otherwise appropriated by the Legislature or increased by interest payments received pursuant to this subsection. Funds which are paid back to the authority as principal pursuant to this subsection may be utilized and relent by the authority for the same purpose. Any interest accruing shall be retained and made available for high impact projects as set forth in this subsection and shall not revert to the General Revenue Fund.

(2) *Traditional loans.* — The authority may finance any economic development project under this section by offering incentives for business formation or expansion to industrial development agencies or enterprises in this state in the form of loans, which shall be repaid to provide financing for subsequent borrowers: *Provided*, That money available to fund such traditional loans may not exceed \$250 million dollars annually, on a rolling basis, unless otherwise appropriated by the Legislature or increased by interest payments received pursuant to this subsection. Funds which are paid back to the authority as principal pursuant to this subsection may be utilized and relent by the authority for the same purpose. Any interest accruing shall be retained and made available for traditional loans as set forth in this subsection and shall not revert to the General Revenue Fund.

(3) *Business retention projects.* — The authority may finance any economic development project under this section by offering incentives for business development and expansion to industrial development agencies or enterprises already existing and operating in the State of West Virginia in the form of loans, which shall be repaid to provide financing for subsequent borrowers: *Provided*, That money available to fund such business retention loans may not exceed \$50 million dollars annually, on a rolling basis, unless otherwise appropriated by the Legislature or increased by interest payments received pursuant to this subsection. Funds which are paid back to the authority as principal pursuant to this subsection may be utilized and relent by the authority for the same purpose.

Any interest accruing shall be retained and made available for business retention projects as set forth in this subsection and shall not revert to the General Revenue Fund.

(e) The authority shall keep itemized records of all fund transactions and agreements entered into in furtherance of the Economic Development Project Fund expenditures. In administering the fund, the authority shall adopt appropriate accounting practices and internal controls, including, but not limited to, strict compliance with the requirements of §5A-8-9 of this code. Fund transactions shall be subject to an annual audit by an independent firm of certified public accountants.

(f) The authority shall prepare and submit to the Joint Committee on Government and Finance and the Governor an annual report addressing the status of each project with outstanding financing issued pursuant to this section. The report shall, at a minimum, provide project-specific data addressing:

- (1) The outstanding amount of authority financing for each project;
- (2) The total amount of private investment in each project;
- (3) The number of jobs created by each project since the project's inception; and
- (4) The number of jobs maintained by each project.

(g) Except for the records and audit required under subsection (e) of this section and the annual reports required under subsection (f) of this section, any documentary material, data, or other writing made or received by the authority relating to high impact development projects under this section, shall be exempt from §29B-1-1 *et seq.* of this code: *Provided*, That any agreement or resolution entered into or signed by the authority which obligates public funds for any high-impact development project shall be subject to inspection and copying pursuant to §29B-1-1 *et seq.* of this code as of the date the agreement or resolution is entered into, signed, or otherwise made public.

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CHAPTER 120

**(S. B. 735 - By Senators Woodrum, Barrett, Hamilton, Hunt,
Jeffries, Phillips, Queen, Smith, Stuart, Swope, and Weld)**

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §5B-2-15 of the Code of West Virginia, 1931, as amended; to amend and reenact §5B-2A-3 and §5-2A-4 of said code; to amend and reenact §5B-8-1 of said code; to amend and reenact §11-13X-9 of said code; and to amend and reenact §31G-1-5 and §31G-1-14 of said code, all relating to clarifying the department responsible for the administration of certain programs; providing an extension on the date work is to be concluded; providing the Governor appoint and set the salary of the director of the office; providing that funding for the position and to carry out the duties of the office shall be as provided by appropriation of the Legislature; and providing requirements for quarterly reports.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2. DEPARTMENT OF ECONOMIC DEVELOPMENT.

***§5B-2-15. Upper Kanawha Valley Resiliency and Revitalization Program.**

(a) *Definitions.* —

(1) *General.* — Terms defined in this section have the meanings ascribed to them by this section, unless a different

*NOTE: This section was also amended by S. B. 481 (Chapter 118), which passed prior to this act.

meaning is clearly required by either the context in which the term is used, or by specific definition in this section.

(2) *Terms Defined.* —

"Contributing partners" means those entities or their representatives described in subsection (f) of this section.

"Prioritize" means, with regard to resources, planning, and technical assistance, that the members of the revitalization council are required to waive their discretionary program guidelines to allow funding requests that may fall outside of the program's guidelines but address the Upper Kanawha Valley communities' goals for revitalization: *Provided*, That properly filed funding applications by Upper Kanawha Valley communities shall be given preferential treatment.

"Program" means the Upper Kanawha Valley Resiliency and Revitalization Program established in this section.

"Revitalization council" means those entities or their representatives described in subsection (d) of this section.

"Technical assistance" means resources provided by the state, revitalization council, contributing partners, or any other individuals or entities providing programming, funding, or other support to benefit the Upper Kanawha Valley under the program.

"Upper Kanawha Valley" means an area historically known as the Upper Kanawha Valley including municipalities and surrounding areas from the Charleston city limits to Gauley Bridge or other communities in the vicinity of the West Virginia University Institute of Technology.

"Upper Kanawha Valley Resiliency and Revitalization Program" means the entire process undertaken to further the goals of this section, including collaboration, development, and implementation between the members, contributors, and technical assistance resource providers.

(b) *Legislative purpose, findings, and intent.* —

(1) The decision to relocate the historic campus of the West Virginia University Institute of Technology from Montgomery, West Virginia, to Beckley, West Virginia, will have a dramatic economic impact on the Upper Kanawha Valley.

(2) The purpose of this section is to establish the Upper Kanawha Valley Resiliency and Revitalization Program. To further this purpose, this program creates a collaboration among state government, higher education, and private and nonprofit sectors to streamline technical assistance capacity, existing services, and other resources to facilitate community revitalization in the Upper Kanawha Valley.

(3) It is the intent of the Legislature to identify existing state resources that can be prioritized to support the Upper Kanawha Valley, generate thoughtful and responsible ideas to mitigate the negative effects of the departure of the West Virginia Institute of Technology from the Upper Kanawha Valley, and help chart a new course and prosperous future for the Upper Kanawha Valley.

(c) Upper Kanawha Valley Resiliency and Revitalization Program established; duration of program. —

(1) The Development Office shall establish the Upper Kanawha Valley Resiliency and Revitalization Program in accordance with the provisions of this section. The program shall inventory existing assets and resources, prioritize planning and technical assistance, and determine such other assistance as might be available to revitalize communities in the Upper Kanawha Valley.

(2) The program shall remain active until it concludes its work on June 30, 2029, and delivers a final report to the Joint Committee on Government and Finance no later than October 1, 2024.

(d) Revitalization council created. — There is hereby created a revitalization council to fulfill the purposes of this section. The revitalization council shall be coordinated by the Department of Economic Development and be subject to oversight by the

secretary of the department. The following entities shall serve as members of the revitalization council:

(1) The Secretary of the Department of Economic Development or their designee, who shall serve as chairperson of the council;

(2) The Secretary of the Department of Health and Human Resources or their designee;

(3) The Commissioner of the Department of Agriculture or their designee;

(4) The Executive Director of the West Virginia Housing Development Fund or their designee;

(5) A representative from the Kanawha County Commission;

(6) A representative from the Fayette County Commission;

(7) The mayor, or their designee, from the municipalities of Montgomery, Smithers, Pratt, and Gauley Bridge;

(8) A representative from Bridge Valley Community and Technical College; and

(9) A representative from West Virginia University.

(e) *Duties of the revitalization council.* —

(1) The council shall identify existing state resources that can be prioritized to support economic development efforts in the Upper Kanawha Valley.

(2) The council shall direct existing resources in a unified effort and in conjunction with contributing partners, as applicable, to support the Upper Kanawha Valley.

(3) The council shall develop a rapid response strategy to attract or develop new enterprises and job-creating opportunities in the Upper Kanawha Valley.

(4) The council shall conduct or commission a comprehensive assessment of assets available at the campus of the West Virginia Institute of Technology and determine how those assets will be preserved and repurposed.

(5) The council shall assist communities in the Upper Kanawha Valley by developing an economic plan to diversify and advance the community.

(6) Members of the council shall support both the planning and implementation for the program and shall give priority wherever possible to programmatic activity and discretionary, noncompetitive funding during the period the program remains in effect.

(7) Members of the council shall work together to leverage funding or other agency resources to benefit efforts to revitalize the Upper Kanawha Valley.

(f) *Contributing partners.* — To the extent possible, the revitalization council shall incorporate the resources and expertise of additional providers of technical assistance to support the program, which shall include but not be limited to:

(1) The West Virginia Small Business Development Center;

(2) The Center for Rural Health Development;

(3) The West Virginia University Brickstreet Center for Entrepreneurship;

(4) The West Virginia University Land Use and Sustainability Law Clinic;

(5) The West Virginia University Center for Big Ideas;

(6) The New River Gorge Regional Development Authority;

(7) The Appalachian Transportation Institute;

(8) The Marshall University Center for Business and Economic Research;

(9) TechConnect;

(10) The West Virginia Community Development Hub;

(11) The West Virginia University Northern Brownfields Assistance Center;

(12) West Virginia State University Extension Service; and

(13) West Virginia University Extension Service, Community, Economic and Workforce Development.

(g) *Reporting and agency accountability.* — The revitalization council, in coordination with its contributing partners, as applicable, shall report annually to the Governor and the Legislature detailing the progress of the technical assistance support provided by the program, the strategic plan for the Upper Kanawha Valley, and the results of these efforts. The annual report to the Legislature shall be made to the Joint Committee on Government and Finance regarding the previous fiscal year no later than October 1 of each year. Copies of the annual report to the Legislature shall be provided to the county commissions and the mayors of the Upper Kanawha Valley.

(h) *Economic incentives for businesses investing in the Upper Kanawha Valley.* — The Department of Economic Development and the revitalization council, as applicable, shall work to educate businesses investing, or interested in investing, in the Upper Kanawha Valley, about the availability of, and access to, economic development assistance, including, but not limited to, the economic opportunity tax credit provided in §11-13Q-19 of this code; the manufacturing investment tax credit provided under §11-13S-1 *et seq.* of this code; and any other applicable tax credit or development assistance.

(i) *Use of state property and equipment; faculty.* — The Department of Economic Development or other owner of state property and equipment in the Upper Kanawha Valley is authorized to provide for the low cost and economical use and sharing of state property and equipment, including computers, research labs, and other scientific and necessary equipment to assist any business within the Upper Kanawha Valley at a nominal or reduced-cost reimbursements to the state for that use.

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.**§5B-2A-3. Definitions.**

(a) For the purpose of this article:

(1) "Department" means the Department of Environmental Protection established in §22-1-1 *et seq.* of this code;

(2) "Office" means the Office of Coalfield Community Development;

(3) "Operator" means the definition in §22-3-3 of this code;

(4) "Renewable and alternative energy" means energy produced or generated from natural or replenishable resources other than traditional fossil fuels or nuclear resources and includes, without limitation, solar energy, wind power, hydropower, geothermal energy, biomass energy, biologically derived fuels, energy produced with advanced coal technologies, coalbed methane, fuel produced by a coal gasification or liquefaction facility, synthetic gas, waste coal, tire-derived fuel, pumped storage hydroelectric power or similar energy sources; and

(5) "Secretary" means the Secretary of the Department of Economic Development.

(b) Unless used in a context that clearly requires a different meaning or as otherwise defined herein, terms used in this article shall have the definitions set forth in this section.

***§5B-2A-4. Office of Coalfield Community Development.**

(a) The Office of Coalfield Community Development is continued within the Department of Economic Development.

(b) The Governor shall appoint and set the salary of the director of the office who shall be responsible for hiring such assistants and clerical staff as may be necessary to carry out the responsibilities of the office. The initial appointment for the director shall be made

*NOTE: This section was also amended by H. B. 3303 (Chapter 122), which passed subsequent to this act.

by July 1, 2026. Funding for this position and to carry out the duties of the office shall be provided by appropriation of the Legislature.

(c) The director shall report quarterly to the energy and finance committees of the legislature on projects funded by the office. The report shall include the amount, the recipient and a description of each project funded.

ARTICLE 8. SMALL BUSINESS INNOVATION RESEARCH AND SMALL BUSINESS TECHNOLOGY TRANSFER MATCHING FUNDS PROGRAM.

***§5B-8-1. Definitions.**

When used in this article:

"Department" means the West Virginia Department of Economic Development.

"SBIR" means the Small Business Innovation Research Program enacted under the Small Business Innovation Development Act of 1982, Pub. L. 97-219, 15 U.S.C. § 638.

"STTR" means the Small Business Technology Transfer Program enacted under the Small Business Technology Transfer Act of 1992, Pub. L. 102-564, 15 U.S.C § 638.

"Small business" means a corporation, partnership, limited liability company, statutory or common law business trust, sole proprietorship, or individual, operating a business for profit, which qualifies as a small business and otherwise meets the requirements of the SBIR or STTR programs.

"West Virginia-based business" means a business that has its principal place of business in this state.

CHAPTER 11. TAXATION

*NOTE: This section was also amended by S. B. 231 (Chapter 117), which passed prior to this act.

ARTICLE 13X. WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT.**§11-13X-9. Legislative rules.**

(a) The Tax Commissioner shall propose for promulgation rules pursuant to §29A-3-1 *et seq.* of this code as may be necessary to carry out the purposes of this article.

(b) The Secretary of the West Virginia Department of Economic Development may propose for promulgation rules pursuant to §29A-3-1 *et seq.* of this code as may be necessary to carry out the purposes of this article.

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.**ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.****§31G-1-5. Creation of the Broadband Enhancement Fund.**

All moneys collected by the council, which may, in addition to appropriations, include gifts, bequests or donations, shall be deposited in a special revenue account in the State Treasury known as the Broadband Enhancement Fund. The fund shall be administered by and under the control of the Secretary of the Department of Economic Development. 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 §11B-2-1 *et seq.* of this code.

§31G-1-14. Legislative rule-making authority.

In order to implement and carry out the intent of this article, the Secretary of the Department of Economic Development, at the direction and recommendation of the council, may propose rules for legislative approval, pursuant to the provisions of §29A-3-1 *et seq.* of this code.

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CHAPTER 121

**(Com. Sub. for H. B. 3036 - By Delegates Hanshaw (Mr. Speaker)
and Skaff)**

[By Request of the Executive]

[Passed March 9, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §5B-2L-14 and §5B-2L-16 of the Code of West Virginia, 1931, as amended, all relating to the BUILD WV Act generally; removing the limit on the number of certified BUILD WV districts that may be certified in this state; and increasing the limit on aggregate sum of approved costs for all BUILD WV projects for any fiscal year.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2L. BUILD WV ACT.

§5B-2L-14. Designation of a certified district.

(a) A certified BUILD WV district may be designated upon the agreement, in writing, of the following officials: the Secretary of the Department of Economic Development, the Secretary of the Department of Tourism, and the Secretary of the Department of Commerce.

(b) A certified district shall be designated by the identification of a municipality, attraction, landmark, or other point of interest. The certified district may extend, as determined by the designation, up to 20 square miles from that municipality, attraction, landmark, or other point of interest.

(c) The following criteria shall be considered when determining whether to designate a certified district:

(1) The housing and employment needs within the certified district;

(2) Whether the certified district will have a significant and positive economic impact on the state;

(3) Whether there is substantial and credible evidence that designating the certified district will result in one or more certified projects likely to be started and completed in a timely fashion;

(4) Whether the certified district will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other commercial businesses;

(5) Whether the certified district will, directly or indirectly, assist in the creation of additional employment opportunities in the area or assist in the filling of currently available jobs;

(6) Whether the certified district helps to diversify the local economy;

(7) Whether the certified district is consistent with the goals of this article; and

(8) Any other relevant and reasonable criteria determined by the designating officials.

(d) The number of districts within the state shall be determined within the discretion of the Secretary of the Department of Economic Development, the Secretary of the Department of Tourism, and the Secretary of the Department of Commerce by their agreement, subject to the \$150 million limitation on aggregate sum of approved costs for all projects for any fiscal year as set forth in §5B-2L-16(c) of this code.

(e) A certified district may be decertified at any time upon agreement, in writing, of the designated officials provided for in subsection (a) of this section. In no case may any BUILD WV district be certified for any time period longer than 10 calendar

years, unless redesignated in the same manner as provided for designation.

(f) In no case may a proposed BUILD WV project be certified in any geographic area that is not a certified BUILD WV district.

(g) The designation made pursuant to this section as to the designation of a certified district, refusal to designate a certified district, decertification, or revocation of certification of a BUILD WV district is final.

§5B-2L-16. Project application; evaluation standards; approval of projects.

(a) Each eligible company or group of multiple party project participants that seeks certification of a proposed project as a certified BUILD WV project must file a written application for approval and certification of the project with the Department of Economic Development.

(b) With respect to each eligible company or group of multiple party project participants making an application to the Department of Economic Development seeking certification of a proposed project as a certified BUILD WV project the Department of Economic Development shall make inquiries and request documentation, including a completed application, from the applicant that shall include the following:

(1) A description and location of the proposed project;

(2) Capital and other anticipated expenditures for the project and the sources of funding therefor;

(3) The anticipated employment, revenues and expenses generated by the project; and

(4) Anything else determined necessary by the Department of Economic Development.

(c) The aggregate sum of approved costs for all projects for any fiscal year shall not exceed \$150 million. Any project application

submitted for certification in the fiscal year after the sum of \$150 million has been reached shall not be approved or certified. Notwithstanding any other provision of this code, for any fiscal year, the Secretary of the Department of Economic Development may not approve any single proposed project as a certified BUILD WV project for the fiscal year unless the proposed project has an aggregate sum of approved costs that is at least \$3 million or the proposed project includes at least six residential units or houses.

(d) The Secretary of the Department of Economic Development, within 60 days following receipt of an application or receipt of any additional information requested by the Department of Economic Development respecting the application, whichever is later, shall act to grant or not to grant certification of the project, based on the following criteria:

(1) The project will have approved costs of at least \$3 million or includes at least six residential units or houses;

(2) The project will have a significant and positive economic impact on the state;

(3) The quality of the proposed project and how it addresses economic problems in the area in which the project will be located;

(4) Whether there is substantial and credible evidence that the project is likely to be started and completed in a timely fashion;

(5) Whether the project will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other commercial businesses;

(6) Whether the project will, directly or indirectly, assist in the creation of additional employment opportunities in the area where the project will be located;

(7) Whether the project helps to diversify the local economy;

(8) Whether the project is consistent with the goals of this article;

(9) Whether the project is economically and fiscally sound using recognized business standards of finance and accounting;

(10) Whether the proposed project demonstrates that the project will meet the immediate future needs of the area; and

(11) The ability of the eligible company or group of multiple party project participants to carry out the project.

(e) *Exclusions.*

(1) In no case shall any property or space that is used, in whole or in part, as a residential timeshare, commercial timeshare, or as part of any similar arrangement, constitute certified project property, or any part thereof.

(2) In no case shall any property or space that is used in whole or in part as an industrial or manufacturing operation, constitute certified project property, or any part thereof.

(3) In no case shall any property or space that is used in whole or in part as a warehouse, distribution center, telephone call center, or telemarketing operation, constitute certified project property, or any part thereof.

(4) In no case shall any property or space that is used, in whole or in part, as an airport constitute certified project property, or any part thereof.

(5) In no case shall any property or space that is used primarily for business activity, business, or other operation or activity excluded from certification by the Department of Economic Development by rule or administrative notice, constitute certified project property, or any part thereof.

(f) The Department of Economic Development may establish additional criteria for consideration when evaluating and approving applications for certified BUILD WV housing projects.

(g) The decision by the Secretary of the Department of Economic Development as to certification of a proposed project, refusal to certify a proposed project, decertification, or revocation of certification of a project is final.

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CHAPTER 122

**(Com. Sub. for H. B. 3303 - By Delegates Reynolds, Bridges,
Sheedy, Crouse, Hott, Zatezalo, Willis, Phillips, Ward and
Brooks)**

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2023.]

AN ACT to amend and reenact §5B-2A-4 and §5B-2A-5 of the Code of West Virginia, 1931, as amended, and by adding thereto a new section, §5B-2A-14, all relating to the Office of Coalfield Community Development; continuing the Office of Coalfield Community Development under the Department of Economic Development; providing that the Governor appoint and set the salary of the director of the office by July 1, 2026; providing that funding for position to carry out the duties of the office shall be as provided by appropriation of the Legislature; clarifying and providing additional duties, powers, and responsibilities for the Office of Coalfield Community Development; and providing a sunset date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

***§5B-2A-4. Office of Coalfield Community Development.**

(a) The Office of Coalfield Community Development is continued within the Department of Economic Development.

(b) The Governor shall appoint and set the salary of the director of the office who shall be responsible for hiring such assistants and clerical staff as may be necessary to carry out the responsibilities

***NOTE:** This section was also amended by S. B. 735 (Chapter 120), which passed prior to this act.

of the office. The initial appointment for the director shall be made by July 1, 2026. Funding for this position and to carry out the duties of the office shall be as provided by appropriation of the Legislature.

(c) The director shall report quarterly to the energy and finance committees of the legislature on projects funded by the office. The report shall include the amount, the recipient and a description of each project funded.

§5B-2A-5. Powers and duties.

The office has and may exercise the following duties, powers, and responsibilities:

(1) To establish a procedure for determining the assets that could be developed in and maintained by the community to foster its long-term viability as provided in §5B-2A-8 of this code and to administer the procedure so established;

(2) To establish a procedure for determining the land and infrastructure needs in the general area of the surface mining operations as provided in §5B-2A-9 of this code and to administer the procedure so established;

(3) To establish a procedure to develop action reports and quarterly updates as provided in §5B-2A-10 of this code and to administer the procedure so established;

(4) To determine the need for meetings to be held among the various interested parties in the communities impacted by surface mining operations and, when appropriate, to facilitate the meetings;

(5) To establish a procedure to assist property owners in the sale of their property as provided in §5B-2A-11 of this code and to administer the procedure so established;

(6) In conjunction with the department, to maintain and operate a system to receive and address questions, concerns, and complaints relating to surface mining;

(7) To coordinate the expenditure of grants issued by the United States Department of Energy and the U.S. Department of Commerce's Economic Development Administration for coalfield economic development or coalfield revitalization projects;

(8) To identify coal assets, including, but not limited to, coal mine operations, coal-fired electric utilities, and coal-based manufacturing or steelmaking facilities, within West Virginia or in states that provide markets for, and consume, West Virginia steam or metallurgical coal and offer assistance and to sustain, protect, and expand their continued operation and reliance on West Virginia coal;

(9) On its own initiative or at the request of a community or a mining operation, offer assistance to facilitate the development of economic or community assets. Such assistance may include the preparation of a master land use plan pursuant to the provisions of §5B-2A-9 of this code;

(10) To develop an educational program and policy materials in support of West Virginia's coal industry, to be incorporated into a program designed to educate the public on the economic and societal benefits provided by the coal industry, including the provision of reliable baseload electric generation by coal-fired power plants; and

(11) To coordinate a program of recruitment and training of industrial workers in conjunction with the West Virginia Office of Miners' Health Safety and Training and Workforce West Virginia to respond to West Virginia's growing manpower needs generally and coal mining particularly. The state-of-art training facility in Julian (Boone County) will serve as host to the "West Virginia Mine Safety and Training Academy" to attract, train new and experience miners and other industrial workers.

§5B-2A-14. Sunset.

Unless acted upon by the Legislature, this article will sunset on June 30, 2032, at which time the Office of Coalfield Community Development shall terminate.

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CHAPTER 123

(Com. Sub. for H. B. 3482 - By Delegate Howell)

[Passed March 11, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-2O-1, §5B-2O-2, §5B-2O-3, and §5B-2O-4; to amend said code by adding thereto a new section, designated §22-5-11c; and to amend and reenact §22B-1-7 of said code, all relating generally to the Coal Fired Grid Stabilization and Security Act of 2023; providing for a short title; making legislative findings and declarations; requiring designation of suitable sites for coal electric generation and reporting to the Division of Air Quality of the West Virginia Department of Environmental Protection and the West Virginia Public Service Commission; requiring construction and operating permits for coal electric generation facilities, including expedited consideration; and requiring prompt consideration of appeals by the Air Quality Board concerning permit issued or denied.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 20. COAL FIRED GRID STABILIZATION AND SECURITY ACT OF 2023.

§5B-2O-1. Short title.

This article shall be known and cited as the "Coal Fired Grid Stabilization and Security Act."

§5B-2O-2. Legislative findings; declaration of public policy.

(a) The Legislature finds that:

(1) The advent and advancement of new and existing technologies and mining/drilling practices have created the opportunity for efficient mining of coal in West Virginia, including opportunities for the production of electricity;

(2) Production of electricity utilizing coal produced in West Virginia is now inadequately developed in comparison to nearby states with which West Virginia competes for economically beneficial projects. Coal electric generation projects have been undermined by existing regulatory requirements and related time delays;

(3) In developing regulatory actions and identifying appropriate approaches to encourage development of coal electric generation projects, agencies should attempt to promote coordination, simplification, and harmonization. Agencies should also seek to identify appropriate means to achieve regulatory goals that are designed to promote innovation and enhance West Virginia's competitiveness with surrounding states;

(4) Agencies should review their existing legislative and procedural rules to determine whether any such rules should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives related to coal electric generation projects. Agencies should also evaluate the data that they have to determine what information might be useful to prompt permitting and approval of coal generated electricity; and

(5) The West Virginia Department of Economic Development established in §5B-2-1 *et seq.* of this code is responsible for implementing this Coal Fired Grid Stabilization and Security Act of 2023 and provide as much assistance as possible to grow and sustain the coal electric generation segment of the economy.

(b) The Legislature declares that facilitating the development of business activity directly and indirectly related to coal electric

generation development, transportation, storage, and use serves the public interest of the citizens of this state by promoting economic development, by improving economic opportunities for the citizens of this state, and providing additional opportunities to stabilize the price of electricity while increasing its reliability and availability.

§5B-20-3. Identification of suitable sites for coal electric generation projects.

(a) The Department of Economic Development is authorized and directed to identify economically viable sites within the state that are:

(1) Located near a convenient and sufficient supply of coal;

(2) Located near consumers to provide a convenient supply of the generated electricity; and,

(3) Likely to create economically viable coal electric generation projects that provide economic benefits to the local and state governmental units and the citizens of the state.

(b) The Department of Economic Development shall use the following criteria in identifying economically viable sites for coal electric generation projects:

(1) Geographic locations near coal deposits in the state capable of supplying and sustaining one or more coal electric generation facilities for the economic life of the facilities;

(2) Geographic locations near existing electric transmission infrastructure capable of transmitting the generated electricity to wholesale markets of electricity by one or more coal electric generation facilities for the economic life of the facilities;

(3) Geographic locations that fulfill the air quality conditions imposed by the Division of Air Quality of the West Virginia Department of Environmental Protection for one or more coal electric generation facilities; and

(4) Geographic locations that can demonstrate that allowable emission increases from one or more coal electric generation facilities, in conjunction with all other applicable emission increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

(A) Any national or West Virginia Ambient Air Quality Standard in any air quality control region; or

(B) Any applicable maximum allowable increase over the baseline concentration in any area.

§5B-20-4. Designation of sites suitable for coal electric generation projects.

(a) Following identification of economically viable sites that may be suitable for coal electric generation projects, the Department of Economic Development shall identify and designate each site it has determined to be suitable for coal electric generation projects as a "Designated Site," and shall communicate the Designated Sites to the West Virginia Department of Environmental Protection's Division of Air Quality and the West Virginia Public Service Commission as sites suitable for the construction and operation of coal electric generation projects.

(b) Any application for a siting certificate pursuant to §24-2-11c of the West Virginia Code filed with the Public Service Commission for development of a coal electric generation project at a Designated Site shall be adjudicated, inclusive of public hearings, and a final order issued by the Public Service Commission, within 270 calendar days after the date of the filing of the application, notwithstanding the requirements of any other provision of this code.

(c) Nothing in this section is intended to preclude, modify, or establish new Public Service Commission jurisdiction over:

(1) Any exercise of powers, duties, and obligations pursuant to the West Virginia Public Energy Authority Act; and

(2) The right of end-user consumers of electricity to develop, invest in, or otherwise contract for on-site electric self-generation or cogeneration facilities, including those utilizing coal as a fuel source.

(3) This section does not alter, modify and/or cancel any existing cogeneration tariffs authorized by the Public Service Commission.

(4) This section does not authorize the sale of electricity to end-users in the state.

(d) Where a designated site has been identified, in accordance with §22-5-11c of this code, as a location where additional data would be helpful for modeling or other evaluation of the potential emission of a coal generation project, the Department of Economic Development shall construct such facilities as are necessary to acquire such data.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-11c. Construction and operating permits required for coal electric generation facilities as stationary sources of air pollutants.

(a) This section applies to coal electric generation facilities as identified and communicated to the Secretary by the West Virginia Department of Economic Development as sites that may be suitable for one or more coal electric generation facilities in accordance with §5B-2O-1 *et seq.* of this code, or as identified by an applicant for a construction and operating permit for one or more coal electric generation facilities.

(b) The secretary shall take all reasonable steps to expedite consideration of permit applications utilizing sites designated by the Department of Economic Development as a site suitable for use as a coal electric generation facility and communicated to the secretary in accordance with §5B-2O-1 *et seq.* of this code. Such steps shall include:

(1) An initial determination of whether the identified site is in compliance with National Ambient Air Quality Standards and the West Virginia State Implementation Plan, whether emissions from a coal electric generation facility would be likely to interfere with compliance with the same and, if interference is likely, the steps necessary to avoid noncompliance with National Ambient Air Quality Standards and the State Implementation Plan; and

(2) Evaluation of whether there is sufficient data, meteorological and otherwise, that would allow acceptable modeling of the impacts of emissions from a coal electric generation facility, and if not, construction of sampling and measuring devices to acquire such data at the site.

(c) Unless otherwise specifically provided in this article, the secretary shall issue a permit for a coal electric generation facility which is determined to be a major stationary source within a reasonable time, not to exceed 270 calendar days, after the secretary determines that the application is complete. The secretary must determine whether an application is complete within 30 days from the date the permit application is filed with the secretary and communicated to the permit applicant.

CHAPTER 22B. ENVIRONMENTAL BOARDS.

ARTICLE 1. GENERAL POLICY AND PURPOSE.

***§22B-1-7. Appeals to Boards.**

(a) The provisions of this section are applicable to all appeals to the boards, with the modifications or exceptions set forth in this section.

(b) Any person authorized by statute to seek review of an order, permit, or official action of the chief of air quality, the chief of water resources, the chief of waste management, the chief of mining and reclamation, the chief of oil and gas, or the secretary may appeal to the air quality board, the environmental quality board, or the surface mine board, as appropriate, in accordance

*NOTE: This section was also amended by S. B. 188 (Chapter 115), which passed prior to this act.

with this section. The person so appealing shall be known as the appellant and the appropriate chief or the secretary shall be known as the appellee.

(c) An appeal filed with a board by a person subject to an order, permit, or official action shall be perfected by filing a notice of appeal with the board within 30 days after the date upon which such order, permit, or official action was received by such person as demonstrated by the date of receipt of registered or certified mail or of personal service. For parties entitled to appeal other than the person subject to such order, permit, or official action, an appeal shall be perfected by filing a notice of appeal with the board within 30 days after the date upon which service was complete. For purposes of this subsection, service is complete upon tendering a copy to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge of the facility or activity involved, or to the permittee; or by tendering a copy by registered or certified mail, return receipt requested to the last known address of the person on record with the agency. Service is not incomplete by refusal to accept. Notice of appeal must be filed in a form prescribed by the rule of the board for such purpose. Persons entitled to appeal may also file a notice of appeal related to the failure or refusal of the appropriate chief or the secretary to act within a specified time on an application for a permit; such notice of appeal shall be filed within a reasonable time.

(d) The filing of the notice of appeal does not stay or suspend the effectiveness or execution of the order, permit or official action appealed from, except that the filing of a notice of appeal regarding a notice of intent to suspend, modify, or revoke and reissue a permit, issued pursuant to the provisions of §22-5-5 of this code, does stay the notice of intent from the date of issuance pending a final decision of the board. If it appears to the appropriate chief, the secretary, or the board that an unjust hardship to the appellant will result from the execution or implementation of a chief's or secretary's order, permit, or official action pending determination of the appeal, the appropriate chief, the secretary, or the board, as the case may be, may grant a stay or suspension of the order, permit or official action and fix its terms: *Provided*, That unjust hardship

shall not be grounds for granting a stay or suspension of an order, permit or official action for an order issued pursuant to §22-3-1 *et seq.* of this code. A decision shall be made on any request for a stay within five days of the date of receipt of the request for stay. The notice of appeal shall set forth the terms and conditions of the order, permit, or official action complained of and the grounds upon which the appeal is based. A copy of the notice of appeal shall be filed by the board with the appropriate chief or secretary within seven days after the notice of appeal is filed with the board.

(e) Within 14 days after receipt of a copy of the notice of appeal, the appropriate chief or the secretary, shall prepare and certify to the board a complete record of the proceedings out of which the appeal arises including all documents and correspondence in the applicable files relating to the matter in question. With the consent of the board and upon such terms and conditions as the board may prescribe, any person affected by the matter pending before the board may, by petition, intervene as a party appellant or appellee. In any appeal brought by a third party, the permittee or regulated entity shall be granted intervenor status as a matter of right where issuance of a permit or permit status is the subject of the appeal. The board shall hear the appeal *de novo*, and evidence may be offered on behalf of the appellant, appellee, and by any intervenors. The board may visit the site of the activity or proposed activity which is the subject of the hearing and take such additional evidence as it considers necessary: *Provided*, That all parties and intervenors are given notice of the visit and are given an opportunity to accompany the board. The appeal hearing shall be held at such location as may be approved by the board including Kanawha County, the county wherein the source, activity, or facility involved is located or such other location as may be agreed to among the parties.

(f) Any such hearing shall be held within 30 days after the date upon which the board received the timely notice of appeal, unless there is a postponement or continuance. The board may postpone or continue any hearing upon its own motion, or upon application of the appellant, the appellee, or any intervenors for good cause shown: *Provided*, That an appeal of any permit pursuant to §22-5-

14 of the code shall be heard by the Air Quality Board within 60 days of the filing of the notice of appeal, unless all parties to the appeal consent to a postponement or continuance, and issue its decision on the appeal as promptly as reasonably possible following the hearing, but in no event later than two months after the completion of the hearing. The chief or the secretary, as appropriate, may be represented by counsel. If so represented, they shall be represented by the Attorney General or with the prior written approval of the Attorney General may employ counsel who shall be a special assistant Attorney General. At any such hearing the appellant and any intervenor may represent themselves or be represented by an attorney-at-law admitted to practice before the Supreme Court of Appeals.

(g) After such hearing and consideration of all the testimony, evidence, and record in the case:

(1) The environmental quality board or the air quality board as the case may be shall make and enter a written order affirming, modifying, or vacating the order, permit, or official action of the chief or secretary, or shall make and enter such order as the chief or secretary should have entered, or shall make and enter an order approving or modifying the terms and conditions of any permit issued; and

(2) The surface mine board shall make and enter a written order affirming the decision appealed from if the board finds that the decision was lawful and reasonable, or if the board finds that the decision was not supported by substantial evidence in the record considered as a whole, it shall make and enter a written order reversing or modifying the decision of the secretary.

(h) In appeals of an order, permit or official action taken pursuant to §22-6-1 *et seq.*, §22-11-1 *et seq.*, §22-12-1 *et seq.*, §22-13-1 *et seq.*, or §22-15-1 *et seq.* of this code, the environmental quality board established in article three of this chapter, shall take into consideration, in determining its course of action in accordance with subsection (g) of this section, not only the factors which the appropriate chief or the secretary was authorized to consider in issuing an order, in granting or denying a permit, in

fixing the terms and conditions of any permit, or in taking other official action, but also the economic feasibility of treating, or controlling, or both, the discharge of solid waste, sewage, industrial wastes, or other wastes involved.

(i) An order of a board shall be accompanied by findings of fact and conclusions of law as specified in §29A-5-3 of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, and any intervenors, and their attorneys of record, if any, and upon the appellee in person or by registered or certified mail.

(j) The board shall also cause a notice to be served with the copy of such order, which notice shall advise the appellant, the appellee, and any intervenors of their right to judicial review, in accordance with the provisions of this chapter. The order of the board shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of this chapter.

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CHAPTER 124

**(Com. Sub. for Com. Sub. for S. B. 47 - By Senators Rucker,
Oliverio, and Roberts)**

[Passed March 10, 2023; in effect 90 days from passage (June 8, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5G-17, relating to creating the Charter Schools Stimulus Fund to provide financial support to charter school applicants and charter schools that may not otherwise have the resources for start-up costs; requiring State Board of Education rules; specifying requirements the rules are to include; requiring the West Virginia Professional Charter School Board to distribute moneys from the fund to qualifying charter school applicants and charter schools; specifying the manner of distribution; and requiring reimbursement of grant amount plus interest if the recipient has not begun operating a charter school within the next 30 months.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5G. PUBLIC CHARTER SCHOOLS.

§18-5G-17. Charter Schools Stimulus Fund.

(a) There is hereby created in the State Treasury a special revenue fund designated and known as the Charter Schools Stimulus Fund. The fund is established for the purpose of providing financial support to charter school applicants and charter schools that may not otherwise have the resources for start-up costs such as costs associated with renovating or remodeling existing buildings and structures and costs for the purchase of school buses. The fund consists of money appropriated by the Legislature, grants, gifts,

devises, and donations from any public or private source. All interest and other returns derived from the deposit and investment of money in the Charter Schools Stimulus Fund shall be credited to the fund. 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 in this section. The West Virginia Professional Charter School Board shall administer the fund.

(b) On or before June 1, 2023, the state board shall promulgate legislative rules pursuant to §29A-3B-1 *et seq.* of this code to implement the provisions of this section. If necessary to meet the June 1, 2023, deadline, the state board shall promulgate an emergency rule. The rules shall include application requirements, requirements for the West Virginia Professional Charter School Board to notify potential applicants, and a requirement for the applicant to attest to or demonstrate that it:

(1) Would not otherwise have the financial capacity without money from the Charter Schools Stimulus Fund to:

(A) Successfully apply to an authorizer; or

(B) Start a public charter school; and

(2) Is not working with or financed by any organization that has started or financed other charter schools to the degree that facilitating and starting charter schools is a significant portion of the organization's purpose.

(c) Subject to the availability of funding, the West Virginia Professional Charter School Board shall distribute money from the Charter Schools Stimulus Fund to qualifying charter school applicants and charter schools in the following manner:

(1) Each qualifying charter school applicant or charter school shall be awarded an initial grant of up to \$300,000 during or before the first two years of the charter school's operation. If an applicant for a charter school receives an initial grant pursuant to this paragraph and fails to begin operating a charter school within the

next 30 months, the applicant shall reimburse the West Virginia Professional Charter School Board for the initial grant plus interest calculated at a prorated rate of 10 percent a year: *Provided*, That the West Virginia Professional Charter School Board may lengthen this 30-month time period in extenuating circumstances; and

(2) Applicants for charter schools and charter schools that received initial grants pursuant to subdivision (1) of this subsection may apply to the West Virginia Professional Charter School Board for an additional grant of up to \$100,000. If an applicant for a charter school receives an additional grant pursuant to this paragraph and fails to begin operating a charter school within the next 30 months, the applicant shall reimburse the West Virginia Professional Charter School Board for the additional grant plus interest calculated at a prorated rate of 10 percent a year: *Provided*, That the West Virginia Professional Charter School Board may lengthen this 30-month time period in extenuating circumstances. A reimbursement required by this subdivision is in addition to any reimbursement required by subdivision (1) of this subsection.

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CHAPTER 125

**(Com. Sub. for S. B. 51 - By Senators Rucker, Grady,
Maynard, and Chapman)**

[Passed March 7, 2023; in effect 90 days from passage (June 5, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §18-5-13a of the Code of West Virginia, 1931, as amended, relating to requiring an impact statement in certain instances of a school closing or consolidation; requiring, in instances where an impact statement is required, county board of education to give the impact statement substantial weight when making a decision on any proposal to close or consolidate a school; requiring State Board of Education rule detailing information that a county board is required to include as part of its impact statement; setting forth minimum requirements for the rule; and providing that amended provisions do not apply to projects currently in progress or approved by the county board of education.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13a. School closing or consolidation.

(a) In addition to the provisions of §18-5-13 of this code, prior to any final decision of a county board on any proposal to close or consolidate any school, except in cases in which a construction bond issue was passed by the voters and which bond issue included the schools to be closed or consolidated, the county board shall:

(1) Prepare and reduce to writing its reasons and supporting data regarding the school closing or consolidation, and an impact

statement on the school closing or consolidation. The written reasons and impact statement, as applicable, shall:

(A) Be available for public inspection in the office of the county school superintendent during the 30 days preceding the date of the public hearing required by this section;

(B) Be delivered in duplicate to the:

(i) Principal of a school which is proposed to be closed or consolidated, and of any school which will receive the students who are relocated as a result of the closure or consolidation; and

(ii) The chair, if any, of the local school improvement council representing a school which is proposed to be closed or consolidated, and any school which will receive the students who are relocated as a result of the closure or consolidation;

(C) Comply with the rule relating to the written statement of reason promulgated pursuant to subsection (b) of this section; and

(D) Comply with the rule relating to the impact statement promulgated pursuant to subsection (c) of this section;

(2) Provide notice for a public hearing. The notice shall be advertised through a Class III legal advertisement, pursuant to the provisions of §59-3-1 *et seq.* of this code for the three weeks prior to the date of the hearing. The notice shall contain the time and place of the hearing and the proposed action of the county board. Additionally, the notice shall contain the statement that the hearing location is subject to change if at the time the meeting is called to order, it is determined that the meeting location is of insufficient size. A copy of the notice shall be posted at any school which is proposed to be closed or consolidated, and at any school which will receive the students who are relocated as a result of the closure or consolidation, in conspicuous working places for all professional and service personnel to observe. The notice shall be posted at least 30 days prior to the date of the hearing;

(3) Conduct a public hearing which meets the following criteria:

(A) At least a quorum of the county board members and the county superintendent from the county wherein an affected school is located shall attend and be present at the public hearing;

(B) Members of the public may be present, submit statements and testimony, and question county school officials at the public hearing;

(C) A separate hearing shall be held for each school closed or consolidated;

(D) More than one hearing may be held during any one day;

(E) The hearing shall be held in a facility of sufficient size to accommodate all those who desire to attend;

(F) If, at the time the hearing is called to order, it is determined by the board that insufficient space is available to accommodate all those who desire to attend, the hearing shall be recessed and moved to a new location of sufficient size to accommodate all those who desire to attend. If the meeting location is changed due to insufficient capacity, the county board shall cause the new meeting location to be posted at the original meeting location; and

(G) The hearing is subject to the requirements set forth in the rule promulgated in accordance with subsection (d) of this section; and

(4) Receive findings and recommendations from any local school improvement council representing an affected school relating to the proposed closure or consolidation prior to or at the public hearing.

(b) If a county board is required to prepare an impact statement pursuant to subsection (a) of this section, the board shall give the impact statement substantial weight when making a decision on any proposal to close or consolidate a school.

(c) The state board shall promulgate a rule, in accordance with §29A-3B-1 *et seq.* of this code, detailing the type of supporting data a county board shall include as part of its written statement of

reason required by this section for school closing or consolidation. The rule shall require at least any data required by the state board to amend a county's comprehensive educational facilities plan.

(d) The state board shall promulgate a rule pursuant to §29A-3B-1 *et seq.* of this code detailing information that a county board shall include as part of its impact statement required by this section for school closing or consolidation. The rule shall require at least the impact on the following:

(1) The students, which at least shall include the transportation time of the affected students;

(2) The financial health of the county, which at least shall include the anticipated cost or savings;

(3) The enrollment of schools designated by the county board to receive the students as it relates to the capacity of the school;

(4) The school personnel employed by the county board, which at least shall include the anticipated increase or decrease in the number employed, and if a decrease in school employees is anticipated, the number of school employees that are anticipated to be decreased through attrition and the number anticipated to be decreased through a reduction in force; and

(5) The community.

(e) The state board shall promulgate a rule, in accordance with §29A-3B-1 *et seq.* of this code, that establishes the procedure to be followed by county boards when conducting a public hearing on the issues of school consolidation and closing.

(1) The rule shall provide standards for at least the following:

(A) The appropriate forum and venue for public hearings to be held;

(B) A process for affording interested parties the opportunity for their perspectives to be expressed;

(C) Establishing, where necessary, reasonable restrictions on the amount of time allowed each individual desiring to speak so that all parties wishing to speak at the hearing are given an equal amount of time; and

(D) Scheduling and organizing public hearings when more than one school within a county is proposed for consolidation or closure.

(2) It is the purpose of this subsection to provide for uniformity among the counties in the procedures followed when scheduling, organizing, and conducting public hearings on the issues of school consolidation and closure.

(f) The state board shall promulgate the rules required by this section by June 1, 2023.

(g) Any project currently in progress, or approved by the county board on the effective date of this section, shall not be subject to the 2023 amended provision of this legislation.



CHAPTER 126

(S. B. 99 - By Senators Nelson, Roberts, and Oliverio)

[Passed March 8, 2023; in effect 90 days from passage (June 6, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-28, relating to meetings of county boards of education to explore and discuss the feasibility of consolidating school districts or sharing certain services; requiring, when two or more county boards of education elect to explore and discuss with each other the idea of possibly consolidating or sharing certain services and functions, the boards to agree on the call of a joint special public meeting; specifying minimum topics; requiring facilitator for the meeting; requiring facilitator to prepare and deliver to the participating boards a detailed written report of the meeting's discussions and identifying any areas for further discussion or consideration by the boards; requiring each participating board to determine whether to accept the report and whether the participating boards should meet again; providing that upon vote to accept of the facilitator's report and hold another meeting, the participating boards shall attend another meeting; specifying minimum topics; requiring the facilitator to prepare and deliver to the participating boards a detailed written report of the meeting's discussion and identifying any areas for further discussion or consideration; requiring each participating board to determine whether to accept the report and whether the participating boards should meet again; requiring meeting process to be repeated until 120 days have passed since the initial joint meeting or until the participating boards no longer wish to meet; requiring a full report of all meetings identifying the extent to which the participating boards think existing laws may enable or

complicate the consolidation of school districts or the sharing of services and functions, together with any suggestions of legislation; requiring report, upon approval by the participating boards, to be forwarded to the President of the Senate and the Speaker of the House of Delegates; authorizing Legislature to consolidate participating county boards as a pilot; and authorizing Legislature to incentivize county boards to explore and discuss the feasibility of consolidating school districts or sharing of services.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-28. Meetings among county boards of education to explore and discuss the feasibility of consolidating school districts or sharing certain services.

(a) When two or more county boards of education, in order to provide efficiencies and direct cost savings, elect, by majority vote, to explore and discuss with each other: (1) The idea of possibly consolidating their school districts into a new school district by act of the Legislature as provided by section six, article XII of the Constitution of West Virginia; or (2) possibly sharing administrative, coordinating or other county-level services and functions between or among them, the boards shall agree upon the call of a joint special meeting to be conducted wholly in public and in accordance with guidelines and topics of discussion specified in the call and in all public notices of the meeting. The topics shall include, but not be limited to, the extent to which existing laws appear to enable or complicate the consolidation of the school districts or the sharing of services and functions, as the case may be.

(b) The joint special meeting shall be facilitated by a party upon whom the participating boards agree. Within 21 days following the joint meeting, the facilitator shall prepare and deliver to the participating boards a detailed written report of the meeting's discussions and identifying any areas for further discussion or consideration by the boards. After reviewing the facilitator's report,

each participating board shall determine by majority vote whether to accept it and whether the participating boards should meet again to discuss or consider the areas identified by the facilitator. Whether or not a board accepts the report, each participating board shall make the report available to the public.

(c) Upon majority vote by any participating board to accept the facilitator's report and to hold another joint special meeting of the participating boards to discuss or consider areas for further discussion or consideration identified in the facilitator's report, the participating boards shall attend another joint special meeting called for that purpose. The meeting shall be called, noticed, conducted, and facilitated as in the case of the initial joint special meeting. Topics of discussion shall include, but not be limited to, the extent to which existing laws appear to enable or complicate the consolidation of the school districts or the sharing of services and functions, as the case may be. Within 21 days following the joint meeting, the facilitator shall prepare and deliver to the participating boards a detailed written report of the meeting's discussions and identifying any areas for further discussion or consideration by the boards. After reviewing the facilitator's report, each participating board shall determine by majority vote whether to accept it and whether the participating boards should meet again to discuss or consider the areas identified by the facilitator. Whether or not a board accepts the report, each participating board shall make the report available to the public.

(d) The process set forth in subsection (c) of this section shall be repeated until 120 days have passed since the initial joint meeting or until the participating boards no longer wish to meet in joint session for those purposes, whichever first occurs. At that point the facilitator or other individual or committee designated by the participating boards shall promptly prepare and submit to the participating boards a full report of all meetings held under this section. The report shall identify the extent to which the participating boards think existing laws may enable or complicate the consolidation of the school districts or the sharing of services and functions, together with any suggestions of legislation to be considered by the Legislature. Upon approval by any of the

participating boards by majority vote, the report shall be forwarded to the President of the Senate and the Speaker of the House of Delegates. If the Legislature elects to consolidate the participating county boards, it may consolidate the county boards as a pilot.

(e) Nothing in this section requires the consolidation of any school districts or that any of the participating boards share administrative, coordinating, or other county-level services and functions between or among them. Nor may this section be construed to rescind, without action by participating county boards, any existing agreements or arrangements for the sharing of such services and functions.

(f) The Legislature may incentivize county boards to explore and discuss the feasibility of consolidating school districts or sharing of services pursuant to this section.

CHAPTER 127

(S. B. 275 - By Senators Trump, Deeds, and Phillips)

[Passed February 17, 2023; in effect 90 days from passage (May 18, 2023)]
[Approved by the Governor on February 24, 2023.]

AN ACT to amend and reenact §18-9F-10 of the Code of West Virginia, 1931, as amended, relating to adding State Fire Marshals to the list of persons who receive information related to school safety requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9F. SCHOOL ACCESS SAFETY ACT.

§18-9F-10. School safety requirements.

In addition to any other requirement contained in this article or the Crisis Response Plan required by §18-9F-9 of this code, each county board of education shall implement a school safety program before September 1, 2019, that at a minimum, requires:

(1) Room numbers to be placed on exterior walls or windows of school buildings, so rooms with exterior walls can be identified by law enforcement, first responders, and State Fire Marshals from the outside;

(2) Providing updated floor plans of the school to first responders, local law enforcement, and State Fire Marshals by September 1 of each school year;

(3) First aid training for all school personnel and students each school year; and

(4) Active shooter training for all school personnel and students at the beginning of each school year.

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CHAPTER 128

(Com. Sub. for S. B. 422 - By Senators Blair (Mr. President) and Woelfel)

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 21, 2023.]

AN ACT to amend and reenact §18-5-27 of the Code of West Virginia, 1931, as amended, all relating to publishing county board curriculum; requiring public schools to post county-adopted curriculum online and establishing deadlines therefore; providing that only students, parents, or guardians have access to online curriculum; defining term; allowing county board to provide access to county-adopted curriculum; and providing that if a public school does not have a website, the information shall be posted on county board website or website authorized by state board.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-27. Requirement to publish curriculum online; parental right to inspect instructional materials; listing books on syllabus; right to file complaint.

(a) Each public school shall ensure that the adopted, up-to-date, county-adopted class curriculum is posted on the school's internet website at the beginning of each school year or no later than 30 business days after new or revised curriculum is adopted: *Provided*, That only students, parents, or guardians of the students shall be provided the login information to gain access to the online curriculum.

(1) For purposes of this section, class curriculum shall include curriculum created pursuant to §18-5A-6 of this code.

(2) The county board of education may provide access, or authorize access, to the county-adopted class curriculum.

(3) If the public school has no accessible website, the information shall be posted on the website of the appropriate county board of education, or website authorized by the state board of education.

(b) Each classroom teacher shall comply with the request of any parent, custodian, or guardian to inspect additional instructional materials adopted by the county board pursuant to §18-2A-10 of this code, supplementary instructional materials that were not adopted by the county board pursuant to §18-2A-10 of this code, and books in the classroom that are available for students to read, subject to the following:

(1) Only the parent, custodian, or guardian of a child enrolled in the class may make a request pursuant to this subsection;

(2) The classroom teacher may require that the parent, custodian, or guardian schedule an appointment in order to inspect the instructional materials. If the classroom teacher requires an appointment pursuant to this subdivision, the teacher shall schedule the appointment within 10 business days of the request of the parent, custodian, or guardian; and

(3) As part of the inspection and upon request of the parent, custodian, or guardian, the classroom teacher shall demonstrate how the instructional material relates to the content standards adopted by the state board.

(c) For any class in which reading a book or books will be required, the classroom teacher shall include the book or books on a class syllabus. The classroom teacher shall make the syllabus available to any parent, custodian, or guardian of a child enrolled in the class upon request.

(d) Any parent, custodian, or guardian may file a complaint with the county superintendent, on a form developed and provided by the county superintendent, if the classroom teacher fails to comply with any provision of this section. If the complaint is not resolved by the county superintendent within seven business days, the parent, custodian, or guardian may file a complaint with the State Superintendent or his or her designee. The State Superintendent shall make a form available for parents to file a complaint pursuant to this subsection.

(e) By September 1 of each year, each county superintendent shall report to the State Superintendent the number of complaints filed with him or her the previous school year. The State Superintendent, annually by October 1, shall report to the Legislative Oversight Commission on Education Accountability the number of complaints filed during the previous school year. The report shall include the number of complaints filed statewide and by county.

(f) For purposes of this section, "parent" means a parent who has some allocation of physical custody of the child or who has some share of joint decision-making authority for the child. For purposes of this section, "custodian" means a person who has some allocation of physical custody of the child or who has provided to the school written permission of a parent to have access to the information contemplated by this section. For purposes of this section, "guardian" means a person other than a parent or custodian who, pursuant to a court order, acts in loco parentis for the child.

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CHAPTER 129

(Com. Sub. for S. B. 453 - By Senators Nelson and Hunt)

[Passed March 6, 2023; in effect 90 days from passage (June 4, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §18-5G-6 and §18-5G-10 of the Code of West Virginia, 1931, as amended, all relating to public charter schools; providing for successor liability and delinquent retirement contributions; and including retirement contribution payments as payroll obligation in distribution of assets.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5G. PUBLIC CHARTER SCHOOLS.

§18-5G-6. Authorizer powers and duties.

(a) Each authorizing authority is responsible for exercising in accordance with this article the following powers and duties with respect to the oversight and authorization of public charter schools:

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

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

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

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

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

(3) Solicit applications and guide the development of high-quality public charter school applications;

(4) Approve new charter applications that meet the requirements of this article, and on the basis of their application satisfying all requirements of §18-5G-8 of this code, that demonstrate the ability to operate the school in an educationally and fiscally sound manner, and that are likely to improve student achievement through the program detailed in the charter application;

(5) Decline to approve charter applications that fail to meet the requirements of §18-5G-8 of this code;

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

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

(8) Determine whether each charter contract it authorizes merits renewal or revocation.

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

(1) Complete a thorough review process;

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

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

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

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

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

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

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-8 of this code;

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

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

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

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

(f) An authorizer shall conduct or require oversight activities that enable it to fulfill its responsibilities under this article, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of this article, adhere to the terms of the charter contract, and do not unduly inhibit the autonomy granted to charter schools. In the event that a public charter school's performance or legal compliance appears unsatisfactory, the authorizer shall promptly notify, in writing, the public charter school governing board of perceived problems and

provide reasonable opportunity for the school to remedy the problems.

(g) An authorizer shall take appropriate corrective actions or exercise sanctions in response to apparent deficiencies in a charter school's performance or legal compliance. If warranted, the actions or sanctions may include requiring a charter school to develop and execute a corrective action plan within a specified time frame;

(h) An authorizer shall require each charter school it oversees to submit an annual report to assist the authorizer in gathering complete information about each school, consistent with the statutory requirements of this act and the charter contract.

(i) To cover authorizer costs for overseeing public charter schools, each public charter school shall remit to its respective authorizer an oversight fee drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school as established by the state board by rule pursuant to §18-5G-5 of this code.

(j) An authorizer may receive and expend appropriate gifts, grants, and donations of any kind from any public or private entity to carry out the purposes of this act, subject to all lawful terms and conditions under which the gifts, grants, or donations are given, and may apply for any federal funds that may be available for the implementation of public charter school programs;

(k) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Except to the extent the provisions of §5-10D-11 or §5-10D-13 of this code may be applicable relating to successor liability for, and collection of, delinquent retirement contributions, neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.

(l) Regulation of public charter schools by the state board and a county board shall be limited to those powers and duties of authorizers prescribed in this article and general supervision consistent with the spirit and intent of this article.

§18-5G-10. Charter contract renewal; performance report by authorizer and renewal guidance; renewal application; renewal term; nonrenewal; closure and dissolution.

(a) No later than June 30 of a public charter school's fourth year of operation under each five-year term of a charter contract, the authorizer shall issue a performance report on the public charter school. The performance report shall summarize the public charter school's performance record to date, based on the data collected under the statutory requirements of this act and the charter contract, and shall provide notice of any weaknesses or concerns perceived by the authorizer concerning the school that may jeopardize its position in seeking renewal if not timely rectified. The school and the authorizer shall mutually agree to a reasonable time period for the public charter school to respond to the performance report and submit any corrections for the report.

(b) No later than June 30 of the school year before a public charter school's final year of operation under terms of a charter contract, the authorizer shall issue contract renewal application guidance to the school. The renewal application guidance required by this subsection shall include or refer explicitly to the criteria and standards that will guide the authorizer's renewal decisions as it pertains to the named public charter school. These criteria and standards shall be based on the statutory requirements of this act and the charter contract. The renewal application guidance shall, at a minimum, require and provide an opportunity for the public charter school to:

(1) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;

(2) Describe improvements undertaken or planned for the school; and

(3) Detail the school's plans for the next charter term.

(c) No later than September 30 of a public charter school's final authorized year of operation under a term of a charter contract, the governing board of the public charter school seeking renewal shall submit a renewal application to the authorizer pursuant to the renewal application guidance offered by the authorizer under subsection (b) of this section. The authorizer shall rule in a public meeting and by resolution on the renewal application no later than 45 days after the filing of the renewal application. In making charter renewal decisions, the authorizer shall:

(1) Ground its decisions on a thorough analysis of evidence of the school's performance over the term of the charter contract in accordance with the terms set forth in the charter contract, annual performance reports, and any required financial audits;

(2) Ensure that data used in making renewal decisions are available to the public charter school and the public;

(3) Provide a public report summarizing the evidence basis for each decision; and

(4) Include one of the following rulings:

(A) Renew the charter contract for another term of up to five years based on the school's performance data and demonstrated capacities of the public charter school; or

(B) Decline to renew the charter contract. The authorizer shall clearly state in a resolution the reasons for the nonrenewal. The governing board of the school shall be granted 30 days to respond in writing to the decision and public report before that decision becomes final. The governing board shall be allowed to provide the authorizer with such arguments and supporting information as it sees fit, and shall be granted an opportunity for a recorded public hearing, at the request of the governing board. The governing board may be represented by counsel at the hearing and may call witnesses to testify. The authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the

renewal of the charter contract. The authorizer shall render its final determination within 10 days of the close of the 30-day period. Any nonrenewal of a charter contract may be appealed to the state board pursuant to §18-5G-13 of this code.

(d) The failure of the authorizer to act on a renewal application within the designated time frames shall be deemed an approval of the renewal application.

(e) Within 10 days of taking final action to renew or not renew a charter under this section, the authorizer shall report the action taken and reasons for the decision to the school's governing board and the state board or affected county board, as applicable. A copy of the report shall be submitted at the same time to the state superintendent.

(f) Renewal of a charter contract may be denied if the authorizer determines that the health and safety of students attending the public charter school is threatened or, at such time following the process set forth in this section, if the public charter school has:

(A) Failed to substantially comply with the provisions of this article:

(B) Committed a material violation of any of the terms, conditions, standards, or procedures required under this chapter or the charter contract;

(C) Failed to substantially meet the performance expectations set forth in the charter contract;

(D) Failed to substantially meet generally accepted standards of fiscal management; or

(E) Violated any provision of law from which the school was not exempted.

(g) If an authorizer revokes or does not renew a charter contract, the authorizer shall close the school: *Provided*, That when the charter is revoked or not renewed for a school that began as a

conversion public charter school or program conversion public charter school, the county board of the district in which the school is located may return it to noncharter public school status.

(h) A charter contract may be revoked at any time if the authorizer determines that the health and safety of students attending the public charter school is threatened, if an administrator employed by or member of the governing board over the charter school is convicted of fraud or misappropriation of funds, if there is a failure to meet generally accepted standards of financial management, if there is a material breach of the charter contract, there is a substantial violation of any provision of law from which the public charter school is not exempted, or if there are dire and chronic academic deficiencies.

(i) In the event of a public charter school closure for any reason, the authorizer shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol established by the state board including, but not limited to, the following:

(1) Overseeing and working with the closing public charter school to ensure timely notification to parents, orderly transition of students and student records to new schools and proper disposition of school funds, property, and assets in accordance with the requirements of this chapter; and

(2) Distributing the assets of the public charter school first to satisfy outstanding payroll obligations to and required payments to retirement systems on behalf of employees of the public charter school and then to creditors of the public charter school. Any remaining funds shall be paid to the county board. If the assets of the public charter school are insufficient to pay all parties to whom the public charter school owes compensation, the prioritization of distribution of assets may be determined by decree of a court of law.

(j) If a public charter school is subject to closure or transition, following exhaustion of any appeal allowed under §18-5G-13 of this code, an authorizer may remove at will at any time any or all

of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure or transition. If the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.

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CHAPTER 130

**(Com. Sub. for S. B. 469 - By Senators Grady, Jeffries, Deeds,
Queen, Caputo, Takubo, Tarr, Woelfel, Nelson, Woodrum,
Oliverio, Taylor, and Phillips)**

[Passed March 10, 2023; to take effect July 1, 2023]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-50, relating to providing funding for Cardiopulmonary Resuscitation Instruction Fund for instruction of public high school students.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

†§18-5-50. Cardiopulmonary Resuscitation Instruction Fund.

There is hereby created in the State Treasury a special revenue fund designated and known as the Cardiopulmonary Resuscitation Instruction Fund which is an interest- and earnings-accumulating account. The fund is established to support cardiopulmonary instruction for public high schools and all moneys must be spent to support the school for which the funding was derived. The fund consists of moneys appropriated by the Legislature, grants, gifts, devises, and donations from any public or private source. Funds shall be distributed to the county boards of education and multicounty vocational centers, with the funding amount per school determined by multiplying the number of projected regular public school graduates by \$5. All interest and other returns derived from the deposit and investment of moneys in the

†NOTE: S. B. 688 (Chapter 132), which passed prior to this act, also created a new Section 50. Therefore, this has been redesignated as Section 51 for the code.

Cardiopulmonary Resuscitation Instruction Fund shall be credited to the fund. 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 in this section. The West Virginia Department of Education shall administer the fund.

CHAPTER 131

(S. B. 625 - By Senator Rucker)

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §18-8-1a of the Code of West Virginia, 1931, as amended, relating to regarding certain transcripts or credentials of microschool programs to be accepted as record of student's previous performance for placement and credit assignment.

Be it enacted by the Legislature of West Virginia:

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 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 parent or guardian 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 17th 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) 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 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) A student from another state, or who is eligible to enroll in a public school in this state, 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, microschool 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.

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CHAPTER 132

(Com. Sub. for S. B. 688 - By Senators Chapman, Hunt, and Oliverio)

[Passed March 8, 2023; in effect 90 days from passage (June 6, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-50, relating to allowing county boards of education to contract with retired teachers to provide tutoring services in reading and math to support the need of one-on-one intervention for students; stating purpose; defining terms; providing tutor eligibility requirements; providing exclusions from eligibility; limiting civil and criminal liability of county school board; and providing miscellaneous provisions regarding program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-50. West Virginia Tutoring Program.

(a) *Purpose.* — County boards of education may contract with an independent contractor who is a retired teacher to provide tutoring services as that term is defined in this section. The purpose of the contract is to provide additional support to students who necessitate additional one-on-one instruction in the core subjects of reading and math. Any county board of education may contract with as many independent contractors as the county school board considers necessary.

(b) *Definitions.* — For purposes of this section the following words have the following meanings:

"Contract" means an agreement between a county board of education and an independent contractor relating to the procurement of tutoring services;

"County school board" means the same as that term is used in §18-5-1 *et seq.* of this code;

"Independent contractor" means the same as that term is used in §21-5I-4 of this code;

"Tutoring services" means academic support provided by an expert teacher who has a deep knowledge or defined expertise in a particular subject or set of subjects;

"Tutor" means an independent contractor who is a retired teacher that provides tutoring services in the area of reading or math; and

"Retired teacher" means the same as that term is used in §18A-2-3 of this code.

(c) *Requirements for participation.* — Prior to entering into a contract with a tutor, the county school board shall require an applicant to provide proof that he or she:

(1) Is a citizen of the United States;

(2) Has retired from his or her employment as a teacher;

(3) Meets any other requirements imposed by the county school board that apply to current teachers, which may include, but are not limited to, a background check or training; and

(4) Carries appropriate liability insurance at his or her expense: *Provided,* That the imposition of this requirement is at the discretion of the county school board.

(d) *Exclusions from participation.* — Any of the following disqualifying criminal offenses shall preclude a county board from engaging the services of a tutor:

(1) Any sex offense;

(2) Crimes against persons, which include, but are not limited to, manslaughter, murder, child abuse, domestic violence, stalking, kidnapping, or aggravated assault or battery;

(3) Unlawful manufacture, delivery, or possession with intent to deliver any controlled substance; and

(4) Any other misdemeanor or felony conviction deemed exclusionary for contracting with the independent contractor by the county school board.

(e) *Liability.* — A county school board may not be held civilly liable or be criminally prosecuted for any action of an independent contractor tutor acting within the scope of the duties for which their services were contracted unless the county school board can be shown to be grossly negligent or committed willful misconduct.

(f) *Miscellaneous.* —

(1) In contracting for the services set forth in this section, county school boards may not be subject to purchasing requirements set forth in in §5A-3-1 *et seq.* of this code.

(2) Nothing in this section requires a county board of education to contract with a tutor pursuant to this section. Participation by a county board of education is voluntary and subject to the availability of county funds. Any county board of education that opts to participate shall do so at its own expense. The provisions of this section place no obligation for the state to appropriate moneys for the purposes set forth in this section.

(3) An independent contractor tutor is not eligible for participation in the public employee insurance plan, workers' compensation, additional state retirement credited to employment as a West Virginia tutor, or any other state-sponsored or offered state benefit plan.

(4) Participation in the West Virginia Tutoring Program shall not affect the retired teacher's retirement benefits in any manner.

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CHAPTER 133

(Com. Sub. for H. B. 2380 - By Delegates Ellington and Toney)

[Passed March 7, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to repeal §18-9D-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-9A-10 of said code; and to amend and reenact §18-9D-2, §18-9D-3, §18-9D-4, §18-9D-6, §18-9D-7, §18-9D-8, §18-9D-9, §18-9D-13, §18-9D-15, and §18-9D-19 of said code, all relating to removing or revising obsolete, outdated, antiquated, inoperative, surplus or superseded provisions relating to defining terms; allowing funding directly to school construction fund instead of through school aid formula; removing references to regional education service agencies; removing authority to issue general obligation bonds; closing capital improvements fund and transferring funding to school construction fund; requiring authority to request appropriation; repealing authority to offer higher education savings plans; providing purposes and revenue sources for other funds and use of use of proceeds of bonds; and removing findings related to comprehensive high schools.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-10. Foundation allowance to improve instructional programs, instructional technology, and teacher and leader induction and professional growth.

(a) The total allowance to improve instructional programs and instructional technology is the sum of the following:

(1) For instructional improvement, in accordance with county and school electronic strategic improvement plans required by §18-2E-5 of this code, an amount equal to 10 percent of the increase in the local share amount for the next school year shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties as follows:

(A) One hundred fifty thousand dollars shall be allocated to each county; and

(B) Allocation to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

Moneys allocated by this subdivision shall be used to improve instructional programs according to the county and school strategic improvement plans required by §18-2E-5 of this code and approved by the state board.

Up to 50 percent of this allocation for the improvement of instructional programs may be used to employ professional educators and service personnel in the county. Prior to the use of any funds from this subdivision for personnel costs, the county board must receive authorization from the State Superintendent. The State Superintendent shall require the county board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; (3) sharing of services with adjoining counties in the use of the total local district board budget; and (4) employment of technology integration specialists to meet the needs for implementation of the West Virginia Strategic Technology Learning Plan. County boards shall make application for the use of funds for personnel for the next fiscal year by May 1 of each year. On or before June 1, the State Superintendent shall review all applications and notify applying county boards of the approval or disapproval of the use of funds for personnel during the fiscal year appropriate. The State Superintendent shall require the county board to demonstrate the need for an allocation for

personnel based upon the county's inability to meet the requirements of state law or state board policy.

The funds available for personnel under this subdivision may not be used to increase the total number of professional noninstructional personnel in the central office beyond four.

The plan shall be made available for distribution to the public at the office of each affected county board; plus

(2) For the purposes of improving instructional technology, an amount equal to 20 percent of the increase in the local share amount for the next school year shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties as follows:

(A) Thirty thousand dollars shall be allocated to each county; and

(B) Allocation to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

Moneys allocated by this subdivision shall be used to improve instructional technology programs according to the county board's strategic technology learning plan.

This allocation for the improvement of instructional technology programs may also be used for the employment of technology system specialists essential for the technology systems of the schools of the county to be fully functional and readily available when needed by classroom teachers. The amount of this allocation used for the employment of technology system specialists shall be included and justified in the county board's strategic technology learning plan; plus

(3) One percent of the state average per pupil state aid multiplied by the number of students enrolled in dual credit, advanced placement, and international baccalaureate courses, as

defined by the state board, distributed to the counties proportionate to enrollment in these courses in each county; plus

(4) For the purpose of supporting county-level implementation of the comprehensive systems for teacher and leader induction and professional growth pursuant to §18A-3C-3 of this code, an amount equal to 20 percent of the increase in the local share amount for the next school year shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties in a manner established by the state board which considers the following factors:

(A) The number of full-time-equivalent teachers employed by the county with zero years of experience;

(B) The total number of full-time-equivalent teachers employed by the county with one year of experience, with two years of experience, and with three years of experience;

(C) The number of full-time-equivalent principals, assistant principals, and vocational administrators employed by the county who are in their first or second year of employment as a principal, assistant principal, or vocational administrator;

(D) The number of full-time-equivalent principals, assistant principals, and vocational administrators employed by the county who are in their first year in an assignment at a school with a programmatic level in which they have not previously served as a principal, assistant principal, or vocational administrator; and

(E) Needs identified in the strategic plans for continuous improvement of schools and school systems including those identified through the performance evaluations of professional personnel.

Notwithstanding any provision of this subsection to the contrary, no county may receive an allocation for the purposes of this subdivision which is less than the county's total 2016-2017 allocation from the Teacher Mentor and Principals Mentorship appropriations to the Department of Education. Moneys allocated

by this subdivision shall be used for implementation of the comprehensive systems for teacher and leader induction and professional growth pursuant to §18A-3C-3 of this code. Notwithstanding any provision of this subsection to the contrary, for each of the five school years beginning with the school year 2020 – 2021 and ending after the school year 2024 – 2025, from funds to be allocated under this subdivision, \$100,000 shall be retained by the Department of Education to assist county boards with the design and implementation of a teacher leader framework to accomplish the teacher induction and professional growth aspects of their comprehensive systems of support for teacher and leader induction and professional growth pursuant to §18A-3C-3 of this code.

(b) Notwithstanding the restrictions on the use of funds pursuant to subdivisions (1) and (2), subsection (a) of this section, a county board may:

(1) Utilize up to 25 percent of the allocation for the improvement of instructional programs in any school year for school facility and equipment repair, maintenance, and improvement or replacement and other current expense priorities and for emergency purposes. The amount of this allocation used for any of these purposes shall be included and justified in the county and school strategic improvement plans or amendments thereto; and

(2) Utilize up to 50 percent of the allocation for improving instructional technology in any school year for school facility and equipment repair, maintenance, and improvement or replacement and other current expense priorities and for emergency purposes. The amount of this allocation used for any of these purposes shall be included and justified in the county board's strategic technology learning plan or amendments thereto.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-2. Definitions.

For the purposes of this article, unless a different meaning clearly appears from the context:

(1) "Authority" means the School Building Authority of West Virginia;

(2) "Bonds" means bonds issued by the authority pursuant to this article;

(3) "Construction project" means a project in the furtherance of a facilities plan with a cost greater than \$1 million for the new construction, expansion or major renovation of facilities, buildings, and structures for school purposes, including:

(A) The acquisition of land for current or future use in connection with the construction project;

(B) New or substantial upgrading of existing equipment, machinery, and furnishings;

(C) Installation of utilities and other similar items related to making the construction project operational.

(D) Construction project does not include such items as books, computers or equipment used for instructional purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course of business improvements; other items which are customarily considered to result in a current or ordinary course of business operating charge or a major improvement project;

(4) "Cost of project" means the cost of construction, expansion, renovation, repair and safety upgrading of facilities, buildings and structures for school purposes; the cost of land, equipment, machinery, furnishings, installation of utilities and other similar items related to making the project operational; and the cost of financing, interest during construction, professional service fees and all other charges or expenses necessary, appurtenant or incidental to the foregoing, including the cost of administration of this article;

(5) "Facilities plan" means the 10-year countywide comprehensive educational facilities plan established by a county board in accordance with guidelines adopted by the authority to meet the goals and objectives of this article that:

(A) Addresses the existing school facilities and facility needs of the county to provide a thorough and efficient education in accordance with the provisions of this code and policies of the state board;

(B) Best serves the needs of individual students, the general school population and the communities served by the facilities, including, but not limited to, providing for a facility infrastructure that avoids excessive school bus transportation times for students consistent with sound educational policy and within the budgetary constraints for staffing and operating the schools of the county;

(C) Includes the school major improvement plan;

(D) Includes the county board's school access safety plan required by §18-9F-3 of this code;

(E) Is updated annually to reflect projects completed, current enrollment projections and new or continuing needs; and

(F) Is approved by the state board and the authority prior to the distribution of state funds pursuant to this article to any county board or other entity applying for funds;

(6) "Project" means a construction project or a major improvement project;

(7) "Revenue" or "revenues" means moneys:

(A) Deposited in the School Construction Fund pursuant to §18-9D-6 of this code.

(B) Deposited in the School Construction Fund pursuant to §11-15-30 of this code and §29-22-18 of this code;

(C) Deposited in the School Building Debt Service Fund pursuant to §29-22-18 of this code;

(D) Deposited in the School Major Improvement Fund pursuant to §11-15-30 of this code;

(E) Received, directly or indirectly, from any source for use in any project completed pursuant to this article;

(F) Received by the authority for the purposes of this article; and

(G) Deposited in the Excess Lottery School Building Debt Services Fund pursuant to §29-22-18a of this code.

(8) "School major improvement plan" means a 10-year school maintenance plan that:

(A) Is prepared by a county board in accordance with the guidelines established by the authority and incorporated in its Countywide Comprehensive Educational Facilities Plan, or is prepared by the state board or the administrative council of an area vocational educational center in accordance with the guidelines if the entities seek funding from the authority for a major improvement project;

(B) Addresses the regularly scheduled maintenance for all school facilities of the county or under the jurisdiction of the entity seeking funding;

(C) Includes a projected repair and replacement schedule for all school facilities of the county or of entity seeking funding;

(D) Addresses the major improvement needs of each school within the county or under the jurisdiction of the entity seeking funding; and

(E) Is required prior to the distribution of state funds for a major improvement project pursuant to this article to the county board, state board or administrative council; and

(9) "School major improvement project" means a project with a cost greater than \$50,000 and less than \$1 million for the renovation, expansion, repair, and safety upgrading of existing school facilities, buildings, and structures, including the substantial repair or upgrading of equipment, machinery, building systems, utilities and other similar items related to the renovation, repair or

upgrading in the furtherance of a school major improvement plan. A major improvement project does not include such items as books, computers or equipment used for instructional purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course of business improvements; or other items which are customarily considered to result in a current or ordinary course of business operating charge.

§18-9D-3. Powers of authority; School Building Authority Fund.

(a) The School Building Authority has the power:

(1) To sue and be sued, plead, and be impleaded;

(2) To have a seal and alter the same at pleasure;

(3) To contract to acquire and to acquire, in the name of the authority, by purchase, lease-purchase not to exceed a term of 25 years, or otherwise, real property or rights or easements necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish those purposes;

(4) To acquire, hold and dispose of real and personal property for its corporate purposes;

(5) To make bylaws for the management and rule of its affairs;

(6) To appoint, contract with and employ attorneys, bond counsel, accountants, construction and financial experts, underwriters, financial advisers, trustees, managers, officers, and such other employees and agents as may be necessary in the judgment of the authority and to fix their compensation: *Provided*, That contracts entered into by the School Building Authority in connection with the issuance of bonds under this article to provide professional and technical services, including, without limitation, accounting, actuarial, underwriting, consulting, trustee, bond counsel, legal services, and contracts relating to the purchase or sale of bonds are subject to the provisions of §5A-3-1 *et seq.* of this code: *Provided, however*, That notwithstanding any other provisions of this code, any authority of the Attorney General of

this state relating to the review of contracts and other documents to effectuate the issuance of bonds under this article shall be exclusively limited to the form of the contract and document: *Provided further*, That the Attorney General of this state shall complete all reviews of contracts and documents relating to the issuance of bonds under this article within 10 calendar days of receipt of the contract and document for review;

(7) To make contracts and to execute all instruments necessary or convenient to effectuate the intent of and to exercise the powers granted to it by this article;

(8) To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the authority that its interests will be best served;

(9) To acquire by purchase, eminent domain or otherwise all real property or interests in the property necessary or convenient to accomplish the purposes of this article;

(10) To require proper maintenance and insurance of any project authorized under this section, including flood insurance for any facility within the 100-year flood plain at which authority funds are expended;

(11) To charge rent for the use of all or any part of a project or buildings at any time financed, constructed, acquired, or improved, in whole or in part, with the revenues of the authority;

(12) To assist any county board of education that chooses to acquire land, buildings and capital improvements to existing school buildings and property for use as public school facilities, by lease from a private or public lessor for a term not to exceed 25 years with an option to purchase pursuant to an investment contract with the lessor on such terms and conditions as may be determined to be in the best interests of the authority, the State Board of Education and the county board of education, consistent with the purposes of this article, by transferring funds to the State Board of Education as provided in §18-9D-15(f) of this code for the use of the county board of education;

(13) To accept and expend any gift, grant, contribution, bequest or endowment of money and equipment to, or for the benefit of, the authority or any project under this article, from the State of West Virginia or any other source for any or all of the purposes specified in this article or for any one or more of such purposes as may be specified in connection with the gift, grant, contribution, bequest, or endowment;

(14) To enter on any lands and premises for the purpose of making surveys, soundings and examinations;

(15) To contract for architectural, engineering or other professional services considered necessary or economical by the authority to provide consultative or other services to the authority or county board requesting professional services offered by the authority, to evaluate any facilities plan or any project encompassed in the plan, to inspect existing facilities or any project that has received or may receive funding from the authority or to perform any other service considered by the authority to be necessary or economical. Assistance to the district may include the development of preapproved systems, plans, designs, models, or documents; advice or oversight on any plan or project; or any other service that may be efficiently provided to county boards by the authority;

(16) To provide funds on an emergency basis to repair or replace property damaged by fire, flood, wind, storm, earthquake or other natural occurrence, the funds to be made available in accordance with guidelines of the School Building Authority;

(17) To transfer moneys to custodial accounts maintained by the School Building Authority with a state financial institution from the School Construction Fund and the School Improvement Fund created in the State Treasury pursuant to §18-9D-6 of this code, as necessary to the performance of any contracts executed by the School Building Authority in accordance with the provisions of this article;

(18) To enter into agreements with county boards and persons, firms or corporations to facilitate the development of county board

projects and county board facilities plans. The county board participating in an agreement shall pay at least 25 percent of the cost of the agreement. Nothing in this section may be construed to supersede, limit, or impair the authority of county boards to develop and prepare their projects or plans;

(19) To encourage any project or part thereof to provide opportunities for students to participate in supervised, unpaid work-based learning experiences related to the student's program of study approved by the county board. The work-based learning experience must be conducted in accordance with a formal training plan approved by the instructor, the employer, and the student and which sets forth at a minimum the specific skills to be learned, the required documentation of work-based learning experiences, the conditions of the placement, including duration and safety provisions, and provisions for supervision and liability insurance coverage as applicable. Projects involving the new construction and renovation of vocational-technical and adult education facilities should provide opportunities for students to participate in supervised work-based learning experiences, to the extent practical, which meet the requirements of this subdivision. Nothing in this subdivision may be construed to affect registered youth apprenticeship programs or the provisions governing those programs; and

(20) To do all things necessary or convenient to carry out the powers given in this article.

(b) The special revenue account in the State Treasury known as the "School Building Authority Fund" is hereby continued. The fund is to be administered by the School Building Authority. 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.

§18-9D-4. School building authority authorized to issue refunding revenue bonds for school building capital improvement projects.

The School Building Authority may by resolution, in accordance with the provisions of this article, issue revenue bonds of the authority from time to time, either to finance the cost of construction projects for public schools in this state, or to refund, at the discretion of the authority, bonds issued to finance the cost of the construction projects for public schools in this state and outstanding under and pursuant to the provisions of this article. The principal of, interest and redemption premium, if any, on the bonds shall be payable solely from the special fund herein provided for such payment.

§18-9D-5. School building authority authorized to offer individual higher education savings plans.

[Repealed.]

§18-9D-6. School Construction Fund in State Treasury; School Building Debt Service Fund in State Treasury; School Improvement Fund in State Treasury; collections to be paid into special funds; Excess Lottery School Building Debt Service Fund in State Treasury; authority to pledge the collections as security for refunding revenue bonds; authority to finance projects on a cash basis.

(a) The School Building Capital Improvements Fund is closed and terminated upon the effective date of the 2023 enactment of this section. Any moneys remaining in the fund shall be transferred to the School Construction Fund.

(b) There is continued in the State Treasury a special revenue fund named the School Building Debt Service Fund into which shall be deposited the amounts specified in §29-22-18 of this code. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this article for which moneys deposited in the School Building

Debt Service Fund have been pledged by the authority. Additionally, the authority may provide in the resolution and in the trust agreement for priorities on the revenues paid into the School Building Debt Service Fund that are necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article. On or prior to May 1 of each year, the authority shall certify to the state Lottery Director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds issued on or after January 1, 1994, and for which moneys deposited in the School Building Debt Service Fund have been pledged, or will be pledged, for repayment pursuant to this section.

After the authority has issued bonds authorized by this article for which moneys deposited in the School Building Debt Service Fund have been pledged and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any balance remaining in the School Building Debt Service Fund may be used for the redemption of any of the outstanding bonds issued under this article, for which moneys deposited in the School Building Debt Service Fund have been pledged, which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which the bonds are redeemable and all bonds redeemed or purchased shall be immediately canceled and may not again be issued: *Provided*, That after the authority has issued bonds authorized by this article and after the requirements of debt service and all associated funds have been satisfied for the fiscal year for which moneys deposited in the School Building Debt Service Fund have been pledged, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any remaining balance in the School Building Debt Service Fund may be transferred to the School Construction Fund created in subsection (c) of this section and used by the School Building Authority in its discretion to finance the cost of school construction or improvement projects authorized in accordance with the provisions of §18-9D-16 of this code on a cash basis.

(c) There is continued in the State Treasury a special revenue fund named the School Construction Fund into which shall be deposited the amounts specified in §11-15-30 of this code, together with any moneys appropriated to the fund by the Legislature.

Expenditures from the School Construction Fund shall be for the purposes set forth in this article, including lease-purchase payments under agreements made pursuant to §18-9D-15 (e) of this code and §18-5-9 of this code and are authorized from collections in accordance with the provisions of §12-3-1 *et seq.* of this code and from other revenues annually appropriated by the Legislature from lottery revenues as authorized by §29-22-18 of this code pursuant to the provisions set forth in §5A-2-1 *et seq.* of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The School Construction Fund shall be an interest-bearing account, with the interest credited to and deposited in the School Construction Fund and expended in accordance with the provisions of this article. Deposits to and expenditures from the School Construction Fund are subject to the provisions of §18-9D-15(k) of this code.

(d) There is continued in the State Treasury a special revenue fund named the School Major Improvement Fund into which shall be deposited the amounts specified in §11-15-30 of this code, together with any moneys appropriated to the fund by the Legislature. Expenditures from the School Major Improvement Fund shall be for the purposes set forth in this article and are authorized from collections in accordance with the provisions of §12-3-1 *et seq.* of this code and from other revenues annually appropriated by the Legislature from lottery revenues as authorized by §29-22-18 of this code pursuant to the provisions set forth in §5A-2-1 *et seq.* of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The School Major Improvement Fund shall be an interest-bearing account, with interest being credited to and deposited in the School

Major Improvement Fund and expended in accordance with the provisions of this article.

(e) There is created in the State Treasury a special revenue fund named the Excess Lottery School Building Debt Service Fund into which shall be deposited the amounts specified in §29-22-18a of this code. All amounts deposited in the fund shall be pledged, as designated by the authority, to the repayment of the principal, interest, and redemption premium, if any, on revenue bonds or refunding revenue bonds authorized by §18-9D-4b of this code. On or prior to May 1 of each year, the authority shall certify to the state Lottery Director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds issued for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged, or will be pledged, for repayment pursuant to this section.

After the authority has issued bonds authorized by this article for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any balance remaining in the Excess Lottery School Building Debt Service Fund may be used for the redemption of any of the outstanding bonds issued under this article, for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged, which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which the bonds are redeemable and all bonds redeemed or purchased shall be immediately canceled and may not again be issued: *Provided*, That after the authority has issued bonds authorized by this article and after the requirements of debt service and all associated funds have been satisfied for the fiscal year, including coverage and reserve funds established in connection with the bonds issued pursuant to this article for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged, any remaining balance in the Excess Lottery School Building Debt Service Fund may be transferred to the School Construction Fund

created in subsection (c) of this section and used by the School Building Authority in its discretion to finance the cost of school construction or improvement projects authorized in accordance with the provisions of §18-9D-16 of this code on a cash basis.

(f) Beginning for fiscal year 2023 and each fiscal year thereafter, the School Building Authority shall annually request the Governor to include in the budget bill an amount equal to \$24 million for appropriation to the agency's General Revenue Fund. These funds shall be transferred to the School Construction Fund and used for purposes set out within subsection (e) of this section.

(g) The Legislature finds and declares that the Supreme Court of Appeals of West Virginia has held that the issuance of additional revenue bonds authorized under the School Building Authority Act, as enacted in this article prior to July 20, 1993, constituted an indebtedness of the state in violation of section four, article X of the Constitution of West Virginia, but that revenue bonds issued under this article prior to July 20, 1993, are not invalid.

The Legislature further finds and declares that the financial capacity of a county to construct, lease and improve school facilities depends upon the county's bonding capacity (local property wealth), voter willingness to pass bond issues and the county's ability to reallocate other available county funds instead of criteria related to educational needs or upon the ability of the School Building Authority created in this article to issue bonds that comply with the holding of the West Virginia Supreme Court of Appeals or otherwise assist counties with the financing of facilities construction and improvement. The Legislature further finds and declares that this section, as well as §29-22-18 of this code, had been reenacted during the first extraordinary session of the West Virginia Legislature in the year 1994 in an attempt to comply with the holding of the Supreme Court of Appeals of West Virginia.

The Legislature further finds and declares that it intends, through the reenactment of this section and §29-22-18 of this code, to dedicate a source of state revenues to special revenue funds for the purposes of paying the debt service on bonds and refunding bonds issued subsequent to January 1, 1994, the proceeds of which

will be used for the construction and improvement of school building facilities. The Legislature further finds and declares that it intends, through the reenactment of this section and §11-15-30 of this code and §29-22-18 of this code, to appropriate revenues to two special revenue funds for the purposes of construction and improvement of school building facilities. Furthermore, the Legislature intends to encourage county boards to maintain existing levels of county funding for construction, improvement, and maintenance of school building facilities and to generate additional county funds for those purposes through bonds and special levies whenever possible. The Legislature further encourages the School Building Authority, the state board and county boards of education to propose uniform project specifications for comparable projects whenever possible to meet county needs at the lowest possible cost.

The Legislature further finds and declares that it intends, through the reenactment of this section and §29-22-18 of this code, to comply with the provisions of sections four and six, article X of the Constitution of West Virginia; and section one, article XII of said Constitution.

§18-9D-7. Authority to fix and collect rents.

The authority may fix and collect a rental fee for the use of all or any part of a capital improvement project completed under this article to provide revenues for deposit in the School Construction Fund to pay, in whole or in part, the principal of, interest and redemption premium, if any, on the bonds authorized to be issued pursuant to this article as the same mature and become due and to make all reserve and other payments to be required by the proceedings which authorize these bonds; to provide any additional protective pledge of revenues and reserve or other payments as the School Building Authority may require by the resolution authorizing any issue of bonds pursuant to this article and any trust agreement made in connection therewith; and to make any other payments required or authorized by this article or any proceedings, resolutions or trust agreements authorized hereunder.

§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

(a) The maximum aggregate amount of bonds outstanding at any time, for which the moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are to be pledged, is \$500 million; however, any amount of bonds for which moneys have been deposited in a sinking fund, reserve fund or other fund established to provide payment of principal or interest on the bonds shall be excluded from the calculation of the maximum aggregate amount of bonds outstanding at any time. The issuance of revenue bonds under this article shall be authorized, from time to time, by resolution or resolutions of the School Building Authority, copies of which shall be provided to the Governor, the President of the Senate and the Speaker of the House of Delegates within five days of their approval, which shall set forth the proposed projects authorized in accordance with §18-9D-16 of this code and provide for the issuance of bonds in amounts sufficient, when sold as provided in this section, to provide moneys considered sufficient by the authority to pay the costs, less the amounts of any other funds available for the costs or from any appropriation, grant or gift for the costs: *Provided*, That bond issues from which bond revenues are to be distributed in accordance with §18-9D-15 of this code for projects authorized pursuant to §18-9D-16 of this code are not required to set forth the proposed projects in the resolution. The resolution shall prescribe the rights and duties of the bondholders and the School Building Authority and, for that purpose, may prescribe the form of the trust agreement referred to in this section. The bonds may be issued, from time to time, in such amounts; shall be of such series; bear such date or dates; mature at such time or times not exceeding 40 years from their respective dates; bear interest at such rate or rates; be in such denominations; be in such form, either coupon or registered, carrying such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places within or without the state; be subject to such terms of redemption at such prices not exceeding 105 percent of the principal amount of the bonds; and be entitled to the priorities on the revenues paid into the

fund pledged for repayment of the bonds as may be provided in the resolution authorizing the issuance of the bonds or in any trust agreement made in connection with the bonds: *Provided, however*, That revenue bonds issued on or after January 1, 2008, which are secured by lottery proceeds from §29-22-18 or §29-22-18a of this code, shall mature at such time or times not exceeding 20 years from their respective dates.

(b) The bonds shall be signed by the Governor, his or her designee or the vice chair of the authority, under the great seal of the state, attested by the Secretary of State, and the coupons attached to the bonds shall bear the facsimile signature of the Governor, his or her designee or the vice chair of the authority. If any of the officers whose signatures appear on the bonds or coupons cease to be officers before the delivery of the bonds, the signatures shall nevertheless be valid and sufficient for all purposes the same as if the officers had remained in office until the delivery. The revenue bonds shall be sold in the manner determined by the authority to be for the best interests of the State.

(c) The proceeds of any bonds shall be used solely for the purpose or purposes as may be generally or specifically set forth in the resolution authorizing those bonds and shall be disbursed in the manner and with the restrictions, if any, that the authority provides in the resolution authorizing the issuance of the bonds or in the trust agreement referred to in this section securing the bonds. If the proceeds of the bonds, by error in calculations or otherwise, are less than the cost of any projects specifically set forth in the resolution, additional bonds may in like manner be issued to provide the amount of the deficiency; and unless otherwise provided for in the resolution or trust agreement hereinafter mentioned, the additional bonds shall be considered to be of the same issue and are entitled to payment from the same fund, without preference or priority, as the bonds before issued for the projects. If the proceeds of bonds issued for the projects specifically set forth in the resolution authorizing the bonds issued by the authority exceed the cost of the bonds, the surplus may be used for any other projects authorized in accordance with §18-9D-16 of this code or in any other manner that the resolution authorizing the bonds

provides. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the definitive bonds.

(d) After the issuance of any revenue bonds, the revenues pledged for the revenue bonds may not be reduced as long as any of the revenue bonds are outstanding and unpaid except under the terms, provisions and conditions that are contained in the resolution, trust agreement or other proceedings under which the revenue bonds were issued.

(e) The revenue bonds and the revenue refunding bonds and bonds issued for combined purposes, together with the interest on the bonds, are exempt from all taxation by the State of West Virginia, or by any county, school district, municipality, or political subdivision thereof.

(f) Any school construction bonds issued under this section shall be issued on parity with any existing School Building Authority bonds previously issued under this article.

§18-9D-9. Issuance of revenue refunding bonds; use of moneys; power to enter into escrow agreements; call for redemption.

The issuance of revenue refunding bonds under the provisions of this article shall be authorized by resolution of the School Building Authority and shall otherwise be subject to the limitations, conditions, and provisions of other revenue bonds under this article. The revenue refunding bonds may be issued in an amount at the option of the authority sufficient to pay either in part or in full, together with interest earned on the investment of the proceeds thereof, whether or not at the time of the issuance of the revenue refunding bonds the hereafter mentioned bonds are payable or callable for optional redemption: (1) The principal of the outstanding bonds; (2) the redemption premium, if any, on the outstanding bonds if they are to be redeemed prior to maturity; (3) the interest due and payable on the outstanding bonds to and including the maturity date thereof or the first date upon which the

outstanding bonds are to be redeemed, including any interest theretofore accrued and unpaid; and (4) all expenses of the issuance and sale of said revenue refunding bonds, including all necessary financial and legal expenses, and also including the creation of initial debt service reserve funds. Any existing moneys pledged with respect to the outstanding bonds may be used for any or all of the purposes stated in (1), (2), (3) and (4) above or may be deposited in a sinking fund or reserve fund or other funds for the issue of bonds which have been issued wholly or in part for the purpose of such refunding. Such amount of the proceeds of the revenue refunding bonds as shall be sufficient for the payment of the principal, interest and redemption premium, if any, on the outstanding bonds which will not be immediately due and payable shall be deposited in trust, for the sole purpose of making such payments, in a banking institution chosen by the authority and in accordance with any provisions which may be included in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same. Any of the moneys so deposited in trust may, prior to the date on which such moneys will be needed for the payment of principal of, interest and redemption premium, if any, on the outstanding bonds, be invested and reinvested as determined by the authority, in whole or in part: (a) In direct obligations issued by the United States of America or one of its agencies or in direct obligations of the State of West Virginia; (b) in obligations unconditionally guaranteed by the United States of America as to principal and interest; or (c) in certificates of deposit of a banking corporation or association which is a member of the federal deposit insurance corporation, or successor; but any such certificates of deposit must be fully secured as to both principal and interest by pledged collateral consisting of direct obligations of or obligations guaranteed by the United States of America, or direct obligations of the State of West Virginia, having a market value, excluding accrued interest, at all times at least equal to the amount of the principal of and accrued interest on the certificates of deposit. Any such investments must mature, or be payable in advance of maturity at the option of the holder, and shall bear interest in such manner as to provide funds which, together with uninvested money, will be sufficient to pay when due or called for redemption the bonds refunded, together with interest accrued and

to accrue thereon and redemption premiums, if any, and the refunding bonds' proceeds or obligations so purchased therewith shall be deposited in escrow and held in trust for the payment and redemption of the bonds refunded: *Provided*, That if interest earned by any investment in the escrow is shown to be in excess of the amounts required from time to time for the payment of interest on and principal of the refunded bonds, including applicable redemption premium, then the excess may be withdrawn from escrow and disbursed in such manner as the authority shall by resolution determine. Any moneys in the sinking or reserve funds or other funds maintained for the outstanding bonds to be refunded may be applied in the same manner and for the same purpose as are the net proceeds of refunding bonds or may be deposited in the special fund or any reserve funds established for account of the refunding bonds.

The authority to issue revenue refunding bonds shall be in addition to any other authority to refund bonds conferred by law.

The School Building Authority may enter into such escrow agreements with such bank or banks and to insert therein such protective and other covenants and provisions as it may consider necessary to permit the carrying out of the provisions of this article and to ensure the prompt payment of the principal of and interest and redemption premiums on the revenue bonds refunded.

Where any revenue bonds to be refunded are not to be surrendered for exchange or payment and are not to be paid at maturity with escrowed obligations, but are to be paid from such source prior to maturity pursuant to call for redemption exercised under a right of redemption reserved in such revenue bonds, the authority shall, prior to the issuance of the refunding bonds, determine which redemption date or dates shall be used, call the revenue bonds for redemption and provide for the giving of the notice of redemption required by the proceedings authorizing the revenue bonds. Where notice is to be given at a time subsequent to the issuance of the refunding bonds, the necessary notices may be deposited with the State Treasurer or the bank acting as escrow agent of the refunding bond proceeds and the escrow agent appropriately instructed and authorized to give the required notices

at the prescribed time or times. If any officer of the public body signing any such notice shall no longer be in office at the time of the utilization of the notice, the notice shall nevertheless be valid and effective for its intended purpose.

§18-9D-13. Payment of bonds.

From the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund, the authority shall make periodic payments in an amount sufficient to meet the requirements of any issue of bonds sold under the provisions of this article and for which the authority has pledged revenues in the fund for the payment of the bonds, as may be specified in the resolution of the authority authorizing the issue thereof or in any trust agreement entered into in connection therewith. The payments so made shall be placed as specified in the resolution or trust agreement in a special sinking fund which is hereby pledged to and charged with the payment of the principal of the bonds of the issue and the interest thereon, and to the redemption or repurchase of the bonds, the sinking fund to be a fund for all bonds of the particular issue without distinction or priority of one over another, except as may be provided in the resolution authorizing the issuance of the bonds. The moneys in the special sinking fund, less the reserve for payment of principal and interest and redemption premium, if any, as may be required by the resolution of the School Building Authority authorizing the issue or any trust agreement made in connection therewith, may be used for redemption of any of the outstanding bonds payable from the fund which by their terms are then redeemable, or for the purchase of bonds at the market price, but not exceeding the price, if any, at which the bonds shall in the same year be redeemable; and all bonds redeemed or purchased shall forthwith be canceled and may not again be issued.

§18-9D-15. Legislative intent; allocation of money among categories of projects; lease-purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation.

(a) It is the intent of the Legislature to empower the School Building Authority to facilitate and provide state funds and to administer all federal funds provided for the construction and major improvement of school facilities so as to meet the educational needs of the people of this state in an efficient and economical manner. The authority shall make funding determinations in accordance with the provisions of this article and shall assess existing school facilities and each facility's school major improvement plan in relation to the needs of the individual student, the general school population, the communities served by the facilities and facility needs statewide.

(b) An amount that is not more than 10 percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from:

(1) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(2) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code; and

(3) Any other moneys received by the authority, except moneys paid into the School Major Improvement Fund pursuant to §18-9D-6 of this code and moneys deposited into the School Access Safety Fund pursuant to §18-9F-5 of this code, may be allocated and may be expended by the authority for projects authorized in accordance with §18-9D-16 of this code that service the educational community statewide or, upon application by the state board, for educational programs that are under the jurisdiction of the state board. In addition, upon application by the state board or the administrative council of an area vocational educational center established pursuant to §18-2B-1 *et seq.* of this code, the authority may allocate and expend under this subsection moneys for school major improvement projects authorized in accordance with §18-9D-16 of this code proposed by the state board or an administrative council for school facilities under the direct supervision of the state board or an administrative council, respectively. Furthermore, upon application by a county board, the authority may allocate and

expend under this subsection moneys for school major improvement projects for vocational programs at comprehensive high schools, vocational programs at comprehensive middle schools, vocational schools cooperating with community and technical college programs, or any combination of the three. Each county board is encouraged to cooperate with community and technical colleges in the use of existing or development of new vocational technical facilities. All projects eligible for funds from this subsection shall be submitted directly to the authority which shall be solely responsible for the project's evaluation, subject to the following:

(A) Any project funded by the authority shall be in accordance with a comprehensive educational facility plan which must be approved by the state board and the authority. The authority may not expend any moneys for a school major improvement project proposed by the state board or the administrative council of an area vocational educational center unless the state board or an administrative council has submitted a 10-year facilities plan; and

(B) The authority shall, before allocating any moneys to the state board or the administrative council of an area vocational educational center for a school improvement project, consider all other funding sources available for the project.

(c) An amount that is not more than two percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from:

(1) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(2) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code; and

(3) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to §18-9F-5 of this code, shall be set aside by the authority as an emergency

fund to be distributed in accordance with the guidelines adopted by the authority.

(d) An amount that is not more than five percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from:

(1) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(2) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code; and

(3) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to §18-9F-5 of this code, may be reserved by the authority for multiuse vocational-technical education facilities projects that may include post-secondary programs as a first priority use. The authority may allocate and expend under this subsection moneys for any purposes authorized in this article on multiuse vocational-technical education facilities projects, including equipment and equipment updates at the facilities, authorized in accordance with §18-9D-16 of this code. If the projects approved under this subsection do not require the full amount of moneys reserved, moneys above the amount required may be allocated and expended in accordance with other provisions of this article. A county board, the state board, an administrative council, or the joint administrative board of a vocational-technical education facility which includes post-secondary programs may propose projects for facilities or equipment, or both, which are under the direct supervision of the respective body: *Provided*, That the authority shall, before allocating any moneys for a project under this subsection, consider all other funding sources available for the project.

(e) The remaining moneys determined by the authority to be available for distribution during the then current fiscal year from:

(1) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(2) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code; and

(3) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to §18-9F-5 of this code, shall be allocated and expended on the basis of need and efficient use of resources for projects funded in accordance with §18-9D-16 of this code.

(f) If a county board proposes to finance a project that is authorized in accordance with §18-9D-16 of this code through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may not allocate moneys to the county board in connection with the project: *Provided*, That the authority may transfer moneys to the state board which, with the authority, shall lend the amount transferred to the county board to be used only for a one-time payment due at the beginning of the lease term, made for the purpose of reducing annual lease payments under the investment contract, subject to the following conditions:

(1) The loan shall be secured in the manner required by the authority, in consultation with the state board, and shall be repaid in a period and bear interest at a rate as determined by the state board and the authority and shall have any terms and conditions that are required by the authority, all of which shall be set forth in a loan agreement among the authority, the state board and the county board;

(2) The loan agreement shall provide for the state board and the authority to defer the payment of principal and interest upon any loan made to the county board during the term of the investment contract, and annual renewals of the investment contract, among the state board, the authority, the county board and a lessor, subject to the following:

(A) If a county board which has received a loan from the authority for a one-time payment at the beginning of the lease term does not renew the lease annually until performance of the investment contract in its entirety is completed, the county board is in default and the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board;

(B) If a county board renews the lease annually through the performance of the investment contract in its entirety, the county board shall exercise its option to purchase the leased premises;

(C) The failure of the county board to make a scheduled payment pursuant to the investment contract constitutes an event of default under the loan agreement;

(D) Upon a default by a county board, the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board; and

(E) If the loan becomes due and payable immediately, the authority, in consultation with the state board, shall use all means available under the loan agreement and law to collect the outstanding principal balance of the loan, together with all unpaid interest accrued to the date of payment of the outstanding principal balance; and

(3) The loan agreement shall provide for the state board and the authority to forgive all principal and interest of the loan upon the county board purchasing the leased premises pursuant to the investment contract and performance of the investment contract in its entirety.

(g) To encourage county boards to proceed promptly with facilities planning and to prepare for the expenditure of any state

moneys derived from the sources described in this section, any county board or other entity to whom moneys are allocated by the authority that fails to expend the money within three years of the allocation shall forfeit the allocation and thereafter is ineligible for further allocations pursuant to this section until it is ready to expend funds in accordance with an approved facilities plan: *Provided*, That the authority may authorize an extension beyond the three-year forfeiture period not to exceed an additional two years. Any amount forfeited shall be added to the total funds available in the School Construction Fund of the authority for future allocation and distribution. Funds may not be distributed for any project under this article unless the responsible entity has a facilities plan approved by the state board and the School Building Authority and is prepared to commence expenditure of the funds during the fiscal year in which the moneys are distributed.

(h) The remaining moneys that are determined by the authority to be available for distribution during the then current fiscal year from moneys paid into the School Major Improvement Fund pursuant to §18-9D-6 of this code shall be allocated and distributed on the basis of need and efficient use of resources for projects authorized in accordance with §18-9D-16 of this code, subject to the following:

(1) The moneys may not be distributed for any project under this section unless the responsible entity has a facilities plan approved by the state board and the authority and is to commence expenditures of the funds during the fiscal year in which the moneys are distributed;

(2) Any moneys allocated to a project and not distributed for that project shall be deposited in an account to the credit of the project, the principal amount to remain to the credit of and available to the project for a period of two years; and

(3) Any moneys which are unexpended after a two-year period shall be redistributed on the basis of need from the School Major Improvement Fund in that fiscal year.

(i) Local matching funds may not be required under the provisions of this section. However, this article does not negate the responsibilities of the county boards to maintain school facilities. Therefore, as a prerequisite for eligibility to receive an allocation of school major improvement funds from the authority, a county board shall provide annual school facility maintenance expenditure data to the authority which shall be jointly reviewed by the authority and the state Department of Education Office of School Facilities and Transportation to assist the authority in its determination of the most meritorious projects to be funded through the School Major Improvement Fund. The state board shall promulgate rules relating to county boards' school facility maintenance budgets, including items which shall be included in these budgets.

(j) Any county board may use moneys provided by the authority under this article in conjunction with local funds derived from bonding, special levy, or other sources. Distribution to a county board, or to the state board or the administrative council of an area vocational educational center pursuant to subsection (b) of this section, may be in a lump sum or in accordance with a schedule of payments adopted by the authority pursuant to guidelines adopted by the authority.

(2) A county board may apply to the authority for funding under this article as part of the county's bond finance plan for a proposed capital improvement bond levy to be submitted to the voters of that county. The county board shall first submit a request for the funding to the executive director of the authority prior to the county board's proposed bond levy election. After initial consultation with the executive director, the county board shall prepare a written outline of the bond finance plan, the capital improvements to be made with levy funds, and the amount and timing of funding requested from the authority. The county board shall then present its request at a meeting of the members of the authority.

Grants of financial assistance that have received initial approval under this section are contingent upon passage of the bond levy and final approval by the School Building Authority of the

county's bond finance plan. Any materials produced by the county or its county board that refer to the authority shall include a statement of this contingency and terms. Notwithstanding any other provision of this subsection, financial assistance to be provided by the authority may only be used to pay costs of capital improvements and may not be pledged as security for or repayment of any bonds issued by the county board.

Upon passage of the bond levy, the county board shall have four years to finalize the project: *Provided*, That the authority may grant an extension to the four years in extenuating circumstances. The provisions of this subsection do not apply to any proposed capital improvement bond levy that is scheduled to be submitted to the voters on or before December 31, 2023.

(k) Funds in the School Construction Fund shall first be transferred and expended as follows:

(1) Any funds deposited in the School Construction Fund shall be expended first in accordance with an appropriation by the Legislature.

(2) To the extent that funds are available in the School Construction Fund in excess of that amount appropriated in any fiscal year, the excess funds may be expended for projects authorized in accordance with §18-9D-16 of this code.

(l) It is the intent of the Legislature to encourage county boards to explore and consider arrangements with other counties that may facilitate the highest and best use of all available funds, which may result in improved transportation arrangements for students, or which otherwise may create efficiencies for county boards and the students. In order to address the intent of the Legislature contained in this subsection, the authority shall grant preference to those projects which involve multicounty arrangements as the authority shall determine reasonable and proper.

(m) County boards shall submit all designs for construction of new school buildings to the School Building Authority for review and approval prior to preparation of final bid documents. A vendor

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

(n) The authority may elect to disburse funds for approved construction projects over a period of more than one year subject to the following:

(1) The authority may not approve the funding of a school construction project over a period of more than three years;

(2) The authority may not approve the use of more than 50 percent of the revenue available for distribution in any given fiscal year for projects that are to be funded over a period of more than one year; and

(3) In order to encourage local participation in funding school construction projects, the authority may set aside limited funding, not to exceed \$500,000, in reserve for one additional year to provide a county the opportunity to complete financial planning for a project prior to the allocation of construction funds. Any funding shall be on a reserve basis and converted to a part of the construction grant only after all project budget funds have been secured and all county commitments have been fulfilled. Failure of the county to solidify the project budget and meet its obligations to the state within 18 months of the date the funding is set aside by the authority will result in expiration of the reserve and the funds shall be reallocated by the authority in the succeeding funding cycle.

§18-9D-19. Comprehensive high schools.

(a) When planning the construction of a high school which has been approved by the authority and which meets the required authority efficiencies, the authority shall provide funding for comprehensive vocational facilities to be located, when feasible, on the same site as the high school and may, in cooperation with the Higher Education Policy Commission, established in §18B-1B-1 of this code, provide funding for facilities for community and technical college education. When building in conjunction with the

Higher Education Policy Commission, an educational specification must be developed for the proposed new facility by the appropriate institutional governing board as defined in §18B-1-2 of this code. The county board is the fiscal agent for construction. All planning, design, bidding, and construction must be completed with authority guidelines and under the supervision of the authority.

(b) When planning the construction of a high school which has been approved by the authority and meets the required authority efficiencies, the authority shall provide funding sufficient for the construction of at least one auxiliary gymnasium. The authority may establish standards for the auxiliary gymnasium.

(c) Upon application of a county board to construct comprehensive vocational facilities at an existing high school, the authority will provide technical assistance to the county in developing a plan for construction of the comprehensive vocational facility. The facility may, in cooperation with the Higher Education Policy Commission in accordance with the provisions of subsection (a) of this section, include facilities for community and technical college education. Upon development of the plan, the authority shall consider funding based on the following criteria:

(1) The distance of any existing vocational facilities from the high schools it serves;

(2) The time required to travel to and from the vocational facility to the high schools it serves;

(3) The ability of the county board to provide local funds for the construction of new comprehensive vocational facilities;

(4) The size of the existing high schools and the demand for vocational technical courses;

(5) The age and physical condition of the existing vocational facilities; and

(6) Such other criteria as the authority shall consider appropriate.

(d) When planning the construction of a high school in a county which is served by a multicounty vocational technical facility, the county may not be required to include the construction of a comprehensive vocational facility in the plan. If the county board elects to construct a comprehensive vocational facility pursuant to this section, the board shall include the multicounty center director and board in planning programs to be offered at the vocational facility which complement the programs offered at the multicounty center and may as part of the plan include facilities for community and technical college education at the multicounty center. The programs offered at the vocational facility may not replace the programs offered at the multicounty vocational technical center without the consent of the center board.

(e) Notwithstanding any other provisions of this section to the contrary, the county board in which there is an existing comprehensive vocational center, may eliminate any vocational offering from a new comprehensive high school if the county board:

(1) Completes a comprehensive vocational curriculum study, as required by the authority, including an evaluation of both the programmatic and physical facilities of the existing center and coordinates the county's vocational curriculum; and

(2) Submits the plan to the authority for review and obtains the authority's approval.

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CHAPTER 134

**(Com. Sub. for H. B. 2596 - By Delegates Toney, Statler,
Vance, Ellington, Cooper, Shamblin, Foggin and Heckert)**

[Passed February 22, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 4, 2023.]

AN ACT to amend and reenact §18-5-16 of the Code of West Virginia, 1931, as amended, relating to open enrollment; clarifying the circumstances in which a county board of education shall permit the transfer of resident students; allowing appeal to State Superintendent of Schools; amending provisions pertaining to the contents of county board of education policies for open enrollment; requiring process for enrollment application to be clearly publicized and made available on the county board's website; modifying reasons for which an application can be denied; and requiring county boards and the State Department of Education to report annually on the number of transfer approvals and denials made pursuant to open enrollment policies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

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

(a) *Establishment of attendance zones within counties.* — The county board may establish attendance zones within the county to designate the schools within its district that resident students typically attend: *Provided*, That a county board may permit any eligible elementary, middle or high school resident student to apply for enrollment in any school with grade level capacity and existing programs and services currently outside any established attendance

zone in which the student resides. Upon the written request of any parent or guardian, or person legally responsible for any resident student, the superintendent may grant a resident student's transfer request from one school or program to another within the county so long as grade level capacity and the program and services exist at the time of the request. Counties with a critical need shortage policy may further review the request to determine if appropriate staffing is available in the requested grade, program, service, or content area. A superintendent may not transfer a resident student from one school to another within the county for reasons affecting the best interests of the schools without the consent of the student's parent or legal guardian. Any aggrieved person may appeal a transfer or denial of transfer by the county superintendent to the county board. When making enrollment decisions, a county superintendent or county board may not distinguish between students on the basis of residential or potential disability status. A county superintendent or county board may determine if appropriate staff, resources, services and programs are in place to meet the disability needs of the student at the requested school. A decision of the county board may be appealed to the state superintendent of schools, whose decision shall be final.

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

(1) "Nonresident student" means a student who resides in this state and who is enrolled in or is seeking enrollment in a county school district other than the county school district in which the student resides.

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

(c) *Enrollment policies for nonresident students.* — County boards shall establish and implement an open enrollment policy for nonresident students without charging tuition and without

obtaining approval from the board of the county in which a student resides and transfers. This policy shall clearly establish an open enrollment process and enrollment application period for nonresident students to enroll in any school within the district. The process for enrollment application shall be clearly publicized to parents and the general public, including dates and timelines, and shall be made available on the board's website. As part of the open enrollment policy, county boards shall also establish a process for nonresident students to enroll in any school within the district on a case-by-case basis at any time during the academic year so long as all other requirements are met including that the student has not previously transferred within the same school year. The open enrollment policy shall not discriminate against nonresident students on the basis of their residential address or any potential disability status. Enrollment policies are subject to the following:

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

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

(B) Secondary students who have completed 10th grade and, due to family relocation, become nonresident students, but express the desire to remain in a specific school to complete their education;

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

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

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

(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: *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.

(2) A county shall comply with all enrollment requirements for children who are in foster care or who meet the definition of unaccompanied youth prescribed in the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(6)).

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

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

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

(4) An application may only be denied by a county board of education due to lack of grade level capacity, lack of programs or services due to areas identified in the county board critical need policy, or the commission of Level 3 or Level 4 inappropriate

behavior as defined by West Virginia Board of Education Policy 4373 in the last year. The denial shall be in writing, sent to the parent or guardian of the nonresident student and the West Virginia Department of Education within three business days of the decision, and include the reason and explanation for the denial and information on appealing the denial of the application. If a nonresident student fails to fill out or submit an open enrollment application correctly, a county board shall provide an explanation of ways in which the application may be corrected and submitted for necessary approval.

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

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

(1) If a student transfers after the second month of any school year, the county to which the student transferred may issue, in the following fiscal year, an invoice to the county from which the student transferred for the amount, determined on a pro rata basis, that the county now responsible for educating the student otherwise would have received under the state basic foundation program established in §18-9A-1 *et seq.* of this code had such student been included in the county's prior year's net enrollment;

(2) If a student in grades kindergarten through 12 transfers after the second month of any school year, the county to which the student transferred may issue, in the following fiscal year, an invoice to the county from which the student transferred for the

amount the county now responsible for educating the student otherwise would have received under aid to exceptional students had such student been included in the county's prior year's child count enrollment;

(3) If a student in prekindergarten transfers after the child count of exceptional students is certified for any school year, the county to which the student transferred may issue, in the following fiscal year, an invoice to the county from which the student transferred for the amount the county now responsible for educating the student otherwise would have received under aid to exceptional students had such student been included in the county's prior year's child count enrollment; and

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

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

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

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

(i) Each county board shall report annually to the State Department of Education the number of resident and nonresident student transfers approved by the county board for the preceding school calendar year, as well as the number of resident and nonresident student transfer applications denied and the reasons for those denials. On or before June 30 of each year, the State Department of Education shall compile the information from the

county boards and report the information to the Legislative Oversight Commission on Education Accountability. Information regarding the annual number of resident and nonresident student transfer approvals and denials shall also be made available on each county board's website.

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CHAPTER 135

(H. B. 2607 - By Delegates Statler and Ellington)

[Passed March 2, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §18-5-13 of the Code of West Virginia, 1931, as amended, relating to the transportation of students and passengers for school-sponsored activities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

Subject to the provisions of this chapter and the rules of the state board, each county board may:

(a) Control and manage all of the schools and school interests for all school activities and upon all school property owned or leased by the county, including:

(1) Requiring schools to keep records regarding funds connected with the school or school interests, including all receipts and disbursements of all funds collected or received by:

(A) Any principal, teacher, student or other person in connection with the schools and school interests;

(B) Any program, activity or other endeavor of any nature operated or conducted by or in the name of the school; and

(C) Any organization or body directly connected with the school;

(2) Allowing schools to expend funds for student, parent, teacher and community recognition programs. A school may use only funds it generates through a fund-raising or donation-soliciting activity. Prior to commencing the activity, the school shall:

(A) Publicize the activity as intended for this purpose; and

(B) Designate for this purpose the funds generated;

(3) Auditing the records and conserving the funds, including securing surety bonds by expending board moneys. The funds described in this subsection are quasipublic funds, which means the moneys were received for the benefit of the school system as a result of curricular or noncurricular activities;

(b) Establish:

(1) Schools, from preschool through high school;

(2) Vocational schools; and

(3) Schools and programs for post-high school instruction, subject to approval of the state board;

(c) Close any school:

(1) Which is unnecessary and assign the students to other schools. The closing shall occur pursuant to official action of the county board. Except in emergency situations when the timing and manner of notification are subject to approval by the state superintendent, the county board shall notify the affected teachers and service personnel of the county board action not later than the first Monday in April. The board shall provide notice in the same manner as set forth in section four of this article; or

(2) Pursuant to subsection (e) of this section;

(d) Consolidate schools;

(e) Close any elementary school whose average daily attendance falls below twenty students for two consecutive months.

The county board may assign the students to other schools in the district or to schools in adjoining districts. If the teachers in the closed school are not transferred or reassigned to other schools, they shall receive one month's salary;

(f) Provide transportation according to rules established by the county board, as follows:

(1) To provide at public expense adequate means of transportation:

(A) For all children of school age who live more than two-miles distance from school by the nearest available road;

(B) For school children participating in county board-approved curricular and extracurricular activities;

(C) Across county lines for students transferred from one district to another by mutual agreement of both county boards. The agreement shall be recorded in the meeting minutes of each participating county board and is subject to subsection (h) of this section; and

(D) Within available revenues, for students within two-miles distance of the school; and

(2) To provide transportation for participants in projects operated, financed, sponsored or approved by the Bureau of Senior Services. This transportation shall be provided at no cost to the county board. All costs and expenses incident in any way to this transportation shall be borne by the bureau or the local or county affiliate of the bureau;

(3) Any school bus owned by the county board may be operated only by a bus operator regularly employed by the county board, except as provided in subsection (g) of this section;

(4) Notwithstanding any other provision of this code to the contrary and pursuant to rules established by the state board, the county board may provide for professional or service employees to

be certified to drive county board-owned and insured vehicles:
Provided, That:

(A) No more than 10 passengers including the driver may be transported at one time;

(B) Not more than two of these vehicles may be used for any school-sponsored activity; and

(C) The certified employees may use the vehicles to transport students for school-sponsored activities, but may not use the vehicles to transport students between school and home.

(5) Notwithstanding any other provision of this code to the contrary, students may be transported to a school-sponsored activity in a county-owned or leased vehicle that does not meet school bus or public transit ratings: *Provided, That* no more than 10 passengers including the driver may be transported at one time: *Provided, however, That* this section does not prohibit a parent, guardian, or other adult approved in writing by the parent or guardian from transporting students in a privately-owned vehicle;

(6) Students may be transported to a school-sponsored activity in a vehicle that has a seating capacity of 16 or more passengers which is not owned and operated by the county board only as follows:

(A) The state board shall promulgate a rule to establish requirements for:

(i) Automobile insurance coverage;

(ii) Vehicle safety specifications;

(iii) School bus or public transit ratings; and

(iv) Driver training, certification and criminal history record check; and

(B) The vehicle owner shall provide to the county board proof that the vehicle and driver satisfy the requirements of the state board rule; and

(7) Buses shall be used to transport 19 or more passengers for extracurricular activities as provided in this section only when the insurance coverage required by this section is in effect;

(g) Lease school buses pursuant to rules established by the county board.

(1) Leased buses may be operated only by bus operators regularly employed by the county board, except that these buses may be operated by bus operators regularly employed by another county board in this state if bus operators from the owning county are unavailable.

(2) The lessee shall bear all costs and expenses incurred by, or incidental to the use of, the bus.

(3) The county board may lease buses to:

(A) Public and private nonprofit organizations and private corporations to transport school-age children for camps or educational activities;

(B) Any college, university or officially recognized campus organization for transporting students, faculty and staff to and from the college or university. Only college and university students, faculty and staff may be transported pursuant to this paragraph. The lease shall include provisions for:

(i) Compensation for bus operators;

(ii) Consideration for insurance coverage, repairs and other costs of service; and

(iii) Any rules concerning student behavior;

(C) Public and private nonprofit organizations, including education employee organizations, for transportation associated with fairs, festivals and other educational and cultural events. The county board may charge fees in addition to those charges otherwise required by this subsection;

(h) To provide at public expense for insurance coverage against negligence of the drivers of school buses, trucks or other vehicles operated by the county board. Any contractual agreement for transportation of students shall require the vehicle owner to maintain insurance coverage against negligence in an amount specified by the county board;

(i) Provide for the full cost or any portion thereof for group plan insurance benefits not provided or available under the West Virginia Public Employees Insurance Act. Any of these benefits shall be provided:

(1) Solely from county board funds; and

(2) For all regular full-time employees of the county board;

(j) Employ teacher aides; to provide in-service training for the aides pursuant to rules established by the state board; and, prior to assignment, to provide a four-clock-hour program of training for a service person assigned duties as a teacher aide in an exceptional children program. The four-clock-hour program shall consist of training in areas specifically related to the education of exceptional children;

(k) Establish and operate a self-supporting dormitory for:

(1) Students attending a high school or participating in a post high school program; and

(2) Persons employed to teach in the high school or post high school program;

(l) At the county board's discretion, employ, contract with or otherwise engage legal counsel in lieu of using the services of the prosecuting attorney to advise, attend to, bring, prosecute or defend, as the case may be, any matters, actions, suits and proceedings in which the county board is interested;

(m) Provide appropriate uniforms for school service personnel;

(n) Provide at public expense for payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by the county board, subject to rules established by the county board;

(o) Allow designated employees to use publicly provided carriage to travel from their residences to their workplace and return. The use:

(1) Is subject to the supervision of the county board; and

(2) Shall be directly connected with, required by and essential to the performance of the employee's duties and responsibilities;

(p) Provide at public expense adequate public liability insurance, including professional liability insurance, for county board employees;

(q)(1) Enter into cooperative agreements with one or more county boards or educational services cooperative to provide improvements to the instructional needs of each district. The cooperative agreements may be used to employ specialists in a field of academic study or for support functions or services for the field.

(2) Enter into cooperative agreements with one or more county boards to facilitate coordination and cooperation in areas of service to reduce administrative and/or operational costs, including the consolidation of administrative, coordinating, and other county level functions into shared functions to promote the efficient administration and operation of the public school systems including, but not limited to:

(A) Purchasing;

(B) Operation of specialized programs for exceptional children;

(C) Employment of any school personnel as defined in §18A-1-1 of this code;

(D) Professional development;

(E) Technology including, but not limited to WVEIS; and

(F) Billing for school-based Medicaid services in schools throughout the state.

Each such cooperative agreement shall be in writing and agreed to by each county board participating in the cooperative agreement. Each cooperative agreement that is an employment agreement may be entered into on a case-by-case basis. Notwithstanding the geographic quadrants as provided in §18-5-13b of this code, school systems may enter into cooperative agreements with any school system in the state.

(3) Enter into a cooperative agreement with other county boards to establish educational services cooperatives as provided in §18-5-13c of this code.

(r) Provide information about vocational and higher education opportunities to exceptional students. The county board shall provide in writing to the students and their parents or guardians information relating to programs of vocational education and to programs available at state institutions of higher education. The information may include sources of available funding, including grants, mentorships and loans for students who wish to attend classes at institutions of higher education;

(s) Enter into agreements with other county boards for the transfer and receipt of any funds determined to be fair when students are permitted or required to attend school in a district other than the district of their residence. These agreements are subject to the approval of the state board; and

(t) Enter into job-sharing arrangements, as defined in section one, article one, chapter eighteen-a of this code, with its employees, subject to the following provisions:

(1) A job-sharing arrangement shall meet all the requirements relating to posting, qualifications and seniority, as provided in §18A-4-1 *et seq.* of this code;

(2) Notwithstanding any contrary provision of this code or legislative rule and specifically §5-16-1 *et seq.* of this code, a county board that enters into a job-sharing arrangement:

(A) Shall provide insurance coverage to the one employee mutually agreed upon by the employees participating in that arrangement; and

(B) May not provide insurance benefits of any type to more than one of the job-sharing employees, including any group plan available under the State Public Employees Insurance Act;

(3) Each job-sharing agreement shall be in writing on a form prescribed and furnished by the county board. The agreement shall designate specifically one employee only who is entitled to the insurance coverage. Any employee who is not designated is not eligible for state public employees insurance coverage regardless of the number of hours he or she works;

(4) All employees involved in the job-sharing agreement shall meet the requirements of §5-16-2 (3) of this code; and

(5) When entering into a job-sharing agreement, the county board and the participating employees shall consider issues such as retirement benefits, termination of the job-sharing agreement and any other issue the parties consider appropriate. Any provision in the agreement relating to retirement benefits may not cause any cost to be incurred by the retirement system that is more than the cost that would be incurred if a single employee were filling the position; and

(u) Under rules it establishes for each child, expend an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.

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CHAPTER 136

**(Com. Sub. for H. B. 2820 - By Delegates Crouse, Steele,
Burkhammer, Kimble, Worrell, Cannon, Dillon, Butler,
Maynor, Lucas, and Pinson)**

[Passed March 11, 2023; in effect ninety days from passage.]

AN ACT to amend and reenact §18-2-25 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18-2-25e, all relating to eligibility for participation in extracurricular activities under control of the West Virginia Secondary Schools Activities Commission; permitting students enrolled in private schools, the Hope Scholarship Program, microschoools and learning pods access to participate in extracurricular activities; modifying eligibility requirements for students enrolled in private schools, home school, the Hope Scholarship Program, microschoools, and learning pods to participate in extracurricular activities; prohibiting private school student from participating in public school sport if sport is offered at private school; clarifying students enrolled in private schools, the Hope Scholarship Program, microschoools and learning pods are subject to same transfer protocols that apply to member-to-member transfers; clarifying when students may transfer schools and retain eligibility to participate in extracurricular activities under control of the West Virginia Secondary Schools Activities Commission; and requiring the West Virginia Secondary Schools Activities Commission to promulgate rules, including emergency rules if necessary.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-25. Authority of county boards to regulate athletic and other extracurricular activities of secondary schools; delegation of authority to West Virginia Secondary School Activities Commission; authority of commission; approval of rules by state board; incorporation; funds; participation by private and parochial schools and by home-schooled students and participants in the Hope Scholarship Program or in a Microschool or Learning Pod.

(a) The county boards of education shall exercise the control, supervision, and regulation of all interscholastic athletic events, and other extracurricular activities of the students in public secondary schools, and of those schools of their respective counties. The county board of education may delegate control, supervision, and regulation of interscholastic athletic events and band activities to the West Virginia Secondary School Activities Commission.

(b) The West Virginia Secondary School Activities Commission is composed of the principals, or their representatives, of those secondary schools whose county boards of education have certified in writing to the State Superintendent of Schools that they have elected to delegate the control, supervision, and regulation of their interscholastic athletic events and band activities of the students in the public secondary schools in their respective counties to the commission. The West Virginia Secondary School Activities Commission may exercise the control, supervision, and regulation of interscholastic athletic events and band activities of secondary schools, delegated to it pursuant to this section. The rules of the West Virginia Secondary School Activities Commission shall contain a provision for a proper review procedure and review board and be promulgated in accordance with the provisions of chapter 29A of this code, but shall, in all instances, be subject to the prior approval of the state board. The West Virginia Secondary School Activities Commission, may, with the consent of the State Board of Education, incorporate under the name of West Virginia Secondary School Activities Commission, Inc., as a nonprofit, nonstock corporation under the provisions of chapter 31 of this code. County boards of education may expend moneys for and pay

dues to the West Virginia Secondary School Activities Commission, and all moneys paid to the commission, as well as moneys derived from any contest or other event sponsored by the commission, are quasi-public funds as defined in §18-5-1 *et seq.* of this code, and the funds of the commission are subject to an annual audit by the State Tax Commissioner.

(c) The West Virginia Secondary School Activities Commission shall promulgate reasonable rules providing for the control, supervision, and regulation of the interscholastic athletic events and other extracurricular activities of private and parochial secondary schools as elect to delegate to the commission control, supervision, and regulation, upon the same terms and conditions, subject to the same rules and requirements and upon the payment of the same fees and charges as those provided for public secondary schools. Any such private or parochial secondary school shall receive any monetary or other benefits in the same manner and in the same proportion as any public secondary school.

(d) Notwithstanding any other provision of this section, or the commission's rules, the commission shall consider eligible for participation in interscholastic athletic events and other extracurricular activities of secondary schools a student who is receiving home instruction pursuant to §18-8-1(c) of this code, is a participant in the Hope Scholarship Program, pursuant to §18-8-1(m) of this code and as provided for in §18-31-1, *et seq.* of this code, or participates in a microschool or learning pod, pursuant to §18-8-1(n) of this code, and who:

(1) Has demonstrated satisfactory evidence of academic progress for each year in compliance with the provisions of that subsection: *Provided*, That the student's average test results are within or above the fourth stanine in all subject areas;

(2) Has not reached the age of 19 by August 1 of the current school year;

(3) Is an amateur who receives no compensation but participates solely for the educational, physical, mental and social benefits of the activity;

(4) Agrees to comply with all disciplinary rules of the West Virginia Secondary School Activities Commission and the county board in which the student lives; and

(5) Agrees to obey all rules of the West Virginia Secondary School Activities Commission governing awards, all-star games, parental consents, physical examinations, and vaccinations applicable to all high school athletes.

Eligibility is limited to participation in interscholastic athletic events and other extracurricular activities at the public secondary school serving the attendance zone in which the student lives: *Provided*, That students who leave a school during the school year are subject to the same transfer protocols that apply to member-to-member transfers. Reasonable fees may be charged to the student to cover the costs of participation in interscholastic athletic events and other extracurricular activities.

(e) Students enrolled in a private school shall be eligible to participate in extracurricular activities at the public secondary school serving the attendance zone in which the student lives if the extracurricular activity is not offered at the student's private school: *Provided*, The student meets the requirements of subsection (d)(4) and (d)(5) of this section.

(f) The West Virginia Secondary School Activities Commission shall recognize preparatory athletic programs, whose participants attend a secondary school in West Virginia for academic instruction, as nonparticipating members of the commission solely for the purpose of competing on the national level: *Provided*, That the preparatory athletic program shall pay the same fees as member schools. Such recognition does not entitle the preparatory athletic program to compete against a member school during the regular season or in any commission state championship events. The commission may promulgate an emergency rule

pursuant to subsection (b) of this section, if necessary, to carry out the intent of this subsection.

§18-2-25e. Athletic eligibility of transfer students.

(a) The West Virginia Secondary School Activities Commission shall modify its rule, prior to the 2023-2024 school year, to allow students to transfer schools and retain athletic eligibility at least one time during a student's four years of secondary school, inclusive of grades nine through 12. The West Virginia Secondary School Activities Commission may promulgate an emergency rule, if necessary, to modify its rule prior to the 2023-2024 school year.

(b) Nothing in this section is intended to limit or restrict a student transferring more than one time for the following reasons:

(1) The West Virginia Secondary School Activities Commission's ability to make eligibility determinations on a case-by-case basis when warranted by a student's circumstances in accordance with the West Virginia Secondary School Activities Commission's rules; or

(2) For any other reason permitted under the rules of the West Virginia Secondary School Activities Commission.

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CHAPTER 137

**(H. B. 2827 - By Delegates Ellington, Clark, Smith, Chiarelli,
Longanacre, Hornby, Statler, Toney, Rowe and Espinosa)**

[Passed March 6, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §18-5-48 of the Code of West Virginia, 1931, as amended, relating to safety and security measures for school facilities and the Safe Schools Fund; making public charter schools eligible for Safe Schools Funds; providing that Safe Schools Funds shall be distributed first to meet the special education video requirements, then safe school entry way needs, and when met, on the basis of need; providing that any moneys distributed from the Safe Schools Fund for facility improvements shall only be expended on facilities owned by a county board of education, public charter school or multicounty vocational center, unless the improvements to such facilities may be removed with minimal effort; and, providing that the West Virginia Board of Education shall promulgate rules to govern the process by which county boards of education, public charter schools and multicounty vocational centers may apply for needs-based funding from the Safe Schools Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

***§18-5-48. Safety and security measures for school facilities;
Safe Schools Fund created.**

(a) Each county board of education, public charter school, and multicounty vocational center shall annually assess the safety and security of each of the school facilities for which they are

***NOTE:** This section was also amended by H. B. 3084 (Chapter 140), which passed subsequent to this act.

responsible. Safety and security measures of each facility shall be upgraded when necessary to ensure, to the best of the county board's, public charter school governing board's or multicounty vocational center administrative council's ability, the safety of the students within each facility. Each county board of education, public charter school governing board, and multicounty vocational center administrative council shall report annually the safety and security measures it has put in place, including upgrades thereto, to the State Department of Education. Annually, the State Department of Education shall compile the information received and report it to the Legislative Oversight Commission on Education Accountability.

(b) As used in this section, "safety and security measures" means action taken by a county board of education, a public charter school, or multicounty vocational center that improves the security of a school facility and the safety of the students within such facility, including, but not limited to, hiring a school resource officer, installing weapon detection systems, upgrading facility doors or windows.

(c) There is hereby created in the State Treasury a special revenue fund to be known as the Safe Schools Fund. The fund shall consist of all moneys received from legislative appropriations and other sources to further the purpose of this section: *Provided*, That annually, the West Virginia Department of Education shall request an appropriation based on the requests of the county boards of education, public charter school governing boards and multicounty vocational center administrative councils. Subject to legislative appropriation, the funds appropriated annually to the School Safety Fund shall be distributed to the county boards of education, public charter schools, and multicounty vocational centers, on the basis of need. Moneys distributed from this fund shall not be used to make permanently affixed improvements, alterations or additions to a physical facility that a county board of education, public charter school or multicounty vocational center does not own. If the West Virginia Department of Education distributes any moneys from this fund for the purpose of making safety improvements on or in a facility that is not owned, it shall require that the improvements

be accomplished in such a manner that they may be removed with minimal effort. All moneys distributed from this fund shall be used to support the purpose and intent of this section and all moneys must be spent to support the school for which the funding was derived: *Provided, however,* That moneys distributed from this fund also may be used for the purposes of §18-20-11 of this code, relating to video cameras in certain special education classrooms: Until such time as all school facilities are in full compliance with the special education video requirements, the West Virginia Department of Education shall first allocate the funding appropriated for the Safe Schools Fund based on the remaining need for video cameras in public school facilities. After all public school facilities have been provided sufficient funds to meet the special education video camera requirements, the funds shall be distributed by the West Virginia Department of Education to meet the needs of school facilities to have safe school entry ways. After safe school entry way needs have been met, the West Virginia Department of Education shall distribute funds based upon a determination of need. Any moneys remaining in the fund at the close of the fiscal year shall be carried forward for use in the next fiscal year. Fund balances shall be invested with the state's Consolidated Investment Fund and any and all interest shall be used solely for the purposes that moneys deposited in the fund may be used pursuant to this article.

(d) The West Virginia Board of Education shall promulgate rules pursuant to §29A-3B-1 *et seq.* of this code to establish a process by which county boards of education, public charter school governing boards and multicounty vocational center administrative councils may submit requests to obtain needs-based funding from the Safe Schools Fund. Such rules shall address:

(1) The manner, time line and process for the submission of a request;

(2) The criteria by which requests shall be evaluated and prioritized; and

(3) Any other matters deemed necessary to further the goals of this article.

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CHAPTER 138

**(Com. Sub. for H. B. 3035 - By Delegates Hanshaw (Mr.
Speaker) and Skaff)**

[By Request of the Executive]

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2023.]

AN ACT to amend and reenact §18-2E-10 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-5-18a of said code; to amend and reenact §18-9A-5 of said code; and to amend and reenact §18-20-10 of said code, all relating to enhancing academic achievement of students including those with learning disabilities; establishing the Third Grade Success Act; replacing transformative system of support for early literacy with multi-tiered system of support for early literacy and numeracy in kindergarten through grade three; revising findings; defining “science of reading”; revising inclusions in West Virginia Board of Education rules required to effectuate Third Grade Success Act section; requiring each county board to adopt high-quality instructional materials; specifying data to be used to inform the classroom teacher’s recommendation on grade level retention; requiring county boards of education to provide in-service training for early childhood classroom assistant teachers, aides, paraprofessionals, classroom teachers, and in certain instances, interventionists in grades kindergarten through three; updating deadlines for West Virginia Board of Education multi-tiered system of support for early literacy and numeracy reports; modifying provisions pertaining to funding for Third Grade Success Act section; requiring retention in the third grade in certain circumstances; specifying exceptions to third grade retention requirement; adding maximum early childhood classroom assistant teacher or aide-pupil ratio for kindergarten; adding maximum early

childhood classroom assistant teacher, paraprofessional, or aide-pupil ratio for grades one through three; requiring ratios to be by grade level with flexibility once grade level requirement is met for full implementation by 2026; allowing county boards to employ an interventionist instead of an early childhood assistant teacher, paraprofessional or aide; removing requirement for survey of districts on class overcrowding and report to the Legislative Oversight Commission on Education Accountability a tailored plan for reducing class overcrowding; phasing in increased ratios of service personnel per 1,000 students for the purpose of determining the basic foundation allowance for service personnel; revising findings pertaining to standards to guide the preparation, certification, and professional development for teachers of reading and related literacy skills and appropriate measures for recognizing characteristics of dyslexia and dyscalculia; replacing responsibilities of the West Virginia Board of Education pertaining to specific learning disabilities, including dyslexia and dyscalculia, with duties of the state board and the local education agencies; requiring state board rule to implement section pertaining to dyslexia and dyscalculia; stating minimum inclusions for rule; requiring report of certain information to the Legislative Oversight Commission on Education Accountability.

Be it enacted by the Legislature of West Virginia:

§18-2E-10. Third Grade Success Act; multi-tiered system of support for early literacy and numeracy in kindergarten through grade three; pre-service and in-service teacher training; notice to parent or guardian; third grade retention policy with exceptions; interventions continuing in fourth grade for students below proficient.

(a) This section shall be known and may be cited as the Third Grade Success Act.

(b) The Legislature finds that:

(1) In the early learning years, ensuring that each student masters the content and skills needed for mastery at the next grade level is critically important for student success;

(2) Students who do not demonstrate grade-level proficiency in reading and mathematics by the end of third grade become increasingly less likely to succeed at each successive grade level and often drop out of school prior to graduation;

(3) State board policy requires every school to establish a process for ensuring the developmental and academic progress of all students. This process is to be coordinated by a school student assistance team that reviews student developmental and academic needs that have persisted despite being addressed through instruction, multi-tiered system of support for intervention, and as applicable, supports for personalized learning. Ensuring the developmental and academic success of all students requires every school to implement, in an equitable manner, programs during and after the instructional day at the appropriate instructional levels that contribute to the success of students; and

(4) To ensure that all students read and perform mathematics proficiently by the end of third grade, a statewide comprehensive approach to early literacy and numeracy is required. This approach shall focus on intensive supports during the early learning years which include schools and engaged communities mobilized to remove barriers, expand opportunities, and assist parents in fulfilling their roles and responsibilities to serve as full partners in the success of their children.

(c) “Science of reading” means evidence-based reading instruction practices that address the acquisition of language, phonological and phonemic awareness, phonics and spelling, fluency, vocabulary, oral language, comprehension, and writing that can be differentiated to meet the needs of individual students.

(d) The state board shall, in accordance with §29A-3B-1 *et seq.* of this code, promulgate legislative rules as necessary to effectuate the provisions of this section. The rules shall provide for at least the following:

(1) Development of a statewide comprehensive, systemic approach to close the reading and mathematics achievement gaps by third grade, which targets school readiness, the attendance gap, science of reading instruction (phonics, phonemic awareness, vocabulary, fluency, comprehension, and writing), summer learning loss, the use of screeners and/or benchmark assessments in English language arts and mathematics for students in grades kindergarten through three, and a multi-tiered system of support for students exhibiting a substantial reading or mathematics deficiency;

(2) Ensuring all West Virginia children have access to high-quality early learning experiences that focus on healthy learners as part of the school readiness model, resulting in increased populations of children on target for healthy development prior to entering first grade;

(3) Closing the attendance gap to certify West Virginia children attend school regularly and limit chronic absenteeism in the early grades;

(4) Providing assistance to county boards with the training and implementation of the science of reading training for all kindergarten through grade three educators, early childhood classroom assistant teachers, aides, paraprofessionals and any interventionists that a county board may choose to employ instead of an early childhood classroom assistant teacher, aides, or paraprofessionals pursuant to §18-5-18a(b) of this code;

(5) Assisting county boards in establishing and operating targeted, sustained extended day and extended year reading and mathematics programs to ensure grade level proficiency and battle summer learning loss;

(6) Establishing an approved list of screeners and/or benchmark assessments in English language arts and mathematics for students in grades kindergarten through three for the purpose of identifying students with a significant reading and/or mathematics deficiency. The screener and/or benchmark assessments shall be given in the first 30 days of the school year and repeated at mid-

year and at the end of the school year to determine student progression in reading and mathematics in kindergarten through third grade;

(7) Establishing an approved list of dyslexia screeners to be administered to students no less than twice per year in kindergarten through third grade and any time students with identified deficiencies are not responding to interventions;

(8) Any student in kindergarten or grades one through three who exhibits a deficiency in reading at any time, based upon the screeners and/or benchmark assessments, and/or the comprehensive statewide student assessment, and any fourth-grade student promoted for good cause shall receive an individual reading improvement plan no later than 30 days after the identification of the reading deficiency. The reading improvement plan shall be created by the teacher, principal, other pertinent school personnel, and the parent(s) or guardians, and shall describe the research-based reading intervention services the student will receive to remedy the reading deficit. Each student shall receive intensive reading intervention until the student no longer has a deficiency in reading. Reading interventions may include evidence-based strategies frequently used to remediate reading deficiencies and includes, but is not limited to, individual instruction, small-group instruction, tutoring, mentoring, or the use of technology that targets specific reading skills and abilities;

(9) Maximizing family engagement to result in the development of a culture of literacy and numeracy, which shall at least include:

(A) Providing parents or guardians with regular updates to inform them of their child's progress toward proficiency in reading and mathematics;

(B) Ensuring parents or guardians are informed of and have access to resources which they may utilize to improve their child's literacy and numeracy skills;

(C) Ensuring the parent or guardian is informed of the importance of their child being able to demonstrate grade level reading and mathematics skills by the end of the third grade and the measures that will be employed pursuant to this section to improve the reading and mathematics skills of children who are not meeting the standards; and

(D) The parent or guardian of any student in kindergarten through grade three who exhibits a deficiency in reading or mathematics at any time during the school year must be notified in writing no later than 15 days after the identification of the deficiency, and the written notification must include the following:

(i) That the student has been identified as having a deficiency in reading and/or mathematics;

(ii) A description of the proposed research-based reading and/or mathematics interventions and/or supplemental instructional services and supports that will be provided to the child to address the identified area(s) of deficiency;

(iii) Strategies for the parent or guardian to use at home to help their child succeed in reading and/or mathematics; and

(iv) That if the child's reading or mathematics deficiency is not corrected by the end of grade three, the child may not be promoted to grade four unless an exemption is met;

(10) Supporting high-quality schools and a workforce prepared to address early literacy and numeracy by the provision of professional development for administrators, kindergarten, first, second, and third grade teachers including, but not limited to, the following:

(A) The approved benchmark assessment and/or screener tools to ensure teachers have the knowledge and skill to administer the assessment and/or screener, analyze the data to inform instruction, and identify students exhibiting substantial deficiencies in reading or mathematics;

(B) Comprehensive training on the science of reading and numeracy instruction to ensure all kindergarten through grade three teachers, early childhood classroom assistant teachers, aides and paraprofessionals, have the knowledge and skill to teach and/or support all students to read and perform mathematics at grade level. The rules also shall provide that any interventionist a county chooses to employ instead of an early childhood classroom assistant teacher, aides or paraprofessionals pursuant to §18-5-18a(b) receives this comprehensive training;

(C) Training and materials to inform classroom teachers of the characteristics of dyslexia and dyscalculia in students, components of benchmarks and screeners that may indicate dyslexia or dyscalculia, and strategies for instruction; and

(D) Job-embedded, on-site teacher training on evidence-based reading and mathematics instruction and data-driven decision-making that provides kindergarten through grade three teachers with immediate feedback for improving instruction;

(11) Ensuring the employment of qualified teachers and service personnel in accordance with §18-5-39 and §18A-4-7c of this code to provide instruction to students enrolled in early literacy and numeracy support programs including, but not limited to, ensuring that educator preparation programs prepare candidates seeking licensure for elementary education with training and instruction to:

(A) Include instruction in state-adopted grade-level content standards, foundational reading and mathematics skills, and how to implement reading instruction using high-quality instructional materials;

(B) Provide effective instruction and intervention for students with reading and math deficiencies, including students with characteristics of dyslexia or dyscalculia; and

(C) Understand and use student data to make instructional decisions;

(12) Creating a formula or grant-based program for the distribution of funds appropriated specifically for the purposes of

this section or otherwise available for the support of a targeted, multi-tiered system of support intervention for early literacy and numeracy;

(13) Providing support for transportation and healthy foods for students required to attend after-school and extended year early literacy and numeracy instructional support programs and supervision at the school that accommodates the typical work schedules of parents; and

(14) Receiving from county boards any applications and annual reports required by rule of the state board.

(e) A student in grades kindergarten through grade three shall be required to attend an extended year early literacy and numeracy instructional support program as a condition for promotion if:

(1) The student has been provided additional academic assistance through interventions offered during the school day or after-school in early literacy and numeracy and, prior to the end of the school year, the student assistance team or the student's classroom teacher recommends that further additional academic help is needed for the student to be successful at the next grade level; and

(2) The county board has established a literacy and numeracy instructional support program during the extended year for the student's grade level.

(f) County boards shall provide high-quality educational facilities, equipment, and services to support literacy and numeracy instructional support programs established pursuant to this section. Extended year programs may be provided at a central location for kindergarten through third graders who qualify for the program.

(g) Each county board shall adopt high-quality instructional materials grounded in scientifically-based reading research and aligned to state standards to be used as the core curriculum. The instructional materials shall not include practices that are aligned with the Three-Cueing Systems Model of teaching reading.

(h) This section may not be construed to prohibit a classroom teacher from recommending the grade level retention of a student in any of the grades kindergarten through grade three based upon the student's lack of mastery of the subject matter and preparation for the subject matter at the next grade level. Benchmark and/or screener data shall be used to inform the classroom teacher's recommendation.

(i) This section may not be construed to affect the individualized education plans of exceptional students.

(j) This section may not be construed to limit the authority of the county board to establish an extended year program in accordance with §18-5-39 of this code. County boards may not charge tuition for enrollment in early literacy and numeracy instructional support programs established pursuant to this section.

(k) Each county board shall implement the provisions of this section and the provisions of the state board rule required by subsection (b) of this section. The county board shall establish a process for ensuring the developmental and academic progress of all students through the auspices of student assistance teams as currently required by state board policy and perform a needs assessment to determine the potential capacity requirements for the multi-tiered system of support for early learners. Each county board also shall provide in-service training:

(1) For kindergarten through grade three early childhood classroom assistant teachers, aides and paraprofessionals, specifically related to literacy, numeracy, and their responsibilities and appropriate measures for exercising authority and control over students. The county board shall also provide this training to any interventionists it chooses to employ instead of an early childhood classroom assistant teacher, aide or professional pursuant to §18-5-18a(b) of this code; and

(2) For classroom teachers in grades kindergarten through three to help the classroom teachers gain a strong understanding of how to best utilize the early childhood classroom assistant teachers,

aides, paraprofessionals or interventionists during classroom instruction and during other periods of the day.

(l) The state board shall provide a report describing the proposed implementation of the multi-tiered system of support for early literacy and numeracy to the Legislative Oversight Commission on Education Accountability on or before July 1, 2023.

(m) The state board shall provide a comprehensive report regarding the status of the multi-tiered system of support for literacy and numeracy to the Legislative Oversight Commission on Education Accountability, the Joint Committee on Government and Finance, and the Governor on or before November 1, 2023, and annually on or before November 1 of each year thereafter. The report shall address, at a minimum, the progress of the program throughout the state, its effect on student achievement, and the sources of the funding both available to and used by the program.

(n) Legislative appropriations to the State Board of Education – State Department of Education Elementary Literacy and Numeracy Program shall be used for the implementation of the provisions of this section along with other funds available for providing a high-quality education.

(o) Effective for the school year beginning July 1, 2026, and thereafter, a public school student who generally demonstrates a minimal understanding of, and ability to apply, grade level English language arts or mathematics knowledge, skills, and abilities, or both, as indicated on the West Virginia General Summative Assessment relative to the West Virginia College and Career Readiness Standards at the end of third grade, shall upon the recommendation of the teacher and the student assistance team, be retained in the third grade for the ensuing school year subject to the following exceptions:

(1) A student with disabilities whose Individual Education Plan indicates participation in the statewide alternate summative assessment;

(2) A student identified as an English language learner who has had less than three years instruction in English as a second language;

(3) A student with disabilities who participates in the statewide summative assessment, has an Individual Education Plan or Section 504 plan that reflects that the student has received intensive intervention for more than two years and still demonstrates a deficiency or who was previously retained in any of the grades kindergarten through grade three;

(4) A student who is in the process of a special education referral or evaluation for placement in special education, has been diagnosed as having a significant impairment, including dyslexia or dyscalculia, or is a child with a disability if the student's individualized education program team and the student's parent or guardian agree that promotion is appropriate based on the student's Individualized Education Plan;

(5) A student who has received intensive intervention for two or more years, still demonstrates a deficiency, and who was previously retained in any of the grades kindergarten through grade three for a total of two years: *Provided*, That the student shall continue to receive intensive intervention in grade four;

(6) A student who demonstrates an acceptable level of performance on an alternative standardized assessment approved by the state board;

(7) A student who attends an extended year learning program following the third grade and has attained proficiency; and

(8) A student whose parent or guardian has requested a good cause exemption within the time period established by the county board and the superintendent, or his or her designee, determines that the good cause exemption is in the best interests of the child: *Provided*, That a good cause exemption may not prohibit the grade level retention of a student by a classroom teacher based upon the student's lack of mastery of the subject matter and preparation for the subject matter at the next grade level.

ARTICLE 5. COUNTY BOARD OF EDUCATION.**§18-5-18a. Maximum teacher-pupil ratio.**

(a) County boards of education shall provide sufficient personnel, equipment, and facilities as will ensure that each classroom, or classrooms having two or more grades that include one or more of the kindergarten through sixth grades shall not have more pupils for each teacher as follows, unless the state superintendent has excepted a specific classroom upon application therefor by a county board as provided in this section:

(1) For kindergarten, not more than 20 pupils for each teacher and one early childhood classroom assistant teacher or aide in classrooms with more than 10 pupils;

(2) For first, second, and third grades, not more than 25 pupils for each teacher and one early childhood classroom assistant teacher, aide or paraprofessional in classrooms with more than 12 pupils: *Provided*, That the early childhood classroom assistant teacher/aide/paraprofessional requirement for classrooms with more than 12 pupils shall be effective beginning the 2023-2024 school year, for first grade classrooms; shall be effective beginning the 2024-2025 school year, for second grade classrooms; and shall be effective beginning the 2025-2026 school year, for third grade classrooms: *Provided however*, That if all grade level classrooms are already being served by an early childhood classroom assistant teacher/aide/paraprofessional by the school year required, the county board has the discretion to add the assistant teachers/aides/paraprofessionals in first, second and third grade classrooms of the greatest need beginning July 1, 2023 and completing full implementation by July 1, 2026; and

(3) For grades four, five, and six, not more than 25 pupils for each teacher.

(b) County boards may satisfy the requirements of subsection (a) of this section by employing a full-time interventionist instead of an early childhood assistant teacher, aide or paraprofessional, subject to the following:

(1) If no full-time interventionist is available, a county board may satisfy the requirements of subsection (a) of this section by employing a part-time interventionist; and

(2) County boards are not required to employ an interventionist even if there are an insufficient number of early childhood assistant teachers, aides and paraprofessionals available to fill all the positions required by subsection (a) of this section.

(c) County school boards may not maintain a greater number of classrooms having two or more grades that include one or more of the grade levels referred to in this section than were in existence in said county as of January 1, 1983.

(d) The state superintendent is authorized, consistent with sound educational policy, to:

(1) Permit on a statewide basis, in grades four through six, more than 25 pupils per teacher in a classroom for the purposes of instruction in physical education; and

(2) Permit more than 20 pupils per teacher in a specific kindergarten classroom and 25 pupils per teacher in a specific classroom in grades four through six during a school year in the event of extraordinary circumstances as determined by the state superintendent after application by a county board of education.

(e) The state board shall establish guidelines for the exceptions authorized in this section, but in no event shall the superintendent except classrooms having more than three pupils above the pupil-teacher ratio as set forth in this section.

(f) The requirement for approval of an exception to exceed the 20 pupils per kindergarten teacher per session limit or the 25 pupils per teacher limit in grades four through six is waived in schools where the schoolwide pupil-teacher ratio is 25 or less in grades four through six: *Provided*, That a teacher shall not have more than three pupils above the teacher/pupil ratio as set forth in this section. Any kindergarten teacher who has more than 20 pupils per session and any classroom teacher of grades four through six who has more than 25 pupils, shall be paid additional compensation based on the

affected classroom teacher's average daily salary divided by 20 for kindergarten teachers, or 25 for teachers of grades four through six, for every day times the number of additional pupils enrolled up to the maximum pupils permitted in the teacher's classroom. All such additional compensation shall be paid from county funds exclusively.

Notwithstanding any other provision of this section to the contrary, commencing with the school year beginning on July 1, 1996, a teacher in grades one, two, or three, or classrooms having two or more such grade levels, shall not have any pupils above the teacher/pupil ratio as set forth in this section.

(g) No provision of this section is intended to limit the number of pupils per teacher in a classroom for the purpose of instruction in choral, band, or orchestra music.

(h) Each school principal shall assign students equitably among the classroom teachers, taking into consideration reasonable differences due to subject areas and/or grade levels.

(i) The state board shall collect from each county board of education information on class size and the number of pupils per teacher for all classes in grades seven through 12. The state board shall report such information to the Legislative Oversight Commission on Education Accountability before January 1, of each year.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-5. Foundation allowance for service personnel.

(a) The basic foundation allowance to the county for service personnel shall be the amount of money required to pay the annual state minimum salaries in accordance with the provisions of §18A-4-1 *et seq.* of this code to such service personnel employed, subject to the following:

(1) A county shall receive an allowance for state aid eligible service personnel positions per 1,000 students in net enrollment, as follows:

(A) For each high-density county, 43.97 service personnel per 1,000 students in net enrollment: *Provided*, That this ratio of service personnel per 1,000 students in net enrollment shall increase to 47.39 beginning July 1, 2023; 50.65 beginning July 1, 2024; and 53.79 beginning July 1, 2025;

(B) For each medium-density county, 44.53 service personnel per 1,000 students in net enrollment: *Provided*, That this ratio of service personnel per 1,000 students in net enrollment shall increase to 47.95 beginning July 1, 2023; 51.21 beginning July 1, 2024; and 54.35 beginning July 1, 2025;

(C) For each low-density county, 45.10 service personnel per 1,000 students in net enrollment: *Provided*, That this ratio of service personnel per 1,000 students in net enrollment shall increase to 48.52 beginning July 1, 2023; 51.78 beginning July 1, 2024; and 54.92 beginning July 1, 2025;

(D) For each sparse-density county, 45.68 service personnel per 1,000 students in net enrollment: *Provided*, That this ratio of service personnel per 1,000 students in net enrollment shall increase to 49.10 beginning July 1, 2023; 52.36 beginning July 1, 2024; and 55.50 beginning July 1, 2025; and

(E) For any service personnel positions, or fraction thereof, determined for a county pursuant to subdivision (1) of this subsection that exceed the number employed, the county's allowance for these positions shall be determined using the average state funded minimum salary of service personnel for the county;

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

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

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**§18-20-10. Dyslexia and dyscalculia defined.**

(a) The Legislature finds as follows:

(1) Reading difficulties are the most common cause of academic failure and underachievement;

(2) There are many students who demonstrate significant weaknesses with reading, writing and mathematics that are influenced by specific learning disabilities, including dyslexia, dyscalculia, and related learning difficulties. Of those who are referred to special education services in public schools, the majority are referred because of problems with language, reading, writing, or a combination of each;

(3) Teaching reading effectively, especially to students experiencing difficulty, requires considerable knowledge and skill. Informed and effective classroom instruction, especially in the early grades, can prevent and relieve the severity of language difficulties, and significantly improve literacy development;

(4) For those students with specific learning disabilities, including dyslexia and dyscalculia, who need specialized instruction, competent intervention can lessen the impact of the disorder and help the student overcome the most debilitating symptoms;

(5) While programs for specific learning disabilities, including dyslexia and dyscalculia, that certify or support teachers, clinicians or specialists differ in their preparation methodologies, teaching approaches and organizational purposes, they should ascribe to a common set of professional standards for the benefit of the students they serve. Compliance with such standards can assure the public that individuals who serve students with specific learning disabilities in public schools are prepared to implement scientifically based and clinically proven practices;

(6) The International Dyslexia Association (IDA) offers widely-adopted and consistent standards to guide the preparation, certification, and professional development for teachers of reading and related literacy skills in classroom, remedial and clinical settings; and

(7) The basis of ascribing to common standards to benefit students with specific learning disabilities, including dyslexia and dyscalculia, requires recognizing common characteristics of the disabilities. The Legislature finds that the definitions of dyslexia and dyscalculia prescribed by the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR) are the appropriate measures for recognizing characteristics of dyslexia and dyscalculia in students.

(b) The Legislature recognizes the following regarding dyslexia and dyscalculia:

(1) Dyslexia and dyscalculia are conditions that may be considered under the specific learning disability category, and their definitions are consistent with IDEA and state board policy. State board policy provides that "specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia;

(2) Dyslexia is an alternative term used to refer to a pattern of learning difficulties characterized by problems with accurate or fluent word recognition, poor decoding, and poor spelling abilities. If dyslexia is used to specify this particular pattern of difficulties, it is important also to specify any additional difficulties that are present, such as difficulties with reading comprehension or math reasoning; and

(3) Dyscalculia is an alternative term used to refer to a pattern of learning difficulties characterized by problems processing

numerical information, learning arithmetic facts, and performing accurate or fluent calculations. If dyscalculia is used to specify this particular pattern of mathematic difficulties, it is important also to specify any additional difficulties that are present, such as difficulties with math reasoning or word reasoning accuracy.

(c) The state board shall:

(1) Develop a list of appropriate screeners, early assessments, and professional development that address and ensure that all students receive the necessary and appropriate screenings, evaluations, and early assessments for specific learning disabilities, including dyslexia and dyscalculia which contain information related to the following:

(A) Appropriate literacy and numeracy screening tools for identifying students who are at risk for academic difficulty in reading and/or math, including dyslexia and dyscalculia, and who require tiered intervention;

(B) Appropriate diagnostic assessment components that can be used to help identify and diagnose;

(C) Appropriate evidence-based instruction and intervention strategies for students who are at risk for academic difficulty in reading and/or mathematics, including students who exhibit possible indicators of risk for dyslexia and/or dyscalculia;

(D) Appropriate accommodations for students who exhibit possible indicators of risk for, or who have been diagnosed with, dyslexia, dyscalculia, and/or other specific learning disabilities;

(E) Connecting a multi-tiered system of support framework to specific learning disability identification; and

(F) The use of the terms “dyslexia” and “dyscalculia” in Individualized Education Programs, and in evaluation reports by professionals qualified to render these diagnoses; and

(2) Explore options to assist any LEA with acquiring approved literacy and/or numeracy screening tools: *Provided*, That the local

educational agency is unable to acquire its own literacy and/or numeracy screening tools that are consistent with state educational agency recommendations;

(3) Adopt and make publicly available guidelines for including dyslexia diagnostic evaluation components in comprehensive assessments for special education and related services. These guidelines shall:

(A) Recommend at least one person on each multidisciplinary evaluation team be knowledgeable about dyslexia and be able to recognize when a dyslexia diagnostic component should be requested in the evaluation process;

(B) Recommend that a diagnosis of dyslexia be given when the data from the comprehensive evaluation components indicate such a diagnosis is appropriate;

(C) Include recommendations for how to document a dyslexia diagnosis in an IEP; and

(D) Include that a Section 504 Plan be considered if a student has a dyslexia diagnosis but does not qualify for special education services;

(4) Adopt and make publicly available a list of approved diagnostic assessment components that can be used to help identify and diagnose dyslexia during comprehensive multidisciplinary evaluations;

(5) Adopt and make publicly available guidelines and a list of resources for dyslexia intervention practices that are evidence-based, including practices consistent with the Science of Reading and Structured Literacy, that are explicit, direct, sequential, systematic, and multisensory;

(6) Adopt and make publicly available a list of recommended accommodations and instructional practices to be used with students who exhibit signs of dyslexia or have been diagnosed with dyslexia. These shall reflect contemporary research and guidelines of the Science of Reading related to dyslexia. These

recommendations shall include, but are not limited to, structured literacy approaches that are explicit, direct, sequential, systematic, and multisensory;

(7) Adopt and make publicly available a list of available professional development resources that support evidence-based intervention for struggling readers, including the Science of Reading and Structured Literacy. This list shall be made publicly available and include resources endorsed or espoused by technical assistance centers, research organizations, and professional associations that support the Science of Reading and Structured Literacy regarding dyslexia, including the International Dyslexia Association; and

(8) Develop and make publicly available informational materials related to dyslexia for parents and guardians that include information about the multidisciplinary evaluation process, updated regularly.

(d) The local education agency shall:

(1) Develop a system for parents and guardians to annually receive digital and print informational materials related to dyslexia;

(2) Ensure at least one educator at each school is trained to administer, score, and interpret the data from the literacy screening instrument or instruments, and to recognize signs of dyslexia;

(3) Notify parents of the results of these literacy screeners while emphasizing that not all students who perform poorly on these screening instruments have dyslexia. Also, not all students with dyslexia will perform poorly on the screeners;

(4) Provide evidence-based reading intervention to students who exhibit academic risk in future reading performance, including indicators of dyslexia;

(5) Conduct comprehensive assessments to determine eligibility for special education services when a child does not respond or only minimally responds to intervention strategies and/or when there is a suspected disability of dyslexia. If a

determination is made through the evaluation process that a student needs assessed for dyslexia, provide assessment and diagnosis as necessary per West Virginia Department of Education guidelines;

(6) Employ appropriate accommodations and instructional practices recommended by the West Virginia Department of Education based upon the students' needs. When those needs are related to dyslexia, these accommodations and instructional techniques or strategies shall also meet the West Virginia Department of Education-approved guidelines for dyslexia accommodations and instructional practices;

(7) Require all elementary educators, special educators, reading interventionists or specialists, and other personnel determined appropriate by the local education agency to receive professional development on the possible signs of dyslexia and the related classroom accommodations and instructional practices approved by the West Virginia Department of Education;

(8) Administer a literacy screening instrument or instruments to students in grades 3-5 who transfer from a local education agency where literacy screening instruments were not administered. If the literacy screening instrument indicates a deficit in reading, the school will provide intervention according to current policy. If a student does not respond or only minimally responds to intervention, a referral for multidisciplinary evaluation shall be made; and

(9) Require all appropriate personnel, as determined by the local education agency, to annually receive professional development relating to the possible indicators for dyslexia and dyscalculia, accommodations and modifications in the classroom environment, proper instructional practices for educating students who exhibit possible indicators of risk for, or who have been, diagnosed with dyslexia, dyscalculia, and/or other specific learning disabilities. Local education agencies may create more than one module to satisfy the requirements of this subdivision.

(e) The state board shall promulgate a rule pursuant to §29A-3B-1 *et seq.* of this code to implement this section. In addition to

other provisions to implement this section, the rule shall at least include the following:

(1) If a student is reading substantially below grade level according to formal and/or informal assessments, including benchmark assessments, and has never been evaluated for special education, a request may be made by a school, parent, or teacher for the administration of an age- or grade-appropriate West Virginia Department of Education-approved literacy screening instrument or instruments. These points of data may be used to either start intervention and progress monitoring per West Virginia Department of Education guidance, or make a referral for a special education evaluation;

(2) Acknowledgement that each local education agency may have one certified Literacy and Numeracy Specialist in each local education agency, or another appropriate professional designated by relevant local education agency leadership, to be appropriately trained, or be seeking appropriate training, in intervention, accommodations, and instructional strategies for students with dyslexia or a related disorder. The trained individual(s) shall serve as an advisor and trainer for dyslexia and related disorders for the local education agency. The reading specialist(s) or other designated professional(s) shall have an understanding of the definition of dyslexia and a working knowledge of:

(A) Techniques to help a student on the continuum of skills with dyslexia;

(B) Dyslexia characteristics that may manifest at different ages and levels;

(C) The basic foundation of the keys to reading, including multisensory, explicit, systematic, and structured literacy instruction; and

(D) Appropriate interventions, accommodations, and assistive technology supports for students with dyslexia.

(f) *Legislative Oversight Commission on Education Accountability (LOCEA)*:

(1) The final draft of the state board's literacy and numeracy rule shall be submitted to the Legislative Oversight Commission on Education Accountability (LOCEA) by August 1, 2023.

(2) The following shall be submitted to the Legislative Oversight Commission on Education Accountability (LOCEA) annually:

(A) Disaggregated data concerning literacy and numeracy patterns statewide;

(B) Statewide interventions implemented; and

(C) The statewide professional development plan.

(3) Progress monitoring regarding K-2 screening and 3-8 formative assessments shall be presented to the Legislative Oversight Commission on Education Accountability (LOCEA) after data is collected for the beginning, middle, and end of the school year.

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CHAPTER 139

**(Com. Sub. for H. B. 3055 - By Delegates Willis, Foster,
Foggin, Chiarelli, Heckert, Storch, Young, Sheedy,
Hornbuckle, Reynolds and Ellington)**

[Passed February 22, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 4, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-13, relating to restructuring technical transition math for students interested in careers in the trades; making findings; describing class; qualifications of instructors; use to meet graduation requirement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-13. Establishment of vocational math class.

(a) *Legislative findings and purpose.* – The Legislature find that empowering students to enter the trades is of paramount importance. Restructuring current math programming to assist students for a career in the trades is the best way to achieve this goal. The restructuring of the technical transition math class to help students with workforce math will provide students with the opportunity to prepare themselves for a career in the trades.

(b) *Enactment.* – There is hereby established for all public-school curriculum in West Virginia a technical transition math class geared towards students interested in careers in the trades. This class will pertain to math curriculum in the fields of fractions, conversion from fractions to decimals, application of measurement, reading blueprints, geometry pertaining to

workforce math and other math skills needed to succeed in the trades.

(c) *Qualifications.* – In order to be able to teach this class, an instructor must meet the same qualifications as needed to teach current trade classes and specific content in the public schools. Students shall be eligible for this class once entering high school. This class can be taken as a personalized math credit to meet graduation requirements.



CHAPTER 140

**(Com. Sub. for H. B. 3084 - By Delegates Ellington, Statler,
Toney, Clark, Mazzocchi, Longanacre and Foggin)**

[Passed March 11, 2023; in effect July 1, 2023.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §18-5-48 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-5G-1, §18-5G-2, §18-5G-3, §18-5G-4, §18-5G-5, §18-5G-7, §18-5G-12 and §18-5G-15 of said code; and to amend and reenact §18-9A-15 of said code; all relating to revising provisions related to public charter schools; providing public charter school access to funding from School Safety Fund; modifying priorities for funds use; requiring rule on process for needs-based funding requests and requiring rules; removing prohibition on elected public official profiting from or receiving monetary consideration from public charter school; expressing legislative intent on comparable levels of funding for public charter school students; authorizing state institution of higher education as applicant; prohibiting imposition of requirements on public charter schools choosing to incorporate post-secondary, industry and workforce program that are not required of noncharter public schools; authorizing public charter schools to include before and after school programs in their education program; excluding public charter school programs from regulation as child care facility; authorizing public charter school students to participate on the same basis as other public school students in extracurricular athletic and academic interscholastic activities sponsored by noncharter public school serving attendance area if not sponsored by charter school; emphasizing that charter school determines certification and licensure for teachers and instructional staff employed by it; clarifying public charter schools are exempt from state board policies unless otherwise specifically

provided; excluding requirement that charter school employees be certified or licensed as condition of employment and providing that charter school may require employees be certified or licensed as condition of employment but is not required to; requiring professional charter school board to consult with nationally recognized organizations along with the state board; providing for administering required state assessments in virtual setting; requiring state board to establish framework and procedures for interaction between public charter schools, public noncharter schools and county boards to facilitate cooperation and ensure prompt transfer of records; providing for invoicing of certain funding when student transfers from and to certain entities after the beginning of the school year; allowing member of charter school governing board to be employee of education service provider if services are provided by state institution of higher education; providing conditions for charter school governing board to be administrative unit of state institution of higher education and authorizing contract; authorizing professional charter school board to receive and expend gifts, grants and donations to carry out purposes of act, to apply for federal funds to implement programs, and to make start-up grants to public charter schools; and requiring for state board rule on method for providing increased enrollment funding for public charter schools.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

***§18-5-48. Safety and security measures for school facilities; Safe Schools Fund created.**

(a) Each county board of education, public charter school, and multicounty vocational center shall annually assess the safety and security of each of the school facilities for which they are responsible. Safety and security measures of each facility shall be upgraded when necessary to ensure, to the best of the county board's, public charter school governing board's or multicounty

*NOTE: This section was also amended by H. B. 2827 (Chapter 137), which passed prior to this act.

vocational center administrative council's ability, the safety of the students within each facility. Each county board of education, public charter school governing board, and multicounty vocational center administrative council shall report annually the safety and security measures it has put in place, including upgrades thereto, to the State Department of Education. Annually, the State Department of Education shall compile the information received and report it to the Legislative Oversight Commission on Education Accountability.

(b) As used in this section, "safety and security measures" means action taken by a county board of education, a public charter school, or multicounty vocational center that improves the security of a school facility and the safety of the students within such facility, including, but not limited to, hiring a school resource officer, installing weapon detection systems, upgrading facility doors or windows.

(c) There is hereby created in the State Treasury a special revenue fund to be known as the Safe Schools Fund. The fund shall consist of all moneys received from legislative appropriations and other sources to further the purpose of this section: *Provided*, That annually, the West Virginia Department of Education shall request an appropriation based on the requests of the county boards of education, public charter school governing boards and multicounty vocational center administrative councils. Subject to legislative appropriation, the funds appropriated annually to the School Safety Fund shall be distributed to the county boards of education, public charter schools, and multicounty vocational centers, on the basis of need. Moneys distributed from this fund shall not be used to make permanently affixed improvements, alterations or additions to a physical facility that a county board of education, public charter school or multicounty vocational center does not own. If the West Virginia Department of Education distributes any moneys from this fund for the purpose of making safety improvements on or in a facility that is not owned, it shall require that the improvements be accomplished in such a manner that they may be removed with minimal effort. All moneys distributed from this fund shall be used to support the purpose and intent of this section and all moneys must be spent to support the school for which the funding was derived: *Provided, however*, That moneys distributed from this

fund also may be used for the purposes of § 18-20-11 of this code, relating to video cameras in certain special education classrooms. Until such time as all school facilities are in full compliance with the special education video requirements, the West Virginia Department of Education shall first allocate the funding appropriated for the Safe Schools Fund based on the remaining need for video cameras in public school facilities. After all public school facilities have been provided sufficient funds to meet the special education video camera requirements, the funds shall be distributed by the West Virginia Department of Education to meet the needs of school facilities to have safe school entry ways. After safe school entry way needs have been met, the West Virginia Department of Education shall distribute funds based upon a determination of need. Any moneys remaining in the fund at the close of the fiscal year shall be carried forward for use in the next fiscal year. Fund balances shall be invested with the state's Consolidated Investment Fund and any and all interest shall be used solely for the purposes that moneys deposited in the fund may be used pursuant to this article.

(d) The West Virginia Board of Education shall promulgate rules pursuant to § 29A-3B-1 *et seq.* of this code to establish a process by which county boards of education, public charter school governing boards and multicounty vocational center administrative councils may submit requests to obtain needs-based funding from the Safe Schools Fund. Such rules shall address:

(1) The manner, time line and process for the submission of a request;

(2) The criteria by which requests shall be evaluated and prioritized; and

(3) Any other matters deemed necessary to further the goals of this article.

ARTICLE 5G. PUBLIC CHARTER SCHOOLS.

§18-5G-1. Legislative purpose and intent; liberal interpretation; prohibiting conversion of private schools; prohibiting profit or monetary consideration by elected

officials; limiting authorization of public charter schools; legislative auditor report.

(a) The purpose of this article is to establish a process for the creation, governance and oversight accountability of public charter schools with a renewed commitment to the mission, goals, and diversity of public education that benefits students, parents, teachers, and community members.

(b) Public charter schools are intended to empower new, innovative, and more flexible ways of educating all children within the public school system to:

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

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

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

(4) Provide expanded opportunities within the public schools for parents to choose among the school curricula, specialized academic or technical themes, and methods of instruction that best serve the interests or needs of their child;

(5) Provide students, parents, community members, and local entities with expanded opportunities for involvement in the public school system;

(6) Allow authorized public schools and programs within public schools exceptional levels of self-direction and flexibility in exchange for exceptional levels of results-driven accountability for student learning; and

(7) Encourage the replication of successful strategies for improving student learning.

(c) All public charter schools established under this article are public schools and are part of the state's public education system.

(d) The provisions of this article shall be interpreted liberally to support the purpose and intent of this section and to advance a renewed commitment by the state to the mission, goals and diversity of public education.

(e) No provision of this article may be interpreted to allow the conversion of private schools into public charter schools.

(f) The total number of public charter schools authorized and in operation under an approved contract in this state shall be limited to 10 pilot public charter schools until July 1, 2023. The State Board shall report to the Legislative Oversight Commission on Education Accountability by November 1, 2022, and every 3 years thereafter, on the status of the state's public charter schools. LOCEA shall report its findings and recommendations, if any, to the Legislature during its next Regular Session. Beginning July 1, 2023, and every 3 years thereafter, an additional 10 public charter schools may be authorized and in operation under an approved contract in this state. The Mountaineer Challenge Academy, if converted to a public charter school, shall not count towards the limitation established by this subsection.

(g) Two years after the first public charter school commences operations under the provisions of this article, the Legislative Auditor shall conduct an audit of the public charter school program and report the findings to the Legislative Oversight Commission on Education Accountability.

(h) It is the intent of the Legislature that public charter school students be considered as important as all other school students in the state and, to that end, comparable funding levels from existing and future sources should be maintained for public charter school students.

§18-5G-2. Definitions.

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

(1) "Applicant" means any one or more in combination of parents, community members, teachers, school administrators, or institutions of higher education in this state who are interested in organizing a public charter school and:

(A) Have obtained 501(c)(3) tax-exempt status or have submitted an application for 501(c)(3) tax-exempt status, or be a state institution of higher education as defined in §18B-1-2 of this code; and

(B) Have developed and submitted an application to an authorizer to establish a public charter school;

(2) "Authorizer" means the entity empowered under this article to review applications, decide whether to approve or reject applications, enter into charter contracts with applicants, oversee public charter schools, and decide whether to renew or not renew charter contracts. Authorizers include:

(A) A county school board when the charter school or application to form a charter school includes a primary recruitment area that is wholly within the county over which the board has jurisdiction;

(B) Two or more county school boards who must act together and function as a single authorizer in all respects under the law when the public charter school or application to form a public charter school includes a primary recruitment area that encompasses territory in the two or more counties over which the respective boards have jurisdiction: *Provided*, That if such two or more school boards functioning together as authorizer reject the application, then one or more of the individual county boards may approve the application, but in such instance the charter school site must be located in one of the counties where the application was approved.

(C) The West Virginia Professional Charter School Board created pursuant to §18-5G-15 of this code; or

(D) The West Virginia Board of Education in the following instances:

(i) The charter school or application to form a charter school or to renew a charter contract is in a county where the state board has intervened in the operation of the school system and limited the authority of the county board to act pursuant to §18-2E-5 of this code; and

(ii) The application to form a public charter school or to renew a charter contract is approved by the affected county board or boards and is forwarded it to the West Virginia Board of Education with a request that it perform to the authorizer function.

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

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

(5) "Conversion public charter school" means a public charter school that existed as a noncharter public school before becoming a public charter school;

(6) "County board" means a board exercising management and control of a school district. A county board's management and control of a public charter school is limited to only that granted under this article. In the case of a school district in which the state board has intervened and limited the authority of the county board to act pursuant to §18-2E-5 of this code, "county board" means the state board. In the case of a multicounty vocational or technical center, "county board" means the administrative council of the multicounty center;

(7) "Education service provider" means a public or private nonprofit or for-profit education management organization, school design provider, or any other partner entity with which a public

charter school contracts for educational design, implementation, or comprehensive management;

(8) A "full-time virtual public charter school" means a public charter school that offers educational services predominantly through an online program.

(9) "Governing board" means a public charter school governing board that meets the requirements §18-5G-3 and §18-5G-7 of this code and is party to the charter contract with the authorizer;

(10) "Noncharter public school" means a public school or multicounty vocational center other than a public charter school established pursuant to this article;

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

(12) "Public charter school" means a public school or program within a public school that is authorized in accordance with the provisions of this article and meets the general criteria, governance structure and statutory compliance requirements described in §18-5G-3 of this code, and other provisions of this article;

(13) "Program conversion public charter school" means a program within an existing noncharter public school that is either preexisting and converted or newly created to become a separate and discreet program governed and operated in accordance with this article within the noncharter public school;

(14) "Start-up public charter school" means a public charter school that did not exist as a noncharter public school prior to becoming a public charter school.

(15) "State board" means the West Virginia Board of Education;

(16) "Student" means any person that is eligible for attendance in a public school in West Virginia; and

(17) "West Virginia Professional Charter School Board" means the board created pursuant to §18-5G-15 of this code.

§18-5G-3. Public charter school criteria, governance structure and statutory compliance requirements; applicable federal and state laws.

(a) Public charter schools authorized pursuant to this article shall meet the following general criteria:

(1) Are part of the state's system of public schools and are subject to general supervision by the West Virginia Board of Education for meeting the student performance standards required of other public school students under §18-2E-5(d) and (e) of this code;

(2) Are subject to the oversight of the school's authorizer for operating in accordance with its approved charter contract and for meeting the terms and performance standards established in the charter contract;

(3) Are not home school-based;

(4) Are not affiliated with or espouse any specific religious denomination, organization, sect, or belief and do not promote or engage in any religious practices in their educational program, admissions, employment policies, or operations;

(5) Are not affiliated with any organized group whose espoused beliefs attack or malign an entire class of people, typically for immutable characteristics, as identified through listings of such groups as may be made by the U. S. Department of Justice, the Federal Bureau of Investigation, or officials having similar jurisdiction in this state;

(6) Are public schools to which parents or legal guardians choose to send their child or children;

(7) Do not charge tuition and may only charge such fees as may be imposed by noncharter public schools in this state; and

(8) Have no requirements that would exclude any child from enrollment who would not be excluded at a noncharter public school.

(b) A public charter school authorized pursuant to this article shall be governed by a board that meets the requirements established in §18-5G-7 of this code and:

(1) Has autonomy over key decisions, including, but not limited to, decisions concerning finance, personnel, scheduling, curriculum, and instruction except as provided in this article;

(2) Has no power to levy taxes;

(3) Operates in pursuit of a specific set of educational objectives as defined in its charter contract;

(4) Provides a program of public education that:

(A) Includes one or more of the following: Prekindergarten and any grade or grades from kindergarten to grade 12 including any associated post-secondary embedded credit, dual credit, advanced placement, internship, and industry or workforce credential programs that the public charter school chooses to incorporate into its programs. If a public charter school chooses to incorporate post-secondary embedded credit, dual credit, and industry and workforce credential programs into its educational program, institutions of higher education may not impose any requirements on the public charter school that are not required of noncharter public schools;

(B) May include in its mission a specific focus on students with special needs, including, but not limited to, at-risk students, English language learners, students with severe disciplinary problems at a noncharter public school, or students involved with the juvenile justice system;

(C) May include a specific academic approach or theme including, but not limited to, approaches or themes such as STEM education, mastery-based education, early college, or fine and performing arts; and

(D) May include before school and/or after school programs as a part of the public charter school's education program. No part of the education program of a public charter school is subject to regulation as a childcare facility;

(5) Provides programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, regulations, rules and policies. A charter school shall deliver the services directly or contract with a county board or another provider to deliver the services as set forth in its charter contract;

(6) Is eligible to participate in state-sponsored or district-sponsored athletic and academic interscholastic leagues, competitions, awards, scholarships, and recognition programs for students, educators, administrators, and schools to the same extent as noncharter public schools. If a public charter school does not sponsor an extracurricular athletic and/or academic interscholastic activity for the students enrolled in the public charter school, the public charter school students may participate on the same basis as other public school students in those activities that are sponsored by the noncharter public school serving the attendance area in which the student resides;

(7) Employs its own personnel as employees of the public charter school and is ultimately responsible for processing employee paychecks, managing its employees' participation in the applicable retirement system, and managing its employees' participation in insurance plans: *Provided*, That nothing in this subdivision prohibits the public charter school from contracting with another person or entity to perform services relating to managing its employees' participation in the retirement system or insurance plan. A county board may not require any employee of its school system to be employed in a public charter school. A county board may not harass, threaten, discipline, discharge, retaliate, or in any manner discriminate against any school system employee involved directly or indirectly with an application to establish a public charter school as authorized under this section. All personnel in a public charter school who were previously employed by the county board shall continue to accrue seniority

with the county board in the same manner that they would accrue seniority if employed in a noncharter public school in the county for purposes of employment in noncharter public schools; and

(8) Is responsible for establishing a staffing plan that includes the requisite qualifications and any associated certification and/or licensure that it determines necessary for teachers and other instructional staff to be employed at the public charter school and for verifying that these requirements are met.

(c) A public charter school authorized pursuant to this article is exempt from all statutes, state board policies and rules applicable to a noncharter public school or board of education except the following unless otherwise specifically provided in this article:

(1) All federal laws and authorities applicable to noncharter public schools in this state including, but not limited to, the same federal nutrition standards, the same civil rights, disability rights and health, life and safety requirements applicable to noncharter public schools in this state;

(2) The provisions of §29B-1-1 *et seq.* of this code relating to freedom of information and the provisions of §6-9A-1 *et seq.* of this code relating to open governmental proceedings;

(3) The same immunization requirements applicable to noncharter public schools;

(4) The same compulsory school attendance requirements applicable to noncharter public schools;

(5) The same minimum number of days or an equivalent amount of instructional time per year as required of noncharter public school students under §18-5-45 of this code;

(6) The same student assessment requirements applicable to noncharter public schools in this state, but only to the extent that will allow the state board to measure the performance of public charter school students pursuant to §18-2E-5(d) and (e) of this code. Any virtual public charter school may administer any required state assessment, if available, in a virtual setting utilizing

remote proctoring that best meets the educational needs of the student. Nothing precludes a public charter school from establishing additional student assessment measures that go beyond state requirements;

(7) The Student Data Accessibility, Transparency and Accountability Act pursuant to §18-2-5h of this code;

(8) Use of the electronic education information system established by the West Virginia Department of Education for the purpose of reporting required information;

(9) Reporting information on student and school performance to parents, policy-makers, and the general public in the same manner as noncharter public schools utilizing the electronic format established by the West Virginia Department of Education. Nothing precludes a public charter school from utilizing additional measures for reporting information on student and school performance that go beyond state requirements;

(10) All applicable accounting and financial reporting requirements as prescribed for public schools, including adherence to generally accepted accounting principles. A public charter school shall annually engage an external auditor to perform an independent audit of the school's finances. The public charter school shall submit the audit to its authorizer and to the state superintendent of schools within nine months of the end of the fiscal year for which the audit is performed;

(11) A criminal history check pursuant to §18A-3-10 of this code for any staff person that would be required if the person was employed in a noncharter public school, unless a criminal history check has already been completed for that staff person pursuant to that section. Governing board members and other public charter school personnel are subject to criminal history record checks and fingerprinting requirements applicable to noncharter public schools in this state. Contractors and service providers or their employees are prohibited from making direct, unaccompanied contact with students and from access to school grounds unaccompanied when students are present if it cannot be verified

that the contractors, service providers or employees have not previously been convicted of a qualifying offense pursuant to §18-5-15c of this code: *Provided*, That nothing in this subdivision, including the reference to §18A-3-10 of this code, requires public charter school employees to be certified or licensed as a condition of employment in a public charter school. A public charter school may, but is not required to, establish certification or licensure as a condition of employment by the school;

(12) The same zoning rules for its facilities that apply to noncharter public schools in this state;

(13) The same building codes, regulations and fees for its facilities that apply to noncharter public schools in this state, including any inspections required for noncharter public schools under this chapter and the West Virginia State Fire Marshal for inspection and issuance of a certificate of occupancy for any facility used by the public charter school; and

(14) The same student transportation safety laws applicable to public schools when transportation is provided.

§18-5G-4. West Virginia Board of Education; powers and duties for implementation, general supervision and support of public charter schools.

(a) The state board along with the West Virginia Public Charter School Board established in §18-5G-15 of this code shall consult with nationally recognized charter school organizations and establish and maintain a catalogue of best practices for public charter schools applicable for all applicants, authorizers, governing board members, and administrators that are consistent with this article and nationally recognized principles and professional standards for quality public charter school authorizing and governance in all major areas of authorizing and governance responsibility in the following areas:

- (1) Organizational capacity and infrastructure;
- (2) Solicitation and evaluation of charter applications;

(3) A framework to guide the development of charter contracts;

(4) Performance contracting including a performance framework;

(5) Providing transparency and avoiding all conflicts of interest;

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

(7) Charter approval and renewal decision-making;

(b) The state board is responsible for exercising, in accordance with this article, the following powers and duties with respect to the oversight and authorization of public charter schools:

(1) Provide forms to promote the quality and ease of use for authorizers to solicit applications for public charter schools, for applicants to complete applications, and for establishing quality charter contracts that include a framework for performance standards. The forms shall be available for use and solicitations made not later than the beginning of February, 2020. The forms shall include an application deadline of August 31st of the year prior to the beginning of operations for the proposed school year. No public charter school may begin operation prior to the beginning of the proposed school year following the previous year August application;

(2) Provide training programs for public charter school applicants, administrators and governing board members, as applicable, that include, but are not limited to:

(i) Pre-application training programs and forms to assist in the development of high quality public charter school applications;

(ii) The required components and the necessary information of the public charter school application and the charter contract as set forth in this article;

(iii) The public charter school board's statutory role and responsibilities;

(iv) Public charter school employment policies and practices; and

(v) Authorizer responsibilities for public charter school contract oversight and performance evaluation;

(3) Receive and expend appropriate gifts, grants and donations of any kind from any public or private entity to carry out the purposes of this act, subject to all lawful terms and conditions under which the gifts, grants or donations are given;

(4) Apply for any federal funds that may be available for the implementation of public charter school programs;

(5) Establish reporting requirements that enable the state board to monitor the performance and legal compliance of authorizers and public charter schools;

(6) Establish a framework and procedures for interactions between public charter schools, public noncharter schools and county boards of education to facilitate cooperation for shared services, training and information and to ensure the prompt transfer of student records, including IEP's, so as to minimize the interruption of a student's education when transferring between noncharter public schools and public charter schools; and

(7) Submit to the Governor and the Legislature an annual report within 60 days of the end of each school year summarizing:

(A) The student performance of all operating public charter schools; and

(B) The authorization status of all public charter schools within the last school year, identifying all public charter schools as:

(i) Application pending;

(ii) Application denied and reasons for denial;

- (iii) Application approved, but not yet operating;
- (iv) Operating and years of operation;
- (v) Renewed and years of operation;
- (vi) Terminated;
- (vii) Closed;
- (viii) Never opened; and

(ix) Any successful innovations applied in authorized public charter schools which may be replicated in other schools. The report shall provide information about how noncharter public schools may implement these innovations.

(c) The state board shall be the authorizer of a public charter school when a county board or boards approve the application for a public charter school and requests the state board to perform the authorizer duties and responsibilities or when an application to form a public charter school or to renew a charter contract is submitted from an applicant within a county in which the state board has intervened and limited the power of the county board to act pursuant to §18-2E-5 of this code.

§18-5G-5. State board rule relating to funding for public charter school enrollment and other necessary provisions; local education agency status; authorizer oversight fee.

(a) The state board shall promulgate a rule pursuant to the provisions of §29A-3B-1 *et seq.* of this code setting forth requirements for public charter school funding. The rule shall include a requirement that 99 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 *et seq.* of this code, the rule may provide for modifications to the calculations set forth in §18-9A-7 of this code regarding the allowance for student transportation and in §18-9A-9(1) of this code regarding the allowance for current

expense for the purpose of making appropriate adjustments to those allowances to account for student transportation and current expense related funding a school district loses in situations where it pays money to a public charter school pursuant to this subsection without a corresponding decrease in the county's transportation and current expense related expenditures;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school, and notwithstanding the terms in the definition of "net enrollment" in §18-9A-2 of this code, shall provide that the county school district paying for the student attending a public charter school have that student included in its net enrollment for the purposes of §18-9A-1 *et seq.* of this code;

(3) When a student in grades kindergarten through 12 transfers on a full-time basis after the beginning of the school year from a school district to a public charter school, or vice versa, or to another public charter school, hereinafter referred to as entities, the following apply:

(A) If the student is included in the second month net enrollment for the purposes of §18-9A-2 of this code, of the entity from which the student transferred, the entity to which the student transfers may invoice the entity from which the student transferred for the amount, determined on a pro rata basis, based on the amount required pursuant to subdivision (2) of this subsection for a student attending a public charter school;

(B) If the student is included in the second month net enrollment for the purposes of §18-9A-2 of this code, of the entity from which the student transferred and is eligible for aid to exceptional students, the entity to which the student transfers may invoice the entity from which the student transferred for the amount, determined on a pro rata basis, of the aid to exceptional students due for that student;

(C) If the student is included in the certified child count of exceptional students for the school year of the entity from which the student transferred, the entity to which the student transfers

may invoice the entity from which the student transferred for the amount, determined on a pro rata basis, due for that student in the certified child count of exceptional students; and

(D) Invoices issued pursuant to paragraphs (A), (B) and (C) of this subdivision shall be paid by the entity from which the student transferred within 30 days of receipt of the invoice; and

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

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

(c) Any public charter school authorized pursuant to this article shall be treated and act as its own local education agency for all purposes except as needed under the provisions of the Public School Support Plan for funding purposes.

(d) To cover authorizer costs for overseeing public charter schools, the state board shall establish a statewide formula for authorizer oversight funding, which shall apply uniformly to every authorizer in the state. Each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per pupil basic foundation allowance as provided pursuant to state board rule promulgated in accordance with this section, not to exceed one percent of each public charter school's per-student funding in a single school year. The state board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after

the authorizer has achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer's public charter schools. The state board shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time public charter school. The state board shall annually review the effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.

(e) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article: *Provided*, That nothing in this rule may conflict with this code. The rule also shall include a provision prohibiting a county board from discrimination against any district employee involved directly or indirectly with an application to establish a public charter school under this article.

(f) All state board rules required to be promulgated by this article shall be promulgated on or before July 1, 2021. The state board may file emergency rules if necessary to meet the July 1, 2021, deadline.

§18-5G-7. Public Charter school governing board.

(a) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than five members elected or selected in a manner specified in the charter application, including at least the following:

(1) Two parents of students attending the public charter school operating under the governing board; and

(2) Two members who reside in the community served by the public charter school.

(b) Members of the governing board shall:

(A) Not be an employee of the public charter school administered by the governing board;

(B) Not be an employee of an education service provider that provides services to the public charter school, unless the services are provided by a state institution of higher education;

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

(D) Collectively possess expertise in leadership, curriculum and instruction, law, and finance; and

(E) Be considered an officer of a school district under the provisions of §6-6-7 of this code and removal from office shall be in accordance with the provisions of that section.

(c) The public charter school governing board shall:

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

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

(A) Receive and disburse funds for school purposes;

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

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

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

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

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

(3) Enroll students in the public charter school pursuant to §18-5G-11 of this code;

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

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

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

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

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

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

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

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

(e) The public charter school governing board is responsible for the operation of its public charter school, including, but not limited to, ensuring compliance with the public charter school criteria, governance and statutory compliance set forth §18-5G-3 of this code, the preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school's program.

(f) The public charter school governing board shall comply with the provisions of §29B-1-1 *et seq.* of this code relating to freedom of information and the provisions of §6-9A-1 *et seq.* of this code relating to open governmental proceedings.

(g) Notwithstanding anything else in this Code, when a state institution of higher education is an applicant and after its application is approved by an authorizer, the governing board of the public charter school may be an administrative unit of the state institution of higher education, and the governing board may enter into the charter contract on behalf of the state institution of higher education.

§18-5G-12. Access to public facilities.

(a) A public charter school may request usage of public facilities from the county board or other public entity in the county where the charter school is located or proposes to locate. A county board or other public entity shall make facilities available to the charter school that are either not used, in whole or in part, for classroom instruction at the time the charter school seeks to use or lease the public facility.

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

(c) During the term of the lease, the charter school is solely responsible for the direct expenses related to the public facility lease, including utilities, insurance, maintenance, repairs, and remodeling. The county school board is responsible for any debt

incurred or liens that are attached to the school building before the charter school leases the public facility.

§18-5G-15. West Virginia Professional Charter School Board; members; appointments; meetings.

(a) There is hereby created the West Virginia Professional Charter School Board which shall report directly to and be responsible to the state board, separate from the Department of Education, for carrying out its duties in accordance with this article. The mission of the board is to authorize high-quality public charter schools throughout the state that provide more options for students to attain a thorough and efficient education, particularly through schools designed to expand the opportunities for at-risk students. The Professional Charter School Board and public charter schools authorized in accordance with this article are subject to the general supervision of the state board solely for the purposes of accountability for meeting the standards for student performance required of other public school students under §18-2E-5 of this code.

(b) The Professional Charter School Board shall consist of five voting members, appointed by the Governor, with the advice and consent of the Senate.

(c) The chair of the House Committee on Education and the chair of the Senate Committee on Education shall serve as nonvoting ex officio members of the Professional Charter School Board.

(d) Each appointed member shall represent the public interest and must satisfy the following requirements:

(1) Be a citizen of the state;

(2) Possess experience and expertise in public or nonprofit governance, management and finance, public school leadership, assessment, curriculum or instruction, or public education law; and

(3) Have demonstrated an understanding of, and commitment to, charter schooling as a strategy for strengthening public education.

(e) No more than three of the appointed members of the Professional Charter School Board may be of the same political party. The members shall reside in geographically diverse areas of the state, with no more than two members residing in the same county. No person may be appointed who holds any other public office or public employment under the government of this state or any of its political subdivisions, or who is an appointee or employee of any charter school governing board or an immediate family member of an employee under the jurisdiction of the Professional Charter School Board or any charter school governing board. No person may be appointed who is engaged in or employed by a person or company whose primary function involves, the sale of services and activities to public charter schools or charter school governing boards.

(f) The initial appointments made pursuant to this section shall be for staggered one- and two-year terms. Three of the initial members appointed by the Governor shall serve two-year terms; and two of the initial members appointed by the Governor shall serve one-year terms. Thereafter, all appointments shall be for a term of two years. The initial appointments shall be made before August 1, 2021. The Professional Charter School Board shall meet as soon as practical after August 1, 2021, upon the call of the Governor, and shall organize for business by selecting a chairman and adopting bylaws. Subsequent meetings shall be called by the chairman.

(g) An appointed member of the Professional Charter School Board may be removed from office by the Governor for official misconduct, incompetence, neglect of duty, or gross immorality. A member may also be removed if the member's personal incapacity renders the member incapable or unfit to discharge the duties of the office or if the member is absent from a number of meetings of the Professional Charter School Board as determined and specified by the commission in its bylaws. Whenever an appointed member vacancy on the Professional Charter School Board exists, the

Governor shall appoint a qualified person for the remainder of the vacated term.

(h) Except in the case of gross negligence or reckless disregard of the safety and well-being of another person, the Professional Charter School Board and members of that board in their official capacity are immune from civil liability with respect to all activities related to a public charter school approved by the Public Charter School Board. The official actions of the members of the Professional Charter School Board who are serving in a nonvoting ex officio capacity by virtue of their designation as chair of the House Committee on Education or chair of the Senate Committee on Education are Professional Charter School Board member actions only, and may not be construed as official actions or positions of such member's committee or legislative body.

(i) The Professional Charter School Board may appoint an executive director and may employ such additional staff as may be necessary. The executive director shall serve at the will and pleasure of the Professional Charter School Board. The executive director must demonstrate an understanding of and commitment to charter schooling as a strategy for strengthening public education and must possess an understanding of state and federal education law.

(j) The Professional Charter School Board shall meet as needed, but at least bi-annually. From funds appropriated or otherwise made available for such purpose, its members shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of official duties upon submission of an itemized statement in a manner consistent with guidelines of the Travel Management Office of the Department of Administration.

(k) The Professional Charter School Board shall investigate official complaints submitted to it that allege serious impairments in the quality of education in a public charter school or virtual public charter school it has authorized pursuant to this article, or that allege such schools are in violation of the policies or laws applicable to them. The Professional Charter School Board also may at its own discretion conduct or cause to be conducted audits

of the education and operation of public charter schools or virtual public charter schools it has authorized pursuant to this article that it determines necessary to achieve its mission of authorizing high-quality public charter schools. Upon a determination that serious impairments or violations exist, the Professional Charter School Board shall promptly notify in writing the public charter school governing board of the perceived serious impairments or violations and provide reasonable opportunity for the school to remedy the serious impairments or violations. The Professional Charter School Board shall take corrective actions or exercise sanctions in response to apparent serious impairments or violations. If warranted, the actions or sanctions may include requiring a charter school to develop and execute a corrective action plan within a specified time frame.

(l) The Professional Charter School Board may receive and expend appropriate gifts, grants and donations of any kind from any public or private entity to carry out the purposes of this act, subject to all lawful terms and conditions under which the gifts, grants or donations are given; may apply for any federal funds that may be available for the implementation of public charter school programs; and may make start-up grants to public charter schools from funds appropriated or otherwise available to it from federal, state, or other sources.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-15. Allowance for increased enrollment; extraordinary sustained increased enrollment impact supplement.

(a) To provide for the support of increased net enrollments in the counties and public charter schools in a school year over the net enrollments used in the computation of total state aid for that year, there shall be appropriated for that purpose from the General Revenue Fund an amount to be determined as follows:

(1) The state board shall promulgate a rule pursuant to §29A-3B-1 *et seq.* of this code that establishes an objective method for projecting the increase in net enrollment for each school district, exclusive of the net enrollment of public charter schools physically

locate in the district. The state superintendent shall use the method prescribed by the rule to project the increase in net enrollment for each school district.

(2) The state superintendent shall multiply the average total state aid per net pupil by the sum of the projected increases in net enrollment for all school districts and report this amount to the Governor for inclusion in his or her proposed budget to the Legislature. The Legislature shall appropriate to the West Virginia Department of Education the amount calculated by the state superintendent and proposed by the Governor.

(3) The state superintendent shall calculate each school district's share of the appropriation by multiplying the increase in net enrollment for the school district by the average total state aid per net pupil and shall distribute each school district's share to the school district on or before December 31, of each year.

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.

(4) If the amount of the appropriation for increased enrollment is not sufficient to provide payment in full for the total of these allocations, each county allocation shall be reduced to an amount which is proportionate to the appropriation compared to the total

of the allocations and the allocations as thus adjusted shall be distributed to the counties as provided in this section: *Provided*, That the Governor shall request a supplemental appropriation at the next legislative session for the reduced amount.

(b) To help offset the budgetary impact of extraordinary and sustained increases in net enrollment in a county, there shall be included in the basic state aid of any county whose most recent three-year average growth in second month net enrollment is two percent or more, an amount equal to one fourth of the state average per pupil state aid multiplied by the increase in the county's second month net enrollment in the latest year.

(c) No provision of this section shall be construed to in any way affect the allocation of moneys for educational purposes to a county under other provisions of law.

(d) The state board shall promulgate a rule pursuant to §29A-3B-1 *et seq.* of this code that establishes an objective method for calculating the increase in net enrollment for each public charter school based on the school's net enrollment for the current year compared to the prior year. Increased enrollment funding calculated for a public charter school shall be paid directly to the school by the Department of Education no later than December 31st.

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CHAPTER 141

**(Com. Sub. for H. B. 3113 - By Delegates Martin, Clark,
Ferrell, Phillips, Hardy, Toney, Ellington, Barnhart, Tully,
Mazzocchi and Howell)**

[Passed March 3, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §18-2-7c of the Code of West Virginia, 1931, as amended, relating to requiring each high school student to complete a one-half credit course of study in personal finance as a requirement for high school graduation; providing beginning class of students and grade level requirement; requiring implementation guidance by State Board and specifying guidance content.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-7c. Program in personal finance.

(a) The Legislature finds and declares that persons with an understanding of personal finance are better prepared to manage their money and that providing a personal finance program in secondary schools in West Virginia will prepare students to handle their finances.

(b) To provide students a basic understanding of personal finance, the state board shall develop a program of instruction on personal finance which may be integrated into the curriculum of an appropriate existing course or courses for students in secondary schools.

(c) Beginning with the class of students entering 9th grade in the 2024-2025 school year and thereafter, each high school student

shall complete one-half credit course of study in personal finance during their 11th or 12th grade year as a requirement for high school graduation. The State Board of Education shall develop and issue implementation guidance to local school boards and other education agencies as to curriculum, content matter standards, eligible teacher certification(s), and graduation requirements the course may fulfill before July 1, 2024.

(d) Every student shall complete a course in personal finance prior to high school graduation.

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CHAPTER 142

**(H. B. 3218 - By Delegates Reynolds, Tully, Ferrell, Sheedy,
Zatezalo, Jeffries, Willis, Hott, Hite, Kimble and Mazzocchi)**

[Passed March 1, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 15, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-40b; and to amend and reenact §18B-1B-7 of said code, all relating to student suicide prevention; requiring suicide prevention resources be printed on student identification cards for students in grades 6-12 in public schools that issue student identification cards; and requiring suicide prevention resources be printed on student identification cards for students in a public or private institution of higher education that issues student identification cards.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-40b. Dissemination of information on suicide prevention.

Commencing one year from the date of reenactment of this section in the 2023 regular session of the Legislature, a public school that serves students in grades 6 to 12, inclusive, and that issues student identification cards shall have printed on either side of the student identification cards the information for the Suicide & Crisis Lifeline, which can be reached by calling or texting 988; and shall have printed on either side of the student identification cards the information for the Crisis Text line, which can be accessed by texting HOME to 741741.

CHAPTER 18B. HIGHER EDUCATION.**ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.****§18B-1B-7. Student mental health policies; suicide prevention.**

(a) Each public and private institution of higher education shall develop and implement a policy to advise students and staff on suicide prevention programs available on and off campus that includes, but is not limited to:

(1) Crisis intervention access, which includes information for suicide prevention hotlines;

(2) Mental health program access, which provides information on the availability of local mental health clinics, student health services and counseling services;

(3) Multimedia application access, which includes crisis hotline contact information, suicide warning signs, resources offered and free-of-cost applications;

(4) Student communication plans, which consist of creating outreach plans regarding educational and outreach activities on suicide prevention; and

(5) Post-intervention plans which include creating a strategic plan to communicate effectively with students, staff, and parents after the loss of a student to suicide.

(b) Each public and private institution of higher education shall provide all incoming students with information about depression and suicide prevention resources available to students. The information provided to students shall include available mental health services and other support services, including student-run organizations for individuals at risk of or affected by suicide.

(c) The information prescribed by subsection (a), subdivisions (1) through (4) of this section shall be posted on the website of each institution of higher education in this state.

(d) Any applicable free-of-cost prevention materials or programs shall be posted on the websites of the public and private institutions of higher education, the Higher Education Policy Commission, and the West Virginia Council for Community and Technical College Education.

(e) Commencing one year from the date of reenactment of this section by the 2023 regular session of the Legislature, a public or private institution of higher education that issues student identification cards shall have printed on either side of the student identification cards the information described in both subdivisions (1) and (2) of this subsection:

(1) The information for the Suicide & Crisis Lifeline, which can be reached by calling or texting 988;

(2) The information for the Crisis Text Line, accessible by texting HOME to 741741.

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CHAPTER 143

**(Com. Sub. for H. B. 3271 - By Delegates Mazzocchi, Kimble,
Holstein, Fast, Ellington, Longanacre, Horst, Walker, Statler,
Keaton and Warner)**

[Passed March 9, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §18-20-11 of the Code of West Virginia, 1931, as amended, relating to increasing monitoring of special education classrooms; adding that an audio recording device be present in the restroom of a self-contained classroom; requiring that notice of audio recording device be placed on bathroom door; requiring county to monitor school audio recordings for at least 15 minutes every 90 days; and setting forth other review parameters for audio recordings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-11. Video cameras required in certain special education classrooms; audio recording devices required in restroom of a self-contained classroom.

(a) A county board of education shall ensure placement of video cameras in self-contained classrooms and audio recording devices in the restrooms of self-contained classrooms as defined in state board policy.

(b) As used in this section:

(1) "Incident" means a raised suspicion by a teacher, aide, parent, or guardian of a child, of bullying, abuse, or neglect of a child or of harm to an employee of a public school by:

- (A) An employee of a public school or school district; or
- (B) Another student;

(2) "Self-contained classroom" means a classroom at a public school in which a majority of the students in regular attendance are provided special education instruction and as further defined in state board policy; and

(3) "Special education" means the same as defined in §18-20-1 *et seq.* of this code.

(c) (1) A county board of education shall provide a video camera to a public school for each self-contained classroom that is a part of that school which shall be used in every self-contained classroom.

(2) Prior to August 1, 2023, a county board of education shall provide an audio recording device to a public school to be used in the restroom of each self-contained classroom that is a part of that school. If the public school is not able to receive the audio recording device by August 1, 2023, the public school may apply to the state Department of Education for a waiver to extend that date to August 1, 2024.

(3) The principal of the school or other school administrator whom the principal assigns as a designee shall be the custodian of the video camera and audio recording device, all recordings generated by the video camera and audio recording device, and access to those recordings pursuant to this section.

(d)(1) Every public school that receives a video camera under this section shall operate and maintain the video camera in every self-contained classroom that is part of that school.

(2) Every public school that receives an audio recording device under this section shall operate and maintain the audio recording device in every restroom that is a part of a self-contained classroom that is part of that school: *Provided*, That each restroom of a self-contained classroom shall have posted on its door a notice that

states: "Pursuant to state law, this restroom is equipped with an audio recording device for the protection of the students."

(3) If there is an interruption in the operation of the video camera or audio recording device for any reason, a written explanation should be submitted to the school principal and the county board explaining the reason and length for which there was no recording. The explanation shall be maintained at the county board office for at least one year.

(e)(1) A video camera placed in a self-contained classroom shall be capable of:

(A) Monitoring all areas of the self-contained classroom, including, without limitation, a room attached to the self-contained classroom and used for other purposes; and

(B) Recording audio from all areas of the self-contained classroom, including, without limitation, a room attached to the self-contained classroom and used for other purposes.

(2) A video camera placed in a self-contained classroom shall not monitor a restroom or any other area in the self-contained classroom where a student changes his or her clothes except, for incidental monitoring of a minor portion of a restroom or other area where a student changes his or her clothes because of the layout of the self-contained classroom.

(3) An audio recording device shall be placed in the restroom of the self-contained classroom and notice provided pursuant to §18-20-11(d)(2) of this code.

(4) A video camera or audio recording device required by this section is not required to be in operation during the time in which students are not present in the self-contained classroom.

(f) Before a public school initially places a video camera in a self-contained classroom or an audio recording device in the restroom of a self-contained classroom pursuant to this section, the county board of education shall provide written notice of the placement to:

(1) The parent or legal guardian of a student who is assigned to the self-contained classroom: *Provided*, That the parent or guardian be allowed the opportunity to opt out of the bathroom audio monitoring for their student. An Individual Education Plan or 504 plan shall outline the opt out and an alternative arrangement for the student or parent needs and requested accommodation; and

(2) The school employee(s) who is assigned to work with one or more students in the self-contained classroom.

(g)(1) Except as provided in subdivision (2) of this subsection, a public school shall retain video and audio recorded pursuant to this section for at least three months after the date of the recording, subject to the following:

(A) If the minimum three-month period overlaps the summer break occurring between the last day of one instructional term and the first day of the next instructional term, the minimum three-month period shall be extended by the number of days occurring between the two instructional terms;

(B) For any school-based camera system or audio device recording device that is installed or replaced after April 1, 2022, the public school shall retain video recorded from a camera or audio device recording for at least 365 days after the date the video or audio was recorded and no extension of this time period during the summer break is required.

(2) If a person requests to review a recording under subsection (k) or subsection (l) of this section, the public school shall retain the recording from the date of the request until:

(A) The earlier of the person reviewing the recording or 60 days after the person who requested the video or audio recording was notified by the public school that the video or audio recording is available; and

(B) Any investigation and any administrative or legal proceedings that result from the recording have been completed, including, without limitation, the exhaustion of all appeals.

(3) In no event may the recording be deleted or otherwise made unretrievable before the time period set forth in subdivision (1) of this subsection elapses.

(h) This section does not:

(1) Waive any immunity from liability of a public school district or employee of a public school district;

(2) Create any liability for a cause of action against a public school or school district or employee of a public school or school district; or

(3) Require the principal or other designated school administrator to review the recording absent an authorized request pursuant to this code section or suspicion of an incident except as otherwise provided in subsection (j) of this section.

(i) A public school or school district shall not use video or audio recorded under this section for:

(1) Teacher evaluations; or

(2) Any purpose other than the promotion and protection of the health, wellbeing, and safety of students receiving special education and related services in a self-contained classroom or restroom of a self-contained classroom.

(j) Except as provided under subsections (k) and (l) of this section, a recording made under this section is confidential and shall not be released or reviewed by anyone except the school principal, other school administration designee, or county designee if the school principal or other school administration designee is unable to review the video or audio recording pursuant to this subsection. The school principal, other school administration designee, or county designee shall review no less than 15 minutes of the video and no less than 15 minutes of audio of each self-contained classroom and restroom at the school no less than every 90 days. The state board shall include in its rule authorized by this section requirements for documentation of compliance with the video and audio reviewing requirements of this subsection.

(k) Within seven days of receiving a request, a public school or school district shall allow review of a recording by:

(1) A public school or school district employee who is involved in an alleged incident that is documented by the recording and has been reported to the public school or school district;

(2) A parent or legal guardian of a student who is involved in an alleged incident that is documented by the recording and has been reported to the public school or school district; or

(3) An employee of a public school or school district as part of an investigation into an alleged incident that is documented by the recording and has been reported to the public school or school district.

(l) Within seven days of receiving a request, a public school or school district shall allow review of a recording by and comply with all subsequent requests for review or release of the recording by:

(1) A law-enforcement officer or employee of the Department of Health and Human Resources, as part of an investigation into an alleged incident that is documented by the recording and has been reported to the agency: *Provided*, That if a release of the recording is requested pursuant to this subdivision, the agency receiving a copy of the recording shall maintain strict confidentiality of the recording and not further release the recording without authorization from the public school district through its superintendent; or

(2) A judge, counsel, or other legal entity that is charged with deciding or representing either the school board, students, or employees in any matters related to legal issues arising from an incident: *Provided*, That the recording may only be released pursuant to an appropriate protective order or under seal.

(m) If an incident is discovered while initially reviewing a recording that requires a report to be made under §49-2-803 of this code, that report shall be made by the reviewer pursuant to that section within 24 hours of viewing the incident.

(n) When a recording is under review as part of the investigation of an alleged incident, and the recording reveals a student violating a disciplinary code or rule of the school, which violation is not related to the alleged incident for which the review is occurring, and which violation is not already the subject of a disciplinary action against the student, the student is not subject to disciplinary action by the school for such unrelated violation unless it reveals a separate incident as described in §18-20-11(b)(1) of this code.

(o) It is not a violation of subsection (j) of this section if a contractor or other employee of a public school or school district incidentally reviews a recording under this section if the contractor or employee of a public school or school district is performing job duties related to the:

(1) Installation, operation, or maintenance of video or audio equipment; or

(2) Retention of video or audio recordings.

(p) This section applies solely to cameras and audio recording devices installed pursuant to this code section and does not limit the access of a student's parent or legal guardian to a recording reviewable under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g, or any other law.

(q) A public school or school district shall:

(1) Take necessary precautions to conceal the identity of a student who appears in a video recording but is not involved in the alleged incident documented by the video recording for which the public school allows viewing under subsection (j) of this section, including, without limitation, blurring the face of the uninvolved student; and

(2) Provide procedures to protect the confidentiality of student records contained in a recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g, or any other law.

(r) (1) Any aggrieved person may appeal to the State Board of Education an action by a public school or school district that the person believes to be in violation of this section.

(2) The state board shall grant a hearing on an appeal under this subsection within 45 days of receiving the appeal.

(s) (1) A public school or school district may use funds distributed from the Safe Schools Fund created in §18-5-48 of this code or any other available funds to meet the requirements of this section.

(2) A public school or school district may accept gifts, grants, or donations to meet the requirements of this section.

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

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CHAPTER 144

(Com. Sub. for S. B. 516 - By Senators Azinger, Trump, and Weld)

[Passed March 10, 2023; in effect 90 days from passage (June 8, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §3-8-1a, §3-8-2, and §3-8-2b of the Code of West Virginia, 1931, as amended, all relating to requirements for disclosure of donor contributions; defining terms; modifying the requirements for disclosing individual contributions to an independent expenditure; and clarifying disclosure for contributions made for the specific purpose of electioneering communications.

Be it enacted by the Legislature of West Virginia:

CHAPTER 3. ELECTIONS.

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.

(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.

(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".

(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.

(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.

(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.

(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 airtime 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 airtime.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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).

(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.

(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.

(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.

(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.

(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.

(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.

(27) "Membership organization political action committee" means a labor organization or a trade association, cooperative, or other incorporated membership organization that: Is composed of members; expressly states the qualifications for membership in its articles and by-laws; makes its articles, by-laws, and other organizational documents available to its members; expressly seeks members; acknowledges acceptance of membership, such as by sending membership cards to new members or including them on a membership newsletter list; and is organized such that it operates a subsidiary entity or segregated fund within the membership organization primarily for the purpose of influencing any election on the ballot in the State of West Virginia.

(28) "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.

(29) "Person" means an individual, corporation, partnership, committee, association, and any other organization or group of individuals.

(30) "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 political action committee, as that term is defined in this section; and

(C) An unaffiliated political action committee, as that term is defined in this section.

(31) "Political committee" means any candidate committee, political action committee, or political party committee.

(32) "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.

(33) "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.

(34) "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.

(35) "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.

(36) "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.

(37) "Unaffiliated political action committee" means a political action committee that is not affiliated with a corporation or a membership organization.

§3-8-2. Requirements for reporting independent expenditures.

(a) In addition to any other reporting required by the provisions of this chapter, any person who makes independent expenditures in an aggregate amount or value in excess of \$1,000 during a calendar year shall file a disclosure statement, according to the requirements of §3-8-5 of this code, that contains all of the following information:

- (1) The name of the person making the expenditure;
- (2) The name of any person sharing or exercising direction or control over the activities of the person making the expenditure;
- (3) The name of the custodian of the books and accounts of the person making the expenditure;

(4) If the person making the expenditure is an entity, the principal place of business of the partnership, corporation, committee, association, organization, or group which made the expenditure;

(5) The amount of each independent expenditure during the period covered by the statement and the name of the person to whom the expenditure was made;

(6) The elections to which the independent expenditure pertains, the names, if known, of the candidates referred to or to be referred to therein, whether the expenditure is intended to support or oppose the identified candidates, and the amount of the total expenditure reported pursuant to subdivision (5) of this subsection spent to support or oppose each of the identified candidates;

(7) The name and address of any person who contributed a total of more than \$1,000 between the first day of the preceding calendar year, and the disclosure date, and whose contributions were made for the purpose of furthering the expenditure;

(8) With regard to the contributors required to be listed pursuant to subdivision (7) of this subsection the statement shall also include:

(A) The month, day, and year that the contributions of any single contributor exceeded \$1,000;

(B) If the contributor is a political action committee, the name and address the political action committee registered with the Secretary of State, county clerk, or municipal clerk;

(C) If the contributor is an individual, the name and address of the individual, his or her occupation, the name and address of the individual's current employer, if any, or, if the individual is self-employed, the name and address of the individual's business, if any;

(D) A description of the contribution, if other than money; and

(E) The value in dollars and cents of the contribution; and

(9) A certification that such independent expenditure was not made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate.

(b) Any person who makes a contribution for the purpose of funding an independent expenditure under this subsection shall, at the time the contribution is made, provide his or her name, address, occupation, his or her current employer, if any, or, if the individual is self-employed, the name of his or her business, if any, to the recipient of the contribution.

(c) The Secretary of State shall expeditiously prepare indices setting forth, on a candidate-by-candidate basis, all independent expenditures separately, made by, on behalf of, for, or against each candidate, as reported under this subsection, and shall periodically publish such indices on a timely pre-election basis.

(d)(1) Any person or political committee that makes or contracts to make independent expenditures aggregating \$5,000 or more for any statewide, legislative, or multicounty judicial candidate, or \$500 or more for any county office candidate, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county, or any municipal candidate on a municipal election ballot, after the 15th day, but more than 12 hours before the date of an election, shall file a report on a form prescribed by the Secretary of State describing the expenditures within 24 hours: *Provided*, That a person making expenditures for any statewide or legislative candidate on or after the 15th day, but more than 12 hours before the day of any election meeting the criteria of this section, but which are subject to the disclosure requirements of §3-8-2b of this code, shall report such expenditures in accordance with the requirements of §3-8-2b of this code and may not file the report otherwise required by this subsection.

(2) Any person who files a report under subdivision (1) of this subsection shall file an additional report within 24 hours after each time the person makes or contracts to make independent expenditures aggregating an additional \$5,000 or more for any

statewide, legislative, or multicounty judicial candidate, or \$500 with respect to the same election, for any county office, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county, or any municipal candidate on a municipal election ballot, as that to which the initial report relates.

(e)(1) A person, including a political committee, who makes or contracts to make independent expenditures aggregating \$10,000 or more at any time, up to and including the 15th day before the date of an election, shall file a report on a form prescribed by the Secretary of State describing the expenditures within 48 hours.

(2) Any person who files a report under subdivision (1) of this subsection shall file an additional report within 48 hours after each time the person makes or contracts to make independent expenditures aggregating an additional \$10,000 with respect to the same election as that to which the initial report relates.

(f) Any communication paid for by an independent expenditure must include a clear and conspicuous public notice that:

(1) Clearly states that the communication is not authorized by the candidate or the candidate's committee; and

(2) Clearly identifies the person making the expenditure: *Provided*, That if the communication appears on or is disseminated by broadcast, cable or satellite transmission, the statement required by this subsection must be both spoken clearly and appear in clearly readable writing at the end of the communication.

(g) Any person who has spent a total of \$5,000 or more for the direct costs of purchasing, producing, or disseminating electioneering communications during any calendar year shall maintain all financial records and receipts related to such expenditure for a period of five years following the filing of a disclosure pursuant to §3-8-2b of this code and, upon request, shall make such records and receipts available to the Secretary of State or county clerk for the purpose of an audit as provided in §3-8-7 of this code.

(h) Any person who willfully fails to comply with this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500, or confined in jail for not more than one year, or both fined and confined.

(i)(1) Any person or political committee who is required to file a statement under this section shall file the statement electronically in accordance with rules promulgated by the Secretary of State.

(2) The Secretary of State shall make any document filed electronically, pursuant to this subsection, accessible to the public on the Internet not later than 24 hours after the document is received by the secretary.

(3) In promulgating a rule under this subsection, the secretary shall provide methods, other than requiring a signature on the document being filed, for verifying the documents covered by the rule. Any document verified by such methods shall be treated for all purposes, including penalties for perjury, in the same manner as a document verified by signature.

(j) This section does not apply to candidates for federal office.

(k) The Secretary of State may propose emergency and legislative rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code.

§3-8-2b. Disclosure of electioneering communication.

(a) Every person who has spent:

(1) A total of \$5,000 or more for the direct costs of purchasing, producing, or disseminating electioneering communications during any calendar year; or

(2) A total of \$1,000 or more on or after the 15th day, but more than 12 hours before the day of any election, for the direct costs of purchasing, producing, or disseminating electioneering communications during any calendar year shall, within 24 hours of each disclosure date, file with the Secretary of State a statement

which contains all of the information listed in subsection (b) of this section.

(b) A person required, by subsection (a) of this section, to file a statement with the Secretary of State shall provide the following information:

(1) The name of the person making the expenditure, the name of any person sharing or exercising direction or control over the activities of the person making the expenditure, and the name of the custodian of the books and accounts of the person making the expenditure;

(2) If the person making the expenditure is not an individual, the principal place of business of the partnership, committee, association, organization or group which made the expenditure;

(3) The amount of each expenditure of more than \$1,000 made for electioneering communications during the period covered by the statement and the name of the person to whom the expenditure was made;

(4) The elections to which the electioneering communications pertain, the names, if known, of the candidates referred to or to be referred to therein, whether the electioneering communication is intended to support or oppose the identified candidates, and the amount of the total expenditure reported in subdivision (3) of this subsection spent to support or oppose each of the identified candidates; and

(5) The names and addresses of any contributors who contributed a total of more than \$1,000 between the first day of the preceding calendar year and the disclosure date, and whose contributions were made for the purpose of furthering the electioneering communications.

(c) With regard to the contributors required to be listed pursuant to subdivision (5), subsection (b) of this section, the statement shall also include:

(1) The month, day, and year that the contributions of any single contributor exceeded \$1,000;

(2) If the contributor is a political action committee, the name and address the political action committee registered with the State Election Commission;

(3) If the contributor is an individual, the name and address of the individual, his or her occupation, the name and address of the individual's current employer, if any, or, if the individual is self-employed, the name and address of the individual's business, if any;

(4) A description of the contribution, if other than money;

(5) The value in dollars and cents of the contribution.

(d)(1) Any person who makes a contribution for the purpose of funding the direct costs of purchasing, producing or disseminating an electioneering communication under this section shall, at the time the contribution is made, provide his or her name and address to the recipient of the contribution;

(2) Any individual who makes contributions totaling \$1,000 or more between the first day of the preceding calendar year and the disclosure date for the purpose of funding the direct costs of purchasing, producing or disseminating electioneering communications shall, at the time the contribution is made, provide the name of his or her occupation and of his or her current employer, if any, or, if the individual is self-employed, the name of his or her business, if any, to the recipient of the contribution.

(e) In each electioneering communication, a statement shall appear or be presented in a clear and conspicuous manner that:

(1) Clearly indicates that the electioneering communication is not authorized by the candidate or the candidate's committee; and

(2) Clearly identifies the person making the expenditure for the electioneering communication: *Provided*, That if the electioneering communication appears on or is disseminated by broadcast, cable,

or satellite transmission, the statement required by this subsection shall be both spoken clearly and appear in clearly readable writing at the end of the communication.

(f) Within five business days after receiving a disclosure of electioneering communications statement pursuant to this section, the Secretary of State shall make information in the statement available to the public through the Internet.

(g) For the purposes of this section, a person is considered to have made an expenditure when the person has entered into a contract to make the expenditure at a future time.

(h) The Secretary of State shall propose emergency and legislative rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code.

(i) If any person, including, but not limited to, a political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any expenditure for electioneering communications which is coordinated with and made with the cooperation, consent or prior knowledge of a candidate, candidate's committee, or agent of a candidate, the expenditure shall be treated as a contribution and expenditure by the candidate. If the expenditure is coordinated with and made with the cooperation or consent of a state or local political party or committee, agent or official of that party, the expenditure shall be treated as a contribution to and expenditure by the candidate's party.

(j) This section does not apply to candidates for federal office. This section is not intended to restrict or to expand any limitations on, obligations of, or prohibitions against any candidate, committee, agent, contributor, or contribution contained in any other provision of this chapter.

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CHAPTER 145

(Com. Sub. for S. B. 631 - By Senator Queen)

[Passed March 10, 2023; in effect 90 days from passage (June 8, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §3-1-48 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-2-6 and §3-2-18 of said code; all relating to elections in general, and specifically to the expenditure of federal appropriations from Congress to the Secretary of State for purposes that further the administration of federal elections held in the state, payable from the County Assistance Voting Equipment Fund; clarifying the uniform statewide deadline for electronically submitted voter registration applications; and changing the deadline by which county clerks must report voter participation history after an election into the statewide voter registration system.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-48. Legislative findings; State Election Fund; loans to counties; availability of funds; repayment of loans; grants to counties for election systems; Secretary of State expenditures from County Assistance Voting Equipment Fund.

(a) *Legislative findings.* — The Help America Vote Act of 2002, PL 107-252, 52 U.S.C. §20901 *et seq.*, provides funding so that all states will be able to implement some form of electronic voting system to replace punch card and lever machines. The new voting systems must meet several requirements including notifying the voter of over votes and permitting each voter to review his or

her ballot and correct errors before casting the vote. The limited, finite funding available to the state will not be sufficient to meet current and future needs for equipment and services as equipment needs to be obtained, repaired, or replaced as technology changes. It is the intent of the Legislature to maximize the available funds by establishing a no-interest loan program to assist any county, regardless of its current voting system, in purchasing necessary electronic voting equipment and services. As the loans are repaid funds will continue to be available to meet future needs. It is not the intent of the Legislature to mandate any technology for voting systems to be utilized in this state and this section is intended only to establish terms and conditions for providing loan assistance to counties in accordance with the provisions of this section.

(b) *State Election Fund.* — The special revenue account created in the State Treasury and known as the State Election Fund account is continued. Expenditures from the account shall be used by the Secretary of State for the administration of this chapter in accordance with the provisions of 52 U.S.C. § 20901 *et seq.*, the Help America Vote Act of 2002, PL 107-252, in accordance with the provisions of §4-11-1 *et seq.* of this code.

(c) *Establishment of special revenue account.* — There is created in the State Treasury a special revenue revolving fund account known as the County Assistance Voting Equipment Fund which shall be an interest-bearing account. The fund shall consist of an initial transfer not to exceed \$8,500,000 from the State Election Fund established under §3-1-48(b) of this code pursuant to legislative appropriation; any future funds received from the federal government under the Help America Vote Act of 2002, PL 107-252, 52 U.S.C. § 20901, *et seq.*, or subsequent acts providing funds to states to obtain, modify, or improve voting equipment and obtain necessary related services including voting systems, technology, and methods for casting and counting votes; any funds appropriated by the Legislature or transferred by any public agency as contemplated or permitted by applicable federal or state law; and any accrued interest or other return on the moneys in the fund. The balance remaining in the fund at the end of each fiscal year shall

remain in the fund and not revert to the State General Revenue Fund.

(d) *Use of funds.* — The money in the fund shall be used only in the manner and for the purposes prescribed in this section. Notwithstanding any provision of law to the contrary, funds in the County Assistance Voting Equipment Fund may not be designated or transferred for any purpose other than those set forth in this section.

(e) *Administration of the fund.* — The Secretary of State shall administer the fund with the approval of the State Election Commission.

(f) *Investment of fund.* — The moneys of the fund shall be invested pursuant to §12-6-1 *et seq.* of this code and in such a manner that sufficient moneys are available as needed for loans authorized under this section.

(g) *Loans to counties.* — The county assistance voting equipment fund shall be used to make no-interest loans to counties to obtain, modify, or replace voting equipment, software, and necessary related services including voting systems, technology, and methods for casting and counting votes: *Provided*, That any county commission that purchased an electronic voting system prior to November 13, 2004, is eligible to apply for matching funds under this section to upgrade the system: *Provided, however*, That matching funds available for an upgrade shall not exceed the amount available under §3-1-48(g)(1) of this code for the purchase of a new electronic voting system under the Secretary of State's authorized contract. The loans shall be made under the following terms and conditions:

(1) The State Election Commission shall, subject to availability of funds, loan no more than 50 percent of the cost of the voting equipment or services to any county commission: *Provided*, That a portion or all of the county matching requirement may be waived in limited circumstances as determined by the State Election Commission pursuant to this section.

(2) The county commission shall provide sufficient documentation to establish to the satisfaction of the State Election Commission that the county commission has at least 50 percent of the money necessary to obtain the voting equipment, software, or services for which the loan is sought.

(3) The county commission shall enter into a contract with the State Election Commission for the repayment of the loan over a period not to exceed five years or the length of the contract to obtain the equipment, software, or services, whichever is less.

(4) The county commission shall use the loan for voting equipment and services certified by the State Election Commission pursuant to the provisions of §3-4a-1 *et seq.* of this code and authorized for use by the Secretary of State.

(5) A county commission may apply for a loan on a form provided by the Secretary of State. The form shall, in addition to requesting information necessary for processing the application, state the deadline for submitting the application and the eligibility requirements for obtaining a loan.

(6) The State Election Commission may waive a portion or all of the matching money required by this subsection for a county commission that can establish that it has exercised due diligence in raising its share of the costs but has been unable to do so. On forms provided by the Secretary of State the county commission shall request a waiver and shall make a full financial disclosure of its assets and liabilities as well as potential for future income when applying for a waiver. The county commission shall demonstrate, to the satisfaction of the State Election Commission, its inability to meet the matching requirements of this subsection and its ability to repay the loan in a timely manner. Notwithstanding the provisions of §3-1-48(g)(3) of this code, the State Election Commission may extend the repayment period on a year-to-year basis for a repayment period not to exceed five additional years.

(h) *Application.* — An application for a loan shall be approved by the State Election Commission if the requirements of this section have been met.

(i) *Rulemaking.* — The Secretary of State shall promulgate in accordance with §29A-3-1 *et seq.* of this code emergency and legislative rules necessary to effectuate the purposes of this section.

(j) *Availability of loans.* — The State Election Commission may not approve a loan under this section until final standards for electronic voting equipment with a voter verified paper ballot have been established by the Secretary of State or the National Institute for Standards and Technology. The State Election Commission may not approve a loan for the purchase, lease, rental, or other similar transaction to obtain electronic voting equipment, software, or necessary related services unless obtained under a contract authorized by the Secretary of State pursuant to rules promulgated under this section.

(k) *Repayment of loans.* — The Secretary of State may, by civil action, mandamus, or other judicial or administrative proceeding, compel performance by a county commission of all the terms and conditions of the loan agreement between the state and that county commission including periodic reduction of any moneys due the county from the state.

(l) Notwithstanding the provisions of this section relating to loan procedures, the State Election Commission may, with a recommendation from the HAVA Grant Board, and consistent with the legislative rules of the program, approve a grant to a county for the purchase of election systems, or election system upgrades, payable from the County Assistance Voting Equipment Fund: *Provided*, That the Secretary of State shall promulgate emergency rules setting forth the criteria for the issuance of grants to the counties pursuant to the provisions of §29A-3-15 of this code.

(m) Notwithstanding the provisions of this section relating to loan or grant procedures, the State Election Commission may, with a recommendation from the HAVA Grant Board or other relevant federal entity and consistent with the legislative and emergency rules of the program, approve expenditures by the Secretary of State, payable from the County Assistance Voting Equipment Fund, for the purchase of election equipment or security upgrades that further the administration of federal elections held in the state,

where such expenditures are limited to election equipment, systems, infrastructure, physical and cyber security upgrades, or any other lawful purpose permitted by the pertinent appropriation from Congress: *Provided*, That the State Election Commission shall promulgate emergency rules setting forth the criteria governing the application and approval process for these expenditures by the Secretary of State, pursuant to the provisions of §29A-3-15 of this code.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-6. Time of registration application before an election.

(a) Voter registration before an election closes on the 21st day before the election or on the first day thereafter which is not a Saturday, Sunday, or legal holiday.

(b) An application for voter registration, transfer of registration, change of name, or change of political party affiliation submitted by an eligible voter by the close of voter registration is effective for any subsequent primary, general, or special election if the following conditions are met:

(1) The application contains the information required by §3-2-5(c) of this code. Incomplete applications for registration containing information which are submitted within the required time may be corrected within four business days after the close of registration if the applicant provides the required information; and

(2) The application is received by the appropriate clerk of the county commission no later than the hour of the close of registration or is otherwise submitted by the following deadlines:

(A) If mailed, the application shall be addressed to the appropriate clerk of the county commission and is postmarked by the postal service no later than the date of the close of registration. If the postmark is missing or illegible, the application is presumed to have been mailed no later than the close of registration if it is received by the appropriate clerk of the county commission no later than the third day following the close of registration;

(B) If accepted by a designated agency or motor vehicle licensing office, the application is received by that agency or office no later than the close of registration;

(C) If accepted through a registration outreach program, the application is received by the clerk, deputy clerk, or registrar no later than the close of registration;

(D) If accepted through an approved electronic voter registration system, the application is received by the clerk of the county commission or other entity designated by the Secretary of State no later than 11:59 p.m. on the final day of registration; and

(3) The verification notice required by the provisions of §3-2-16 of this code mailed to the voter at the residence indicated on the application is not returned as undeliverable.

§3-2-18. Registration records; active, inactive, canceled, pending and rejected registration files; procedure; voting records.

(a) For the purposes of this article:

(1) "Original voter registration record" means all records submitted or entered in writing or electronically, where permitted by law, for voter registration purposes, including:

(A) Any original application or notice submitted by any person for registration or reinstatement, change of address, change of name, change of party affiliation, correction of records, cancellation, confirmation of voter information, or other request or notice for voter registration purposes; and

(B) Any original entry made on any voters' registration record at the polling place or made or received by the clerk of the county commission relating to any voters' registration such as records of voting, presentation of identification and proof of age, challenge of registration, notice of death or obituary notice, notice of disqualifying conviction or ruling of mental incompetence, or other original document which may affect the status of any person's voter registration.

(2) "Active voter registration records" means the registration records, whether on paper or in electronic format, containing the names, addresses, birth dates, and other required information for all persons within a county who are registered to vote and whose registration has not been designated as inactive or canceled pursuant to the provisions of this article.

(3) "Inactive voter registration records" means the registration records, whether on paper or in electronic format, containing the names, addresses, birth dates, and other required information for all persons designated inactive pursuant to the provisions of §3-2-27 of this code following the return of the prescribed notices as undeliverable at the address provided by the United States Postal Service or entered on the voter registration, or for failure of the contacted voter to return a completed confirmation notice within 30 days of the mailing.

(4) "Canceled voter registration records" means the records containing all required information for all persons who have been removed from the active and inactive voter registration records and who are no longer registered to vote within the county.

(5) "Pending application records" means the temporary records containing all information submitted on a voter registration application, pending the expiration of the verification period.

(6) "Rejected application records" means the records containing all information submitted on a voter registration application which was rejected for reasons as described in this article.

(7) "Confirmation pending records" means the records containing all required information for persons who have been identified to be included in the next succeeding mailing of address confirmation notices as set forth by the National Voter Registration Act of 1993 (42 U.S.C. § 1973gg *et seq.*).

(b) For the purposes of this chapter or of any other provisions of this code relating to elections conducted under the provisions of this chapter, whenever a requirement is based on the number of

registered voters, including, but not limited to, the number of ballots to be printed, the limitations on the size of a precinct, or the number of petition signatures required for election purposes, only those registrations included on the active voter registration files shall be counted and voter registrations included on the inactive voter registration files, as defined in this subdivision, are not to be counted.

(c) Active voter registration records, confirmation pending records, and inactive voter registration records may be maintained in the same physical location, providing the records are coded, marked, or arranged in such a way as to make the status of the registration immediately obvious. Canceled voter registration records, pending application records, and rejected application records may be maintained in separate physical locations. However, all such records shall be maintained in the statewide voter registration database, subject to this article.

(d) The effective date of any action affecting any voter's registration status shall be entered on the voter record, including the effective date of registration, change of name, address or party affiliation or correction of the record, effective date of transfer to inactive status, return to active status, or cancellation. When any registration is designated inactive or is canceled, the reason for the designation or cancellation and any reference notation necessary to locate the original documentation related to the change shall be entered on the voter record.

(e) Within 80 days after each primary, general, municipal, or special election, the clerk of the county commission shall enter the voting records into the statewide voter registration database.

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CHAPTER 146

**(S. B. 609 - By Senators Smith, Azinger, Boley, Phillips,
Swope, and Taylor)**

[Passed March 6, 2023; in effect from passage]
[Approved by the Governor on March 7, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5D-1-5c, relating to and requiring the approval of the Public Energy Authority before decommissioning or deconstructing an existing coal, oil, and natural gas fueled electric power plant; requiring the submission of a petition containing certain specified information; providing for rule-making authority; and exempting certain power plants from the approval requirement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

§5D-1-5c. Approval of decommissioning or deconstructing an existing power plant.

(a) No existing coal, oil, or natural gas fueled power plant shall undertake any decommissioning or deconstructing activities prior to obtaining approval from the authority: *Provided*, That such approval may not be unreasonably withheld.

(b) The authority may approve the decommissioning or deconstructing of an existing coal, oil, or natural gas fueled power plant upon the submission of a petition containing, at a minimum, the following information:

(1) An analysis by an authority approved third party that evaluates the social, environmental, and economic impact at a local and statewide level of such decommissioning and deconstruction; and

(2) Potential alternatives to the decommissioning and deconstruction, including the reconstruction that make use of other technologies, including novel technologies and green technologies as alternative fuel sources.

(c) The authority shall propose rules for legislative approval and promulgate emergency rules in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement this section, including exempting power plants that have been non-producing for at least five years prior to the effective date of this section.

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CHAPTER 147

**(S. B. 143 - By Senators Smith, Phillips, Caputo, Woodrum,
Jeffries, Hamilton, Trump, Maynard, Rucker, Taylor, and
Maroney)**

[Passed January 30, 2023; in effect 90 days from passage (April 30, 2023)]
[Approved by the Governor on February 6, 2023.]

AN ACT to amend and reenact §22-15A-3a of the Code of West Virginia, 1931, as amended, relating to the Adopt-A-Stream Program; requiring volunteers 17 years of age or younger be accompanied by an adult; changing streams eligible for participation in program; altering process for selecting stream participation in program; allowing department to approve or deny applications at its discretion; expanding sources of funding to support program; lengthening period of stream participation from one to three years; altering method of collection of stream litter; and requiring one cleanup of the river prior to road signs being erected.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 15A. THE A. JAMES MANCHIN
REHABILITATION ENVIRONMENTAL ACTION
PLAN.**

§22-15A-3a. Creation of Adopt-A-Stream Program required.

(a) The Adopt-A-Highway Program was established in the late 1980s to improve the quality of the state's environment by encouraging public involvement in the elimination of highway litter. That program is cosponsored by the Division of Highways and the Department of Environmental Protection, Rehabilitation Environmental Action Plan. Its objective is to save taxpayer money by increasing public awareness and to serve as an educational tool

by focusing on the consequences of littering. The program offers volunteers the opportunity to take charge of their own environment by making a positive effort to create a cleaner, more aesthetic place in which to live.

In West Virginia there are currently 25,000 volunteers who regularly pick up litter on 4,000 miles of highway. They have been responsible for removing more than 40 million pounds of litter since the program began.

(b) As with the Adopt-A-Highway Program, individuals, families, churches, businesses, schools, civic organizations, government agencies, scouting groups, fraternities, and communities may participate in an Adopt-A-Stream Program, which the department shall create and implement. Participants 17 years of age or younger must be accompanied by an adult. Any stream or river within the state of West Virginia is eligible for adoption, with the exception of streams or rivers determined to be unsafe by the department. Adopted streams or river sections must be at least one mile long. Applications for adoptions will be reviewed and approved or denied at the department's discretion. The Litter Control Fund, or other sources of funding deemed appropriate by the secretary, may be used to support the Adopt-A-Stream Program.

(c) Adoptions are for a period of three years, during which time at least one cleanup is required per year. Collected litter will be placed at designated locations approved by the department. The department may coordinate with volunteers, local authorities, and state agencies for removal and disposal of collected litter. Garbage bags, safety training, and gloves are to be furnished by the program.

(d) Adopted streams or rivers may be identified by a sign at a location along the adopted section bearing the Adopt-A-Stream logo and the name of the adopter after the first cleanup has been completed. Volunteers who complete one required litter pickup within the first year of the three-year contract period shall be awarded a certificate of accomplishment signed by the secretary.

(e) Any stream obstruction or other cause for concern observed by volunteers may be reported to the Department of Environmental Protection, Division of Natural Resources, the State Conservation Committee, or the appropriate local county emergency manager.

(f) The secretary may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code.

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CHAPTER 148

**(Com. Sub. for Com. Sub. for S. B. 561 - By Senators Jeffries
and Woelfel)**

[Passed March 11, 2023; to take effect July 1, 2023]
[Approved by the Governor on March 23, 2023.]

AN ACT to repeal §16-13C-1, §16-13C-2, §16-13C-3, §16-13C-4, §16-13C-5, and §16-13C-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §22-36-1, §22-36-2, §22-36-3, §22-36-4, §22-36-5, §22-36-6, and §22-36-7, all relating to the administration of the West Virginia Drinking Water Treatment Revolving Fund; transferring administration of Drinking Water Treatment Revolving Fund from Department of Health and Human Resources to Department of Environmental Protection; adding provisions relating to review by Department of Environmental Protection of funded projects and implementation of mitigation efforts if necessary to protect public health and the environment; and providing for Department of Environmental Protection to propose legislative rules.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13C. DRINKING WATER TREATMENT REVOLVING FUND ACT.

§16-13C-1. Definitions.

[Repealed.]

§16-13C-2. Designation of division of health as state instrumentality; rules; small systems; disadvantaged communities.

[Repealed.]

§16-13C-3. Drinking water treatment revolving fund; duties of division of health and water

development authority; set-aside accounts.

[Repealed.]

§16-13C-4. Management of funds.

[Repealed.]

§16-13C-5. Remedies to enforce payment.

[Repealed.]

§16-13C-6. Construction of article.

[Repealed.]

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 36. ADMINISTRATION OF THE WEST VIRGINIA DRINKING WATER TREATMENT REVOLVING FUND.

§22-36-1. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(1) "Authority" means the Water Development Authority provided for in §22C-1-4 of this code.

(2) "Capacity development" means the technical, managerial, and financial capability of a public water system.

(3) "Cost" means the cost of all labor, materials, machinery, equipment, lands, property, rights and easements, plans and specifications, and all other expenses necessary or incident to the acquisition, construction, improvement, expansion, extension, repair, or rehabilitation of all or part of a project.

(4) "Disadvantaged community" means the service area of a public water system that meets affordability criteria established after public review and comment by the state.

(5) "Federal Safe Drinking Water Act" means the federal statute commonly known as the Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*, as enacted, amended, and as may be subsequently amended.

(6) "Fund" means the West Virginia Drinking Water Treatment Revolving Fund created in this article.

(7) "Instrumentality" means the Department of Environmental Protection which has the primary responsibility for administering the fund and this article pursuant to requirements of the federal Safe Drinking Water Act.

(8) "Local entity" means any municipality, public utility, or person, including any individual, firm, partnership, association, not-for-profit corporation, or other corporation organized and existing under the laws of the state which may construct and operate an eligible project.

(9) "Public water system" means that term as defined in §16-1-9a of this code.

(10) "Project" means a project for improving a drinking water system for the purpose of achieving or maintaining compliance with applicable state and federal drinking water regulations.

(11) "Set-aside accounts" means those accounts that shall be set up for activities required by the federal Safe Drinking Water Act. The moneys for these accounts may be taken from the federal capitalization grant for these non-project activities before the capitalization grant is deposited into the fund.

(12) "Small system" means a public water system serving 10,000 or fewer persons.

§22-36-2. Designation of Department of Environmental Protection as state instrumentality; rules; small systems; disadvantaged communities.

(a) The Department of Environmental Protection shall act as the instrumentality that is hereby empowered to enter into capitalization agreements with the United States Environmental Protection Agency, to accept capitalization grant awards made under the federal Safe Drinking Water Act, and to direct the administration and management of the West Virginia Drinking Water Treatment Revolving Fund created in this article in accordance with the requirements of federal law.

(b) The Department of Environmental Protection shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code for the purpose of effecting the administration of the provisions of this article. The rules shall include, but are not limited to, establishing requirements for: (1) Capacity development; (2) environmental review; (3) disadvantaged community designation; (4) receipt and disbursement of fund moneys; and (5) establishment of a Drinking Water Treatment Revolving Fund program to direct the financial management of the fund to water systems and establish the interest rates and repayment terms of the loans.

(c) Two percent of the annual federal capitalization grants made to this state shall be utilized to provide technical assistance services for small systems to assist those systems in maintaining compliance with the federal Safe Drinking Water Act. The Department of Environmental Protection shall enter into contracts to provide technical assistance services for small systems with such non-profit organizations that: (1) Have a membership that represents at least 25 percent of the small systems of this state; and (2) have at least five years' experience in providing on-site technical assistance to small systems.

(d) The Department of Environmental Protection shall, in accordance with the provisions of the federal Safe Drinking Water Act, establish a program for loan subsidies to disadvantaged communities. Thirty percent of the annual federal capitalization grants made to this state shall be dedicated to the funding of projects for disadvantaged communities.

§22-36-3. West Virginia Drinking Water Treatment Revolving Fund; duties of Department of Environmental Protection and Water Development Authority; set-aside accounts.

(a) There is continued in the office of the State Treasurer a permanent and perpetual special fund to be known as the West Virginia Drinking Water Treatment Revolving Fund. The fund shall be administered and managed in accordance with the provisions of the federal Safe Drinking Water Act by the Department of Environmental Protection. The Department of Environmental Protection may draw all or a portion of those moneys available under capitalization agreements, and with the capitalization grant awards from the United States Environmental Protection Agency under the federal Safe Drinking Water Act, and deposit such moneys into the fund and the set-aside accounts.

(b) The fund, less the set-aside account moneys, shall be administered and managed by the Water Development Authority under the direction of the Department of Environmental Protection. The fund shall be comprised of moneys appropriated to the fund by the Legislature, moneys allocated to the state by the federal government expressly for the purpose of establishing and maintaining a drinking water treatment revolving fund and set-aside accounts, all receipts from loans made from the fund, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans or provide other allowable financial assistance to eligible projects for public water systems, as described in the federal Safe Drinking Water Act.

(c) In order to carry out the administration and management of the fund, the authority and the Department of Environmental

Protection are authorized to employ officers, employees, agents, advisors, and consultants, including attorneys, financial advisors, engineers, other technical advisors, and public accountants, and notwithstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or instrumentality.

(d) The authority shall propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code to govern the pledge of loans to secure bonds of the authority.

(e) Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee. Moneys in the fund shall not be commingled with other money of the authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code.

(f) Pursuant to the provisions of the federal Safe Drinking Water Act, set-aside accounts shall be set up in accounts separate from the West Virginia Drinking Water Treatment Revolving Fund. These set-aside accounts shall include, but not be limited to, administration costs, source water protection, operator training and certification, technical assistance to systems, local assistance, and other state activities permitted by the federal Safe Drinking Water Act. The Department of Environmental Protection shall establish and administer the set-aside accounts as permitted by the federal Safe Drinking Water Act. An application fee may be charged and deposited into the administrative account to defray the cost of administering the program.

§22-36-4. Management of funds.

The authority shall manage the funds received pursuant to the provisions of this article for accounting purposes. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year and the costs thereof may be defrayed as administrative expenses under the provisions of this article. The

audit shall be conducted by a certified public accountant and provide an auditor's opinion on the fund's financial statements, a report on the internal controls, and a report prepared in compliance with the provisions of the West Virginia Drinking Water Treatment Revolving Fund.

§22-36-5. Remedies to enforce payment.

(a) In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement made between the state and a local entity, and notwithstanding any provisions of this code to the contrary, the authority has and may, at its option, exercise the following rights and remedies in the event of any default by a local entity under a loan agreement:

(1) The authority may directly impose, in its own name and for its own benefit, service charges upon all users of a project funded by a loan distributed to a local entity pursuant to this article, and may proceed directly to enforce and collect the service charges, together with all necessary costs of the enforcement and collection.

(2) The authority may exercise, in its own name or in the name of, and as the agent for, a particular local entity, all of the rights, powers, and remedies of the local entity with respect to the project or which may be conferred upon the local entity by statute, rule, regulation, or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local entity pursuant to this article.

(3) The authority may, by civil action, mandamus, or other judicial or administrative proceeding, compel performance by a local entity of all the terms and conditions of the loan agreement between the state and that local entity including:

(A) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(B) The enforcement and collection of service charges; and

(C) The enforcement by the local entity of all rights and remedies conferred by statute, rule, regulation, or judicial decision.

(b) The rights and remedies enumerated in this article are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

§22-36-6. Construction of article.

The provisions of this article shall be liberally construed to the end that its beneficial purposes may be affected. Insofar as the provisions of this article are inconsistent with the provisions of any other general, special, or local law, the provisions of this article are controlling.

§22-36-7. Environmental review of funded projects.

(a) The Department of Environmental Protection shall conduct an environmental review on each project funded under this article. The Secretary of the Department of Environmental Protection shall promulgate legislative rules in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the environmental review of funded projects: *Provided*, That the rules shall be consistent with the regulations promulgated by the United States Environmental Protection Agency pursuant to the federal Safe Drinking Water Act, 42 U.S.C. § 300f through § 300j-27, inclusive, as amended.

(b) The Secretary of the Department of Environmental Protection is authorized to direct a local entity, or its agent, to implement all measures that, in the judgment of the secretary, are necessary in order to mitigate or prevent adverse impacts to the public health, safety, or welfare or to the environment that may result from a project funded under this article. The secretary is further authorized to require all projects to comply with all other appropriate federal laws and regulations that are required of the projects under the Federal Safe Drinking Water Act, 42 U.S.C. § 300f through § 300j-27, inclusive, as amended.

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CHAPTER 149

**(H. B. 2839 - By Delegates Anderson, Zatezalo, Heckert,
Cooper, Reynolds, Sheedy, Hott, Street, Barnhart and Riley)**

[Passed March 3, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §22-2-10 of the Code of West Virginia, 1931, as amended; and to further amend said code by adding thereto a new section, designated §22-3-39, all relating to declaring the benefits and effects of the extraction of useful substances from the waters of the state; clarifying the applicability of state policy for provisions of the Abandoned Mine Lands and Reclamation Act and of the Surface Coal Mining and Reclamation Act; and correcting the name of a receiving fund for proceeds received by the Department of Environmental Protection.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ABANDONED MINE LANDS AND RECLAMATION ACT.

§22-2-10. Benefits derived from substances separated by treatment of pollution from mine drainage in the waters of the state; public policy; legislative findings, intent, and purpose; severability.

(a) *Public Policy.* — It is the long-standing public policy of the State of West Virginia, pursuant to § 22-11-1 *et seq.* of this code, the Water Pollution Control Act, that the state is compelled to maintain reasonable standards of purity and quality of the waters of the state which are consistent with public health and the protection of all forms of life. It is also the long-standing public policy of this state, pursuant to § 20-2-1 *et seq.* of this code, that

wildlife resources in this state shall be held as a public trust by the state and protected for the use and enjoyment of its citizens.

(b) *Legislative Findings, Intent, and Purpose.* — The Legislature finds that treatment of mine drainage reduces environmental harm by reducing toxic substances and pollution in the waters of the state. The Legislature finds that the necessary and expensive treatment of mine drainage to remove pollution from the waters of the state, and disposal of the same, may produce materials that contain valuable concentrations of rare earth elements, critical materials, and other substances which may be utilized for commercial gain. The Legislature finds that these materials found within the waters of the state are part of the water and can only be separated from the water with expensive and continuing investments of resources which may last for decades. The Legislature enacts this section with the intent of fulfilling the state's obligations to maintain reasonable standards of purity and quality of the waters of the state, consistent with public health and the protection of all forms of life, by encouraging investments into the treatment of mine drainage.

(c) Notwithstanding any provision of this code or common law to the contrary, all chemical compounds, elements, and other potentially toxic materials which are found within the waters of this state, which are derived from the treatment of mine drainage, and which have economic value, may be used, sold, or transferred by the Department of Environmental Protection, or its designee, for commercial gain and benefit. All funds received by the department shall be deposited at the discretion of the secretary into the Special Reclamation Water Trust Fund or the Acid Mine Drainage Abatement and Treatment Fund, and used by the department to fulfill its obligations under this code: *Provided*, That nothing in this subsection shall be construed to interfere with any existing contract or the ability of the department to enter into an agreement with private parties with respect to the removal, sale, or transfer of said chemical compounds, elements, and other potentially toxic materials.

(d) Notwithstanding any provision of this code or common law to the contrary, all chemical compounds, elements, and other

potentially toxic materials which are found within the waters of this state which are derived from the treatment of mine drainage, and which have economic value, may be used, sold, or transferred by any party, other than the department, who successfully removes said chemical compounds, elements, and other potentially toxic materials from the waters of this state for commercial gain and benefit: *Provided*, That nothing in this subsection shall be construed to interfere with any existing contract or the ability of parties to enter into an agreement with respect to the removal, sale, or transfer of said chemical compounds, elements, and other potentially toxic materials.

(e) The provisions of this section concerning the treatment of mine drainage are applicable to property governed by §22-2-1 *et seq.* of this code and §22-3-1 *et seq.* of this code.

(f) The provisions of this section are severable, and if any part of this section is adjudged to be unconstitutional, unenforceable, or invalid, that determination does not affect the continuing validity of the remaining provisions of this section.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-39. Benefits derived from substances separated by treatment of pollution from mine drainage in the waters of the state; applicability.

The provisions of §22-2-10 of this code concerning the treatment of mine drainage are applicable to property governed by §22-3-1 *et seq.* of this code.

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CHAPTER 150

**(Revised Com. Sub. for H. B. 3110 - By Delegates Anderson,
Zatezalo, Horst, Hansen, Fehrenbacher, Cooper, Martin,
Young, Hardy and Heckert)**

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §11-13A-5a of the Code of West Virginia, 1931, as amended; and to amend and reenact §22-6-2, §22-6-29, and §22-6A-7 of said code, all relating to funding the Office of Oil and Gas in the Department of Environmental Protection; providing for the apportionment of three fourths of one percent of oil and gas severance taxes not to exceed \$1,200,000 to Office of Oil and Gas; establishing two tiers of annual oversight fees for wells producing more than 60,000 cubic feet of gas per day; increasing the expedited permit modification fee by \$2500 over the current level; eliminating the one million dollar cap on deposits to the Oil and Gas Operating Permit and Processing Fund from collections of fees for expedited permits and expedited permit modifications; providing that those fees, if not used for other purposes, may be moved to the Oil and Gas Reclamation Fund; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-5a. Dedication of ten percent of oil and gas severance tax for benefit of counties and municipalities and of three fourths of one percent of oil and gas severance tax for the

benefit of the Office of Oil and Gas in the Department of Environmental Protection; distribution of major portion of such dedicated tax to oil and gas producing counties; distribution of minor portion of such dedicated tax to all counties and municipalities; reports; rules; special funds in the office of state treasurer; methods and formulae for distribution of such dedicated tax; expenditure of funds by counties and municipalities for public purposes; and requiring special county and municipal budgets and reports thereon.

(a) Effective July 1, 1996, five percent of the tax attributable to the severance of oil and gas imposed by §11-13A-3a of this code is hereby dedicated for the use and benefit of counties and municipalities within this state and shall be distributed to the counties and municipalities as provided in this section. Effective July 1, 1997, and thereafter, ten percent of the tax attributable to the severance of oil and gas imposed by section three-a of this article is hereby dedicated for the use and benefit of counties and municipalities within this state and shall be distributed to the counties and municipalities as provided in this section. Effective July 1, 2023, and every year thereafter, three fourths of one percent of the tax attributable to the severance of oil and gas imposed by §11-13A-3a of this code, not to exceed \$1,200,000, is hereby dedicated for the use and benefit of regulating the oil and gas industry by the Office of Oil and Gas in the Department of Environmental Protection and shall be deposited in the Oil and Gas Operating Permit and Processing Fund to ensure that the Office of Oil and Gas has sufficient funding to support its regulatory mission of ensuring the safety of the natural environment of this state.

(b) Seventy-five percent of the dedicated tax for counties and municipalities shall be distributed by the State Treasurer in the manner specified in this section to the various counties of this state in which the oil and gas upon which this additional tax is imposed was located at the time it was removed from the ground. Those counties are referred to in this section as the "oil and gas producing counties". The remaining twenty-five percent of the net proceeds of this additional tax on oil and gas shall be distributed among all

the counties and municipalities of this state in the manner specified in this section.

(c) The Tax Commissioner is hereby granted plenary power and authority to promulgate reasonable rules requiring the furnishing by oil and gas producers of such additional information as may be necessary to compute the allocation required under the provisions of subsection (f) of this section. The Tax Commissioner is also hereby granted plenary power and authority to promulgate such other reasonable rules as may be necessary to implement the provisions of this section.

(d) In order to provide a procedure for the distribution of seventy-five percent of the dedicated tax for counties and municipalities on oil and gas to the oil and gas producing counties, the special fund known as the oil and gas county revenue fund established in State Treasurer's office by chapter two hundred forty-two, acts of the Legislature, 1995 regular session, as amended and reenacted in the subsequent act of the Legislature, is hereby continued. In order to provide a procedure for the distribution of the remaining twenty-five percent of the dedicated tax for counties and municipalities on oil and gas to all counties and municipalities of the state, without regard to oil and gas having been produced in those counties or municipalities, the special fund known as the all counties and municipalities revenue fund established in State Treasurer's office by chapter two hundred forty-two, acts of the Legislature, 1995 regular session, as amended and reenacted in the subsequent act of the Legislature, is hereby redesignated as the "all counties and municipalities oil and gas revenue fund" and is hereby continued.

Seventy-five percent of the dedicated tax for counties and municipalities on oil and gas shall be deposited in the oil and gas county revenue fund and twenty-five percent of this dedicated tax on oil and gas shall be deposited in the all counties and municipalities oil and gas revenue fund, from time to time, as the proceeds are received by the Tax Commissioner. The moneys in the funds shall be distributed to the respective counties and municipalities entitled to the moneys in the manner set forth in subsection (e) of this section.

(e) The moneys in the oil and gas county revenue fund and the moneys in the all counties and municipalities oil and gas revenue fund shall be allocated among and distributed annually to the counties and municipalities entitled to the moneys by the State Treasurer in the manner specified in this section. On or before each distribution date, the State Treasurer shall determine the total amount of moneys in each fund which will be available for distribution to the respective counties and municipalities entitled to the moneys on that distribution date. The amount to which an oil and gas producing county is entitled from the oil and gas county revenue fund shall be determined in accordance with subsection (f) of this section, and the amount to which every county and municipality shall be entitled from the all counties and municipalities oil and gas revenue fund shall be determined in accordance with subsection (g) of this section. After determining, as set forth in subsections (f) and (g) of this section, the amount each county and municipality is entitled to receive from the respective fund or funds, a warrant of the State Auditor for the sum due to the county or municipality shall issue and a check drawn thereon making payment of the sum shall thereafter be distributed to the county or municipality.

(f) The amount to which an oil and gas producing county is entitled from the oil and gas county revenue fund shall be determined by:

(1) In the case of moneys derived from tax on the severance of gas:

(A) Dividing the total amount of moneys in the fund derived from tax on the severance of gas then available for distribution by the total volume of cubic feet of gas extracted in this state during the preceding year; and

(B) Multiplying the quotient thus obtained by the number of cubic feet of gas taken from the ground in the county during the preceding year; and

(2) In the case of moneys derived from tax on the severance of oil:

(A) Dividing the total amount of moneys in the fund derived from tax on the severance of oil then available for distribution by the total number of barrels of oil extracted in this state during the preceding year; and

(B) Multiplying the quotient thus obtained by the number of barrels of oil taken from the ground in the county during the preceding year.

(g) The amount to which each county and municipality is entitled from the all counties and municipalities oil and gas revenue fund shall be determined in accordance with the provisions of this subsection. For purposes of this subsection "population" means the population as determined by the most recent decennial census taken under the authority of the United States:

(1) The State Treasurer shall first apportion the total amount of moneys available in the all counties and municipalities oil and gas revenue fund by multiplying the total amount in the fund by the percentage which the population of each county bears to the total population of the state. The amount thus apportioned for each county is the county's "base share".

(2) Each county's base share shall then be subdivided into two portions. One portion is determined by multiplying the base share by that percentage which the total population of all unincorporated areas within the county bears to the total population of the county, and the other portion is determined by multiplying the base share by that percentage which the total population of all municipalities within the county bears to the total population of the county. The former portion shall be paid to the county and the latter portion shall be the "municipalities' portion" of the county's base share. The percentage of the latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of the latter portion by the percentage which the population of each municipality within the county bears to the total population of all municipalities within the county.

(h) Moneys distributed to any county or municipality under the provisions of this section, from either or both special funds, shall

be deposited in the county or municipal general fund and may be expended by the county commission or governing body of the municipality for such purposes as the county commission or governing body shall determine to be in the best interest of its respective county or municipality: *Provided*, That in counties with population in excess of two hundred thousand, at least seventy-five percent of the funds received from the oil and gas county revenue fund shall be apportioned to and expended within the oil and gas producing area or areas of the county, the oil and gas producing areas of each county to be determined generally by the State Tax Commissioner: *Provided, however*, That the moneys distributed to any county or municipality under the provisions of this section shall not be budgeted for personal services in an amount to exceed one fourth of the total amount of the moneys.

(i) On or before March 28, 1997, and each March 28 thereafter, each county commission or governing body of a municipality receiving any such moneys shall submit to the Tax Commissioner on forms provided by the Tax Commissioner a special budget, detailing how the moneys are to be spent during the subsequent fiscal year. The budget shall be followed in expending the moneys unless a subsequent budget is approved by the State Tax Commissioner. All unexpended balances remaining in the county or municipality general fund at the close of a fiscal year shall remain in the General Fund and may be expended by the county or municipality without restriction.

(j) On or before December 15, 1996, and each December 15 thereafter, the Tax Commissioner shall deliver to the clerk of the Senate and the Clerk of the House of Delegates a consolidated report of the budgets, created by subsection (i) of this section, for all county commissions and municipalities as of July 15, of the current year.

(k) The State Tax Commissioner shall retain for the benefit of the state from the dedicated tax attributable to the severance of oil and gas the amount of \$35,000 annually as a fee for the administration of the additional tax by the Tax Commissioner.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.**§22-6-2. Secretary – powers and duties generally; department records open to public; inspectors.**

(a) The secretary shall have as his or her duty the supervision of the execution and enforcement of matters related to oil and gas set out in §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code.

(b) The secretary is authorized to propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code necessary to effectuate the above stated purposes.

(c) The secretary shall have full charge of the oil and gas matters set out in §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code. In addition to all other powers and duties conferred upon him or her, the secretary shall have the power and duty to:

(1) Supervise and direct the activities of the Office of Oil and Gas and see that the purposes set forth in §22-6-2(a) and §22-6-2(b) of this code are carried out;

(2) Determine the number of supervising oil and gas inspectors and oil and gas inspectors needed to carry out the purposes of §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code and appoint them as such. All appointees must be qualified civil service employees, but no person is eligible for appointment until he or she has served in a probationary status for a period of six months to the satisfaction of the secretary;

(3) Supervise and direct such oil and gas inspectors and supervising inspectors in the performance of their duties;

(4) Make investigations or inspections necessary to ensure compliance with and to enforce the provisions of §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code;

(5) Prepare report forms to be used by oil and gas inspectors or the supervising inspector in making their findings, orders, and notices upon inspections made in accordance with §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code;

(6) Employ a hearing officer and such clerks, stenographers, and other employees as may be necessary to carry out his or her duties and the purposes of the Office of Oil and Gas and fix their compensation;

(7) Hear and determine applications made by owners, well operators, and coal operators for the annulment or revision of orders made by oil and gas inspectors or the supervising inspector, and to make inspections, in accordance with the provisions of §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, and §22-9-1 *et seq.* of this code;

(8) Cause a properly indexed permanent and public record to be kept of all inspections made by the secretary or by oil and gas inspectors or the supervising inspector;

(9) Conduct research and studies as the secretary shall deem necessary to aid in protecting the health and safety of persons employed within or at potential or existing oil or gas production fields within this state, to improve drilling and production methods, and to provide for the more efficient protection and preservation of oil and gas-bearing rock strata and property used in connection therewith;

(10) Collect a permit fee of \$400 for each permit application filed other than an application for a deep well, horizontal wells regulated pursuant to §22-6A-1 *et seq.* of this code, or a coalbed methane well; and collect a permit fee of \$650 for each permit application filed for a deep well: *Provided*, That no permit application fee is required when an application is submitted solely for the plugging or replugging of a well, or to modify an existing application for which the operator previously has submitted a permit fee under this section. All application fees required hereunder are in lieu of and not in addition to any fees imposed

under §22-11-1 *et seq.* of this code relating to discharges of stormwater but are in addition to any other fees required by the provisions of §22-6-1 *et seq.* of this code: *Provided, however,* That upon a final determination by the United States Environmental Protection Agency regarding the scope of the exemption under Section 402(l)(2) of the federal Clean Water Act (33 U.S.C. 1342(l)(2)), which determination requires a "national pollutant discharge elimination system" permit for stormwater discharges from the oil and gas operations described therein, any permit fees for stormwater permits required under §22-11-1 *et seq.* of this code for such operations may not exceed \$100;

(11) On or after July 1 of each year, collect from the responsible operator of the first 400 wells subject to §22-6-1 *et seq.*, §22-6A-1 *et seq.* or §22-21-1 *et seq.* of this code that has not yet been plugged, and that produces more than an average, calculated by dividing the annual production by 365, of 250,000 cubic feet of gas per day or more as reported to the State Tax Commissioner in the previous reporting year, an annual oversight fee of \$350 for each well;

(12) On or after July 1 of each year, collect from the responsible operator of the first 400 wells subject to §22-6-1 *et seq.*, §22-6A-1 *et seq.* or §22-21-1 *et seq.* of this code that has not yet been plugged, and that produces an average, calculated by dividing the annual production by 365, of less than or equal to 250,000 cubic feet of gas but more than 60,000 cubic feet of gas per day as reported to the State Tax Commissioner in the previous reporting year, an annual oversight fee of \$75 for each well;

(13) On or after July 1 of each year, collect from the responsible operator of the first 4,000 wells subject to §22-6-1 *et seq.*, §22-6A-1 *et seq.* or §22-21-1 *et seq.* of this code that has not yet been plugged, and that produces an average, calculated by dividing the annual production by 365, of less than or equal to 60,000 cubic feet of gas but more than 10,000 cubic feet of gas per day as reported to the State Tax Commissioner in the previous reporting year, an annual oversight fee of \$25 for each well; *Provided,* That responsible operators with 500 or fewer unplugged wells that produce an average, calculated by dividing the annual

production by 365, of less than or equal to 60,000 cubic feet of gas but more than 10,000 cubic feet of gas per day are not subject to fees under this subdivision;

(14) Perform all other duties which are expressly imposed upon the secretary by the provisions of this chapter;

(15) Perform all duties as the permit issuing authority for the state in all matters pertaining to the exploration, development, production, storage, and recovery of this state's oil and gas;

(16) Adopt rules with respect to the issuance, denial, retention, suspension, or revocation of permits, authorizations, and requirements of this chapter, which rules shall assure that the rules, permits, and authorizations issued by the secretary are adequate to satisfy the purposes of §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-7-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code particularly with respect to the consolidation of the various state and federal programs which place permitting requirements on the exploration, development, production, storage, and recovery of this state's oil and gas; and

(17) Perform such acts as may be necessary or appropriate to secure to this state the benefits of federal legislation establishing programs relating to the exploration, development, production, storage, and recovery of this state's oil and gas, which programs are assumable by the state.

(d) The secretary shall have authority to visit and inspect any well or well site and any other oil or gas facility in this state and may call for the assistance of any oil and gas inspector or inspectors or supervising inspector whenever such assistance is necessary in the inspection of any such well or well site or any other oil or gas facility. Similarly, all oil and gas inspectors and supervising inspectors shall have authority to visit and inspect any well or well site and any other oil or gas facility in this state. Such inspectors shall make all necessary inspections of oil and gas operations required by §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code; administer and enforce all oil and gas laws and rules; and perform

other duties and services as may be prescribed by the secretary. The inspectors shall note and describe all violations of §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code and promptly report those violations to the secretary in writing, furnishing at the same time a copy of the report to the operator concerned. Any well operator, coal operator operating coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams beneath said tract of land, may request the secretary to have an immediate inspection made. The operator or owner of every well or well site or any other oil or gas facility shall cooperate with the secretary, all oil and gas inspectors and the supervising inspector in making inspections or obtaining information.

(e) Subject to the provisions of §29B-1-1 *et seq.* of this code, all records of the office shall be open to the public.

§22-6-29. Operating permit and processing fund; special reclamation fund; fees.

(a) There is hereby continued within the Treasury of the State of West Virginia the special fund known as the Oil and Gas Operating Permit and Processing Fund, and the secretary shall deposit with the state Treasurer to the credit of such special fund all fees collected under the provisions of §22-6-2(c)(10), §22-6-2(c)(11), §22-6-2(c)(12), and §22-6-2(c)(13) of this code.

The Oil and Gas Operating Permit and Processing Fund shall be administered by the secretary for the purposes of carrying out the provisions of this chapter. Fees collected under §22-6-2(c)(11), (12) and (13) of this code not used for other purposes may only be transferred to the Oil and Gas Reclamation Fund that is continued in §22-6-29(b) of this code at the discretion of the secretary.

The secretary shall make an annual report to the Governor and to the Legislature on the use of the fund, and shall make a detailed accounting of all expenditures from the Oil and Gas Operating Permit and Processing Fund.

(b) In addition to any other fees required by the provisions of §22-6-1 *et seq.* of this code, every applicant for a permit to drill a well shall, before the permit is issued, pay to the secretary a special reclamation fee of \$150 for each activity for which a well work application is required to be filed: *Provided*, That a special reclamation fee shall not be assessed for plugging activities. Such special reclamation fee shall be paid at the time the application for a drilling permit is filed with the secretary and the payment of such reclamation fee shall be a condition precedent to the issuance of said permit.

There is hereby continued within the Treasury of the State of West Virginia the special fund known as the Oil and Gas Reclamation Fund, and the secretary shall deposit with the state Treasurer to the credit of such special fund all special reclamation fees collected. The proceeds of any bond forfeited under the provisions of §22-6-1 *et seq.* of this code shall inure to the benefit of, and shall be deposited in, such Oil and Gas Reclamation Fund.

The Oil and Gas Reclamation Fund shall be administered by the secretary. The secretary shall cause to be prepared plans for the reclaiming and plugging of abandoned wells which have not been reclaimed or plugged or which have been improperly reclaimed or plugged. The secretary, as funds become available in the Oil and Gas Reclamation Fund, shall reclaim and properly plug wells in accordance with said plans and specifications and in accordance with the provisions of §22-6-1 *et seq.* of this code relating to the reclaiming and plugging of wells and all rules promulgated thereunder. Such funds may also be utilized for the purchase of abandoned wells, where such purchase is necessary, and for the reclamation of such abandoned wells, and for any engineering, administrative, and research costs as may be necessary to properly effectuate the reclaiming and plugging of all wells, abandoned or otherwise.

The secretary may avail the division of any federal funds provided on a matching basis that may be made available for the purpose of reclaiming or plugging any wells.

The secretary shall make an annual report to the Governor and to the Legislature setting forth the number of wells reclaimed or plugged through the use of the Oil and Gas Reclamation Fund provided for herein. Such report shall identify each such reclamation and plugging project, state the number of wells reclaimed or plugged thereby, show the county wherein such wells are located, and shall make a detailed accounting of all expenditures from the Oil and Gas Reclamation Fund.

All wells shall be reclaimed or plugged by contract entered into by the secretary on a competitive bid basis as provided for under the provisions of §5A-3-1 *et seq.* of this code and the rules promulgated thereunder.

ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.

§22-6A-7. Horizontal well permit required; permit fee; application; soil erosion control plan; well site safety plan; site construction plan; water management plan; permit fee; installation of permit number; suspension and transfer of a permit.

(a) It is unlawful for any person to commence any well work, including site preparation work which involves any disturbance of land, for a horizontal well without first securing from the secretary a well work permit pursuant to this article.

(b) Every permit application filed under this section shall be on a form as may be prescribed by the secretary, shall be verified, and shall contain the following information:

(1) The names and addresses of: (A) The well operator; (B) the agent required to be designated under subsection (k) of this section; and (C) every person whom the applicant shall notify under any section of this article, together with a certification and evidence that a copy of the application and all other required documentation has been delivered to all such persons;

(2) The names and addresses of every coal operator operating coal seams under the tract of land on which the well is or may be

located, and the coal seam owner of record and lessee of record required to be given notice by §22-6A-5(a)(6) of this code, if any, if the owner or lessee is not yet operating the coal seams;

(3) The number of the well or other identification the secretary may require;

(4) The well work for which a permit is requested;

(5) The approximate total depth to which the well is to be drilled or deepened, or the actual depth if the well has been drilled; the proposed angle and direction of the well; the actual depth or the approximate depth at which the well to be drilled deviates from vertical, the angle, and direction of the nonvertical well bore until the well reaches its total target depth or its actual final depth; and the length and direction of any actual or proposed horizontal lateral or well bore;

(6) Each formation in which the well will be completed if applicable;

(7) A description of any means used to stimulate the well;

(8) If the proposed well work will require casing or tubing to be set, the entire casing program for the well, including the size of each string of pipe, the starting point and depth to which each string is to be set and the extent to which each such string is to be cemented;

(9) If the proposed well work is to convert an existing well, all information required by this section, all formations from which production is anticipated, and any plans to plug any portion of the well;

(10) If the proposed well work is to plug or replug the well, all information necessary to demonstrate compliance with the legislative rules promulgated by the secretary in accordance with §22-6A-13 of this code;

(11) If the proposed well work is to stimulate a horizontal well, all information necessary to demonstrate compliance with the requirements of §22-6A-5(a)(7) of this code;

(12) The erosion and sediment control plan required under subsection (c) of this section for applications for permits to drill;

(13) A well site safety plan to address proper safety measures to be employed for the protection of persons on the site as well as the general public. The plan shall encompass all aspects of the operation, including the actual well work for which the permit was obtained, completion activities and production activities, and shall provide an emergency point of contact for the well operator. The well operator shall provide a copy of the well site safety plan to the local emergency planning committee established pursuant to §15-5A-7 of this code for the emergency planning district in which the well work will occur at least seven days before commencement of well work or site preparation work that involves any disturbance of land;

(14) A certification from the operator that: (A) It has provided the owners of the surface described in §22-6A-10(b)(1), §22-6A-10(b)(2), and §22-6A-10(b)(4) of this code, the information required by §22-6A-16(b) and §22-6A-16(c) of this code; (B) that the requirement was deemed satisfied as a result of giving the surface owner notice of entry to survey pursuant to §22-6A-10(a) of this code; or (C) the notice requirements of §22-6A-16(b) of this code were waived in writing by the surface owner; and

(15) Any other relevant information which the secretary may reasonably require.

(c)(1) An erosion and sediment control plan shall accompany each application for a well work permit under this article. The plan shall contain methods of stabilization and drainage, including a map of the project area indicating the amount of acreage disturbed. The erosion and sediment control plan shall meet the minimum requirements of the West Virginia Erosion and Sediment Control Manual as adopted and from time to time amended by the department. The erosion and sediment control plan shall become

part of the terms and conditions of any well work permit that is issued pursuant to this article and the provisions of the plan shall be carried out where applicable in the operation. The erosion and sediment control plan shall set out the proposed method of reclamation which shall comply with the requirements of §22-6A-14 of this code.

(2) For well sites that disturb three acres or more of surface, excluding pipelines, gathering lines and roads, the erosion and sediment control plan submitted in accordance with this section shall be certified by a registered professional engineer.

(d) For well sites that disturb three acres or more of surface, excluding pipelines, gathering lines and roads, the operator shall submit a site construction plan that shall be certified by a registered professional engineer and contains information that the secretary may require by rule.

(e) In addition to the other requirements of this section, if the drilling, fracturing, or stimulating of the horizontal well requires the use of water obtained by withdrawals from waters of this state in amounts that exceed 210,000 gallons during any 30-day period, the application for a well work permit shall include a water management plan, which may be submitted on an individual well basis or on a watershed basis, and which shall include the following information:

(1) The type of water source, such as surface or groundwater, the county of each source to be used by the operation for water withdrawals and the latitude and longitude of each anticipated withdrawal location;

(2) The anticipated volume of each water withdrawal;

(3) The anticipated months when water withdrawals will be made;

(4) The planned management and disposition of wastewater after completion from fracturing, refracturing, stimulation, and production activities;

(5) A listing of the anticipated additives that may be used in water utilized for fracturing or stimulating the well. Upon well completion, a listing of the additives that were actually used in the fracturing or stimulating of the well shall be submitted as part of the completion log or report required by §22-6A-5(a)(14) of this code;

(6) For all surface water withdrawals, a water management plan that includes the information requested in subdivisions (1) through (5) of this subsection and the following:

(A) Identification of the current designated and existing water uses, including any public water intakes within one mile downstream of the withdrawal location;

(B) For surface waters, a demonstration, using methods acceptable to the secretary, that sufficient in-stream flow will be available immediately downstream of the point of withdrawal. A sufficient in-stream flow is maintained when a pass-by flow that is protective of the identified use of the stream is preserved immediately downstream of the point of withdrawal; and

(C) Methods to be used for surface water withdrawal to minimize adverse impact to aquatic life; and

(7) This subsection is intended to be consistent with and does not supersede, revise, repeal, or otherwise modify §22-11-1 *et seq.*, §22-12-1 *et seq.*, or §22-26-1 *et seq.* of this code and does not revise, repeal, or otherwise modify the common law doctrine of riparian rights in West Virginia law.

(f) An application may propose and a permit may approve two or more activities defined as well work; however, a separate permit shall be obtained for each horizontal well drilled.

(g) The application for a permit under this section shall be accompanied by the applicable bond as required by §22-6A-15 of this code, the applicable plat required by §22-6A-5(a)(6) of this code, and a permit fee of \$10,000 for the initial horizontal well drilled at a location and a permit fee of \$5,000 for each additional horizontal well drilled on a single well pad at the same location.

(h)(1) An applicant may enter into an expedited permit application process with the secretary for a well permit and pay an additional expedited permit fee of \$20,000 for the initial horizontal well drilled at a location and an additional expedited permit fee of \$10,000 for each additional horizontal well drilled on a single well pad at the same location: *Provided*, That deep well permitting is excluded from this expedited permit process due to the independent board review and approval requirement which is outside the secretary's control.

(2) Upon entering into an expedited permit process and meeting all the criteria set forth in this article, the secretary shall issue or deny a permit within 45 days of the submission of a permit application under this article, unless the secretary seeks additional information or modification from the applicant, which would toll the 45 day period until the secretary receives the required responsive information from the applicant.

(3) Each day the agency exceeds: (A) The 45-day deadline for approval or denial of an expedited initial horizontal well drilled, the secretary shall refund \$1,333.33 per day up to and including day 60 after the submission of a permit application until the expedited fee is reduced to the normal permit fee amount; or (B) the 45-day deadline for approval or denial of an expedited permit for any additional horizontal well drilled on a single well pad at the same location, the secretary shall be required to refund \$666.66 per day up to and including day 60 after the submission of a permit application, until the expedited fee is reduced to the normal permit fee amount.

(4)(A) After all refunds are paid by the secretary, one half of the additional expedited permit fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and shall be used by the agency to cover costs to review, process, and approve or deny the applicable horizontal well permit applications and modifications pending before the agency.

(B) After all refunds are paid by the secretary, one half of the additional expedited permit fee shall be deposited in the Oil and

Gas Reclamation Fund and used specifically for the reclamation and plugging of orphaned oil or gas wells.

(i)(1) An applicant may enter into an expedited permit modification application process with the secretary for a well permit and pay an additional expedited permit modification fee of \$5,000 for the modification of the permit for any horizontal well drilled at a location: *Provided*, That deep well permit modifications are excluded from this expedited permit modification process if the modification is subject to independent board review and approval.

(2) Upon entering into an expedited permit modification process and meeting all the criteria set forth in this article, the secretary shall issue or deny a permit modification within 20 days of the submission of a permit modification application under this article, unless the secretary seeks additional information or further modification from the applicant, which would toll the 20 day period until the secretary receives the required responsive information from the applicant.

(3) Each day the agency exceeds the 20-day deadline for approval or denial of an expedited horizontal well permit modification, the secretary shall refund \$500 per day up to and including day 30 after the submission of an expedited permit modification application, until the expedited permit modification fee of \$5,000 is reduced to zero.

(4)(A) After all refunds are paid by the secretary, one half of the expedited permit modification fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and shall be used by the agency to cover costs to review, process, and approve or deny the applicable horizontal well permit applications and modifications pending before the agency.

(B) After all refunds are paid by the secretary, one half of the expedited permit modification fee shall be deposited in the Oil and Gas Reclamation Fund and used specifically for the reclamation and plugging of orphaned oil or gas wells.

(j) Any balance in the Oil and Gas Reclamation Fund, earmarked specifically for the reclamation and plugging of orphaned oil or gas wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-7(i)(4)(B) of this code, which remains at the end of any state fiscal year does not revert to the General Revenue Fund but shall remain in the special revenue account as indicated and may be used only as provided in §22-6-29(b) of this code. The revenues deposited in the Oil and Gas Reclamation Fund, earmarked specifically for the reclamation and plugging of orphaned oil or gas wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-7(i)(4)(B) of this code may not be designated as nonaligned state special revenue funds under §11B-2-32 of this code.

(k) The well operator named in the application shall designate the name and address of an agent for the operator who is the attorney-in-fact for the operator and who is a resident of the State of West Virginia upon whom notices, orders, or other communications issued pursuant to this article or §22-11-1 *et seq.* of this code may be served, and upon whom process may be served. Every well operator required to designate an agent under this section shall, within five days after the termination of the designation, notify the secretary of the termination and designate a new agent.

(l) The well owner or operator shall install the permit number as issued by the secretary and a contact telephone number for the operator in a legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications, and manner of installation shall be in accordance with the rules of the secretary.

(m) The secretary may waive the requirements of this section and §22-6A-8, §22-6A-10, §22-6A-11, and §22-6A-24 of this code in any emergency situation if the secretary considers the action necessary. In that case the secretary may issue an emergency permit which is effective for not more than 30 days, unless reissued by the secretary.

(n) The secretary shall deny the issuance of a permit if the secretary determines that the applicant has committed a substantial

violation of a previously issued permit for a horizontal well, including the applicable erosion and sediment control plan associated with the previously issued permit, or a substantial violation of one or more of the rules promulgated under this article, and in each instance has failed to abate or seek review of the violation within the time prescribed by the secretary pursuant to the provisions of §22-6A-5(a)(1) and §22-6A-5(a)(2) of this code and the rules promulgated hereunder, which time may not be unreasonable.

(o) If the secretary finds that a substantial violation has occurred and that the operator has failed to abate or seek review of the violation in the time prescribed, the secretary may suspend the permit on which the violation exists, after which suspension the operator shall forthwith cease all well work being conducted under the permit. However, the secretary may reinstate the permit without further notice, at which time the well work may be continued. The secretary shall make written findings of the suspension and may enforce the same in the circuit courts of this state. The operator may appeal a suspension pursuant to the provisions of §22-6A-5(a)(23) of this code. The secretary shall make a written finding of any such determination.

(p) Any well work permit issued in accordance with this section may be transferred with the prior written approval of the secretary upon his or her finding that the proposed transferee meets all requirements for holding a well work permit, notwithstanding any other provision of this article or rule adopted pursuant to this article. Application for the transfer of any well work permit shall be upon forms prescribed by the secretary and submitted with a permit transfer fee of \$500. Within 90 days of the receipt of approval by the secretary, the transferee shall give notice of the transfer to those persons entitled to notice in §22-6A-10(b) of this code by personal service or by registered mail or by any method of delivery that requires a receipt or signature confirmation, and shall further update the emergency point of contact provided pursuant to §22-6A-7(b)(13).

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CHAPTER 151

**(Com. Sub. for H. B. 3189 - By Delegates Riley, Hansen,
Westfall, Clark, Horst, Hanshaw (Mr. Speaker), Hornby,
Steele, Storch, Hardy and Hillenbrand)**

[Passed March 10, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-11C-1, §22-11C-2, §22-11C-3, and §22-11C-4, all relating to identifying the sources of perfluoroalkyl and polyfluoroalkyl substances discharged into source waters used for public drinking water; providing legislative findings; providing state and federal regulation history, status, and future expectations; providing definitions; requiring the Department of Environmental Protection to begin identifying sources of PFAS in water sources and address sources of PFAS for certain public water systems with action plans; requiring facilities using PFAS chemicals to monitor and report their use; setting forth other duties of those facilities; clarifying duties and obligations of public water systems and water treatment systems; providing information disclosure provisions; requiring the Secretary of the Department of Environmental Protection to propose changes to statutes and rules and to update numeric public water supply human health criteria; requiring the Department of Environmental Protection to implement permit modifications to require monitoring; and requiring legislative rule-making.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11C. PFAS PROTECTION ACT.

§22-11C-1. Legislative Findings.

(a) *Legislative findings.* — (1) The Legislature recognizes the prevalence of perfluoroalkyl and polyfluoroalkyl substances, which the United States Environmental Protection Agency (USEPA) has classified as contaminants. These chemicals are used in thousands of applications throughout the industrial, food, automotive, aerospace, electronic, oil and gas, green energy, and textile industries. They are used in some fire-fighting foams, food packaging, cleaning products, semiconductors, computers, cellular phones, electric vehicle batteries, automobiles, pharmaceuticals, agricultural pesticides, oil and gas development, defense equipment, hydrogen production, and various other household items. Many are very stable, some accumulate in the environment, and many are highly water soluble, easily transferring through soil to groundwater.

(2) During the 2020 regular session, the West Virginia Legislature passed Senate Concurrent Resolution 46 (SCR 46), which requested that the Department of Environmental Protection (DEP) and the Department of Health and Human Resources cooperatively propose and initiate a public source-water supply study plan to sample PFAS substances for all community water systems in West Virginia, including schools and daycares that operate treatment systems regulated by the West Virginia Department of Health and Human Resources.

(3) In compliance with SCR 46, the DEP and the Department of Health and Human Resources contracted with the United States Geological Survey to conduct the PFAS study. The USGS study was completed in 2022, with results for 279 sampled sites.

(4) According to the USGS study, PFOA and/or PFOS was detected above the then-current USEPA drinking water health advisory in 13% (37) of the sampled raw water sources between 2019 and 2021.

(5) In June 2022, the USEPA issued updated interim or final drinking water health advisories for four PFAS: perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorobutane sulfonic acid and its potassium salt (PFBS), and

hexafluoropropylene oxide dimer acid and its ammonium salt (HFPO-DA).

(6) According to the data collected for the USGS study, PFOA and/or PFOS was detected above the June 2022 drinking water health advisories in 49% (137) of the sampled raw water sources (involving 130 public water systems) between 2019 and 2021.

(7) In August 2022, the USEPA proposed to designate PFOA and PFOS as hazardous substances because, when released into the environment, these chemicals present substantial danger to public health.

(8) On December 5, 2022, the USEPA issued guidance to state permitting authorities entitled “Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs.”

(9) The USEPA has committed to establishing drinking water standards under the Safe Drinking Water Act for PFOA and PFOS in 2023.

(10) The USEPA has committed to publishing recommended human health water quality criteria under the Clean Water Act for PFOA and PFOS in 2024.

(11) While some manufacturers have already voluntarily done so, it is imperative to identify the remaining sources of PFAS detected in the raw water sources for public water systems so that these sources of pollution can be properly addressed, minimizing the impacts to public drinking water systems. Identifying and addressing PFAS sources will also benefit people who rely on impacted private drinking water wells.

(12) It is in the public interest for West Virginia to reduce toxic chemicals in drinking water supplies to protect the health of West Virginians and strengthen the state’s economy.

§22-11C-2. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(1) “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” means non-polymeric perfluoroalkyl and polyfluoroalkyl substances that contain at least two fully fluorinated carbon atoms, excluding gases and volatile liquids. PFAS includes, among other substances, PFOA and PFOS.

(2) “Secretary” means the Secretary of the Department of Environmental Protection.

(3) “USGS study” means United States Geological Survey Scientific Investigations Report 2022-5067, entitled “Occurrence of Per- and Polyfluoroalkyl Substances and Inorganic Analytes in Groundwater and Surface Water Used as Sources for Public Water Supplies in West Virginia,” published in 2022.

(4) “Publicly Owned Treatment Works” means any treatment works owned by the state or any political subdivision thereof, any municipality or any other public entity, for the treatment of pollutants as well as any such treatment works that were subsequently conveyed to a private entity which delivers wastewater treatment services under the regulation of the Public Service Commission of West Virginia.

§22-11C-3. Identification of PFAS sources where PFAS has been detected in raw water sources for public drinking water systems.

(a) To identify and address sources of PFAS in raw water sources of public drinking water systems, DEP shall:

(1) Write a PFAS action plan to identify and address sources of PFAS by July 1, 2024, for each of the 37 raw water sources for which the USGS study has measured PFOA, PFOS, PFBS, or HFPO-DA above the practical quantitation limit and above USEPA’s applicable drinking water human health advisory;

(2) For each raw water source for which the USGS study has measured PFOA, PFOS, PFBS, or HFPO-DA above the method detection level, above USEPA’s applicable drinking water human health advisory, and below the practical quantitation limit, DEP

shall initiate a study to sample the finished water of the associated public water system, after treatment, by December 31, 2023;

(3) For each public water system for which the measured PFOA, PFOS, PFBS, or HFPO-DA in the finished water is above the method detection level and above USEPA's applicable drinking water human health advisory, whether or not the measured value is above or below the practical quantitation limit, DEP shall write a PFAS action plan to identify and address sources of PFAS for the public water system's raw water source or sources. The first 50 such plans shall be completed by December 31, 2025, and the remaining plans shall be completed by December 31, 2026;

(4) For each public water system for which a PFAS action plan is required under this section, DEP shall provide information to the public water system regarding PFAS raw water and finished water sampling results, DEP's schedule for developing any required PFAS action plan, a summary of results from any completed PFAS action plan, information about how to obtain any completed PFAS action plan, and contact information for an appropriate person or office at DEP to which questions can be directed. Public water systems are subject to the Fifth Unregulated Contaminant Monitoring Rule (UCMR), 40 C.F.R. part 141, which are also subject to the Consumer Confidence Report (CCR) and the Public Notification (PN) rules under the Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*, as enacted, amended, and as may be subsequently amended, to which the public water systems are required to notify their customers of available UCMR results and report UCMR results in their annual Consumer Confidence Report (CCR) when unregulated contaminants, including PFAS, are detected;

(5) Recommend any necessary changes to West Virginia statutes or administrative rules to address the sources of PFAS chemicals; and

(6) Report annually on its activities to the Joint Legislative Oversight Commission on State Water Resources.

(7) In developing PFAS action plans, consult with other applicable units of state government, organizations representing West Virginia public drinking water systems, West Virginia public drinking water systems, and other relevant entities with knowledge related to identifying and addressing PFAS sources.

(b) The PFAS action plans, to the extent that data are available, shall identify the source or sources of PFAS in the raw water source, and regulatory and non-regulatory options for addressing each identified source of PFAS and minimizing the impacts on public water systems.

(c) The PFAS action plans and associated studies herein required do not change the duty or drinking water standard requirements of public water systems.

§22-11C-4. Self-reporting of PFAS manufacture and use, monitoring of PFAS discharges, and establishment of PFAS water quality criteria.

(a) No later than December 31, 2023, all facilities that discharge to a surface water under a West Virginia/National Pollutant Discharge Elimination System permit or that discharge to a Publicly Owned Treatment Works under an industrial pretreatment program, including but not limited to chemical and manufacturing facilities, which manufacture or knowingly use or have used one or more of the following PFAS chemicals in their production process since January 1, 2017, must report the use of these chemicals to the DEP:

(1) Any PFAS chemical found in any public water system's raw water source in the USGS study; and

(2) Any additional PFAS chemicals that the secretary determines are harmful to human health and that he or she reasonably believes to be present in West Virginia waters at levels that can be detected using USEPA-approved methods: *Provided*, That if USEPA-approved methods are not yet available, USEPA-recommended methods may be used. If two or more methods have

been approved by USEPA, monitoring shall use the method with the lowest detection level.

(b) This reporting shall include the chemical name, the Chemical Abstracts Service (CAS) number, the amount used in each year from 2017 through 2022, and any additional information required by the secretary to ascertain sources of PFAS chemicals in West Virginia, and shall be provided in a manner and form prescribed by the secretary.

(c) For every facility that reports the use of one or more PFAS chemicals in accordance with subsection (a) of this section, and that discharges to a Publicly Owned Treatment Works, the secretary shall forward the information provided by the facility to the Publicly Owned Treatment Works within 30 days of receipt. This reporting requirement does not change the duty or discharge permits of a Publicly Owned Treatment Works.

(d) For every facility that reports the use of one or more PFAS chemicals in accordance with subsection (a) of this section, at least quarterly monitoring of the self-reported PFAS chemicals shall be required within six months of notification by the facility: *Provided*, That the secretary may alter the monitoring frequency if monitoring results are below the method detection level for four consecutive samples, or if monitoring results show consistent results and the source or sources of the PFAS detected in the samples have been conclusively determined. This monitoring shall be implemented as follows:

(1) If the facility discharges to a surface water under a West Virginia/National Pollutant Discharge Elimination System permit, the secretary shall modify the facility's West Virginia/National Pollutant Discharge Elimination System permit to require monitoring.

(2) If the facility discharges to a Publicly Owned Treatment Works under an industrial pretreatment program and the permit holder for the Publicly Owned Treatment Works has pretreatment authority, the permit holder for the Publicly Owned Treatment Works shall modify the pretreatment permit held by the facility that

reports the use of one or more PFAS chemicals to require monitoring.

(3) If the facility discharges to a Publicly Owned Treatment Works under an industrial pretreatment program and the department has pretreatment authority, the secretary shall modify the pretreatment permit held by the facility that reports the use of one or more PFAS chemicals to require monitoring.

(e) Monitoring shall use laboratory and sampling methods approved by the USEPA: *Provided*, That if USEPA-approved methods are not yet available, USEPA-recommended methods may be used. If two or more approved methods are available, monitoring shall use the method with the lowest detection level.

(f) For every facility that reports the use of one or more PFAS chemicals in accordance with subsection (a) of this section, the secretary shall modify the facility's West Virginia/National Pollutant Discharge Elimination System permit as directed by the federal Clean Water Act and State Water Pollution Control Act, after consultation with relevant USEPA guidance.

(g) After the USEPA establishes final water quality criteria under the Clean Water Act for any PFAS, DEP shall propose adopting appropriate criteria by rule, which criteria may be no more stringent than the criteria established by USEPA, as part of the next regular legislative rulemaking cycle in accordance with §29A-3-1 *et seq.* of this code.

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CHAPTER 152

**(S. B. 142 - By Senators Trump, Oliverio, Stuart, Clements,
Barrett, Phillips, Woodrum, Nelson, and Maroney)**

[Passed March 7, 2023; in effect 90 days from passage (June 5, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §44-2-1 and §44-2-29 of the Code of West Virginia, 1931, as amended; to amend and reenact §44-3A-4a and §44-3A-19 of said code; and to amend and reenact §44-4-9 of said code, all relating to the procedure to settle estates of decedents; abolishing the requirement to publish a short form settlement of estates of decedents; providing for short form filing procedure; changing the requirement of a Class II legal advertisement to a Class I legal advertisement for the fiduciary commissioners list of long form settlements; and updating language and style.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS
AGAINST ESTATES OF DECEDENTS.**

§44-2-1. Reference of decedents' estates; proceedings thereon.

(a) Upon the return of the appraisal by the personal representative to the county clerk, the estate of his or her decedent, by order of the county commission, must be referred to a fiduciary commissioner for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and distributes, and any other matter necessary for the settlement of the estate: *Provided*, That in counties where there are two or more commissioners, the estates of decedents must be referred to the commissioners in rotation, so there may be an equal division of the work. Notwithstanding any

other provision of this code to the contrary, a fiduciary commissioner may not charge to the estate a fee greater than \$300 and expenses for the settlement of an estate, except upon: (i) Approval of the personal representative; or (ii) a determination by the county commission that the fee is based upon the actual time spent and actual services rendered pursuant to a schedule of fees or rate of compensation for fiduciary commissioners promulgated by the commission in accordance with the provisions of §59-1-9 of this code.

(b) If the personal representative delivers to the clerk an appraisal of the assets of the estate showing their value to be \$200,000 or less, exclusive of real estate specifically devised and nonprobate assets, or if it appears to the clerk that there is only one beneficiary of the probate estate and that the beneficiary is competent at law, the clerk shall record the appraisal. If an unpaid creditor files a claim against the estate, the personal representative has 20 days after the date of the filing of a claim against the estate of the decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner. If the personal representative approves all claims as filed, then no reference may be made.

(c) The personal representative shall, within a reasonable time after the date of recordation of the appraisal: (i) File a waiver of final settlement in accordance with the provisions of §44-2-29 of this code; or (ii) make a report to the clerk of his or her receipts, disbursements, and distribution and submit an affidavit stating that all claims against the estate for expenses of administration, taxes, and debts of the decedent have been paid in full. Upon receipt of the waiver of final settlement or report, the clerk shall record the waiver or report and mail copies to each beneficiary and creditor by first-class mail, postage prepaid. The clerk shall retain the report for 10 days to allow any beneficiary or creditor to appear before the county commission to request reference to a fiduciary commissioner. The clerk shall collect a fee of \$10 for recording and mailing the waiver of final settlement or report.

(d) If no request or objection is made to the clerk or to the county commission, the county commission may confirm the

report of the personal representative, and the personal representative and his or her surety shall be discharged; but if an objection or request is made, the county commission may confirm and record the accounting or may refer the estate to its fiduciary commissioners: *Provided*, That the personal representative has 20 days after the date of the filing of a claim against the estate of the decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner, and if all claims are approved as filed, then no reference may be made.

(e) For purposes of this section, the term beneficiary means a person designated in a will to receive real or personal property.

§44-2-29. Waiver of final settlement.

(a) In all estates of decedents subject to administration under this article where a release of lien, if required by the provisions of §11-11-1 *et seq.* of this code, has been filed with the clerk and more than 90 days have elapsed since the filing of any notice required by the provisions of this article, even though such estate may have been referred to a fiduciary commissioner, a final settlement may be waived by a waiver containing an affidavit made by the personal representative, that the time for filing of claims has expired, that no known and unpaid claims exist against the estate, and that all beneficiaries have each been advised of the share or shares to which each is entitled from the estate. Each beneficiary shall sign the waiver unless the beneficiary receives a bequest of tangible personal property or a bequest of cash.

(b) In the case of a deceased beneficiary or a beneficiary under a disability, the duly qualified fiduciary or agent of the beneficiary may sign in lieu of the beneficiary. A fiduciary or agent signing the waiver shall be responsible to the beneficiary for any loss resulting from the waiver.

(c) The waiver shall be recorded as in the case of and in lieu of a settlement as provided in §44-2-1 *et seq.* of this code.

**ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF
AND ALLOWANCE OF CLAIMS AGAINST ESTATES
OF DECEDENTS; COUNTY OPTION.**

§44-3A-4a. Short form settlement.

(a) In all estates of decedents administered under the provisions of this article where more than 60 days has elapsed since the filing of any notice required by §44-3A-4 of this code, an estate may be closed by a short form settlement filed in compliance with this section: *Provided*, That any lien for payment of estate taxes pursuant to §11-11-1 *et seq.* of this code is released and that the release is filed with the clerk.

(b) The fiduciary may file with the fiduciary supervisor a proposed short form settlement which shall contain an affidavit made by the fiduciary that the time for filing claims has expired, that no known and unpaid claims exist against the estate, showing the allocation to which each distributee and beneficiary is entitled in the distribution of the estate, and contain a representation that the property to which each distributee or beneficiary is entitled has been or upon approval of the settlement will be delivered thereto, or that each distributee and beneficiary has agreed to a different allocation. The application shall contain a waiver signed by each distributee and beneficiary: *Provided*, That a beneficiary receiving a bequest of tangible personal property or a bequest of cash may not be required to sign the waiver.

(c) The waiver may be signed in the case of a distributee or beneficiary under a disability by an agent under a power of attorney or the duly qualified guardian or conservator of the distributee or beneficiary. An agent, guardian, or conservator signing the waiver shall be responsible to the distributee or beneficiary for any loss resulting from the waiver.

(d) The fiduciary supervisor shall examine the affidavit and waiver and determine that the allocation to the distributees and beneficiaries set forth in the affidavit is correct and all proper parties signed the waiver.

(e) If the short form settlement is proper the fiduciary supervisor shall record the same and mail copies to each distributee and beneficiary by first-class mail, postage prepaid. The fiduciary supervisor shall retain the short form settlement for 10 days to allow any distributee and beneficiary to appear before the fiduciary supervisor to object or request a referral to a fiduciary commissioner. The fiduciary supervisor shall collect a fee of \$10 for recording and mailing the short form settlement. If no objection or referral request is made to the fiduciary supervisor, the county commission shall upon order, confirm the short form settlement of the personal representative, and the personal representative and his or her surety shall be discharged. If an objection or request is made, the county commission may confirm and record the short form settlement or may refer the estate to a fiduciary commissioner.

§44-3A-19. Long form settlement before fiduciary supervisor.

(a) At any time after the expiration of the period for filing claims, the fiduciary supervisor may proceed with a complete long form settlement under this section if the estate has not been referred to a fiduciary commissioner or if the estate, having been referred to a fiduciary commissioner generally or for a specific reason, has been withdrawn and placed before the fiduciary supervisor for settlement.

The fiduciary supervisor shall require that the personal representative, or the personal representative may on his or her own motion, timely file a proposed long form settlement which shall include:

(1) Proof of payment of all claims filed against the estate or proof that payment has been provided for;

(2) Verification under oath that the personal representative, after exercise of due diligence, knows of no other claims against the estate;

(3) Verification and accounting of any income received by the personal representative from the benefit of the estate;

(4) Provisions for the payment of all taxes due from the estate or proof that all such taxes have been paid;

(5) A proposed plan of distribution; and

(6) Any and all other information deemed appropriate by the fiduciary supervisor.

(b) The provisions of this section to the contrary notwithstanding, any claim paid by the personal representative to any creditor or beneficiary before the expiration of the period for filing claims shall not abrogate in any way the liability of the personal representative pursuant to §44-3A-26, §44-3A-27, or §44-3A-28 of this code.

(c) At the time the proposed settlement is filed, or prior thereto, the personal representative shall prepare and furnish to the fiduciary supervisor, and the supervisor shall review, a return of all inheritance taxes due the state, pursuant to §11-11-1 *et seq.* of this code, by reason of the death of the decedent, who shall approve any proper return filed with him or her.

The supervisor shall compare the proposed settlement with any proper inheritance tax return and with the appraisal and any and all other documents deemed appropriate by the supervisor in order to investigate the propriety of the proposed settlement.

(d) The supervisor may, if he or she considers it appropriate, reject the settlement and give notice in writing to the personal representative of the matters disapproved and the reasons therefor and fix a time, no later than 45 days after the date of the notice, for the personal representative to amend the proposed settlement. The personal representative may, within the time specified by the supervisor, amend the settlement, otherwise satisfy the supervisor of the propriety of all or part of such proposed settlement, or insist on the propriety thereof, with or without amendment thereof.

(e) The supervisor shall, after he or she is satisfied as to the propriety of the settlement or, after the period set by him or her for amendment thereof has expired, prepare a report of his or her recommendations to the county commission with respect thereto

and his or her findings and determinations, which shall include his or her findings with respect to:

(1) A proper appraisal has been filed which conforms to the requirements of §44-1-14 of this code;

(2) The claims of creditors have been paid or have been properly provided for in proper order of preference and proportions;

(3) A proper inheritance tax return has been made and the taxes due thereon paid or that payment has been provided for;

(4) Any real property in this state owned by the decedent at the time of his or her death has been properly transferred upon the books of the assessor or that the assessor has been notified of the facts and circumstances sufficient to cause the transfer to be noted upon the books of the assessor;

(5) A proper distribution to the parties entitled thereto has been proposed by the personal representative of the estate;

(6) Minors and other persons under disability who own or are entitled to an interest in the estate are or have been protected; and

(7) Any other matter or matters deemed pertinent by the fiduciary supervisor.

(f) The fiduciary supervisor shall give notice of the proposed settlement and findings to the Tax Commissioner, all creditors whose claims have not been fully paid or otherwise satisfied, and all beneficiaries, which notice shall include a copy of the proposed settlement and shall advise that the subject estate shall be settled according thereto 30 days following the date of the notice. In addition, on the first Monday of the next month, the supervisor shall publish, as a Class I-0 legal advertisement, a notice that the accounts of the personal representative are before him or her for approval.

(g) The notice shall be divided into two sections: Settlements approved and settlements not approved and notice of

the date and time that the names shall be presented to the county commission, which date shall not be more than 15 days after the publication. The advertisement shall be sufficient if substantially as follows:

NOTICE OF PROPOSED SETTLEMENT OF ESTATES

To the Creditors and Beneficiaries of the within named deceased persons:

I have before me the proposed final settlements of the estates of the following deceased persons, which shall be presented to the county commission of County, at the Courthouse thereof, in the City of, on the day of, 20..., at o'clock,M., which settlements have been presented to me by the fiduciary of the estates and which proposed settlements I have either approved or have not approved as indicated below:

APPROVED

Name(s) of Decedent:

.....
.....
.....

NOT APPROVED

Name(s) of Decedent:

.....
.....

Any person having any interest in the estate of any deceased person may appear before the county commission at the time and place hereinabove specified and thereupon protect his or her

interests as they may appear or else may be forever thereafter barred from asserting such interests.

Given under my hand this day of, 20....,

.....

Fiduciary Supervisor

.....County, W. Va.

(h) Any person may examine the proposed settlement in the office of the fiduciary supervisor and file objection thereto at or prior to the time set by the notice for presentation thereof to the county commission. The commission shall proceed to hear the presentation of the proposed settlement and findings and hear interested parties, if any appear, and approve, modify and approve, or refuse to approve the proposed settlement and the findings of the fiduciary supervisor. Alternatively, the commission may refer the cause to a fiduciary commissioner generally for supervision or for the purpose of the resolution of any disputed matter.

(i) If no dispute or objection to the proposed settlement has arisen, the fiduciary supervisor shall direct the personal representative to conclude the affairs of the estate as outlined in the proposed settlement or amended proposed settlement. Upon receipt by the supervisor of evidence to his or her satisfaction that all claims including claims of beneficiaries have been satisfied and that all taxes have been paid, he or she shall submit his or her report of the proposed or amended proposed settlement to the county commission for ratification, confirmation, and approval as otherwise provided by law.

ARTICLE 4. ACCOUNTING BY FIDUCIARIES.

§44-4-9. Publication of list of fiduciaries prior to settlements.

Every fiduciary commissioner shall, on the first Monday of every month, prepare a list of the fiduciaries whose accounts are at the date of such list before the fiduciary commissioner for

settlement, except those that may have been mentioned in some previous list and except those for whom a short form settlement has been filed in accordance with the provisions of §44-2-1, §44-2-29, and §44-3A-4a of this code. The fiduciary commissioner shall state the names of the fiduciaries, the nature of their accounts, whether as they act as personal representative, guardian, curator, or committee and the names of their decedents, or of the persons for whom they are guardians, curators, or committees. The fiduciary commissioner shall also publish the list each month as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for the publication shall be the county. The publication of the list shall be made on the first Monday of the month, or on some following day of the same week. No account of any fiduciary shall be completed by any fiduciary commissioner until it has been mentioned in a list, nor until the completion of the publication. Any fiduciary commissioner who fails to publish this list shall be fined \$20. The cost of the publication of the list shall be borne by the fiduciary commissioner, but the fiduciary commissioner may charge to, and collect from, each of the fiduciaries in the list the proportionate part of the cost thereof as and when the fiduciary commissioner collects the fees for settling the accounts of the fiduciary.

CHAPTER 153

(S. B. 443 - By Senator Tarr)

[Passed March 10, 2023; to take effect July 1, 2023]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §44-3A-42 of the Code of West Virginia, 1931, as amended, relating to directing payment of the estate administration fee to the State Auditor.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS; COUNTY OPTION.

§44-3A-42. Fees to be charged by fiduciary supervisor or fiduciary supervisor; disposition of fees.

(a) When necessary solely for the purpose of financing the cost of settling estates, the county commission may authorize the fiduciary supervisor to charge and collect at the time of qualification of the fiduciary of a decedent's estate a fee not to exceed: (1) \$25 for all estates in which the gross assets do not exceed \$10,000; (2) \$100 for all estates in which the gross assets are more than \$10,000 and do not exceed \$50,000; and (3) \$175 for all estates in which the gross assets exceed \$50,000. Of the sums collected by the fiduciary supervisor, \$5 shall be forwarded to the State Auditor. The moneys so forwarded to the State Auditor shall be deposited in the Office of the Treasurer of the state in the special fund, designated The Inheritance Tax Administration Fund, to be used to defray, in whole or in part, costs incurred by the State Auditor in order to facilitate the prompt administration of the provisions imposed by this article. The remaining amounts shall be deposited in the county fiduciary fund as provided in §44-3A-43 of

this code. Such fee shall be paid to include all services of the fiduciary supervisor for the settlement of every such decedent's estate which is settled pursuant to the provisions of §44-3A-19 of this code. All such fees shall also include the cost of publication of the notice required by §44-3A-4 of this code, and the notice required by §44-3A-19 of this code, but shall not include the cost of any mailings or of the cost of recording any documents required to be recorded in the office of the clerk of the county commission by the provisions of this chapter.

In the event the fiduciary supervisor is required to examine and prepare a statement of deficiencies, including reasons for disapproving any of the documents required to be filed by the personal representative of any decedent's estate, he shall charge and collect from such personal representative a fee of \$10.

(b) In addition to the fees set forth in subsection (a) of this section, the fiduciary supervisor shall charge a fee to be fixed by the county commission in the manner provided in subsection (c) of this section for conducting hearings, granting continuances of hearings, considering evidence, for drafting recommendations with respect to such hearings and for appearing before the county commission with respect thereto and any other matters of an extraordinary nature not normally included within a summary settlement as contemplated by §44-3A-19 of this code. Such fee shall be used to defray the costs imposed by or incidental to any extraordinary demands by or conditions imposed by a fiduciary or imposed by the circumstances of the estate.

(c) The fiduciary supervisor or fiduciary commissioner shall prepare a voucher for the county commission, which voucher shall be itemized and shall set forth in detail all of the services performed and the amount charged for such service or services. Such voucher shall also indicate in each instance if the service was actually performed by the fiduciary supervisor or fiduciary commissioner or whether such service was performed by an employee or deputy of such supervisor or commissioner. All vouchers shall reflect the services rendered pursuant to the initial fee charged and collected as provided in subsection (a) of this section and, in addition thereto, shall indicate those services for which charges are to be made over

and above that amount. In the case of any service for which a fee is not fixed by this section, or the fee fixed is based on time expended, the voucher shall show the actual time personally expended by the supervisor or commissioner, to the nearest tenth of an hour. All such vouchers shall be verified prior to submission to the county commission for approval. Upon approval of any such voucher, the same shall be charged against the estate to which the same applies. In reviewing any fee charged by either the fiduciary supervisor or a fiduciary commissioner, the county commission shall consider the following:

- (1) The time and effort expended;
- (2) The difficulty of the questions raised;
- (3) The skill required to perform properly the services rendered;
- (4) The reasonableness of the fee;
- (5) Any time limitations imposed by the personal representative, any beneficiary or claimant, or by the attendant circumstances; and
- (6) Any unusual or extraordinary circumstances or demands or conditions imposed by the personal representative, any beneficiary or claimant or by the attendant circumstances. The county commission may approve any such voucher or may reduce the same, as it deems proper, after considering those matters set forth in this subsection. Any such approval shall be by order of the commission and be entered of record by the clerk of the county commission in the fiduciary record book and the general order books of the commission. In no event shall any fee for any service, whether performed by the fiduciary supervisor or the fiduciary commissioner, be fixed, charged or approved which is based upon or with reference to the monetary value of the estate or of the amount in controversy upon any disputed issue or fact of law.

(d) For every estate other than a decedent's estate, there shall be charged by the fiduciary supervisor at the time of qualification a fee of \$25, which fee shall include all services performed by the

fiduciary supervisor with respect to such estate from the time of qualification of the personal representative thereof until and including the filing of the first annual settlement. For each additional or subsequent annual or triennial settlement, the fiduciary supervisor shall charge and collect a fee of \$10.

(e) The county commission or other tribunal in lieu thereof shall, by order, establish or fix a schedule of suggested fees or rates of compensation for the guidance of the fiduciary supervisor and any fiduciary commissioner in preparing their respective vouchers for fees other than those fees fixed by any provision of this section or of this chapter. A copy of these fees or rates shall be posted in a conspicuous place in the county courthouse.

(f) The amendments to this section enacted in the year 2023 shall be effective on July 1, 2023.

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CHAPTER 154

**(H. B. 3272 - By Delegates Criss, Hardy, Householder,
Barnhart, Westfall, Jeffries, Hott, Capito, C. Pritt, Espinosa
and Riley)**

[Passed February 22, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 7, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §31I-1-1, §31I-1-2, §31I-1-3, §31I-1-4, §31I-1-5, §31I-1-6, §31I-1-7, §31I-1-8, §31I-1-9, §31I-1-10, §31I-1-11, §31I-1-12, and §31I-1-13; and to amend and reenact §36-1A-1 of said code, all relating to the operation of private trust companies; creating the West Virginia Private Trust Company Act; setting forth purposes and findings; defining terms; specifying requirements and limitations for and powers of private trust companies and licensed private trust companies; requiring a nonrefundable application fee; creating a special account in the State Treasury; specifying responsibilities and rule-making authority of the State Auditor; and modifying statutory rule against perpetuities.

Be it enacted by the Legislature of West Virginia:

CHAPTER 31I. TRUST COMPANIES.

ARTICLE 1. PRIVATE TRUST COMPANIES AND PRIVATE TRUST BUSINESS.

§31I-1-1. Short title.

This article may be cited as the "Private Trust Company Act".

§31I-1-2. Purposes; findings.

(a) The purpose of the article is to establish requirements for licensing private trust companies, to regulate persons who provide

fiduciary services to family members of no more than three families and their related interests as a private trust company, and to establish the degree of regulatory oversight required of the State Auditor over such companies. The public interest served by this article is to ensure that fiduciary activities performed by a private trust company are restricted to family members and their related interests and as otherwise provided in this article.

(b) The Legislature finds that:

(1) A private trust company is not a financial institution, and licensure of such a company is not required.

(2) A private trust company may elect to be a licensed private trust company under this article if the company desires to be subject to the regulatory oversight of the State Auditor, as provided in this article, notwithstanding that the company restricts its services to family members.

(3) With respect to a licensed private trust company, the State Auditor is responsible for regulating, supervising, and examining the company as provided under this article.

(4) With respect to a private trust company that does not elect to be licensed, the State Auditor's role is limited to ensuring that fiduciary services provided by the company are restricted to family members and authorized related interests and not to the general public. The State Auditor is not responsible for examining a private trust company regarding the safety or soundness of its operations.

§311-1-3. Definitions.

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

(1) "Applicant" means the corporation or limited liability company on whose behalf an application for a license to operate as a licensed private trust company is submitted under §311-1-4(e) of this code.

(2) "Capital account" means the aggregate value of unimpaired capital stock based on the par value of the shares, plus any unimpaired surplus and undivided profits or retained earnings of a private trust company organized as a corporation; or the initial cash investment remitted for membership interests in a private trust company organized as a limited liability company, plus any undivided profits or retained earnings of the limited liability company.

(3) "Capital stock" means the shares of stock issued to create nonwithdrawable capital for a corporation, or membership interests issued to create nonwithdrawable capital for a limited liability company.

(4) "Collateral kinship" means a relationship that is not lineal but derives from a common ancestor.

(5) "Degrees of kinship" means, with respect to two persons:

(A) Degrees of lineal kinship computed by counting one degree for each person in the line of ascent or descent, exclusive of the person from whom the computing begins; and

(B) Degrees of collateral kinship computed by commencing with one of the persons and ascending from that person to a common ancestor, descending from that ancestor to the other person, and counting one degree for each person in the line of ascent and in the line of descent, exclusive of the person from whom the computation begins, the total to represent the degree of such kinship.

(6) "Designated relative" means a common ancestor of a family, who may be a living or deceased person, who is the individual to or through whom the family members are related, and who is so designated in the application for a license.

(7) "Family" means a designated relative and family members of that designated relative.

(8) "Family affiliate" means a company or other entity in which one or more family members own, control, or have the power,

directly or indirectly, to vote all of the capital stock, partnership interests, membership interests, or other equity interests of the entity.

(9) "Family member" means a designated relative and:

(A) Any individual within: (i) the fifth degree of lineal kinship to a designated relative of a private trust company, or the sixth degree of lineal kinship to a designated relative of a licensed private trust company, or (ii) the seventh degree of collateral kinship to a designated relative of a private trust company, or the ninth degree of collateral kinship to a designated relative of a licensed private trust company;

(B) The present or past spouse of any individual qualifying as a family member and an individual who is within the fifth degree of lineal kinship to such spouse or former spouse;

(C) A trust established by: (i) a family member if the trust is funded exclusively by one or more family members and, for these purposes, a trust to which property has been transferred as a result of a family member's exercise of a power of appointment shall be considered established by that family member if all qualified beneficiaries of the appointee trust are family members, or (ii) an individual who is not a family member if all of the noncharitable qualified beneficiaries of the trust are family members, except that a trust composed exclusively of nonindividual qualified beneficiaries is considered to be a family member if all of the nonindividual qualified beneficiaries are charitable foundations or other charitable entities as described in paragraph (F) of this subdivision;

(D) A family affiliate or officer or former officer of a family affiliate: *Provided*, That in the case of a former officer, such officer must have qualified as an officer of the family affiliate at any time within the past three years;

(E) The estate of a family member or the estate of an individual who is not a family member if all of the noncharitable beneficiaries of such estate are family members, except that an estate composed

exclusively of nonindividual beneficiaries is considered to be a family member if all of the nonindividual beneficiaries are charitable foundations or other charitable entities as described in paragraph (F) of this subdivision; or

(F) A charitable foundation or other charitable entity that either: (i) was created by a family member, or (ii) has a governing body consisting mostly of family members.

(10) "Fiduciary" means executor, administrator, conservator, guardian, committee, or trustee.

(11) "Licensed private trust company" means a private trust company that operates in accordance with this article and has been issued a license that has not been revoked or suspended by the State Auditor.

(12) "Lineal kinship" means a family member who is in the direct line of ascent or descent from a designated relative.

(13) "Officer" of a family affiliate means an individual, regardless of whether the individual has an official title or receives a salary or other compensation, who may participate in the major policymaking functions of a family affiliate, other than as a director. The term does not include an individual who may have an official title and exercise discretion in the performance of duties and functions, but who does not participate in determining the major policies of the family affiliate and whose decisions are limited by policy standards established by other officers, regardless of whether the policy standards have been adopted by the board of directors or other members of management. The chair of the board of directors, the president, the chief officer, the chief financial officer, the senior trust officer, and all executive vice presidents of a family affiliate, and all managers if organized as a limited liability company, are presumed to be officers unless such officer is excluded by resolution of the board of directors or members or by the bylaws or operating agreement of the family affiliate, other than in the capacity of a director, from participating in major policymaking functions of the family affiliate, and such excluded officer does not actually participate therein.

(14) "Operating plan" means a plan that establishes the policies and procedures a private trust company will have in effect when the institution opens for business and thereafter:

(A) To ensure that trust accounts are handled in accordance with recognized standards of fiduciary conduct; and

(B) To assure compliance with applicable laws and regulations.

(15) "Private trust business" means acting as or performing the duties of a fiduciary in the regular course of its business for family members. A person does not engage in private trust business by:

(A) Rendering services as an attorney-at-law in the performance of duties as a fiduciary;

(B) Rendering services as a certified or registered public accountant in the performance of duties as such;

(C) Acting as trustee under a deed of trust made only as security for the payment of money or for the performance of another act;

(D) Acting as a trustee in bankruptcy or as a receiver;

(E) Holding trusts of real estate for the primary purpose of subdivision, development, or sale, or to facilitate any business transaction with respect to such real estate;

(F) Engaging in the business of an escrow agent;

(G) Holding assets as trustee of a trust created for charitable purposes if:

(i) The trustee is an entity exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code; and

(ii) The trust is: (I) exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code, (II) a charitable remainder trust described in Section 664 of the Internal Revenue Code, (III) a pooled income fund described in Section 642(c)(5) of the Internal Revenue Code, or (IV) a trust the charitable interest in which is either a guaranteed annuity or a fixed percentage

distributed yearly of the fair market value of the trust property, described in Section 2055(e)(2)(B) or Section 2522(c)(2)(B) of the Internal Revenue Code;

(H) Receiving rents and proceeds of sale as a licensed real estate broker on behalf of the principal; or

(I) Engaging in securities transactions as a broker-dealer or salesman.

(16) "Private trust company" means a corporation or limited liability company that:

(A) Is exclusively owned by one or more family members;

(B) Is organized or qualified to do business in this state;

(C) Engages or proposes to engage in private trust business under this article with one or more family members;

(D) Does not serve as a fiduciary for a person, entity, trust, or estate that is not a family member, except that it may serve as a fiduciary for up to 35 individuals who are not family members if the individuals are current or former employees of the private trust company or one or more trusts, companies, or other entities that are family members; and

(E) Does not transact business with the general public.

(17) "Qualified beneficiary" has the meaning provided in §44D-1-103(r) of this code.

(18) "State Auditor" means the West Virginia State Auditor.

(19) "Tax" includes, but is not limited to, federal, state, or local income, gift, estate, generation-skipping transfer, or inheritance tax.

(20) "Trust institution" means a bank or trust company chartered by a state bank supervisory agency or by the Office of the Comptroller of Currency.

§311-1-4. Organization; minimum capital requirements; notice to State Auditor; control; application for license.

(a) No person other than a corporation or limited liability company organized under the laws of this state to engage exclusively in the private trust business shall act as a private trust company or licensed private trust company.

(b) A licensed private trust company that has one designated relative may not be organized or operated with an owners' capital account of less than \$250,000. The minimum capital account is \$350,000 if two designated relatives of the licensed private trust company are named in the application for a license or in the annual license renewal. The minimum capital account is \$450,000 if three designated relatives of the licensed private trust company are named in the application for a license or in the annual license renewal. A private trust company may not be organized or operated with a capital account of less than \$250,000.

(c) No person shall engage in business as a private trust company or licensed private trust company without first giving written notice to the State Auditor. The notice shall identify at least one designated relative for any private trust company, and up to three designated relatives for any licensed private trust company, whose relationship to other individuals determines whether the individuals are family members. The notice shall identify the location of the principal office and additional office, if any, within this state. The notice shall be accompanied by an operating plan and such other books, records, documents, or information as the State Auditor may require. The notice shall also certify that:

(1) All provisions of law have been complied with;

(2) The private trust company or licensed private trust company is formed for no other reason than to engage in the private trust business;

(3) Family members have subscribed for capital stock, surplus, and a reserve for operation in an amount equal to or in excess of \$250,000; and

(4) The private trust company or licensed private trust company is serving or will serve as trustee for one or more trusts having an aggregate of at least \$50,000,000 in trust assets as further specified in §31I-1-10 of this code.

(d) All of the capital stock, membership interests, or other equity interests of a private trust company or licensed private trust company shall be and shall remain owned by, and under the voting control of, family members, including any spouses, trusts, stock corporations, limited partnerships, limited liability companies, or estates that qualify under §31I-1-3(9)(B) through (E) of this code of one or more families.

(e) An applicant seeking to operate as a licensed private trust company must file an application with the State Auditor on forms prescribed by the State Auditor, accompanied by a nonrefundable \$10,000 application fee to be deposited into a special account in the State Treasury to be known as the Private Trust Company Application Fund. Expenditures from the fund shall be for the purpose of the State Auditor administering this article. Expenditures 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: *Provided*, That for the fiscal year ending June 30, 2024, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature. The application to operate as a licensed private trust company must also contain or be accompanied by:

(1) The name of the proposed licensed private trust company;

(2) A copy of the articles of incorporation or articles of organization and the bylaws or operating agreement of the proposed licensed private trust company;

(3) The physical address and mailing address of the proposed licensed private trust company, which must be located in this state;

(4) A statement describing in detail the services that will be provided to family members by the proposed licensed private trust company;

(5) The name and biographical information of each individual who will initially serve as a director, officer, manager, or member acting in a managerial capacity of the proposed licensed private trust company;

(6) The name and biographical information of each individual who owns or has the ability or power to directly or indirectly vote at least 10 percent or more of the outstanding shares, membership interest, or membership units of the proposed licensed private trust company;

(7) The names of the designated relatives;

(8) The amount of the initial capital account of the proposed licensed private trust company and the form in which the capital was paid and will be maintained;

(9) The type and amount of bonds or insurance that will be procured and maintained on directors, officers, managers, or members acting in a managerial capacity or employees pursuant to §311-1-12 of this code;

(10) A statement signed by the applicant, or by the individual signing on behalf of the proposed licensed private trust company, under penalty of perjury, affirming that the following statements are true:

(A) The proposed licensed private trust company is not currently transacting business with the general public;

(B) No director, officer, manager, or member served as a director, officer, or manager, or acted in a managerial capacity, for a trust company or any other financial institution that had a license issued under the financial institutions codes or by the Federal Government or any other state, the District of Columbia, a territory of the United States, or a foreign country that was suspended or revoked within the 10 years preceding the date of the application;

(C) No director, officer, manager, or member acting in a managerial capacity has been convicted of, or pled guilty or nolo contendere, regardless of whether adjudication of guilt is entered by the court, to a violation of the financial institutions codes, or other similar state or federal laws or related rules, or to a crime involving fraud, misrepresentation, or moral turpitude;

(D) No director, officer, manager, or member acting in a managerial capacity has had a professional license suspended or revoked within the 10 years preceding the date of the application;

(E) All information contained in the application is true and correct to the best knowledge of the individual signing the application on behalf of the proposed licensed private trust company; and

(11) Any other additional information reasonably required by the State Auditor.

§31I-1-5. Operation and powers.

Every private trust company and licensed private trust company shall conduct its business in accordance with an operating plan and in accordance with generally accepted fiduciary standards. A private trust company or licensed private trust company when engaging in a private trust business shall have the same rights, powers, and privileges as a banking or trust institution pursuant to §31A-4-14 of this code, including the power to act as executor under the last will and testament or administrator of the estate of any deceased family member.

§31I-1-6. Reacquisition of shares or interests; dividends.

A private trust company or licensed private trust company shall not buy, redeem, or otherwise reacquire shares of stock or membership interests that the private trust company or licensed private trust company has issued, or declare a dividend or other distribution to its stockholders, members, or holders of equity interests, to the extent that such purchase, redemption, reacquisition, dividend, or distribution shall cause the private trust

company's or licensed private trust company's paid-in capital, retained surplus, and reserves to be reduced below \$250,000.

§311-1-7. Offices.

(a) The office at which a private trust company or licensed private trust company begins business shall be designated initially as its principal office. The board of directors or managers of a private trust company or licensed private trust company may thereafter redesignate as the principal office another authorized office of the private trust company or licensed private trust company in this state.

(b) The board of directors or managers of a private trust company or licensed private trust company may designate, and from time to time redesignate, one additional office at which the private trust company or licensed private trust company may conduct business in this state.

(c) The private trust company or licensed private trust company shall notify the State Auditor of any such redesignation of its principal office or designation or redesignation of an additional office not later than 30 days before its effective date and shall confirm to the State Auditor any such designation or redesignation within 10 days of its occurrence.

§311-1-8. Directors or managers.

The affairs of every private trust company or licensed private trust company shall be directed by a board of directors if a corporation, or managers if a limited liability company, consisting of not less than five nor more than 25 persons. At least one director or manager shall be a resident of this state.

§311-1-9. Limitation on powers.

(a) In the exercise of any power held by a private trust company or licensed private trust company in its capacity as a fiduciary, the private trust company or licensed private trust company shall have a duty not to exercise any power in such a way as to deprive the estate, trust, or other entity for which it acts as a fiduciary of an

otherwise available tax exemption, deduction, or credit for tax purposes, or deprive a donor of trust assets of a tax exemption, deduction, or credit or operate to impose a tax upon a donor or other person as owner of any portion of the estate, trust, or otherwise.

(b) Without limitation to subsection (a) of this section, no family member who is a stockholder or member or who otherwise holds an equity interest in, or is serving as a director, officer, manager, or employee of, a private trust company or licensed private trust company shall participate in or otherwise have a voice in any discretionary decision by the private trust company or licensed private trust company to distribute income or principal of any trust in order to discharge a legal obligation of a family member or for a family member's pecuniary benefit, unless:

(1) The exercise of the discretion is limited by an ascertainable standard relating to the health, education, support, or maintenance of that family member;

(2) The distribution is necessary for that family member's support, health, or education; or

(3) The instrument governing the administration of that trust clearly so provides.

§31I-1-10. Minimum trust assets under management certification.

As part of the notice to the State Auditor required of any private trust company or licensed private trust company that is required under §31I-1-4 of this code, an affidavit must also be submitted by the applicant, signed under penalty of perjury, certifying that the private trust company or licensed private trust company serves or will serve as trustee for one or more trusts having at least \$50,000,000 in aggregate trust assets under management as of the date of such affidavit.

§31I-1-11. Unlawful to advertise services.

A private trust company or licensed private trust company may not advertise its services to the public.

§31I-1-12. Fidelity bonds; insurance.

(a) The directors or managers of a licensed private trust company shall procure and maintain fidelity bonds on all active officers, directors, managers, members acting in a managerial capacity, and employees of the company, regardless of whether they receive a salary or other compensation from the company, in order to indemnify the company against loss because of a dishonest, fraudulent, or criminal act or omission on their part, whether acting alone or in combination with other persons.

(b) Each fidelity bond shall be issued in an amount of at least \$1,000,000.

(c) In lieu of the fidelity bonds required under subsection (a) of this section, a licensed private trust company may increase its capital account required under §31I-1-4(b) of this code by \$1,000,000 so that if it has:

(1) One designated relative, then it is organized or operated with a capital account of at least \$1,250,000;

(2) Two designated relatives, then it is organized or operated with a capital account of at least \$1,350,000; or

(3) Three designated relatives, then it is organized or operated with a capital account of at least \$1,450,000.

(d) The licensed private trust company shall also procure and maintain an errors and omissions insurance policy of at least \$1,000,000 in which it is listed as the insured to cover the acts and omissions of officers, directors, managers, and members acting in a managerial capacity, regardless of whether the person receives a salary or other compensation from the company.

(e) A private trust company or licensed private trust company may also procure and maintain other insurance policies necessary or desirable in connection with the business of the company, including, but not limited to, one or more casualty insurance policies.

(f) A private trust company that is not a licensed private trust company may procure and maintain fidelity bonds as described in this section.

(g) A private trust company that is not a licensed private trust company may procure and maintain errors and omissions insurance coverage as described in this section.

§31I-1-13. Rule-making authority by State Auditor.

The State Auditor shall promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code and may 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.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 1A. UNIFORM STATUTORY RULE AGAINST PERPETUITIES.

§36-1A-1. Statutory rule against perpetuities.

(a) Except as provided in subsection (e) of this section, a nonvested property interest is invalid unless:

(1) When the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(2) The interest either vests or terminates within 90 years after its creation.

(b) Except as provided in subsection (e) of this section, a general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(1) When the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive; or

(2) The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(c) Except as provided in subsection (e) of this section, a nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(1) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(2) The power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under the provisions of this section, the possibility that a child will be born to an individual after the individual's death is disregarded.

(e) As to any trust administered by a private trust company pursuant to §31I-1-1 *et seq.* of this code on or after July 1, 2023, this subsection shall apply to a nonvested property interest or power of appointment contained in a trust by substituting 1,000 years in place of "90 years" in each place such term appears in this section, unless the terms of the trust require that all beneficial interests in the trust vest or terminate within a lesser period.

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CHAPTER 155

**(H. B. 3499 - By Delegates Fast, Petitto, Warner, Lucas, C.
Pritt, Cooper and Steele)**

[Passed March 10, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §36-12-11 of the Code of West Virginia, as amended, and to amend and reenact §36-12-13 of said code, all relating to transfer on death deeds; and specifically clarifying that an inter vivos transfer of a piece of real property that is the subject of a transfer on death deed causes the transfer on death deed to be revoked, with or without express language of revocation; and permitting transfer on death deeds to specify that the possessory interest conveyed can, if so provided in the language of the deed, transfer a joint tenancy with right of survivorship.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 12. UNIFORM REAL PROPERTY TRANSFER
ON DEATH ACT.**

**§36-12-11. Revocation by instrument authorized; revocation
by act not permitted.**

(a) Subject to subsection (b) of this section, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, if the instrument:

(1) Is one of the following:

(A) A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(B) An instrument of revocation that expressly revokes the deed or part of the deed; or

(C) As to property that was described in a transfer on death deed made by a transferor and previously recorded, an inter vivos deed made by the same transferor that conveys the same real estate, or part thereof, whether or not the inter vivos deed expressly revokes the transfer on death deed, or part of the deed; and

(2) Is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the public records in the office of the clerk of the county commission of the county where the deed is recorded.

(b) If a transfer on death deed is made by more than one transferor revocation by a transferor does not affect the deed as to the interest of another transferor; and a deed of joint owners is revoked only if it is revoked by all of the living joint owners.

(c) After a transfer on death deed is recorded it may not be revoked by a revocatory act on the deed.

(d) This section does not limit the effect of an *inter vivos* transfer of the property.

§36-12-13. Effect of transfer on death deed at transferor's death

(a) Except as otherwise provided in the transfer on death deed in this article, §41-1-6 of this code, §41-3-3 of this code, §42-3-1, *et seq.* of this code, §42-§4-2 of this code, or §42-5-1, *et seq.* of this code, on the death of the transferor the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(1) Subject to subdivision (2) of this subsection, the interest in the property is transferred to the designated beneficiary in accordance with the deed.

(2) The interest of a designated beneficiary, when there is only one beneficiary designated, is contingent on the designated beneficiary surviving the transferor. The interest of a designated

beneficiary that fails to survive the transferor, when there is only one beneficiary designated, lapses.

(3) Subject to subdivision (4) of this subsection, concurrent interests are transferred to the beneficiaries in equal and undivided shares, unless the deed specifies otherwise, as tenants in common or with right of survivorship if the deed specifies joint tenancy with right of survivorship.

(4) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently as tenants in common or with right of survivorship if the deed specifies joint tenancy with the right of survivorship.

(b) Subject to §39-2-1, *et seq.*, and §38-1-1, *et seq.* of this code, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens and other interests to which the property is subject at the transferor's death. For purposes of this subsection, §39-2-1, *et seq.*, and §38-1-1, *et seq.* of this code, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

(c) If a transferor is a joint owner with other joint owners with right of survivorship and is:

(1) Survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or

(2) The last surviving joint owner, the transfer on death deed is effective.

(d) If a transferor is an owner with other owners as tenants in common, the transfer on death deed is only effective as to the interest in the property which was held by the transferor.

(e) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

(f) The amendments to this section, enacted during the 2023 regular session of the Legislature, shall apply only to transfer on death deeds recorded after the effective date of this section.



CHAPTER 156

(Com. Sub. for H. B. 2004 - By Delegates Phillips, Kimble, Nestor, Cannon, Holstein, Willis, Espinosa, Miller, A. Hall, Sheedy, and Martin)

[Passed March 10, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §31A-2A-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §31A-2B-1, §31A-2B-2, §31A-2B-3, §31A-2B-4, §31A-2B-5, §31A-2B-6, §31A-2B-7, §31A-2B-8, §31A-2B-9, and §31A-2B-10, all relating generally to payment card transactions involving firearm, firearm accessory or component, and ammunition retailers; clarifying that financial records may not be disclosed or compelled to be disclosed in a manner that discriminates against constitutionally protected activities; providing a short title; setting forth legislative findings and intent; defining terms; prohibiting disclosure of protected financial information except in limited circumstances; establishing requirements for written authorization for disclosure of protected financial information; establishing requirements for subpoenas of protected financial information; prohibiting use of protected financial information for discriminatory conduct; providing civil remedies for violations of new article with liquidated or compensatory damages; providing injunctive relief for violations of new article; providing defendants in a civil action with a right to cure; allowing the aggrieved party in a civil action to recover attorney's fees; establishing a statute of limitations for civil remedies; providing that civil remedies are exclusive for violations of new article; authorizing the Commissioner of Financial Institutions to administer requirements of new article; authorizing the Attorney General to investigate and judicially enforce new article subject to

certain limitations; allowing the Attorney General to recover attorney's fees in action for injunctive relief; authorizing the State Treasurer to disqualify financial institutions from certain state contracts if violations of new article have occurred; establishing the scope of new article; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. MAXWELL GOVERNMENTAL ACCESS TO FINANCIAL RECORDS ACT.

§31A-2A-4. Exceptions.

(a) Nothing in this article is intended to, or shall prohibit, apply to, or interfere with:

(1) The lawful authority or ability of the commissioner of banking or any other state or federal regulatory agency of a bank, savings and loan association, trust company, or credit union to obtain or to share between such regulatory agencies any records which the commissioner of banking or such state or federal regulatory agency may deem appropriate for the examination and regulation of the financial institution: *Provided*, That nothing in this subdivision permits disclosure of protected financial information in violation of §31A-2B-1 *et seq.* of this code;

(2) The lawful authority or ability of the Insurance Commissioner or the State Auditor to obtain any records from a financial institution relating to the financial institution's sale of insurance or securities;

(3) The dissemination or publication of information derived from financial records if the information cannot be identified to any particular customer, deposit, or account, or if the information is in composite form and is not disseminated or published in a way which identifies any particular customer, deposit, or account;

(4) The making of reports or returns specifically required or permitted by federal or state law, including applicable tax law or regulations;

(5) The disclosure of any information under the provisions of the uniform commercial code governing the dishonor of a negotiable instrument, or the disclosure to any purported state entity payee or to any purported state entity holder of a check, draft, order, or other item, whether or not such instrument has been accepted by such payee or holder as payment, as to whether or not such instrument would be honored if presented at the time of such disclosure;

(6) A state entity obtaining a credit report or consumer credit report from anyone other than a financial institution;

(7) The exchange, in the regular course of business, of information showing the outstanding balance of a mortgage loan account in connection with a sale, refinancing, or foreclosure of real property in a transaction to which the state entity is a party; or the disclosure, in the regular course of business, of information on a mortgage or deed of trust on a subject property to a state entity as holder of any subordinate mortgage, deed of trust or security interest;

(8) The disclosure to the Department of Health and Human Resources, upon written request, of an individual's financial records which the department determines are necessary to verify or confirm the individual's eligibility or ineligibility for public assistance;

(9) The disclosure of an individual's financial records in response to a written request by the Department of Health and Human Resources, as authorized by the federal parent locator service of the United States Department of Health and Human Services;

(10) The examination or audit of financial records relating to preneed funeral trust accounts pursuant to §47-14-1 *et seq.* of this code;

(11) The disclosure of financial records relating to unclaimed property pursuant to §36-8-1 *et seq.* of this code, including the examination of financial records by the State Treasurer or his or

her agent to determine compliance with the handling and reporting of unclaimed property as provided by, and subject to, the limitations set forth in §36-8-20 of this code;

(12) The presentation to appropriate local, state, or federal law-enforcement authorities of a certificate under oath by an authorized representative of a financial institution drawee that declares the dishonor of the check, draft, or order by the drawee, the lack of an account with the drawee at the time of utterance or the insufficiency of the drawer's funds at the time of presentation and utterance in connection with any criminal action for obtaining property or services by a worthless check, draft, or order;

(13) The notification to appropriate local, state, or federal law-enforcement authorities or regulatory agencies that the financial institution, its officers, employees or agents thereof have information which may be relevant to a possible violation of any statute or regulation: *Provided*, That nothing in this subdivision permits disclosure of protected financial information in violation of §31A-2B-1 *et seq.* of this code. The disclosure of any information pursuant to this subdivision may only include the name or other identifying information concerning any individual, corporation, or account involved in and the nature of any suspected illegal activity;

(14) The disclosure of information or records by a financial institution to any court or other appropriate state entity which is incidental to recording a lien, perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary;

(15) The disclosure of information or records by a financial institution which is incidental to processing an application for assistance to a customer in the form of a government loan, loan guaranty, or loan insurance agreement, or which is incidental to processing a default on, or administering, a government guaranteed or insured loan or to initiating contact with an appropriate state entity for the purpose of providing any financial record necessary to permit such authority to carry out its responsibilities under a loan, loan guaranty, or loan insurance agreement;

(16) The disclosure of information incidental to a transaction in the normal course of business of the financial institution where there is no reasonable cause to believe that the information is intended to be used by the state entity in connection with an investigation of the customer;

(17) The preparation, review, handling, or maintenance of financial records in the ordinary course of business by any officer, employee, or agent of a financial institution having custody of the records; or

(18) The disclosure to appropriate law-enforcement officials of the financial records of any officer, director, employee, or controlling shareholder of a financial institution by a financial institution or by any state or federal regulatory agency having authority to regulate the financial institution, if there is reason to believe that the financial record is relevant to a possible violation by such person of any law relating to a crime against the financial institution or any such state or federal regulatory agency. No state or federal regulatory agency which discloses any information pursuant to this subdivision shall be deemed to have waived any privilege applicable to that record under law.

(b) Nothing in this article shall preclude a state entity from obtaining information that is public record without regard to this article although the information may have been derived from financial records.

(c) Nothing in this article shall preclude a state entity from obtaining information or financial records voluntarily submitted to it by others in an attempt to seek governmental assistance or redress of a grievance, including legislative change: *Provided*, That the financial record or information was not solicited by the state entity in an effort to evade the requirements of this article or submitted by a financial institution in contravention of §31A-2A-7 of this code.

(d) Notwithstanding the exceptions set forth in this section, a financial institution may not disclose financial records to a state entity and a state entity may not compel disclosure of financial

records in a manner that singles out or discriminates against any person based on activity protected by the Second Amendment to the United States Constitution or Section 22, Article III of the West Virginia Constitution.

ARTICLE 2B. THE SECOND AMENDMENT FINANCIAL PRIVACY ACT.

§31A-2B-1. Short title.

This article shall be known and may be cited as the "Second Amendment Financial Privacy Act."

§31A-2B-2. Findings and intent.

(a) The Legislature finds that:

(1) The Second Amendment to the United States Constitution guarantees the people the right to keep and bear arms;

(2) Section 22, Article III of the West Virginia Constitution provides that "[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";

(3) In September of 2022, the International Organization for Standardization, based in Switzerland, approved a unique Merchant Category Code for firearm and ammunition retailers;

(4) Later in September of 2022, the world's three largest payment card networks publicly announced they would assign the new Merchant Category Code to firearms retailers accepting payment cards for purchases, after 28 members of Congress sent a public letter to networks, pressuring them to adopt the new code;

(5) In the letter to payment card networks, federal lawmakers stated that the new Merchant Category Code for firearms retailers would be "[. . .] the first step towards facilitating the collection of valuable financial data that could help law enforcement in countering the financing of terrorism efforts", expressing a clear government expectation that networks will utilize the new

Merchant Category Code to conduct mass surveillance of constitutionally protected firearms, firearm accessories or components, and ammunition purchases in cooperation with law enforcement;

(6) The new Merchant Category Code will allow the banks, payment card networks, acquirers, and other entities involved in payment card processing to identify and separately track lawful payment card purchases at firearms retailers in West Virginia, paving the way for both unprecedented surveillance of Second Amendment activity and unprecedented information sharing between financial institutions and the government;

(7) This potential for cooperative surveillance and tracking of lawful firearms, firearm accessories or components, and ammunition purchases will have a significant chilling effect on citizens wishing to exercise their federal and state constitutional rights to keep and bear arms in West Virginia;

(8) While federal law requires some financial institutions to report transactions that are highly indicative of money laundering or other unlawful activities, there is no federal or state law authorizing financial institutions to surveil and track lawful activities by customers in cooperation with law enforcement; in fact, both the federal Right to Financial Privacy Act and West Virginia's Maxwell Governmental Access to Financial Records Act prohibit financial institutions from disclosing a customer's financial records except in limited circumstances; and

(9) This article should be construed as a generally applicable consumer financial protection law that does not prevent or significantly interfere with the duly authorized powers of any bank, nor does this article directly or indirectly discriminate against any bank based on its charter or structure.

(b) Based on the above-stated findings, it is the intent of the Legislature to prohibit the misuse of payment card processing systems to surveil, report, or otherwise discourage constitutionally protected firearm, firearm accessories or components, and

ammunition purchases and sales within West Virginia's jurisdiction.

§31A-2B-3. Definitions.

(a) The terms used in this article shall have the same meaning provided in §31A-2A-1 of this code, unless otherwise specified in this section.

(b) For the purposes of this article, the following terms have the following meanings:

(1) "Ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

(2) "Assign" or "assignment" refers to a financial institution policy, process, or practice that labels, links, or otherwise associates a firearms code with a merchant or payment card transaction in a manner that allows the financial institution or any other entity facilitating or processing the payment card transaction to identify whether a merchant is a firearms retailer or whether a transaction involves the sale of firearms, firearm accessories or components, or ammunition.

(3) "Customer", in addition to the definition provided in §31A-2A-1(a) of this code, includes any person who presents a payment card to a merchant for the purchase of goods or services.

(4) "Disclosure" means the transfer, publication, or distribution of protected financial information to another person for any purpose other than to process or facilitate a payment card transaction.

(5) "Financial institution", in addition to the definition provided in §31A-2A-1(b) of this code, includes an entity other than a merchant involved in facilitating or processing a payment card transaction, including, but not limited to, a bank, acquirer, gateway, payment card network, or payment card issuer.

(6) "Financial record", in addition to the definition provided in §31A-2A-1(c) of this code, includes a financial record held by a financial institution related to a payment card transaction that the financial institution has processed or facilitated.

(7) "Firearm" has the same meaning as that term is defined in §61-7-2 of this code and includes antique firearms.

(8) "Firearm accessories or components" means:

(A) Any device specifically adapted to enable the wearing or carrying about one's person or the storage or mounting in or on any conveyance of a firearm and any attachment or device specifically adapted to be inserted into or affixed onto any firearm to enable, alter, or improve the functioning or capabilities of the firearm;

(B) Any item that is used in conjunction with or mounted upon a firearm, including but not limited to telescopic or laser sights, magazines, flash or sound suppressors, folding or aftermarket stocks and grips, speedloaders, braces, ammunition carriers, and lights for target illumination; and

(C) Any component for making ammunition, reloading materials and equipment, machinery, and tools for manufacturing ammunition.

(9) "Firearms code" means any code or other indicator a financial institution assigns to a merchant or to a payment card transaction that identifies whether a merchant is a firearms retailer or whether the payment card transaction involves the purchase of a firearm, firearm accessories or components, or ammunition. The term includes, but is not limited to, a Merchant Category Code assigned to a retailer by a payment card network or other financial institution.

(10) "Firearms retailer" means any person engaged in the lawful business of selling or trading firearms or antique firearms, as those terms are defined in §61-7-2 of this code, firearm accessories or components, or ammunition to be used in firearms or antique firearms.

(11) "Government entity" means any state or local government agency or instrumentality thereof, located in West Virginia.

(12) "Merchant" means a person or entity that accepts payment cards from customers for the purchase of goods or services. The term includes a firearms retailer that accepts payment cards for the lawful purchase of firearms, firearm accessories or components, or ammunition.

(13) "Payment card" means a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to purchase goods or services from a merchant.

(14) "Protected financial information" means any record of a sale, purchase, return, or refund involving a payment card that is retrieved, characterized, generated, labeled, sorted, or grouped based on the assignment of a firearms code. A "customer's protected financial information" refers to protected financial information appearing in a financial institution's records pertaining to a customer.

§31A-2B-4. Protected financial information.

A financial institution is prohibited from disclosing a customer's protected financial information to a government entity and a government entity is prohibited from accessing or obtaining said information unless:

(1) Disclosure is expressly permitted by §31A-2A-4 of this code and the protected financial information is not singled out, segregated, or disclosed based on the assignment of a firearms code;

(2) Disclosure is made pursuant to a valid warrant issued in a criminal investigation, stating the grounds or probable cause for its issuance, and otherwise meeting the requirements of §62-1A-3 of this code;

(3) The customer has provided written authorization for disclosure, according to the requirements of §31A-2B-5 of this code;

(4) Disclosure is made pursuant to a subpoena meeting the requirements of §31A-2A-5 and §31A-2B-6 of this code or to a grand jury subpoena meeting the requirements of §31A-2A-6 of this code; or

(5) The financial institution discloses only the following information:

(A) That the financial institution is not in possession of the protected financial information; and

(B) The identity of the entity that is in possession of the requested protected financial information.

§31A-2B-5. Written authorization for disclosure.

(a) Notwithstanding §31A-2B-4 of this code, a financial institution may disclose a customer's protected financial information to a government entity if the customer provides the financial institution with written authorization for said disclosure. The written authorization described by this section must contain the following:

(1) A statement that the customer consents to the disclosure of the protected financial information, along with the definition provided in §31A-2B-3(14) of this code, for a specific period;

(2) A statement that the customer has the right to refuse to consent to disclosure;

(3) A statement that the customer understands his or her right to revoke said consent at any time before the protected financial information is disclosed;

(4) A description of the financial records authorized to be disclosed;

(5) The purpose for which disclosure of the protected financial information is authorized;

(6) The recipient or recipients of the disclosure; and

(7) The customer's signature.

(b) The written authorization described in this section may not be required as a condition of doing business or transacting with any financial institution.

(c) The written authorization required by this section must be executed distinctly and separately from other agreements or instruments entered into between the customer and financial institution.

§31A-2B-6. Additional requirements for subpoenas.

A subpoena issued by a government entity that specifically requires disclosure of protected financial information must meet the following requirements, in addition to the requirements of §31A-2A-5 of this code:

(1) The subpoena must state that protected financial information is being sought, along with the definition provided in §31A-2B-3(14) of this code;

(2) A copy of the subpoena must be served upon the customer according to the procedure provided in §31A-2A-5 of this code and the subpoena must contain a certification that said service was executed; and

(3) A copy of the subpoena must be served by the government entity upon the Consumer Protection Division of the West Virginia Attorney General's Office on the same day the subpoena is served upon the customer whose protected financial data is being sought and the subpoena must contain a certification that said service was executed.

§31A-2B-7. Use of protected financial information for discriminatory purpose.

A financial institution may not use a firearms code to engage in the following discriminatory conduct:

(1) Declining a lawful payment card transaction based on the assignment of a firearms code to the merchant or transaction;

(2) Limiting or declining to do business with a customer, potential customer, or merchant based on the assignment of a firearms code to previous lawful transactions involving the customer, potential customer, or merchant;

(3) Charging a higher transaction or interchange fee to any merchant or for a lawful transaction, as compared to the fee charged to a similarly situated merchant or for a similar transaction, based on the assignment of a firearms code; or

(4) Otherwise taking any action against a customer or merchant that is intended to suppress lawful commerce involving firearms, firearm accessories or components, or ammunition.

§31A-2B-8. Civil remedies.

(a) Subject to subsection (c) of this section, a customer may bring a civil action for damages, injunctive relief, or both damages and injunctive relief against any financial institution or government entity that causes the customer's protected financial information to be disclosed in violation of this article. For each violation, the individual may recover:

(1) Against any person who negligently or recklessly violates this article, liquidated damages of \$10,000 or actual damages, whichever is greater; or

(2) Against any person who intentionally violates this article, liquidated damages of \$25,000 for each or actual damages, whichever is greater.

(b) Subject to subsection (c) of this section, a customer or merchant aggrieved by a violation of §31A-2B-7 of this code may bring a civil action for damages, injunctive relief, or both damages and injunctive relief. Said person may recover liquidated damages of \$50,000 or actual damages, whichever is greater.

(c) Right to cure. – Prior to an aggrieved party bringing a civil action pursuant to this section, a financial institution shall have the right to cure an alleged violation of this section, according to the procedures, restrictions, and requirements set forth in §46A-5-108(a) of this code: *Provided*, That both parties must follow the procedures set forth therein.

(d) Attorney's fees. – If a court finds that a violation of this article has occurred as the result of a civil action brought pursuant to subsection (a) or subsection (b) of this section, the court shall award reasonable attorney's fees to the aggrieved party. An award of attorney's fees is subject to the same limitations set forth in §46A-5-108(f) of this code.

(e) Statute of Limitations. – Any action under this article is barred unless the action is commenced within five years after the aggrieved party knows or reasonably should know of the violation. The statute of limitations provided herein is tolled for the 45-day period set forth in §46A-5-108(a) of this code or for the period the effectuation of the cure offer is being performed, whichever is longer.

(f) The remedies provided in this article are the exclusive civil remedies available to an aggrieved party for violations of this article.

§31A-2B-9. Enforcement; contractual authority of the State.

(a) Notwithstanding any other provisions of this chapter, the Commissioner of Banking is authorized to administratively enforce the requirements of this article consistent with §31A-2-4 of this code.

(b) The Attorney General is authorized to investigate compliance with this article and may bring a civil action for injunctive relief to judicially enforce this article: *Provided*, That with regard to a national bank, the Attorney General is authorized to conduct investigations and take judicial enforcement action only to the extent permitted by 12 U.S.C. §25b(i). Upon awarding an injunction against a financial institution as the result of a judicial

enforcement action pursuant to this subsection, a court may award the Attorney General reasonable attorney's fees.

(c) In selecting a financial institution to provide a financial service or product to the state related to payment card processing, the State Treasurer may disqualify a financial institution from the competitive bidding process or from any other official selection process if:

(1) During the past five years, a court of competent jurisdiction has entered an order or opinion finding that the financial institution violated this article;

(2) During the past five years, the Commissioner of Banking or the Attorney General, as the result of an investigation, has determined that a financial institution has violated this article;

(3) During the past five years, the financial institution has admitted to violating this article in the records of a court or other official proceeding; or

(4) The financial institution has publicly stated that it has adopted or intends to adopt policies or practices that violate this article.

§31A-2B-10. Scope and Severability.

(a) Nothing in this article may be construed or applied in a manner that violates or conflicts with superseding federal law.

(b) The sections and provisions of this article are severable. If any section or provision of this article is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the other sections and provisions of this article, which shall remain in full force and effect.

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CHAPTER 157

(H. B. 2611 - By Delegates Barnhart, Westfall, Hott, Espinosa and Rowe)

[Passed March 2, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §31A-8-12a of the Code of West Virginia, 1931, as amended, relating to banking from mobile units and provision of messenger services; expanding the area in which banking from mobile units and the provision of messenger services may be conducted; and updating the boundary limitations for mobile banking and messenger services by banking institutions or other depository institutions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-12a. Banking from mobile units; limitation of messenger services.

(a) It is illegal for any banking institution or other depository institution to conduct its business in a facility that is a mobile unit not permanently attached to the real estate upon which it is located, except: (i) That such mobile units may be used as temporary banking quarters pending construction of a permanent bank building on the same or adjacent property thereto if a charter for said bank has previously been approved; or except (ii) as provided by subsection (b) of this section. This section may not be construed or interpreted to prohibit a financial institution from providing messenger services to its customers by which items are received by

mail, armored car service or other courier or delivery service for subsequent deposit.

(b) Upon the approval of the commissioner, a banking institution may establish one or more mobile facilities to accept or withdraw deposits, pay checks, issue cashier's checks, traveler's checks and other instruments, as well as perform other banking services. Each mobile facility shall be affiliated with and operated by a bank or branch office of a bank physically located and authorized to do business in West Virginia. A mobile facility shall be viewed as an extension of the qualified offices of the bank located in West Virginia and the transactions shall be governed by the laws applicable as if made at such offices. The term "mobile facility" shall include a mobile customer bank communications terminal which is intended to be moved or driven from place to place. A mobile customer bank communications terminal will be treated as an off-premises unit subject to mandatory sharing laws and rules notwithstanding any contrary provisions of this subsection: *Provided*, That no mobile customer bank communications terminal may serve as an automatic loan machine (ALM) terminal on behalf of any other institution other than the operating bank: *Provided, however*, That no mobile facility may be operated within 2,000 feet of another bank's main office or branch office.

CHAPTER 158

(H. B. 3500 - By Delegates Westfall, Barnhart, and Hott)

[Passed March 10, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §46A-4-114, relating to permitting employees of regulated consumer lenders to conduct work at their residence if certain requirements are met.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-114. Permitting licensee to conduct business at remote location.

(a) Notwithstanding any provision of this article to the contrary, but subject to the requirements of this section, employees of a West Virginia licensee located in West Virginia may perform work for the licensee at their residence: *Provided*, That such a residence is located within 100 miles of a licensed West Virginia corporation or branch office: *Provided, however*, That nothing in this subsection restricts employees of the licensee from participating in regulated consumer lending activities at other locations for limited periods of time. Any regulated consumer lender activity conducted by an employee of the West Virginia licensee shall be considered, reported, and regulated as loans of the West Virginia licensee, regardless of the employee's location during the activity.

(b) A licensee, prior to authorizing work by employees at a location other than the licensee's designated place of business, shall ensure the following:

(1) No in-person customer interactions will be conducted at the other location;

(2) The other location is not designated as a business location to consumers or customers;

(3) Appropriate data security and privacy safeguards are in place for licensee and consumer data, information, and records at the other location, including, but not limited to, the use and maintenance of secure virtual private networks and maintenance of appropriate security updates, patches, or other alterations to ensure the security of electronic devices;

(4) Appropriate risk-based monitoring and oversight processes of work performed by the employees of a licensee at the other location are in place, and records of such monitoring and processes are maintained;

(5) No consumer information or records are maintained at the other location;

(6) All consumer and licensee information and records remain accessible and available for regulatory oversight and examinations;

(7) Employees are trained and keep confidential all conversations about, and with, consumers that may be conducted at the other location; and

(8) The other location is a safe and secure workplace for employees.

(c) A licensee, prior to authorizing work at a location other than the licensee's designated place of business, shall establish written policies and procedures to ensure compliance with the requirements of subsection (b) of this section.

(d) A licensee that authorizes work at another location pursuant to this section shall:

(1) Periodically review and document compliance with the provisions of this section and the written policies and procedures

established pursuant to subsection (c) of this section as it relates to every employee who works at another location; and

(2) Certify annually to the commissioner that the provisions of this section have been met as to each employee working at another location.

CHAPTER 159

(S. B. 457 - By Senator Barrett)

[Passed March 9, 2023; in effect 90 days from passage (June 7, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §60-7-12 of the Code of West Virginia, 1931, as amended, relating to removing gambling and use of gaming devices from definition of activities Alcohol Beverage Control Commission licensee is prohibited to permit on licensee's private club premises.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§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. 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 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 6:00 a.m. on weekdays, Saturdays, and Sundays, 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 the private club or a guest of 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 younger than 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 16 years of age and younger than 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 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.

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CHAPTER 160

**(Com. Sub. for H. B. 3044 - By Delegates Gearhart,
Householder, Criss, Hardy, Espinosa, Storch, Smith, Nestor,
Zatezalo, Maynor and Ellington)**

[Passed March 6, 2023; in effect from passage.]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §29-22B-1103 of the Code of West Virginia, 1931, as amended, relating to the annual fee for limited video lottery terminal permits; permitting reduced fee in certain circumstances for certain period; establishing criteria for reduced annual fee for video lottery terminals; requiring West Virginia Lottery to determine which permit holders qualify for reduced annual permit fees and amount thereof; and terminating provisions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-1103. Permit fee.

(a) For the privilege of holding a permit that authorizes the licensee to own or lease video lottery terminals from a licensed manufacturer, the person shall pay an annual fee of \$1,000 per video lottery terminal for which the permit is issued.

(b) (1) Notwithstanding any provision of subsection (a) of this section to the contrary, for the fee due and payable May 1, 2023, and each May 1 thereafter until and including May 1, 2030:

(A) The annual fee shall be \$1,000 per video lottery terminal for terminals that utilize the 10 percent lowest performing software versions, as measured by daily net terminal income of all terminals available for play; and

(B) For permit holders who own or lease terminals with software versions that outperform the 10 percent lowest performing software versions by more than \$500 annual net terminal income for the State of West Virginia, the permit holder will pay a reduced fee of \$500 per terminal annually.

(2) For the fee due and payable May 1, 2023, the West Virginia Lottery shall compute the daily average net terminal income for each version of operating software used in all terminals in play from July 1, 2022, until February 28, 2023, and prepare a report listing the 10 percent of all the versions of operating software having the lowest daily net terminal income over that period, the permit holders who may receive the \$500 annual reduced fee per terminal, and the total amount of any such reduced fee for each permit holder. When calculating the daily average net terminal income, a software that is in play for any number of days during a month shall be considered as operating the full number of days in that month. For subsequent years, the West Virginia Lottery shall compute the daily average net terminal income for each version of operating software used in all terminals in play from March 1st of the preceding year until the last day of February and prepare a report listing the 10 percent of all the versions of operating software having the lowest daily net terminal income over that period, the permit holders who may receive the \$500 annual reduced fee per terminal, and the total amount of any such reduced fee for each permit holder. Should a group of terminals with a software version be partially included in the 10 percent calculation, the entire group shall not be eligible for the reduced fee. Furthermore, a terminal must be active and operational for a period of 60 days to be eligible for the reduced fee. This subsection will terminate and have no force or effect after May 1, 2030.

(c) The fee shall initially be paid at the time the permit is issued for the number of video lottery terminals a person is authorized to own or lease without going through the bid process. Thereafter, this fee shall be due and payable each first day of May while the person holds the permit and the amount of the fee shall be determined by the number of video lottery terminals the person is permitted to own or lease from a licensed manufacturer.

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CHAPTER 161

**(Com. Sub. for H. B. 3450 - By Delegates Espinosa, Willis,
Householder, Hardy, Criss, Zatezalo, Storch, Clark, Fluharty
and Shamblin)**

[Passed March 6, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §29-22A-10 and §29-22A-10b of the Code of West Virginia, 1931, as amended, all relating to racetrack video lottery; providing for certain transfers to and from the Licensed Racetrack Modernization Fund; specifying eligible purposes for recoupment of funds on deposit in facility modernization account within the Licensed Racetrack Modernization Fund; and modifying the distribution of net terminal income to counties where the video lottery terminals are located.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

(a) The commission shall provide to manufacturers, or applicants applying for a manufacturer's permit, the protocol documentation data necessary to enable the respective manufacturer's video lottery terminals to communicate with the

commission's central computer for transmitting auditing program information and for activation and disabling of video lottery terminals.

(b) The gross terminal income of a licensed racetrack shall be remitted to the commission through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. Licensed racetracks must provide the commission 30 days' advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission:

(1) The commission shall deduct an amount sufficient to reimburse the commission for its actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack and the resulting amount after the deduction is the net terminal income. The amount deducted for administrative costs and expenses of the commission may not exceed four percent of gross terminal income: *Provided*, That any amounts deducted by the commission for its actual costs and expenses that exceeds its actual costs and expenses shall be deposited into the State Lottery Fund. For the fiscal years ending June 30, 2011 through June 30, 2030, the term "actual costs and expenses" may include transfers of up to \$9 million in surplus allocations for each fiscal year, as calculated by the commission when it has closed its books for the fiscal year, to the Licensed Racetrack Modernization Fund created by subdivision (2), of this subsection. For all fiscal years beginning on or after July 1, 2001, the commission shall not receive an amount of gross terminal income in excess of the amount of gross terminal income received during the fiscal year ending on June 30, 2001, but four percent of any amount of gross terminal income received in excess of the amount of gross terminal income received during the fiscal year ending on June 30, 2001, shall be deposited into the fund established in §29-22-18a of this code; and

(2) A Licensed Racetrack Modernization Fund is created within the lottery fund. For all fiscal years beginning on or after July 1, 2011, and ending with the fiscal year beginning July 1,

2030, the commission shall deposit such amounts as are available according to subdivision (1) of this subsection into a separate facility modernization account maintained within the Licensed Racetrack Modernization Fund for each racetrack. Each racetrack's share of each year's deposit shall be calculated in the same ratio as each racetrack's apportioned contribution to the four percent administrative costs and expenses allowance provided for in subdivision (1) of this subsection for that year. For each \$2 expended by a licensed racetrack for facility modernization improvements or capital improvements at facilities located in this state that are on or contiguous to the premises of the licensed racetrack, having a useful life of three or more years and placed in service after July 1, 2011, the licensed racetrack shall receive \$1 in recoupment from its facility modernization account. If the licensed racetrack's facility modernization account contains a balance in any fiscal year, the unexpended balance from that fiscal year will be available for matching for one additional fiscal year, after which time, the remaining unused balance carried forward shall revert to the lottery fund. For purposes of this section, the term "facility modernization improvements" includes acquisitions of new and unused video lottery terminals and related equipment, and the term "capital improvements" means real property that is expected to replace or modernize buildings, equipment, machinery and other tangible property used in connection with the operation of the gaming, hospitality, or entertainment at the facility. Video lottery terminals financed through the recoupment provided in this subdivision must be retained by the licensee in its West Virginia licensed location for a period of not less than five years from the date of initial installation.

(c) The amount resulting after the deductions required by subsection (b) of this section constitutes net terminal income that shall be divided as set out in this subsection. For all fiscal years beginning on or after July 1, 2001, any amount of net terminal income received in excess of the amount of net terminal income received during the fiscal year ending on June 30, 2001, shall be divided as set out in §29-22A-10b of this code. The licensed racetrack's share is in lieu of all lottery agent commissions and is considered to cover all costs and expenses required to be expended

by the licensed racetrack in connection with video lottery operations. The division shall be made as follows:

(1) The commission shall receive 30 percent of net terminal income, which shall be paid into the State Lottery Fund as provided in §29-22A-10a of this code;

(2) Until July 1, 2005, 14 percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee, and used for payment of regular purses in addition to other amounts provided for in §19-23-1 *et seq.* of this code, on and after July 1, 2005, the rate shall be seven percent of net terminal income;

(3) The county where the video lottery terminals are located shall receive two percent of the net terminal income: *Provided, That:*

(A) Beginning July 1, 1999, and thereafter, any amount in excess of the two percent received during the fiscal year 1999 by a county in which a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1999, shall be divided as follows:

(i) The county shall receive 50 percent of the excess amount; and

(ii) The municipalities of the county shall receive 50 percent of the excess amount, said 50 percent to be divided among the municipalities on a per capita basis as determined by the most recent decennial United States census of population; and

(B) Beginning July 1, 1999, and thereafter, any amount in excess of the two percent received during the fiscal year 1999 by a county in which a racetrack other than a racetrack described in paragraph (A) of this subdivision is located and where the racetrack has been located in a municipality within the county since on or before January 1, 1999, shall be divided, if applicable, as follows:

(i) The county shall receive 50 percent of the excess amount; and

(ii) The municipality shall receive 50 percent of the excess amount; and

(C) In a county in which a racetrack other than a racetrack described in paragraphs (A) or (B) of this subdivision is located and where the racetrack has been located within that county since on or before January 1, 1999, and where the racetrack is not located in a municipality, the two percent of net terminal income shall be divided, if applicable, as follows:

(i) The county shall receive one percent; and

(ii) The remaining one percent shall be distributed in equal shares to all municipalities located wholly within the county. Per capita population has no effect on distributions under this paragraph;

(4) One percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the Racing Commission to be used for payment into the pension plan for all employees of the licensed racing association;

(5) The West Virginia Thoroughbred Development Fund created pursuant to §19-23-13b of this code and the West Virginia Greyhound Breeding Development Fund created pursuant to §19-23-10 of this code shall receive an equal share of a total of not less than one and one-half percent of the net terminal income;

(6) The West Virginia Racing Commission shall receive one percent of the net terminal income which shall be deposited and used as provided in §19-23-13c of this code;

(7) A licensee shall receive 46 and one-half percent of net terminal income;

(8)(A) The Tourism Promotion Fund established in §5B-2-12 of this code shall receive three percent of the net terminal income: *Provided*, That for the fiscal year beginning July 1, 2003, the tourism commission shall transfer from the Tourism Promotion Fund \$5 million of the three percent of the net terminal income

described in this section and §29-22A-10b of this code into the fund administered by the West Virginia Economic Development Authority pursuant to §31-15-7 of this code, \$5 million into the Capitol Renovation and Improvement Fund administered by the Department of Administration pursuant to §5A-4-6 of this code, and \$5 million into the Tax Reduction and Federal Funding Increased Compliance Fund; and

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for each fiscal year beginning after June 30, 2004, this three percent of net terminal income and the three percent of net terminal income described in §29-22A-10b(a)(8)(B) of this code shall be distributed as provided in this paragraph as follows:

(i) 1.375 percent of the total amount of net terminal income described in this section and §29-22A-10b of this code shall be deposited into the Tourism Promotion Fund created pursuant to §5B-2-12 of this code;

(ii) 0.375 percent of the total amount of net terminal income described in this section and in §29-22A-10b of this code shall be deposited into the Development Office Promotion Fund created pursuant to §5B-2-3b of this code;

(iii) 0.5 percent of the total amount of net terminal income described in this section and in §29-22A-10b of this code shall be deposited into the Research Challenge Fund created pursuant to §18B-1B-10 of this code;

(iv) 0.6875 percent of the total amount of net terminal income described in this section and in §29-22A-10b of this code shall be deposited into the Capitol Renovation and Improvement Fund administered by the Department of Administration pursuant to §5A-4-6 of this code; and

(v) 0.0625 percent of the total amount of net terminal income described in this section and in §29-22A-10b of this code shall be deposited into the 2004 Capitol Complex Parking Garage Fund

administered by the Department of Administration pursuant to §5A-4-5a of this code;

(9)(A) On and after July 1, 2005, seven percent of net terminal income shall be deposited into the Workers' Compensation Debt Reduction Fund created in §23-2d-5 of this code: *Provided*, That in any fiscal year when the amount of money generated by this subdivision totals \$11 million, all subsequent distributions pursuant to this subdivision shall be deposited in the special fund established by the licensee and used for the payment of regular purses in addition to the other amounts provided in §19-23-1 *et seq.* of this code;

(B) The deposit of the seven percent of net terminal income into the Workers' Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to these funds and shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to the other amounts provided in §19-23-1 *et seq.* of this code on and after the first day of the month following the month in which the Governor certifies to the Legislature that: (i) The revenue bonds issued pursuant to §23-2D-1 *et seq.* of this code have been retired or payment of the debt service provided for; and (ii) that an independent certified actuary has determined that the unfunded liability of the old fund, as defined in chapter 23 of this code, has been paid or provided for in its entirety; and

(10) The remaining one percent of net terminal income shall be deposited as follows:

(A) For the fiscal year beginning July 1, 2003, the veterans memorial program shall receive one percent of the net terminal income until sufficient moneys have been received to complete the veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia. The moneys shall be deposited in the State Treasury in the Division of Culture and History special fund created pursuant to §29-11-3 of this code: *Provided*, That only after sufficient moneys have been deposited in the fund to complete the veterans memorial and to pay in full the annual bonded indebtedness on the veterans memorial, not more than \$20,000 of

the one percent of net terminal income provided in this subdivision shall be deposited into a special revenue fund in the State Treasury, to be known as the John F. 'Jack' Bennett Fund. The moneys in this fund shall be expended by the Division of Veterans Affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The Division of Veterans Affairs shall promulgate legislative rules pursuant to the provisions of §29-3-1 *et seq.* of this code specifying the manner in which the funds are spent, determine the ability of the surviving spouse to pay for the placement of the marker and setting forth the standards to be used to determine the priority in which the veterans' grave markers will be placed in the event that there are not sufficient funds to complete the placement of veterans' grave markers in any one year, or at all. Upon payment in full of the bonded indebtedness on the veterans memorial, \$100,000 of the one percent of net terminal income provided in this subdivision shall be deposited in the special fund in the Division of Culture and History created pursuant to §29-11-3 of this code and be expended by the Division of Culture and History to establish a West Virginia veterans memorial archives within the Cultural Center to serve as a repository for the documents and records pertaining to the veterans memorial, to restore and maintain the monuments and memorial on the capitol grounds: *Provided, however,* That \$500,000 of the one percent of net terminal income shall be deposited in the State Treasury in a special fund of the Department of Administration, created pursuant to §5A-4-5 of this code, to be used for construction and maintenance of a parking garage on the State Capitol Complex; and the remainder of the one percent of net terminal income shall be deposited in equal amounts in the Capitol Dome and Improvements Fund created pursuant to §5A-4-2 of this code and Cultural Facilities and Capitol Resources Matching Grant Program Fund created pursuant to §29-1-3 of this code.

(B) For each fiscal year beginning after June 30, 2004:

(i) Five hundred thousand dollars of the one percent of net terminal income shall be deposited in the State Treasury in a special fund of the Department of Administration, created pursuant

to §5A-4-5 of this code, to be used for construction and maintenance of a parking garage on the State Capitol Complex; and

(ii) The remainder of the one percent of net terminal income and all of the one percent of net terminal income described in §29-22A-10b(a)(9)(B) of this code shall be distributed as follows: The net terminal income shall be deposited in equal amounts into the Capitol Dome and Capitol Improvements Fund created pursuant to §5A-4-2 of this code and the Cultural Facilities and Capitol Resources Matching Grant Program Fund created pursuant to §29-1-3 of this code until a total of \$1,500,000 is deposited into the Cultural Facilities and Capitol Resources Matching Grant Program Fund; thereafter, the remainder shall be deposited into the Capitol Dome and Capitol Improvements Fund.

(d) Each licensed racetrack shall maintain in its account an amount equal to or greater than the gross terminal income from its operation of video lottery machines, to be electronically transferred by the commission on dates established by the commission. Upon a licensed racetrack's failure to maintain this balance, the commission may disable all of a licensed racetrack's video lottery terminals until full payment of all amounts due is made. Interest shall accrue on any unpaid balance at a rate consistent with the amount charged for state income tax delinquency pursuant to chapter 11 of this code. The interest shall begin to accrue on the date payment is due to the commission.

(e) The commission's central control computer shall keep accurate records of all income generated by each video lottery terminal. The commission shall prepare and mail to the licensed racetrack a statement reflecting the gross terminal income generated by the licensee's video lottery terminals. Each licensed racetrack shall report to the commission any discrepancies between the commission's statement and each terminal's mechanical and electronic meter readings. The licensed racetrack is solely responsible for resolving income discrepancies between actual money collected and the amount shown on the accounting meters or on the commission's billing statement.

(f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the commission may make no credit adjustments. For any video lottery terminal reflecting a discrepancy, the licensed racetrack shall submit to the commission the maintenance log which includes current mechanical meter readings and the audit ticket which contains electronic meter readings generated by the terminal's software. If the meter readings and the commission's records cannot be reconciled, final disposition of the matter shall be determined by the commission. Any accounting discrepancies which cannot be otherwise resolved shall be resolved in favor of the commission.

(g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not operational or the commission notifies licensed racetracks that remittance by this method is required. The licensed racetracks shall report an amount equal to the total amount of cash inserted into each video lottery terminal operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminal in exchange for winning redemption tickets, and remit the amount as generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than noon on the day when the payment would otherwise be completed through electronic funds transfer.

(h) Licensed racetracks may, upon request, receive additional reports of play transactions for their respective video lottery terminals and other marketing information not considered confidential by the commission. The commission may charge a reasonable fee for the cost of producing and mailing any report other than the billing statements.

(i) The commission has the right to examine all accounts, bank accounts, financial statements, and records in a licensed racetrack's possession, under its control or in which it has an interest and the licensed racetrack shall authorize all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.

(j) If a court of competent jurisdiction finds that the provisions of this section as amended and reenacted in 2021 and the provisions of §29-22A-10d of this code conflict and cannot be harmonized, the provisions of §29-22A-10d of this code shall control.

§29-22A-10b. Distribution of excess net terminal income.

(a) For all years beginning on or after July 1, 2001, any amount of net terminal income generated annually by a licensed racetrack in excess of the amount of net terminal income generated by that licensed racetrack during the fiscal year ending on June 30, 2001, shall be divided as follows:

(1) The Commission shall receive forty-one percent of net terminal income, which the Commission shall deposit in the state Excess Lottery Revenue Fund created in §29-22-18a of this code;

(2) Until July 1, 2005, eight percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to other amounts provided in §19-23-1 *et seq.* of this code; on and after July 1, 2005, the rate shall be four percent of net terminal income;

(3) The county where the video lottery terminals are located shall receive two percent of the net terminal income: *Provided, That:*

(A) Any amount by which the total amount under this section and §29-22A-10(c)(3) of this code is in excess of the two percent received during fiscal year 1999 by a county in which a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1999, shall be divided as follows:

(i) The county shall receive 50 percent of the excess amount; and

(ii) The municipalities of the county shall receive 50 percent of the excess amount, the 50 percent to be divided among the

municipalities on a per capita basis as determined by the most recent decennial United States census of population; and

(B) Any amount by which the total amount under this section and §29-22A-10(c)(3) of this code is in excess of the two percent received during fiscal year 1999 by a county in which a racetrack other than a racetrack described in paragraph (A) of this proviso is located and where the racetrack has been located in a municipality within the county since on or before January 1, 1999, shall be divided, if applicable, as follows:

(i) The county shall receive 50 percent of the excess amount; and

(ii) The municipality shall receive 50 percent of the excess amount; and

(C) In a county in which a racetrack other than a racetrack described in paragraphs (A) or (B) of this subdivision is located and where the racetrack has been located within that county since on or before January 1, 1999, and where the racetrack is not located in a municipality, the two percent of net terminal income shall be divided, if applicable, as follows:

(i) The county shall receive one percent; and

(ii) The remaining one percent shall be distributed in equal shares to all municipalities located wholly within the county. Per capita population has no effect on distributions under this paragraph;

(4) One half of one percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the Racing Commission to be used for payment into the pension plan for all employees of the licensed racing association;

(5) The West Virginia Thoroughbred Development Fund created under §19-23-13b of this code and the West Virginia greyhound breeding development fund created under §19-23-10 of

this code shall receive an equal share of a total of not less than one and one-half percent of the net terminal income.

(6) The West Virginia Racing Commission shall receive one percent of the net terminal income which shall be deposited and used as provided in §19-23-13c of this code;

(7) A licensee shall receive forty-two percent of net terminal income;

(8) The tourism promotion fund established in §5B-2-12 of this code shall receive three percent of the net terminal income: *Provided*, That for each fiscal year beginning after June 30, 2004, this three percent of net terminal income shall be distributed pursuant to the provisions of §29-22A-10(c)(8)(B) of this code;

(9) (A) On and after July 1, 2005, four percent of net terminal income shall be deposited into the Workers' Compensation Debt Reduction Fund created in §23-2D-5 of this code: *Provided*, That in any fiscal year when the amount of money generated by this subdivision together with the total allocation transferred by the operation of §29-22A-10(c)(9) of this code totals \$11 million, all subsequent distributions under this subdivision (9) during that fiscal year shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to other amounts provided in §19-23-1 *et seq.* of this code;

(B) The deposit of the four percent of net terminal income into the Worker's Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to these funds, which shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to the other amounts provided in §19-23-1 *et seq.* of this code on and after the first day of the month following the month in which the Governor certifies to the Legislature that: (i) The revenue bonds issued pursuant to §23-2D-1 *et seq.* of this code have been retired or payment of the debt service is provided for; and (ii) that an independent certified actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided in its entirety; and

(10) (A) One percent of the net terminal income shall be deposited in equal amounts in the capitol dome and improvements fund created under §5A-4-2 of this code and cultural facilities and capitol resources matching grant program fund created under §29-1-3 of this code; and

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for each fiscal year beginning after June 30, 2004, this one percent of net terminal income shall be distributed pursuant to the provisions of §29-22A-10(c)(9)(B)(ii) of this code.

(b) The Commission may establish orderly and effective procedures for the collection and distribution of funds under this section in accordance with the provisions of this section and §29-22A-10 of this code.

CHAPTER 162

**(Com. Sub. for S. B. 439 - By Senators Smith, Caputo,
Hamilton, Phillips, Taylor, Swope, and Nelson)**

[Passed March 7, 2023; in effect from passage]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-34-1, §22-34-2, §22-34-3, §22-34-4, and §22-34-5, all relating to establishing a design-build program for the Department of Environmental Protection; providing a short title; establishing a design-build pilot program; directing secretary to promulgate procedural rule to implement program; requiring secretary to follow rule implementing design-build program; establishing a process for invitation of bids from prequalified design-builders; providing for acceptance of bid and awarding contract; requiring report to Joint Committee on Government and Finance; and providing for sunset provision.

Be it enacted by the Legislature of West Virginia:

ARTICLE 34. DEPARTMENT OF ENVIRONMENTAL PROTECTION DESIGN-BUILD PILOT PROGRAM.

§22-34-1. Short title.

This article shall be known as, and may be cited as, the West Virginia Department of Environmental Protection Design-Build Pilot Program.

§22-34-2. West Virginia Department of Environmental Protection Design-Build Program.

(a) Notwithstanding any provision of this code to the contrary, the secretary of the West Virginia Department of Environmental

Protection may expedite the construction of projects by combining the design and construction elements of a project into a single contract as provided in this article.

(b) The secretary shall promulgate procedural rules as the secretary deems to be useful or necessary to carry out the purpose of this article and to implement the intent of the Legislature in accordance with the provisions of §29A-3-1 *et seq.* of this code, which must provide at a minimum:

(1) The application process for approval of a design-build project;

(2) The procedure for selecting the most qualified design-builders prior to the release of the invitation for proposals;

(3) The procedure for the preparation and contents of invitations for proposals;

(4) The procedure for preparing and submitting proposals;

(5) The procedure for evaluating proposals;

(6) The procedure for negotiations between the agency and those submitting proposals prior to the acceptance of a proposal, if any such negotiations are contemplated;

(7) The procedure for awarding and executing design-build contracts; and

(8) The procedure for acting on formal protests relating to the solicitation or award of design-build contracts.

(c) A design-build project may be let to contract only in accordance with the secretary's procedural rules promulgated pursuant to the provisions of this article: *Provided*, That only contracts awarded directly by the Department of Environmental Protection may utilize the design-build delivery method authorized pursuant to the provisions of this article: *Provided, however*, design-build delivery projects awarded pursuant to the provisions of this article may not exceed a total aggregate value of \$50 million.

§22-34-3. Invitation for bids.

(a) The West Virginia Department of Environmental Protection shall prepare an invitation for bids for prequalified design-builders, which must provide at a minimum:

(1) The procedure to be followed for submitting bids and making awards;

(2) The proposed general terms and conditions for the design-build contract;

(3) The description of the drawings, specifications, or other information to be submitted with the bid, with guidance as to form and level of completeness of the drawings, specifications, or submittals that will be acceptable;

(4) A proposed time schedule for commencement and completion of the design-build contract;

(5) Budget limits for the design-build contract, if any;

(6) Requirements or restrictions for subletting specific portions of the design-build contract, if any; and

(7) Requirements for performance bonds, payment bonds, insurance, professional liability insurance, and workers' compensation coverage.

(b) The West Virginia Department of Environmental Protection shall set forth its needs with sufficient clarity to ensure there is comprehensive understanding of the project's scope and requirements.

§22-34-4. Acceptance of design-build bid.

(a) The design-builder shall submit the bid to the West Virginia Department of Environmental Protection as required in the invitation for bids.

(b) The design-builder shall furnish a bid bond not to exceed five percent of the maximum cost of the design-build contract.

(c) The secretary may choose to reject all bids. If the secretary chooses to accept a bid, he or she shall award the project to the qualified design-builder based on a value-based selection process combining technical qualifications and competitive bidding elements. The secretary shall ascertain that the submissions comply with the requirements of this article and the policies and procedures of the secretary.

§22-34-5. Report to the Legislature; sunset date.

(a) On or before January 15, 2024, and annually thereafter, the secretary shall prepare and submit to the Joint Committee on Government and Finance a written report, which may be transmitted electronically, evaluating the experience of the West Virginia Department of Environmental Protection with each design-built project completed pursuant to the provisions of this article during the prior calendar year, including whether the department realized any cost or time savings, the number and cost of change orders, the quality of work performed, the number of bids received, and other issues the secretary considers appropriate.

(b) The provisions of this article expire and shall have no force and effect after December 31, 2025.

CHAPTER 163

(S. B. 458 - By Senator Nelson)

[Passed March 6, 2023; in effect 90 days from passage (June 4, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §5-10D-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-10D-14, all relating to the Consolidated Public Retirement Board; setting the rate of interest on delinquent retirement contribution submissions; and prohibiting employer unilateral termination without legislative action.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-13. Withholding state and county money to satisfy delinquencies.

(a) If any employer participating in a retirement plan administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this code fails to make any payment due to the retirement system for a period of 60 days after the payment is due, the participating employer is delinquent, and the delinquency shall be certified by the Consolidated Public Retirement Board to the State Auditor, the county commission of the county in which the participating employer is located, and the sheriff of the county in which the participating employer is located. If any participating employer becomes delinquent as provided in this section, the State Auditor, county commission, or sheriff is authorized and directed to withhold any money due the participating employer by the state or county until the delinquency,

together with interest thereon, is satisfied. The rate of interest applicable to the delinquency shall be the actuarial interest rate assumption as approved by the Consolidated Public Retirement Board for completing the actuarial valuation for the plan year immediately preceding the first day of the plan year in which the delinquency payment is made, compounded daily, and the minimum interest charge is \$50. The money withheld by the State Auditor, county commission, or sheriff shall be paid to the applicable retirement system on behalf of the participating employer.

(b) The Consolidated Public Retirement Board shall provide notice to the participating employer 30 days prior to certifying delinquency under this section.

§5-10D-14. Employer unilateral termination of participation prohibited.

Once an employer has begun participating, whether by election or by operation of law, in any public retirement system administered pursuant to this article, it may not terminate its participation without affirmative legislative action.

CHAPTER 164

(S. B. 553 - By Senator Swope)

[Passed March 3, 2023; in effect 90 days from passage (June 1, 2023)]
[Approved by the Governor on March 11, 2023.]

AN ACT to amend and reenact §5A-3-10e of the Code of West Virginia, 1931, as amended, relating to allowing for evaluation of prequalified bidders to be based on best value.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10e. Prequalification agreement; agency-delegated bidding.

(a) Subject to the limitations of this section, the director may permit spending units to procure commodities and services from a preapproved vendor through a prequalification agreement and delegated prequalification bidding if the director determines the process is fair, economical, and in the best interests of the state.

(b) *Definitions.* — For purposes of this section:

"Prequalification agreement" means an agreement, having a term of no more than three years, between the Purchasing Division and at least two prequalified vendors authorizing a spending unit to purchase a commodity or service on a recurrent basis through the delegated prequalification bidding process defined in the prequalification agreement.

"Prequalified vendor" means a "vendor", as that term is defined in §5A-1-1 *et seq.* of this code, that has entered into a prequalification agreement with the Purchasing Division and may

participate in the delegated prequalification bidding subject to the terms and conditions of the prequalification agreement.

"Delegated prequalification bidding" means the competitive bidding process whereby the prequalified vendors that are parties to a prequalification agreement may submit sealed bids directly to spending units to provide a commodity or service identified in the prequalification agreement subject to the limitations set forth in this section.

(c) *Prequalification agreement.* —

(1) For each prequalification agreement, the director shall set forth the requirements, technical or otherwise, under which a vendor may be qualified to supply a commodity or service through the delegated prequalification bidding. For each prequalification agreement, the director shall follow the notice and advertising requirements set forth in §5A-3-10 of this code.

(2) A prequalification agreement may authorize the delegated prequalification bidding for only one type of commodity or service.

(3) A vendor may submit information to the director to establish that it meets the requirements set forth in the prequalification agreement.

(4) If the director determines that a vendor meets the requirements set forth in the prequalification agreement, the vendor may enter into the prequalification agreement as a prequalified vendor.

(d) *Delegated prequalification bidding procedures.* —

(1) A spending unit may commence the delegated prequalification bidding process by issuing a request for a commodity or service identified in the prequalification agreement stating in the request the quantity of the commodity or if a service, the scope of work to be completed, to be procured.

(2) The prequalified vendor that submits the lowest bid, or if the solicitation is a best value procurement, the highest scoring

responsive and responsible bidder when evaluating all factors in the best value procurement, in response to the request shall be awarded the procurement: *Provided*, That the solicitation for a best value procurement include the scoring criteria and all factors used to determine the highest scoring responsive and responsible bidder when the procurement request is released.

(3) The delegated prequalification bidding may not be utilized for any request for commodities or services anticipated to cost more than \$1 million, unless approved in writing by the Director of the Purchasing Division. The state may not issue a series of orders each anticipated to cost less than \$1 million to circumvent the monetary limitation in this subsection. The limit expressed herein applies to each delegated prequalification bid conducted pursuant to the prequalification agreement and not to total spending under the prequalification agreement.

(e) *Rule-making authority.* — The Director of the Purchasing Division shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement this section, including, but not limited to, provisions to establish procedures for the solicitation and authorization of prequalification agreements, prequalification of vendors, and implementation of delegated prequalification bidding.

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CHAPTER 165

**(Com. Sub. for S. B. 568 - By Senators Trump, Deeds, Hunt,
Rucker, Stover, Stuart, Taylor, and Woelfel)**

[Passed March 10, 2023; in effect from passage]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §27-6A-13 of the Code of West Virginia, 1931, as amended, relating generally to the Dangerousness Assessment Advisory Board; clarifying the board's primary purpose; authorizing board to offer its services to the court when requested; providing information and recommendations to the courts; and declaring that the Secretary of the Department of Health and Human Services has no supervisory authority over the board.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 6A. COMPETENCY AND CRIMINAL
RESPONSIBILITY OF PERSONS CHARGED OR
CONVICTED OF A CRIME.**

§27-6A-13. Dangerousness Assessment Advisory Board.

(a) The Dangerousness Assessment Advisory Board is continued. The board shall consist of the following persons:

(1) The Commissioner of the Bureau of Behavioral Health and Health Facilities, or a designee of the commissioner who was not involved in the decision under review;

(2) The forensic coordinator of the state;

(3) A representative of the protection and advocacy system for the state as defined by 29 U.S.C. § 794e, 42 U.S.C. § 15041 *et seq.*, and 42 U.S.C. § 10801 *et seq.*;

(4) An employee of the Division of Corrections and Rehabilitation designated by the commissioner with experience in inmate classification;

(5) An employee of the Division of Rehabilitation Services with experience in independent living programs;

(6) Two board-certified forensic psychiatrists appointed by the Governor with the advice and consent of the Senate; and

(7) Two psychologists who are West Virginia qualified forensic evaluators with at least five years demonstrated experience in state and federal courts, appointed by the Governor with the advice and consent of the Senate.

(b) The primary purpose of the board is to provide opinion, guidance, and informed objective expertise to circuit courts as to the appropriate level of custody or supervision necessary to ensure that persons who have been judicially determined to be incompetent to stand trial and not restorable or not guilty by reason of mental illness are in the least restrictive environment available to protect the person, other persons, and the public generally. The board may, offer its services to a court when requested and may provide any information or recommendations to the court that the board in its independent judgment considers appropriate to assist the court with matters including, but not limited to, treatment, placement, discharge, release, community outings, custody, supervision, and barriers or obstacles to treatment, placement, discharge, release, community outings, custody, and supervision of forensic patients.

(c) A circuit court when reviewing a proposed less restrictive placement for a person found incompetent to stand trial and not restorable or not guilty by reason of mental illness may request the assistance of the board in considering the proposed placement plan. The circuit court may request that the forensic clinical director

convene the board to seek its opinion or opinions on the appropriateness of the proposed placement. The secretary shall provide necessary suggestions, space, and support staff to the board to conduct its activities, but neither the secretary nor the medical director shall have supervisory authority over the board.

(d) The provisions of §6-9A-1 *et seq.* and §29B-1-1 *et seq.* of this code are inapplicable to the operation of the board.

(e) In performing its duties under this section, the board shall have access to all court records and medical and mental health records available to the court, and all documents of any type used by the medical director in developing the proposed placement plan.

(f) Each member of the board whose regular salary is not paid by the State of West Virginia shall be paid the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Reimbursement for expenses shall not be made, except upon an itemized account, properly certified by the members of the board. All reimbursement for expenses shall be paid out of the State Treasury upon a requisition upon the State Auditor.

(g) A board member shall recuse himself or herself if he or she has previously evaluated a person whose classification or placement is under review.

(h) The members of the board are immune from suit and liability, either personally or in their official capacity, for any claim for damage to, or loss of, property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred within the scope of their board duties or responsibilities: *Provided*, That nothing in this subsection shall be construed to protect any person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person.

(i) A board member is not subject to a subpoena to appear at a judicial hearing by virtue of being a member of the board, or fulfilling his or her duties under this section. Upon request of the circuit court, the board shall make all documents, reports, and other materials used in making its report available to the court or a party in the judicial proceeding regarding placement in redacted form upon the circuit court's request.

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CHAPTER 166

(S. B. 597 - By Senators Woodrum and Roberts)

[Passed March 8, 2023; in effect 90 days from passage (June 6, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §21A-2-6 of the Code of West Virginia, 1931, as amended, relating to unemployment compensation; and permitting the Commissioner of Workforce West Virginia to hire up to 200 exempt employees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. THE COMMISSIONER OF WORKFORCE WEST VIRGINIA.

§21A-2-6. Powers and duties generally.

The commissioner is the executive and administrative head of Workforce West Virginia and has the power and duty to:

(1) Exercise general supervision for the governance of Workforce West Virginia and propose rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the requirements of this chapter;

(2) Prescribe uniform rules pertaining to investigations and departmental hearings, and propose rules for promulgation;

(3) Supervise fiscal affairs and responsibilities of Workforce West Virginia;

(4) Prescribe the qualifications of, appoint, remove, and fix the compensation of, the officers and employees of Workforce West Virginia, subject to the provisions of §21A-4-10 of this code, relating to the board of review;

(5) Organize and administer Workforce West Virginia so as to comply with the requirements of this chapter and to satisfy any conditions established in applicable federal law or regulation;

(6) Make reports in the form and containing information required by the United States Department of Labor and comply with any requirements that the United States Department of Labor finds necessary to assure the correctness and verification of the reports;

(7) Make available to any agency of the United States charged with the administration of public works or assistance through public employment, upon its request, the name, address, ordinary occupation, and employment status of each recipient of unemployment compensation and a statement of the recipient's rights to further compensation under this chapter;

(8) Keep an accurate and complete record of all Workforce West Virginia proceedings, record and file all bonds and contracts, and assume responsibility for the custody and preservation of all papers and documents of Workforce West Virginia;

(9) Sign and execute in the name of the state, by Workforce West Virginia, any contract or agreement with the federal government, its agencies, other states, their subdivisions, or private persons;

(10) Prescribe a salary scale to govern compensation of appointees and employees of Workforce West Virginia;

(11) Exempt up to 200 positions of the offices of WorkForce West Virginia from the classified service of the state, the employees of which positions shall serve at the will and pleasure of the commissioner: *Provided*, That such exempt positions shall be in addition to those positions in classified and classified-exempt service under the classification plan adopted by the Division of Personnel. The Commissioner of Workforce West Virginia shall report all exemptions made under this section to the Director of the Division of Personnel as the commissioner determines necessary;

(12) Make the original determination of right in claims for benefits;

(13) Make recommendations and an annual report to the Governor concerning the condition, operation, and functioning of Workforce West Virginia;

(14) Invoke any legal or special remedy for the enforcement of orders or the provisions of this chapter;

(15) Exercise any other power necessary to standardize administration, expedite Workforce West Virginia business, assure the establishment of fair rules, and promote the efficiency of the service;

(16) Keep an accurate and complete record and prepare a monthly report of the number of persons employed and unemployed in the state. The report shall be made available upon request to members of the public and press;

(17) Provide, at Workforce West Virginia expense, a program of continuing professional, technical, and specialized instruction for the personnel of Workforce West Virginia;

(18) (A) Propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, under which agencies of this state shall revoke or not grant, issue, or renew any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with any employing unit whose account is in default with the commissioner with regard to the administration of this chapter. The term "agency" includes any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities, or public corporations. An employing unit is not in default if it has entered into a repayment agreement with the Unemployment Compensation Division of Workforce West Virginia and remains in compliance with its obligations under the repayment agreement;

(B) The rules shall provide that, before revoking, granting, issuing, or renewing any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with

any employing unit, the designated agencies shall review a list or lists provided by Workforce West Virginia that are in default. If the employing unit's name is not on the list, the agency, unless it has actual knowledge that the employing unit is in default with Workforce West Virginia, may grant, issue, or renew the contract, license, permit, certificate, or other authority to conduct a trade, profession, or business. The list may be provided to the agency in the form of a computerized database or databases that the agency can access. Any objections to the revocation or refusal to issue or renew shall be reviewed under the appropriate provisions of this chapter;

(C) The rules may be promulgated or implemented in phases so that specific agencies or specific types of contracts, licenses, permits, certificates, or other authority to conduct trades, professions, or businesses will be subject to the rules beginning on different dates. The presumptions of ownership or control contained in the Department of Environmental Protection's surface mining reclamation regulations promulgated under the provisions of §22-3-1 *et seq.* of this code are not applicable or controlling in determining the identity of employing units who are in default for the purposes of this subdivision. The rules shall also provide a procedure allowing any agency or interested person, after being covered under the rules for at least one year, to petition Workforce West Virginia to be exempt from the provisions of the rules;

(19) Deposit to the credit of the appropriate special revenue account or fund, notwithstanding any other provision of this code and to the extent allowed by federal law, all amounts of delinquent payments or overpayments, interest, and penalties thereon and attorney's fees and costs collected under the provisions of this chapter. The amounts collected shall not be treated by the Auditor or Treasurer as part of the general revenue of the state; and

(20) Enter into interagency agreements to assist in exchanging information and fulfilling the provisions of this article.

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CHAPTER 167

**(S. B. 734 - By Senators Woodrum, Barrett, Hamilton, Hunt,
Jeffries, Phillips, Queen, Smith, Stuart, Swope, and Weld)**

[Passed March 10, 2023; in effect 90 days from passage (June 8, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §5A-3-3c of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §5A-6-4d and §5A-6-4e; and to amend and reenact §5A-6B-4 of said code, all relating to state data accessibility and infrastructure resiliency; requiring adoption of cloud computing services by state agencies; requiring development of a cloud strategy by Chief Information Officer; encouraging digitization of state agency forms; and requiring annual reporting on information technology modernization.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-3c. Exemptions from purchasing requirements for contracts entered into as part of recovery from a declared state of emergency.

(a) The provisions of this article do not apply to contracts entered into during a state of emergency declared by the Governor pursuant to §15-5-6 of this code, so long as the contract is directly and solely related to the recovery from the declared state of emergency.

(b) The provisions of this article do not apply to the renewal of a contract entered into during a state of emergency declared pursuant to §15-5-6 of this code, if the contract is directly and

solely related to the recovery from the declared state of emergency during which the contract was initially entered. For purposes of this subsection, recovery does not include permanent reconstruction after the initial state of emergency has ended.

(c) The provisions of this article do not apply to the purchase of goods or services from the federal government, or an agency thereof, if the purchase of those goods and services is directly and solely related to the recovery from a state of emergency declared pursuant to §15-5-6 of this code.

(d) At the discretion of the Chief Information Officer, the provisions of this article may not apply to the purchase, procurement, or implementation of information technology in response to a qualified cyber security incident, as defined by §5A-6C-3 of this code: *Provided*, That the information technology is imminently necessary to protect the state's infrastructure or data.

(e) To qualify for the exemption contained in this section, the Director of the Division of Homeland Security and Emergency Management must certify that the contract or purchase is directly and solely related to the recovery from a declared state of emergency and attach a copy of the proclamation issued by the Governor's office to the certification. Such certifications shall be maintained by the Division of Homeland Security and Emergency Management until the contracts or purchase agreements have been fully executed.

(f) For purposes of this section, "directly and solely related" means that the goods or services being purchased or contracted for will be used for recovery from the state of emergency only and will not be used for any other purpose.

ARTICLE 6. OFFICE OF TECHNOLOGY.

§5A-6-4d. Responsibilities of the Chief Information Officer to implement information technology modernization.

(a) For the purposes of this section, "cloud computing service" means a service that enables on demand self-service network access to a shared pool of configurable computer resources

including, but not limited to, data storage, analytics, electronic commerce, streaming services, mobile services, electronic mail, document sharing, and document editing which can be rapidly provided and released with minimal management effort or service provider interaction.

(b) The Chief Information Officer shall develop a comprehensive strategy and implement standards for the procurement, adoption, and utilization of cloud computing services by the state and its agencies. In developing the strategy, the Chief Information Officer may consult with other relevant state or federal agencies and relevant private sector stakeholders.

(c) When implementing the comprehensive strategy described in subsection (b) of this section, the Chief Information Officer may:

(1) Consider activities that accelerate the development of standards addressing interoperability and portability of cloud computing services in collaboration with private sector stakeholders;

(2) Consider activities that advance the development of conformance testing to be performed by private sector stakeholders to support cloud computing standardization;

(3) Consider activities that support the development of appropriate security and architecture frameworks in consultation with private sector stakeholders; and

(4) Identify modern security control best practices to address security and privacy requirements, and to enable the use and adoption of cloud computing services, including practices defined in National Institute of Standards and Technology, Federal Risk and Authorization Management Program, and any equivalent state program adopted in West Virginia.

(d) Beginning on December 1, 2023, and on December 1 of each year after, the Chief Information Officer shall report annually the status of the state's comprehensive strategy described in subsection (b) of this section to the Joint Committee on Government and Finance and to the Governor. To assist in the

creation of the report, all relevant state agencies shall cooperate with the Chief Information Officer and provide any information required by the Chief Information Officer in an accurate and timely manner.

§5A-6-4e. Digitization of state forms.

(a)(1) All state agencies shall explore existing paper-based forms and applications so that said forms and applications can be made conveniently available to state residents.

(2) The Chief Information Officer may work collaboratively with private sector vendors to establish contracts and services to enable state agencies in modernizing government services to be delivered through a digital media.

(3) The Chief Information Officer shall work with all state agencies to ensure that all paper-based forms and applications are made available to state residents through digital media by no later than July 1, 2025.

ARTICLE 6B. CYBER SECURITY PROGRAM.

§5A-6B-4. Responsibilities of agencies for cybersecurity.

State agencies and other entities subject to the provisions of this article shall:

(1) Undergo an appropriate cyber risk assessment as required by the cybersecurity framework or as directed by the Chief Information Security Officer;

(2) Adhere to the cybersecurity standard established by the Chief Information Security Officer in the use of information technology infrastructure;

(3) Adhere to enterprise cybersecurity policies and standards;

(4) Manage cybersecurity policies and procedures where more restricted security controls are deemed appropriate;

(5) Submit all cybersecurity policy and standard exception requests to the Chief Information Security Officer for approval;

(6) Complete and submit a cyber risk self-assessment report to the Chief Information Security Officer by December 31, 2020;

(7) Manage a plan of action and milestones based on the findings of the cyber risk assessment and business needs; and

(8) Submit annual reports to the Chief Security Information Officer no later than November 1 of each year beginning on November 1, 2023. The report shall contain an analysis and evaluation of each agency or entity's cybersecurity readiness, ability to keep user data safe, data classifications, and other steps that the agency or entity has taken towards information technology modernization that are consistent with the objectives of §5A-6-4d and §5A-6-4e of this code.

§5A-6B-6. Annual reports.

The Chief Information Security Officer shall annually, beginning on December 1, 2019, and on December 1 of each year thereafter, report to the Joint Committee on Government and Finance and to the Governor on the status of the cybersecurity program, including any recommended statutory changes. The report shall include a summary of each state agency's report submitted pursuant to §5A-6B-4 of this code regarding the agency's cybersecurity readiness and the agency's information technology modernization efforts.

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CHAPTER 168

**(Com. Sub. for H. B. 2814 - By Delegates Young, Anderson,
Zatezalo, Heckert and Clark)**

[Passed March 10, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §24-2I-1 and §24-2I-2, all relating to the creation of a Hydrogen Power Task Force in West Virginia; providing for a short title; providing for the establishment of the task force; providing for membership appointments and management; establishing a duty of the task force to study hydrogen-fueled energy in West Virginia; providing specific topics of study; providing a reporting requirement; and providing for a sunset date of July 1, 2024.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2I. HYDROGEN POWER TASK FORCE.

§24-2I-1. Title.

This article shall be known as "Hydrogen Power Task Force Act".

§24-2I-2. Establishment of the task force.

(a) There is hereby established a task force to study hydrogen-fueled energy in West Virginia's economy and energy infrastructure. Such study shall include, without limitation:

(1) A review of regulations and legislation needed to guide the development and achievement of economies of scale for a hydrogen energy ecosystem in the state;

(2) An examination of how to position the state to take advantage of competitive incentives and programs created by the federal Infrastructure Investment and Jobs Act and the federal Inflation Reduction Act;

(3) Recommendations for post-secondary education or workforce initiatives to prepare the state's workforce for hydrogen fueled energy-related jobs;

(4) An examination of the sources of potential hydrogen, including, but not limited to, coal, oil, natural gas, hydro, wind, solar, biogas, and nuclear;

(5) Recommendations for funding and tax preferences for building hydrogen-fueled energy facilities at sites throughout West Virginia;

(6) Recommendations regarding funding sources for developing hydrogen fueled energy programs and infrastructure; and

(7) Recommendations for potential end uses of hydrogen-fueled energy.

(b) The task force shall consist of the following members:

(1) A representative from a regulated electric utility company, who shall be appointed by the Governor;

(2) A representative from the fossil fuel energy industry, who shall be appointed by the Governor;

(3) A representative from the manufacturing industry with experience in hydrogen-fueled energy technology, who shall be appointed by the Governor;

(4) A representative from environmental organizations that advocate for renewable energy, who shall be appointed by the Governor;

(5) The chairperson of the Public Service Commission or his or her designee;

(6) The Secretary of the Department of Environmental Protection or his or her designee;

(7) The Secretary of the Department of Economic Development or his or her designee;

(8) The Secretary of the Department of Commerce or his or her designee; and

(9) A representative from higher education.

(c) All initial appointments to the task force shall be made not later than 90 days after the effective date of this section. Any vacancy shall be filled by the appointing authority, as applicable.

(d) The chairperson shall be elected by members of the task force at the first meeting, which meeting is to be called by the Governor. The first meeting shall be held not later than 120 days after the effective date of this section.

(e) Not later than July 1, 2024, the task force shall submit an electronic report on its findings and recommendations to the Joint Committee on Government and Finance.

(f) The task force shall terminate on the date that it submits such report or July 1, 2024, whichever is later.

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CHAPTER 169

(H. B. 3146 - By Delegates Storch, Howell, Clark and Linville)

[Passed March 9, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto the following new article, designated as §6-9C-1, §6-9C-2, §6-9C-3, §6-9C-4, §6-9C-5, §6-9C-6, §6-9C-7, §6-9C-8, and §6-9C-9, and §6-9C-10, all relating to adopting the Model Public Meetings During Emergencies Act; setting forth short title; defining terms; providing for virtual meetings; providing mechanism for authorization of virtual meetings; setting forth rules for, and conduct of virtual meetings; providing for public observation of, and public participation in, virtual meetings; providing for notice of virtual meetings; providing for rules governing same and exceptions; providing for procedural rules governing conduct of same; and establishing relation to the Electronic Signatures in Global and National Commerce Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9C. UNIFORM PUBLIC MEETINGS DURING EMERGENCIES ACT.

§6-9C-1. Short title.

This article may be cited as the Public Meetings During Emergencies Act.

§6-9C-2. Definitions.

In this article:

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Emergency" means an event or condition that is an emergency, disaster, or public health emergency as addressed in §15-5-2 and §15-5-6 of this code.

"Emergency declaration" means a declaration of emergency issued by a person or agency authorized to do so under §15-5-6 of this code and that is in effect.

"Meeting" has the same definition as in §6-9A-2 of this code.

"Person" has the same definition as in §6-9A-2 of this code. The term does not include a public corporation, government or governmental subdivision, agency, or instrumentality.

"Public agency" has the same definition as in §6-9A-2 of this code, however, for purposes of this article, it does not include the Legislature.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Virtual meeting" or "virtually" means a meeting of a public agency or any part thereof, at which some or all of the members of the public agency participate wholly or partly by electronic means.

§6-9C-3. Virtual meetings.

(a) A public agency may meet virtually during an emergency that is the subject of an emergency declaration if otherwise permitted by law, or all or part of the jurisdiction of the public agency is subject to the emergency declaration; and the person authorized by law or by rule of the public agency to act for the public agency determines that due to the emergency it would not be practical or prudent for the public agency to meet physically or if the emergency declaration prohibits physical meetings.

(b) If a virtual meeting of a public agency authorized by §6-9C-3(a) of this code complies with the requirements of §6-9C-4, §6-9C-5, and §6-9C-6 of this code, then any action taken at a virtual meeting has the same legal force and effect as an action taken at a physical meeting of the public agency. All other laws of the state that apply to a physical meeting of a public agency shall, to the extent practicable and not inconsistent with a virtual meeting, apply to a virtual meeting of the public agency.

§6-9C-4. Authorization for virtual meeting.

(a) A public agency may conduct a virtual meeting while an emergency declaration is in effect that applies to all or part of the jurisdiction of the public agency if:

(1) The emergency declaration prohibits, limits, or has the effect of prohibiting or limiting an in-person meeting of the public agency; or

(2) The presiding officer of the public agency or other individual authorized to act for the public agency determines it is not practical or prudent for the public agency to conduct an in-person meeting because of the emergency; and

(A) Communicates to the members of the public agency that the meeting shall be a virtual meeting; and

(B) Takes reasonable steps to inform members of the public that the meeting shall be a virtual meeting.

§6-9C-5. Conduct of virtual meeting.

(a) A public agency shall, to the extent practicable, select a means to conduct a virtual meeting that is compatible with assistive technology commonly used by individuals with disabilities and that facilitates the accommodation needs of individuals with disabilities to access the meeting.

(b) Except as provided in §6-9C-5(c) or §6-9C-5(d) of this code, the means used to conduct a virtual meeting shall permit each member of the public agency who attends the meeting to see and

hear during the meeting and to be seen and heard by, the other members of the public agency who attend the meeting.

(c) If a member of a public agency is unable to obtain visual access to the virtual meeting but is able to obtain audio access that permits the member, during the meeting, to hear and be heard by the other members of the public agency who attend the meeting, the member may attend by audio access.

(d) If a public agency lacks the capacity to provide contemporaneous visual access to a virtual meeting for members of the public agency, the public agency may conduct the meeting by audio-only access that permits each member of the public agency who attends the meeting, to hear and be heard during the meeting by the other members of the public agency who attend the meeting.

(e) A member of a public agency who attends a virtual meeting is considered present for all purposes, including for determination of a quorum and voting, if during the meeting, the member may:

(1) For a meeting conducted in compliance with §6-9C-5(b) of this code, see and hear and be seen and heard by the other members of the public agency who attend; or

(2) For a meeting conducted in compliance with §6-9C-5(c) or (d) of this code, may hear and be heard by the other members of the public agency who attend.

(f) A member of a public agency who attends a virtual meeting through electronic means that provide audio-only access to the meeting shall state the member's name each time the member speaks. Failure by a member to state the member's name does not invalidate an action taken at the virtual meeting.

(g) A vote taken at a virtual meeting shall be by a process that identifies how each member of the public agency votes.

(h) The minutes of a virtual meeting shall include any vote taken, that the meeting was conducted by electronic means, the technology used, and which members of the public agency attended by electronic means.

§6-9C-6. Public observation.

(a) If the open meetings law requires that the public be able to observe all or part of a meeting of a public agency in real time:

(1) The public agency shall permit the public to observe a virtual meeting or the part of the virtual meeting that would be required to be open to the public if it were part of an in-person meeting; and

(2) The public agency shall provide the technological means to allow the members of the public who observe the virtual meeting to see and hear or, if the public agency conducts the meeting by audio-only access under §6-9C-5(d) of this code, to hear any members of the public authorized by the public agency to speak in the meeting.

(b) A document, exhibit, or other record presented to a public agency at a virtual meeting that, under the open meetings law, would have been available to the public at an in-person meeting, including members of the public observing or participating in a virtual meeting under §6-9C-7 of this code, shall be made available to the public at the same time as the virtual meeting to the extent practicable.

§6-9C-7. Public participation.

(a) If a law of this state or a political subdivision of the state or a rule, practice, or procedure adopted by the public agency requires that members of the public be permitted to participate in a meeting of the public agency, the public agency to the extent practicable shall permit members of the public to participate in a virtual meeting, subject to the conditions that apply at an in-person meeting of the public agency.

(b) If members of the public are permitted to speak at a virtual meeting, the technology used to conduct the meeting shall permit the members of the public agency and members of the public attending the meeting to hear the members of the public who speak at the meeting.

(c) If a public agency considers at a virtual meeting a matter affecting the right or interest of a person entitled by other law of the state or a political subdivision of this state or by rule of the public agency to participate, present evidence, or examine or cross-examine witnesses at an in-person meeting, the public agency shall permit the person to use the same technology that the public agency uses to conduct the virtual meeting, or provide equivalent access, to attend the meeting and present evidence, or examine or cross-examine witnesses in the meeting.

(d) If a person to which §6-9C-7(c) of this code applies objects that the virtual meeting does not allow the person to effectively protect the right or interest referred to in §6-9C-7(c) of this code, the public agency shall consider the objection and may proceed with the matter at a virtual meeting if the agency determines that the virtual meeting will allow the person to effectively protect the right or interest. The determination and the reason for the determination shall be stated in a record.

§6-9C-8. Notice.

(a) In addition to any other requirement concerning notice, a public agency, for a meeting of the public agency, shall give notice of a virtual meeting and shall specify that the meeting will be a virtual meeting and the technology that will be used for the virtual meeting.

(b) Notice of a virtual meeting shall specify how:

(1) Members of the public may observe the meeting in real time pursuant to §6-9C-6 of this code;

(2) Members of the public permitted to participate, present evidence, or examine or cross-examine witnesses at the meeting pursuant to §6-9C-7 of this code may do so;

(3) A member of the public may alert the public agency of a technical or quality problems that prevents the member from accessing the meeting; and

(4) A member of the public with a disability may request a reasonable accommodation to access the meeting.

§6-9C-9. Procedural rules.

A public agency may adopt rules for conducting a virtual meeting under this article, comparable to rules for conducting an in-person meeting of the public agency. The rules may include:

(1) The means by which the public agency will inform members of the public that a virtual meeting will be held;

(2) The effect of a technical or quality problems that interferes with meeting or access to a meeting by a member of the public agency or the public;

(3) The means by which a record considered at a meeting is made available to the public agency and, if required by other law, the public;

(4) The means for access to a meeting by an individual with a disability; and

(5) The process by which a person may object under §6-9C-7 of this code to the conduct of a meeting on the ground that the procedure denies the person due process of law.

§6-9C-10. Electronic Signatures in Global and National Commerce Act.

This article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 *et seq.*, but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in Section 103 (b) of that act, 15 U.S.C. § 7003(b).

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CHAPTER 170

**(H. B. 3307 - By Delegates Hanshaw (Mr. Speaker), Street,
Zatezalo, Ward, Fluharty, Phillips, McGeehan and Howell)**

[Passed March 2, 2023; in effect March 17, 2023.]
[Approved by the Governor on March 17, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §29-36-1, §29-36-2, §29-36-3, §29-36-4, §29-36-5, §29-36-6, and §29-36-7, all relating to establishing the West Virginia-Ireland Trade Commission; establishing findings; providing for the composition of commission, appointment of members and filling of vacancies; providing for compensation of commission members; providing for meetings, selection of a chair, maintenance of records, and a quorum; setting forth purposes of the commission; requiring commission to make certain reports, findings, and recommendations to Governor and Legislature; providing for acceptance of funds by commission; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 36. WEST VIRGINIA-IRELAND TRADE COMMISSION.

§29-36-1. Findings.

Findings—the Legislature finds that:

Over 15 percent of West Virginia's population is of Irish descent, which, according to the Irish diplomat Barbara Jones, represents a higher figure than that in Boston or New York City;

The ties that bind Ireland to West Virginia are deep and lasting, reflected on West Virginia's map from Ireland to Irish Mountain, from Tyrone to Tralee; and

Irish heritage has been the fortunate lot of many great West Virginians, such as philanthropist Bernard P. McDonough, the inventor Michael Owens, and US Senator John Kenna;

Ireland and West Virginia are attempting to reinvent their economies for success in the twenty-first century; and

West Virginians have both historic and practical reasons to desire the building of firmer commercial links with Ireland.

§29-36-2. Establishment of commission; Composition; Appointments; Vacancies.

For these and other reasons, there is hereby established the West Virginia-Ireland Trade Commission. The commission shall consist of 9 members, to be appointed as follows:

(a) Two members of the Senate, who shall be appointed by the President of the Senate, shall have knowledge of or current or past involvement in organizations that promote Irish affairs, or shall have interest in the well-being of trade relations between West Virginia and Ireland; and two members of the House of Delegates, who shall be appointed by the Speaker of the House of Delegates, shall have knowledge of or current or past involvement in organizations that promote Irish affairs, or shall have interest in the well-being of trade relations between West Virginia and Ireland. The legislative members of the commission shall serve during the two-year legislative term in which the appointments are made.

(b) Five members of the commission shall be appointed by the Governor, with the advice and consent of the Senate, and shall serve for a term of four years. The members thus appointed shall include at least one representative from: a public institution of higher education; the West Virginia Chamber of Commerce, or its successor organization; and at least two public members shall represent Irish American communities or interest, neither of whom shall be members of the same political party.

(c) All appointments shall be made no later than July 1, 2023. A vacancy in the membership of the commission shall be filled in the same manner as the original appointment was made.

§29-36-3. Compensation; Meetings; Chair; Records; Quorum.

(a) Members of the commission shall receive the same compensation authorized by law for members of the Legislature for the interim duties for each day, or portion thereof, the member is engaged in the discharge of official duties. All members shall be reimbursed for their actual and necessary expenses incurred in the discharge of official duties, except that mileage shall be reimbursed at the same rate as that authorized for members of the Legislature.

(b) (1) The commission shall meet and hold hearings at the places it designates throughout the State.

(2) The commission shall elect a chair from amongst its members. The chair may appoint from among the commission members subcommittees and subcommittee chairs at their discretion.

(c) The commission shall keep records of all proceedings which shall be public and open to inspection, shall adopt a seal, and shall exercise and perform the duties prescribed by this section.

(d) A majority of the members of the commission shall constitute a quorum for the transaction of the business of the commission.

§29-36-4. Purpose of Commission.

The purpose of the West Virginia-Ireland Trade Commission shall be to:

(1) Advance bilateral trade and investment between West Virginia and Ireland;

(2) Initiate joint action on policy issues of mutual interest to West Virginia and Ireland;

(3) Promote business and academic exchanges between West Virginia and Ireland;

(4) Encourage mutual economic support between West Virginia and Ireland;

(5) Encourage mutual investment in the infrastructure of West Virginia and Ireland; and

(6) Address such other issues as determined by the Commission.

§29-36-5. Reports.

The commission shall report its findings, results, and recommendations to the Governor, and the Legislature, within one year of its initial organizational meeting and by February 1st of each succeeding year for the activities of the preceding calendar year. The report shall be in writing and include recommendations as deemed appropriate by the commission to effectuate its purpose, as provided by this section.

§29-36-6. Funds.

The West Virginia-Ireland Trade Commission shall be authorized to raise funds, through direct solicitation or other fundraising events, alone, or with other groups, and accept gifts, grants, and bequests from individuals, corporations, foundations, governmental agencies, and public and private organizations and institutions, to defray the commission's administrative expenses and to carry out its purposes.

§29-36-7. Effective Date.

This act shall take effect March 17, 2023.

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CHAPTER 171

(H. B. 3360 - By Delegates Kelly and Hott)

**[By Request of the West Virginia Department of
Homeland Security]**

[Passed March 11, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-13-1, *et seq.*, relating generally to creating the Office of the Inspector General in the Department of Homeland Security; authorizing the appointment of the Inspector General; setting forth duties and powers of the Inspector General; setting forth provisions for appointment and removal of Inspector General; establishing qualifications for Inspector General; authorizing delegation of duties; authorizing employing persons to perform duties of the office and authorizing and directing rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. OFFICE OF THE INSPECTOR GENERAL.

§15A-13-1. Office created; appointment of Inspector General.

(a) There is hereby created the Office of the Inspector General as a separate and independent operating agency within the department.

(b) The Office of the Inspector General shall be headed by the Inspector General.

(c) The Inspector General shall be appointed by the Governor, subject to the advice and consent of the Senate.

(d) The term of the Inspector General is five years.

(e) At the end of a term, an Inspector General shall be eligible for reappointment by the Governor, subject to confirmation as required by the provisions of subsection (c) of this section. The Inspector General may continue to serve until a successor is appointed if he or she is not reappointed.

(f) If a vacancy occurs in the position, an interim Inspector General may be appointed as successor to serve until a successor is appointed.

(g) The Inspector General may be removed by the Governor during his or her term only for:

- (1) Malfeasance or gross misfeasance in office;
- (2) Persistent failure to perform the duties of the office; or
- (3) Conduct prejudicial to the proper administration of justice.

(h) The Inspector General shall be appointed without regard to political affiliation and shall be professionally qualified through experience or education in at least two of the following areas:

- (1) The practice of law;
- (2) Auditing;
- (3) Government operations;
- (4) Financial analysis;
- (5) Management analysis;
- (6) Public administration; or
- (7) Fraud investigation.

(i) The Inspector General shall be paid an annual salary not to exceed \$95,000.

(j) The Inspector General:

(1) Shall perform inspections, evaluations, and reviews, and provide quality control for all investigations within the department, and supervise all personnel of the Office of the Inspector General;

(2) Shall investigate fraud, waste, abuse of departmental funds, and behavior in the department that threatens public safety or demonstrates negligence, incompetence, misfeasance, or malfeasance;

(3) Shall cooperate with and coordinate investigative efforts with law enforcement, and where a preliminary investigation establishes a sufficient basis to warrant referral, shall refer such matters to the appropriate prosecuting attorney or the appropriate federal law-enforcement agency; and

(4) May subpoena any person or evidence, administer oaths, take and certify affidavits, and take depositions and other testimony for the purpose of investigating fraud, waste, abuse of departmental funds, or behavior in the department that threatens public safety or demonstrates negligence, incompetence, or malfeasance.

(A) If a person fails to comply with a lawful order or subpoena issued under this subsection, on petition of the Inspector General or a designated Assistant Inspector General, a court of competent jurisdiction may compel:

(i) Compliance with the order or subpoena; or

(ii) Testimony or the production of evidence.

(k) If the Office of the Inspector General is unable to investigate a complaint or allegation because of a conflict of interest, the Office of the Inspector General shall refer the complaint or allegation to the Attorney General for referral to another investigative entity.

(l) Neither the Governor, the secretary, nor any other person, may impede, interfere, or inhibit the Inspector General from initiating, conducting, or completing any investigation, inspection, evaluation, review, or other activity regarding oversight of any investigation conducted by the Office of the Inspector General.

(m) The position of the Inspector General shall be governed by the classified-exempt service provisions in §29-6-4 of this code: *Provided, That, any employees of the Office of the Inspector General shall be governed by the classified service provisions of §29-6-1 et seq.* of this code and rules promulgated thereunder.

(n) The Inspector General may employ such professional personnel, investigators, and other personnel, including certified law-enforcement officers, necessary for the proper administration of the office.

(o) The Inspector General may delegate duties to other employees or obtain services through contract, but the Inspector General is responsible for all official tasks so delegated.

(p) The Inspector General shall propose legislative and procedural rules in accordance with the provisions of chapter 29A of this code in order to implement provisions of this section and to carry out the duties prescribed therein. The Inspector General may promulgate emergency rules pursuant to §29A-3-15 of this code to effectuate the purposes of this section.

(q) Reports of investigations are confidential and shall be provided under seal to the Governor, the secretary, and the Joint Committee on Government and Finance on a quarterly basis.

(r) Reports and documents relating to active investigations involving possible criminal conduct are confidential and are not subject to the provisions of 29B-1-1 *et seq.*

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CHAPTER 172

(H. B. 3444 - BY DELEGATE PHILLIPS)

[Passed March 6, 2023; in effect from passage.]

[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §4-13A-2 of the Code of West Virginia, 1931, as amended, relating to adding the Cabinet Secretary of Economic Development, or a designee to the West Virginia Semiquincentennial Commission.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. WEST VIRGINIA SEMIQUINCENTENNIAL COMMISSION AND FUND.

§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 Cabinet Secretary of Economic Development, or a designee;

(4) The Curator of the Department of Arts, Culture, and History, or a designee;

(5) The Secretary of the Department of Tourism, or a designee;

(6) The Executive Director of the Herbert Henderson Minority Affairs Office, or a designee;

(7) The West Virginia State Archivist;

(8) The Director of the West Virginia State Museums;

(9) 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

(10) 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;

(11) 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;

(12) 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.



CHAPTER 173

(Com. Sub. for S. B. 220 - By Senators Woodrum, Deeds, Rucker, Stuart, Hamilton, and Trump)

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-12E-12; to amend said code by adding thereto a new article, designated §19-12F-1, §19-12F-2, §19-12F-3, §19-12F-4, §19-12F-5, §19-12F-6, §19-12F-7, §19-12F-8, §19-12F-9, §19-12F-10, and §19-12F-11; to amend and reenact §60-7-12 and §60-7-13 of said code; and to amend said code by adding thereto a new article, designated §60-10-1 and §60-10-2, all relating to further regulation of hemp-derived cannabinoid products and regulation of kratom; creating the Select Plant-Based Derivatives Regulation Act: Industrial Hemp; creating the Select Plant-Derived Regulation Act: Kratom; making legislative findings and declaring the purpose of the acts; providing applicability; defining terms; requiring permits to manufacture, process, distribute, offer to sell, and sell regulated products; vesting regulatory authority in the Commissioner of Agriculture and the Alcohol Beverage Control Commission; granting legislative and emergency rule-making authority to the Commissioner of Agriculture and the Alcohol Beverage Control Commissioner; establishing an internal effective date from passage for purposes of declaring illegal products contraband and authorizing seizure, forfeiture, and destruction; limiting lawful sale of certain regulated products to persons 21 years of age or older; requiring age verification for internet sales and sales not made face-to-face; creating a eleven percent tax on retail sales to be collected by the Tax Commissioner quarterly for certain hemp products and kratom products;

establishing distribution of tax revenue; authorizing the Alcohol Beverage Control Commissioner to enforce regulation of the product at the retail level; clarifying Alcohol Beverage Control Commissioners authority over alcohol licensees selling kratom and hemp-derived cannabinoid products; and creating criminal offenses related to regulated products and establishing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

CHAPTER 19. AGRICULTURE.

ARTICLE 12E. INDUSTRIAL HEMP DEVELOPMENT ACT.

§19-12E-12. Regulation of Select Plant-Based Derivatives: Industrial Hemp.

(a) This section shall be known as the Select Plant-Based Derivatives Regulation Act: Industrial Hemp.

(b) The Legislature finds that certain plant-based derivatives can be regulated so as not to interfere with the strict regulation of controlled substances in this state. The purpose of the act is to allow limited, regulated access to certain plant-based derivatives which are naturally occurring and as authorized by the provisions of this article for adults 21 years of age and older: *Provided*, That, the provisions of this section shall not apply to naturally occurring plant-based derivative products not containing tetrahydrocannabinol content.

(c) As used in this section:

(1) "Alcohol Beverage Control Commissioner" means the Alcohol Beverage Control Commissioner or his or her designees.

(2) "Commissioner" means the Commissioner of Agriculture or his or her designees.

(3) "Contaminated" means made impure and unsafe by biological, chemical, or physical additives.

(4) "Department" means the West Virginia Department of Agriculture.

(5) "Final product" means a product approved by the Department in accordance with the provisions of this article, and any other applicable rules and requirements set forth by the Department, as specified for the product.

(6) "Hemp-derived cannabinoid" means a naturally occurring non-synthetic substance as follows:

(A) Delta-9 tetrahydrocannabinol with a concentration level consistent with 7 U.S.C. §5940;

(B) Delta-8 tetrahydrocannabinol;

(C) Delta-10 tetrahydrocannabinol;

(D) Hexahydrocannabinol;

(E) Tetrahydrocannabiphorol (THCp); and

(F) Tetrahydrocannabivarin (THCv).

(7) "Manufacturer" means a person or entity which grows industrial hemp.

(8) "Non-naturally occurring derivative" means a product that is contaminated as defined by this article, or a product that, upon result of Department laboratory testing, is found to be in violation of this article or rules promulgated therewith, or a product that is unlawful pursuant to 7 U.S.C. §5940 or otherwise violates applicable federal regulations.

(9) "Processor" means a person or entity that processes compounds or converts hemp-derived cannabinoids into a hemp-derived cannabinoid product and distributes, sells, or offers for sale, hemp-derived cannabinoid products in this state on a wholesale basis to a retailer.

(10) "Seller" means a person or entity that distributes, offers for sale, or sells hemp-derived products to persons for personal consumption.

(11) "Retail sales" means the sale of hemp-derived products in a commercial setting as determined and set forth in rules promulgated by the commissioner.

(d) Any person manufacturing, processing, distributing, offering for sale, or selling any hemp-derived cannabinoid products in this state shall have a permit issued by the commissioner and be otherwise authorized to do business in this state. The commissioner may issue manufacturer, processor and retailer permits.

(e) The Commissioner of Agriculture shall propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code that include, but are not limited to:

(1) Issuance of permits to persons who wish to manufacture, handle, process, distribute, offer for sale, or sell hemp-derived cannabinoid products;

(2) Regular sampling and testing of hemp-derived cannabinoid products to determine purity levels;

(3) Supervision of the hemp-derived cannabinoid products during their cultivation, processing, and sale;

(4) Assessment of fees as commensurate with the need of the commissioner's activities in issuing permits, laboratory testing, and in overseeing the regulation of hemp-derived products;

(5) Approving the manufacture, production, sale, processing, distributing, and transport of hemp-derived cannabinoid products;

(6) Developing guidelines for the labeling of hemp-derived cannabinoid products, including but not limited to, a statement which says "KEEP OUT OF REACH OF CHILDREN. CONSULT YOUR PHYSICIAN BEFORE USE IF YOU ARE PREGNANT OR TAKING ANY MEDICATION" and "USE OF THIS PRODUCT MAY IMPACT DRUG TESTING RESULTS";

(7) Developing guidelines or standards related to the display or staging of hemp-derived cannabinoid products to increase the safety of underage patrons in retail environments;

(8) Developing guidelines or standards to restrict the advertising or marketing of unapproved or unlawful products;

(9) Developing prohibitions on child targeted packaging and shapes and forms of products;

(10) Developing administrative rules, procedures, and sanctions for violations of this section.

(11) Any other rules and procedures necessary to carry out the purposes of this article.

(f) The Commissioner of Agriculture and the Alcohol Beverage Control Commissioner may, pursuant to §29A-3-15 of this code, promulgate such separate or joint emergency rules as are necessary to effectuate the purposes of this article.

(g) Any website owned, managed, or operated by a person who manufactures, processes, distributes, offers for sale, or sells hemp-derived cannabinoid products to persons in this state shall employ a neutral age-screening mechanism to verify legal age. The mechanism may include an age-gate, age-screen, or any other age-verification mechanism approved by the commissioner.

(h) Any person or entity distributing, offering to distribute, or selling hemp-derived cannabinoid products to persons in this state by means other than a direct in-person transaction may employ an age verification mechanism approved by the commissioner.

(i) In addition to all other applicable taxes, there is hereby levied an additional tax equal to 11 percent of the retail sales price on each retail sale of hemp-derived cannabinoids for the privilege of engaging in the business of selling hemp-derived cannabinoid products.

(1) For the privilege of engaging or continuing within this state in the business of the retail sale of hemp-derived cannabinoid

products, as defined in subdivision (6), subsection (a) of this section, there is hereby levied upon and collected from every person exercising the privilege a privilege tax.

(2) The rate of tax imposed by this subsection is 11 percent of the retail sales price of hemp-derived cannabinoid products sold during the reporting period, depending upon the person's method of accounting for federal income tax purposes. The tax imposed by this subsection shall not be added by the retailer as a separate charge or line item on any sales slip, invoice, receipt, other statement, or memorandum of the price paid by a customer.

(3) The tax shall be due and payable on a quarterly basis as follows: On the 20th day of January, April, July, and October for the preceding calendar quarter. When the payment of tax is due, the person shall file a tax return in a form prescribed by the Tax Commissioner. The Tax Commissioner may require such forms, schedules, and returns and impose such filing and remittance requirements that are necessary or convenient for the efficient administration of taxes imposed by this subsection.

(4) The taxes imposed by this subsection shall be paid to the Tax Commissioner by electronic funds transfer unless electronic payment is prohibited by state or federal law. Tax returns required by this subsection shall be filed electronically with the Tax Commissioner.

(5) If any retailer does not renew its permit, relinquishes its permit, has said permit to operate suspended or revoked, or otherwise ceases selling hemp-derived cannabinoid products then any tax, additions to tax, penalties, and interest imposed by this section and by §11-10-1 *et seq.* of this code, shall become due and the retailer shall make a final return or returns and pay any tax which is due within 90 days of not renewing its permit, relinquishing its permit, having its permit to operate suspended or revoked, or otherwise ceasing business. The unpaid amount of any tax is to be considered a lien.

(6) All money received from the tax imposed under this subsection, including any interest and additions to tax paid under

§11-10-1 *et seq.* of this code, less the amount of any refunds, shall be deposited into the Agricultural Fees Fund created by §19-1-4c of this code.

(7) Persons or entities subject to the tax imposed by this subsection shall provide to the Tax Commissioner any information required by the Tax Commissioner to administer, collect, and enforce the tax imposed by this subsection.

(8) Notwithstanding any provision of §11-10-1 *et seq.* of this code or of this section to the contrary, the Tax Commissioner, and the commissioner shall enter into written agreements pursuant to which the Tax Commissioner shall disclose to designated employees of the department, whether a particular retailer is in good standing with the Tax Commissioner, and the commissioner shall disclose to designated employees of the Tax Commissioner information a retailer provides to the commissioner pursuant to this code. Tax information disclosed pursuant to a written agreement shall remain confidential in the hands of the receiver and shall not be disclosable under §29B-1-1 *et seq.* of this code. To the extent feasible, this information should be shared or exchanged electronically to ensure safe destruction, or as necessary, proper file retention practices.

(9) The Tax Commissioner may promulgate, in accordance with the provisions of §29A-3-1 *et seq.* of this code, any necessary legislative rules, including emergency rules, as the Tax Commissioner considers necessary for the efficient administration of taxes imposed by this subsection.

(A) Funds from the tax imposed by the provisions of subdivision (1) of this subsection and deposited in the Agricultural Fees Fund, shall be divided and deposited as follows:

(i) Sixty-five percent shall remain in the Agriculture Fees Fund;

(ii) Five percent shall be transferred to the Fight Substance Abuse Fund created by §60A-9-8 of this code;

(iii) Thirty percent shall be deposited in the Alcohol Beverage Control Enforcement Fund established by the provisions of §60-7-13 of this code.

(B) Notwithstanding any provision in §11-9-1 *et seq.* of this code to the contrary, and as relevant to the tax imposed by §16A-9-1 of this code, the West Virginia Tax Crimes and Penalties Act set forth in §11-9-1 *et seq.* of this code shall apply with like effect as if the said West Virginia Tax Crimes and Penalties Act were applicable only to the tax imposed by §16A-9-1 *et seq.* of this code and were set forth in extenso in §16A-9-1 *et seq.* of this code.

(C) Notwithstanding any provision of §11-10-1 *et seq.* of this code, or any other provision of this code to the contrary, each and every provision of the West Virginia Tax Procedure and Administration Act as set forth in §11-10-1 *et seq.* of this code applies to the tax imposed by §16A-9-1 *et seq.* with like effect as if the said West Virginia Tax Procedure and Administration Act were applicable only to the tax imposed by §16A-9-1 *et seq.* of this code and were set forth in extenso in §16A-9-1 *et seq.* of this code.

(j) All fees collected pursuant to the provisions of this subsection shall be deposited with the State Treasurer to the credit of the Agricultural Fees Fund established by the provisions of §19-1-4c of this code for the use of the commissioner for administering and enforcing the provisions of this article.

(k)(1) The provisions of this section related to retail sales shall be enforced by the commissioner with the assistance of the Alcohol Beverage Control Commissioner.

(2) The commissioner and the Alcohol Beverage Control Commissioner shall enter into a memorandum or memoranda of understanding to facilitate the enforcement of this section.

(l)(1) Any hemp-derived product found in this state in violation of this article is hereby declared contraband and any property interest in the hemp-derived product is vested in the State of West Virginia and is subject to seizure, forfeiture, and destruction.

(2) Any certified law-enforcement officer in this state is authorized to enforce the criminal provisions of this section, and enforcement agents of the Alcohol Beverage Control Commissioner are authorized to enforce the administrative retailer provisions of this section as relating to retail sales.

(3) The commissioner shall provide the requisite training necessary to enforce the criminal and administrative provisions of this section.

(4) The provisions of this subsection are effective from passage.

(m) Any person who manufactures, processes, distributes, sells, or offers for sale any hemp-derived cannabinoid product in this state without a permit to do so is guilty of a crime.

(1) A first violation of this subsection is a misdemeanor, and upon conviction thereof, a person shall be fined not more than \$1,000, confined in jail for not more than one year, or both fined and confined.

(2) A second or subsequent violation of this subsection is a felony and, upon conviction thereof, a person shall be fined not more than \$5,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(n) Any person who processes, distributes, manufactures, sells, or offers to sell any hemp-derived product knowing or having reason to know that the product has been contaminated with a toxic or illegal substance 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 two nor more than 10 years, or both fined and imprisoned.

(o)(1) Any person who knowingly manufactures, processes, distributes, sells, or offers for sale any hemp-derived cannabinoid product which has not been approved by the commissioner is guilty of a misdemeanor and, upon conviction thereof, shall be fined not

less than \$1,000 nor more than \$5,000 or confined in jail for not more than one year, or both fined and confined.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a second or subsequent violation of subdivision (1) of this subsection constitutes a felony and any person convicted thereof shall be fined not more than \$5,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(p) Any person who knowingly distributes, offers for sale, or sells a contaminated hemp-derived cannabinoid product is guilty of a felony and, upon conviction thereof, shall be fined not less than \$10,000 nor more than \$25,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(q) Any person who knowingly distributes or sells hemp-derived cannabinoid product to a person under the age of 21 is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(r)(1) Any person under the age of 21 who possesses hemp-derived cannabinoid product 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 one year, or both fined and confined.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, second and subsequent violations of subdivision (1) of this subsection, constitute a felony and any person convicted thereof, shall be fined not more than \$5,000 and imprisoned in a state correctional facility for not less than one nor more than three years, or both fined and imprisoned.

ARTICLE 12F. SELECT PLANT-BASED PRODUCT REGULATION ACT: KRATOM.

§19-12F-1. Short title.

This article shall be known as the Select Plant-Based Product Regulation Act: Kratom.

§19-12F-2. Findings; purpose.

The legislature finds that select plant-based derivatives, including kratom, can be regulated so as not to interfere with the strict regulation of controlled substances in this state. The purpose of this article is to allow limited regulated assess to kratom for adults 21 years of age and older.

§19-12F-3. Definitions.

(1) "Alcohol Beverage Control Commissioner" means the Alcohol Beverage Control Commissioner or his or her designee.

(2) "Commissioner" means the Commissioner of Agriculture or his or her designee.

(3) "Contaminated" means made impure and unsafe by biological, chemical, or physical additives.

(4) "Department" means the West Virginia Department of Agriculture.

(5) "Kratom" means a psychoactive preparation that is composed of the crushed or powdered dried leaves of the *mitragyna speciosa*, a yellow-flowered tropical tree which contains the alkaloids mitragynine and 7-hydroxymitragynine.

(6) "Kratom product" means a food product, food ingredient, dietary agreement, dietary supplement, or beverage intended or marketed for human consumption containing any part of the leaf of the plant *mitragyna speciosa*.

(7) "Manufacture" means a person or entity which grows kratom for commercial purposes.

(8) "Processor" means a person or entity that processes, distributes, sells, or offers for sale, kratom or kratom products in this state on a wholesale basis to a retailer.

(9) "Retailer" means a person or entity that distributes, offers for sale, or sells kratom or kratom products to persons for personal consumption.

§19-12F-4. Processor and retailer permits; regulation.

Any person manufacturing, processing, distributing, offering for sale, or selling kratom or kratom products in this state shall have a permit issued by the commissioner and be otherwise authorized to do business in this state. The commissioner may issue permits for manufacturers, processors, and retailers.

§19-12F-5. Rule-making authority.

(a) The commissioner shall propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code that include, but are not limited to:

(1) Issuance of permits to persons who wish to manufacture, process, distribute, offer for sale, or sell kratom;

(2) Sampling and testing of kratom to determine purity levels;

(3) Supervision of the kratom during its manufacture, processing, and sale;

(4) Assessment of fees that are commensurate with the costs of the Commissioner of Agriculture's activities in permitting, testing, and supervising the regulation of kratom and the sale of kratom products;

(5) The production, processing, sale, possession, distribution, or transport of kratom products;

(6) Developing standards for the labeling of kratom products to include, at a minimum, a statement which says "KEEP OUT OF REACH OF CHILDREN. CONSULT YOUR PHYSICIAN BEFORE USE IF YOU ARE PREGNANT OR TAKING ANY MEDICATION";

(7) Developing guidelines or standards related to the display or staging of kratom products to increase the safety of underage patrons in retail environments;

(8) Developing prohibitive standards as to child targeted packaging and shapes and forms of products;

(9) Developing administrative rules, procedures, and sanctions for violations of this section;

(10) Any other rules and procedures necessary to carry out the provisions of this article.

(b) The Commissioner of Agriculture and the Alcohol Beverage Control Commissioner may, pursuant to §29A-3-15 of this code, promulgate such separate or joint emergency rules as are necessary to effectuate the purposes of this article.

§19-12F-6. Age verification requirements.

(a) Any website owned, managed, or operated by a person who manufactures, processes, distributes, offers for sale, or sells a product containing kratom or kratom products to persons in this state shall employ a neutral age-screening mechanism that verifies that the user is at least 21 years old, including by using an age-gate, age-screen, or other age-verification mechanism approved by the commissioner.

(b) Any person or entity distributing, offering to distribute or sell, or selling kratom or kratom products to persons in this state by means other than a direct in-person transaction shall employ an age-verification mechanism approved by the commissioner.

§19-12F-7. Taxation; disposition of funds.

(a) For the privilege of engaging or continuing within this state in the business of the retail sale of kratom or kratom products, there is hereby levied upon and collected from every person exercising the privilege a privilege tax.

(b) The rate of tax imposed by this subsection is 11 percent of the retail sales price of kratom or kratom products sold during the reporting period.

(c) The tax shall be due and payable on a quarterly basis as follows: on the 20th day of January, April, July, and October for the preceding calendar quarter. When the payment of tax is due, the person shall file a tax return in a form prescribed by the Tax Commissioner. The Tax Commissioner may require such forms, schedules, and returns and impose such filing and remittance requirements that are necessary or convenient for the efficient administration of taxes imposed by this subsection.

(d) The taxes imposed by this subsection shall be paid to the Tax Commissioner by electronic funds transfer unless electronic payment is prohibited by state or federal law. Tax returns required by this subsection shall be filed electronically with the Tax Commissioner.

(e) If any retailer does not renew its permit, relinquishes its permit, has said permit suspended or revoked, or otherwise ceases selling kratom and kratom products then any tax, additions to tax, penalties, and interest imposed by this section and by §11-10-1 *et seq.* of this code, shall become due and the retailer shall make a final return or returns and pay any tax which is due within 90 days of not renewing its permit, relinquishing its permit, having its permit suspended or revoked, or otherwise ceasing business. The unpaid amount of any tax is to be considered a lien.

(f) All money received from the tax imposed under this subsection, including any interest and additions to tax paid under §11-10-1 *et seq.* of this code, less the amount of any refunds, shall be deposited into the Agricultural Fees Fund created by §19-1-4c of this code.

(g) Persons or entities subject to the tax imposed by this subsection shall provide to the Tax Commissioner any information required by the Tax Commissioner to administer, collect, and enforce the tax imposed by this subsection.

(h) Notwithstanding any provision of §11-10-1 *et seq.* of this code or of this section to the contrary, the Tax Commissioner, and the commissioner shall enter into written agreements pursuant to which the Tax Commissioner shall disclose to designated employees of the department, whether a particular retailer is in good standing with the Tax Commissioner, and the commissioner shall disclose to designated employees of the Tax Commissioner information a retailer provides to the commissioner pursuant to this code. Tax information disclosed pursuant to a written agreement shall remain confidential in the hands of the receiver and shall not be disclosable under §29B-1-1 *et seq.* of this code. To the extent feasible, this information should be shared or exchanged electronically to ensure safe destruction, or as necessary, proper file retention practices.

(i) The Tax Commissioner may promulgate, in accordance with the provisions of §29A-3-1 *et seq.* of this code, any necessary legislative rules as the Tax Commissioner necessary to the efficient administration of taxes imposed by this subsection.

(1) Funds from the tax imposed by the provisions of this subsection and deposited into the Agricultural Fees Fund shall be divided and deposited as follows:

(2) Sixty-five percent shall remain in the Agriculture Fees Fund;

(3) Five percent shall be transferred to the Fight Substance Abuse Fund created by §60A-9-8 of this code; and

(4) Thirty percent shall be deposited in the Alcohol Beverage Control Enforcement Fund established by the provisions of §60-7-13 of this code.

(j) Notwithstanding any provision in §11-9-1 *et seq.* of this code to the contrary, and as relevant to the tax imposed by §16A-9-1, the West Virginia Tax Crimes and Penalties Act set forth in §11-9-1 *et seq.* of this code shall apply with like effect as if the said the West Virginia Tax Crimes and Penalties Act were applicable

only to the tax imposed by §16A-9-1 *et seq.* of this code and were set forth in extenso in §16A-9-1 *et seq.* of this code.

(k) Notwithstanding any provision of §11-10-1 *et seq.* of this code, or any other provision of this code to the contrary, the West Virginia Tax Procedure and Administration Act, as set forth in §11-10-1 *et seq.* of this code applies to the tax imposed by §16A-9-1 *et seq.* with like effect as if the said West Virginia Tax Procedure and Administration Act were applicable only to the tax imposed by §16A-9-1 *et seq.* of this code and were set forth in extenso in §16A-9-1 *et seq.* of this code.

(l) All fees collected pursuant to the provisions of subsection shall be deposited with the State Treasurer to the credit of the Agricultural Fees Fund established by the provisions of §19-1-4c of this code for the use of the commissioner in administering and enforcing the provisions of this article.

§19-12F-8. Application and registration fees.

(a) Applicants for kratom and kratom manufacturer, processor, or retailer permits shall pay a non-refundable application fee of \$1,500 which shall be deposited with the State Treasurer to the credit of the Agricultural Fees Fund established by the provisions of §19-1-4c of this code for the use of the commissioner for administering and enforcing the provisions of this article.

(b) Processor and retailer permit holders shall pay an annual fee of \$300 which shall be deposited with the State Treasurer to the credit of the Agricultural Fees Fund established by the provisions of §19-1-4c of this code for the use of the commissioner in administering and enforcing the provisions of this article.

§19-12F-9. Cooperative enforcement agreements.

(a) The provisions of article related to retail sales shall be enforced by the commissioner with the assistance of the Alcohol Beverage Control Commissioner.

(b) The commissioner and the Alcohol Beverage Control Commissioner shall enter into a memorandum or memoranda of understanding to facilitate enforcement of this article.

§19-12F-10. Contraband; seizures; forfeitures; and destruction.

(a) Any kratom or kratom product found in this state in violation of this article is hereby declared contraband and any property interest in the kratom or kratom product is vested in the State of West Virginia and is subject to seizure and forfeiture and destruction.

(b) Any certified law enforcement officer in this state may enforce the criminal provisions of this article, and any enforcement agent of the Alcohol Beverage Control Commissioner is authorized to enforce the administrative provisions of this article as it relates to retailers.

§19-12F-11. Criminal violations; penalties.

(a) Any person who manufactures, processes, distributes, sells, or offers for sale any kratom or kratom product in this state without a permit is guilty of a crime.

(1) A first violation of this subsection is a misdemeanor, and, upon conviction thereof, a person shall be fined not more than \$1,000, confined in jail for not more than one year, or both fined and confined.

(2) A second or subsequent violation of this subsection is a felony and, upon conviction thereof, a person shall be fined not more than \$5,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(b) Any person who manufactures, processes, distributes, sells or offers to sell any kratom or kratom product knowing or having reason to know that the product has been contaminated with a toxic or illegal substance 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 two nor more than 10 years, or both fined and imprisoned.

(c)(1) Any person who knowingly manufactures, processes, distributes, sells, or offers for sale any kratom or kratom product which has not been approved by the commissioner is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 or confined in jail for not more than one year, or both fined and confined.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a second or subsequent violation of subdivision (1) of this subsection constitutes a felony and any person convicted thereof, shall be fined not more than \$5,000 or imprisoned for not less than one nor more than five years, or both fined and imprisoned.

(d) Any person who knowingly manufactures, distributes, offers for sale, or sells contaminated kratom or kratom product is guilty of a felony and, upon conviction thereof, shall be fined not less than \$10,000 nor more than \$25,000 or imprisoned for not less than one nor more than five years, or both fined and imprisoned.

(e) Any person who knowingly distributes or sells a kratom or kratom product to a person under the age of 21 is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(f) (1) Any person under the age of 21 who possesses kratom or a kratom product 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 one year, or both fined and confined.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, second and subsequent violations of subdivision (1) of this subsection constitute a felony and any person convicted thereof, shall be fined not more than \$5,000 and imprisoned in a state correctional facility for not less than one nor more than three years, or both fined and imprisoned.

**CHAPTER 60. STATE CONTROL OF ALCOHOLIC
LIQUORS.**

**ARTICLE 10. ENFORCEMENT AUTHORITY RELATING
TO RETAIL SALE OF SELECT PLANT-BASED
DERIVATIVES.**

§60-10-1. Enforcement authority; jurisdiction.

The commissioner is hereby authorized to enforce the provisions of §19-12E-1 *et seq.* of this code and §19-12F-1 *et seq.* of this code, as relating to retail sales.

§60-10-2. General provisions.

For the purposes of enforcing §19-12E-1 *et seq.* and §19-12F-1 *et seq.* of this code, the Alcohol Beverage Control Commission and the Commissioner of Agriculture may request information from any state agency, Constitutional officer, or local agency and, notwithstanding the provisions of §11-10-5d of this code or any other provision of this code, may share information with, and request information from, any federal agency and any agency or Constitutional officer of this or of any other state or any local agency thereof.



CHAPTER 174

(Com. Sub. for S. B. 10 - By Senators Phillips, Karnes, Martin, Maynard, Tarr, Grady, Taylor, Roberts, Smith, Rucker, Hamilton, Barrett, Woodrum, Hunt, Azinger, Stuart, and Deeds)

[Passed February 21, 2023; in effect from passage]
[Approved by the Governor on March 1, 2023.]

AN ACT to amend and reenact §18B-1-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-1B-4 of said code; to amend and reenact §18B-2A-4 of said code; to amend and reenact §18B-2B-6 of said code; and to amend said code by adding thereto a new section, designated §18B-4-5b, all relating generally to carrying concealed pistol or revolver; regulating the carrying of a concealed pistol or revolver by a person who holds a current license to carry a concealed deadly weapon on the property of a public institution of higher education; authorizing the carrying of concealed pistols or revolvers under certain circumstances and in certain areas on the grounds of an institution of higher education; eliminating authority of the Higher Education Policy Commission, the Council for Community and Technical College Education, and the institutional boards of governors to restrict or regulate the carrying of concealed pistols or revolvers in certain circumstances in or on areas of an institution of higher education; requiring institutions to provide storage space for concealed pistols and revolvers; designating these amendments as the Campus Self-defense Act; expressing legislative intent; and creating an internal effective date of July 1, 2024.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1. GOVERNANCE.**§18B-1-6. Rulemaking.**

(a) The commission may promulgate, adopt, amend, or repeal rules, in accordance with §29A-3A-1 *et seq.* of this code, subject to §18B-1-3 of this code. This grant of rule-making authority does not limit, overrule, restrict, supplant, or supersede the rule-making authority provided to the exempted schools.

(b) The council may promulgate, adopt, amend, or repeal rules in accordance with §29A-3A-1 *et seq.* of this code, subject to §18B-1-3 of this code. This grant of rule-making power extends only to those areas over which the council has been granted specific authority and jurisdiction by law.

(c) As it relates to the authority granted to governing boards of state institutions of higher education to promulgate, adopt, amend, or repeal any rule under this code:

(1) "Rule" means any regulation, guideline, directive, standard, statement of policy, or interpretation of general application which has institution-wide effect or which affects the rights, privileges, or interests of employees, students, or citizens. Any regulation, guideline, directive, standard, statement of policy, or interpretation of general application that meets this definition is a rule for the purposes of this section.

(2) Regulations, guidelines, or policies established for individual units, divisions, departments, or schools of the institution, which deal solely with the internal management or responsibilities of a single unit, division, department, or school or with academic curricular policies that do not constitute a mission change for the institution, are excluded from this subsection, except for the requirements relating to posting.

(3) The commission shall promulgate a rule to guide the development of rules made by the governing boards, including a process for comment by the commission as appropriate, except the exempted schools, who shall each promulgate their own rules. The council shall promulgate a rule to guide the development and

approval of rules made by the governing boards. The commission and council shall provide technical assistance in rulemaking as requested. The rules promulgated by the exempted schools, the commission and council shall include, but are not limited to, the following provisions which shall be included in the rule on rules adopted by each governing board of a state institution of higher education:

(A) A procedure to ensure that public notice is given and that the right of interested parties to have a fair and adequate opportunity to respond is protected, including providing for a 30 day public comment period prior to final adoption of a rule;

(B) Designation of a single location where all proposed and approved rules, guidelines, and other policy statements are posted and can be accessed by the public;

(C) A procedure to maximize Internet access to all proposed and approved rules, guidelines, and other policy statements to the extent technically and financially feasible; and

(D) Except for the exempted schools, a procedure for the governing board to follow in submitting its rules for review and comment by the commission and approval by the council, as appropriate:

(i) The governing boards shall submit rules for review and comment to the commission.

(ii) The commission shall return to the governing board its comments and suggestions within 15 business days of receiving the rule.

(iii) If a governing board receives comments or suggestions on a rule from the commission, it shall record them as part of the minute record. The rule is not effective and may not be implemented until the governing board holds a meeting and places on the meeting agenda the comments it has received from the commission.

(d) Nothing in this section requires that any rule reclassified or transferred by the commission or the council under this section be promulgated again under the procedures set out in §29A-3A-1 *et seq.* of this code unless the rule is amended or modified.

(e) The commission and council each shall file with the Legislative Oversight Commission on Education Accountability any rule it proposes to promulgate, adopt, amend, or repeal under the authority of this article.

(f) The governing boards shall promulgate and adopt any rule which they are required to adopt by this chapter or chapter 18C of this code no later than July 1, 2011, unless a later date is specified. On and after this date:

(1) Any rule of a governing board which meets the definition set out in subsection (c) of this section and which has not been promulgated and adopted by formal vote of the appropriate governing board is void and may not be enforced;

(2) Any authority granted by this code which inherently requires the governing board to promulgate and adopt a rule is void until the governing board complies with this section.

(g) Within 15 business days of the adoption of a rule, including repeal or amendment of an existing rule, and before the change is implemented, a governing board shall furnish a copy of each rule which it has adopted to the commission or the council, respectively, for review.

(h) Annually, by October 1, each governing board shall file with the commission or the council, as appropriate, a list of all rules that were in effect for that institution on July 1 of that year, including the most recent date on which each rule was considered and adopted, amended, or repealed by the governing board. For all rules adopted, amended, or repealed after the effective date of this section, the list shall include a statement by the chair of the governing board certifying that the governing board has complied with this section when each listed rule was promulgated and adopted.

(i) Any rule of the commission or council in effect at the time of the re-enactment of this section or approved by the Legislature during its 2017 Regular Session shall remain in effect and applicable to an institution of higher education under the jurisdiction of the commission or council until an institution exercises its authority to adopt a rule pursuant to this chapter.

(j) On or after July 1, 2024, a rule adopted pursuant to the provisions of this section may not restrict or regulate the carrying of a concealed pistol or revolver by a person who holds a current and valid license to carry a concealed deadly weapon except as expressly authorized in §18B-4-5b of this code.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

***§18B-1B-4. Powers and duties of Higher Education Policy Commission.**

(a) The primary responsibility of the commission is to provide shared services in a cost-effective manner upon request to the state colleges and universities, the West Virginia Council for Community and Technical College Education, and the community and technical colleges; undertake certain statewide and regional initiatives as specifically designated in this chapter, including those related to the administration of grants and scholarships and including those in conjunction with the council; to review, confirm, or approve certain actions undertaken by governing boards, as delineated in this chapter; and assist in the development of policy that will achieve the goals, objectives and priorities found in §18B-1-1a and §18B-1D-1 of this code. The commission shall exercise its authority and carry out its responsibilities in a manner that is consistent and not in conflict with the powers and duties assigned by law to the West Virginia Council for Community and Technical College Education and the powers and duties assigned to the governing boards. To that end, the commission has the following powers and duties relating to the governing boards under its jurisdiction:

*NOTE: This section was also amended by H. B. 2515 (Chapter 190), which passed subsequent to this act.

(1) Develop and advance the public policy agenda pursuant to §18B-1D-1 *et seq.* of this code to address major challenges facing the state, including, but not limited to, the goals, objectives, and priorities established in this chapter;

(2) In conjunction with the council, propose emergency and legislative rules in accordance with §29A-3A-1 and §18B-1-6 of this code to establish a performance-based funding formula model the commission and council shall use, beginning in the fiscal year 2024 budget cycle, in developing their annual budget requests to ensure the fair and equitable distribution and use of public funds among the state's institutions of higher education, including the statutorily and administratively exempted schools. This funding formula model shall advance the goals of the state's post-secondary education system by emphasizing outcomes focused on student success and institutional mission achievement. The formula shall include a range of variables that shall be weighted in a manner that corresponds to each institution's mission and provides incentives for productivity improvements consistent with the goal of strengthening the state's economy and workforce by developing the most competitive and capable graduates in the nation. The rule shall, at a minimum:

(A) Establish a set of objective performance metrics that reflect and support the state's higher education goals and priorities and the methodology by which those metrics shall be used in the allocation of state funds;

(B) Ensure that a portion of each institution's base appropriation is allocated based on outcomes achieved over a defined period of time;

(C) Incentivize post-secondary program offerings that align with the state's higher education and workforce development priorities; and

(D) Establish safeguards to ensure stability of the funding formula model including, but not limited to, providing for periodic reviews of and revision to the performance metrics and funding methodology in addition to accounting for inflation;

(3) In collaboration with the council and the governing boards:

(A) Build public consensus around and sustain attention to a long-range public policy agenda. In developing the agenda, the commission and council shall seek input from the Legislature, the Governor, the governing boards, and the State Board of Education and local school districts to create the necessary linkages to assure smooth, effective, and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Assist governing boards in carrying out their duty effectively to govern the individual institutions of higher education;

(4) Serve as a point of contact to state policymakers:

(A) The Governor for the public policy agenda; and

(B) The Legislature by maintaining a close working relationship with the legislative leadership and the Legislative Oversight Commission on Education Accountability;

(5) Upon request, provide shared services to a state institution of higher education;

(6) Administer scholarship and grant programs as provided for in this code;

(7) Establish and implement the benchmarks and performance indicators for state colleges and universities necessary to measure institutional progress in achieving state policy priorities and institutional missions pursuant to §18B-1D-7 of this code;

(8) Establish a formal process for recommending capital investment needs and for determining priorities for state colleges and universities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process pursuant to §18B-19-1 *et seq.* of this code;

(9) Except the statutorily and administratively exempted schools, develop standards, and evaluate governing board requests for capital project financing in accordance with §18B-19-1 *et seq.* of this code;

(10) Except the statutorily and administratively exempted schools, ensure that governing boards manage capital projects and facilities needs effectively, including review and approval of capital projects, in accordance with §18B-19-1 *et seq.* of this code;

(11) Acquire legal services as considered necessary, including representation of the commission, the governing boards, employees, and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commission may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;

(12) Employ a chancellor, and any interim chancellor employed shall meet all criteria required of the chancellor, pursuant to §18B-1B-5 of this code;

(13) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission and the council, in accordance with §18B-4-1 *et seq.* of this code;

(14) Provide suitable offices in Kanawha County for the chancellor, vice chancellors, and other staff;

(15) Approve the total compensation package from all sources for presidents of institutions under its jurisdiction, except the statutorily exempted schools, as proposed by the governing boards. The governing boards, except the governing boards of the statutorily exempted schools, must obtain approval from the commission of the total compensation package both when institutional presidents are employed initially and afterward when any change is made in the amount of the total compensation package: *Provided*, That the commission shall receive notice, but need not approve or confirm, an increase in the compensation of an

institutional president that is exactly in the ratio of compensation increases allocated to all institutional employees and approved by the governing board to expressly include the president;

(16) Assist and facilitate the work of the institutions to implement the policy of the state to assure that parents and students have sufficient information at the earliest possible age on which to base academic decisions about what is required for students to be successful in college, other post-secondary education and careers related, as far as possible, to results from current assessment tools in use in West Virginia;

(17) Approve and implement a uniform standard jointly with the council to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards. The chancellors shall develop a clear, concise explanation of the standard which they shall communicate to the State Board of Education and the state superintendent of schools;

(18) Jointly with the council and in conjunction with the West Virginia Network, support systemwide technology needs through leveraged consortium purchasing, software, database and networking support, and other services including, but not limited to, the following:

(A) Expanding distance learning and technology networks to enhance teaching and learning, and promoting access to quality educational offerings with minimum duplication of effort; and

(B) Increasing the delivery of instruction to nontraditional students, providing services to business and industry, and increasing the management capabilities of the higher education system.

(C) Notwithstanding any other provision of law or this code to the contrary, the council, commission, and governing boards are not subject to the jurisdiction of the Chief Technology Officer for any purpose;

(19) Propose rules in accordance with §29A-3A-1 *et seq.* and §18B-1-6 of this code to ensure that, within sound academic policy, a student may transfer and apply toward the requirements of any post-secondary credential the maximum number of credits earned at any regionally accredited in-state or out-of-state institution of higher education in a manner that minimizes the need to repeat courses or incur additional costs. This requirement applies to transfer processes for all levels of post-secondary programs delivered at community and technical colleges, baccalaureate-degree-granting institutions, and graduate-degree-granting institutions;

(20) Propose rules in accordance with §29A-3A-1 *et seq.* and §18B-1-6 of this code to develop a program through which a student who has gained knowledge and skills through employment, participation in education, and training at vocational schools or other education institutions, or Internet-based education programs, may demonstrate by competency-based assessment that he or she has the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate's degree or a bachelor's degree at a state institution of higher education;

(21) Seek out and attend regional, national, and international meetings and forums on education and workforce development-related topics as, in the commission's discretion, are critical for the performance of their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the established education goals, objectives, and priorities pursuant to §18B-1-1a and §18B-1D-1 *et seq.* of this code;

(22) Promulgate and implement a rule for governing boards and institutions to follow when considering capital projects pursuant to §18B-19-1 *et seq.* of this code, which rule shall provide for appropriate deference to the value judgments of governing boards and may not apply to the statutorily or administratively exempted schools;

(23) Submit to the appropriate agencies of the executive and legislative branches of state government an appropriation request that reflects recommended appropriations for the commission and the governing boards under its jurisdiction, including the statutorily and administratively exempted schools. The commission shall submit as part of its appropriation request the separate recommended appropriation request it received from the council, both for the council and for the governing boards under the council's jurisdiction. The commission annually shall submit the proposed allocations based on the funding formula model required by subdivision (a)(2) of this section;

(24) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to governing boards for qualifying noncapital expenditures incurred in providing services to students with physical, learning, or severe sensory disabilities;

(25) Pursuant to §29A-3A-1 *et seq.* and §18B-1-6 of this code, promulgate rules necessary or expedient to fulfill the purposes of this chapter and chapter 18C of this code;

(26) Determine when a joint rule among the governing boards under its jurisdiction is necessary or required by law and, in those instances, in consultation with the governing boards under its jurisdiction, promulgate the joint rule;

(27) Promulgate and implement a rule jointly with the council whereby course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement;

(28) Promulgate a rule pursuant to §18B-10-1 of this code establishing tuition and fee policy for all governing boards under the jurisdiction of the commission, except the statutorily and administratively exempted schools. The rule shall include, but is not limited to, the following:

(A) Differences among institutional missions;

(B) Strategies for promoting student access;

(C) Consideration of charges to out-of-state students; and

(D) Any other policies the commission and council consider appropriate;

(29) Notwithstanding any other provision of this code to the contrary sell, lease, convey, or otherwise dispose of all or part of any real property that it owns, in accordance with §18B-19-1 *et seq.* of this code;

(30) Provide policy analysis and research focused on issues affecting institutions of higher education generally or a geographical region thereof;

(31) Develop and approve of institutional mission definitions except for the statutorily and administratively exempted schools: *Provided*, That the commission may use funds appropriated by the Legislature for incentive funds to influence institutional behavior in ways that are consistent with public priorities, including the statutorily and administratively exempted schools;

(32) Review and approve academic programs for governing boards under its jurisdiction, except the statutorily and administratively exempted schools. The review and approval includes use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes.

(A) The commission's authority to review and approve academic programs for the statutorily and administratively exempted schools is limited to programs that are proposed to be offered at a new location not presently served by that institution: *Provided*, That West Virginia University and the West Virginia University Institute of Technology are subject to the commission's authority as provided in §18B-1C-2 of this code.

(B) In reviewing and approving academic programs, the commission shall focus on the following policy concerns:

(i) New programs may not be implemented which change the institutional mission, unless the institution also receives approval for expanding the institutional mission;

(ii) New programs which require significant additional expense investments for implementation may not be implemented unless the institution demonstrates that:

(I) The expenses shall be addressed by effective reallocations of existing institutional resources; or

(II) The expenses can be legitimately spread out over future years and shall be covered by reasonably anticipated additional net revenues from new enrollments;

(iii) A new undergraduate program which is significantly similar to an existing program already in the geographic service area may not be implemented unless the institution requesting the new program demonstrates a compelling need in the service area that is not being met by the existing program: *Provided*, That the academic programs of the statutorily and administratively exempted schools are not to be taken into consideration except as it relates to academic programs offered at West Virginia University in Beckley and West Virginia University Institute of Technology in Beckley.

(C) The commission shall approve or disapprove proposed academic degree programs in those instances where approval is required as soon as practicable. The commission shall maintain by rule a format model by which a new program approval shall be requested by an institution. When a request for approval of a new program is submitted to the commission, the chancellor shall provide notice within two weeks as to whether the submission meets the required format, and if it does not the chancellor shall identify each specific deficiency and return the request to the institution. The institution may refile the request for approval with the commission to address any identified deficiencies. Within 30 days after the chancellor's confirmation that the request meets the required format, the commission shall either approve or disapprove

the request for the new program. The commission may not withhold approval unreasonably.

(33) Distribute of funds appropriated to the commission, including incentive and performance-based funds;

(34) Administer state and federal student aid programs under the supervision of the vice chancellor for administration, including promulgation of rules necessary to administer those programs;

(35) Serve as the agent to receive and disburse public funds when a governmental entity requires designation of a statewide higher education agency for this purpose;

(36) Develop and distribute information, assessment, accountability, and personnel systems for state colleges and universities, including maintaining statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

(37) Jointly with the council, promulgate and implement rules for licensing and oversight for both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs in the state. The council has authority and responsibility for approval of all post-secondary courses or programs providing community and technical college education as defined in §18B-1-2 of this code;

(38) Develop, facilitate and oversee statewide and regional projects and initiatives related to providing post-secondary education at the baccalaureate level and above as those using funds from federal categorical programs or those using incentive and performance-based funds from any source;

(39) (A) For all governing boards under its jurisdiction, except for the statutorily exempted schools, review institutional operating budgets, review, and approve capital budgets, and distribute incentive and performance-based funds.

(B) For the governing boards of the statutorily exempted schools, the commission shall distribute incentive and

performance-based funds and may review and comment upon the institutional operating budgets and capital budgets. The commission's comments, if any, shall be made part of the governing board's minute record and shall be filed with the Legislative Oversight Commission on Education Accountability;

(40) Provide information, research, and recommendations to state colleges and universities relating to programs and vocations with employment rates greater than 90 percent within six months post-graduation; and

(41) Provide information, research, and recommendations to state colleges and universities on coordinating with the West Virginia State Board of Education about complimentary programs.

(b) In addition to the powers and duties provided in this section and any other powers and duties assigned to it by law, the commission has other powers and duties necessary or expedient to accomplish the purposes of this chapter and chapter 18C of this code: *Provided*, That the provisions of this subsection do not shift management authority from the governing boards to the commission.

(c) The commission may withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years, if the commission determines that either of the following conditions exist:

(1) The commission has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the governing board according to state law; or

(2) Other circumstances which, in the view of the commission, severely limit the capacity of the governing board to exercise its powers or carry out its duties and responsibilities.

The commission may not withdraw specific powers for a period exceeding two years. During the withdrawal period, the commission shall take all steps necessary to reestablish sound, stable, and responsible institutional governance.

(d) On or after July 1, 2024, nothing in this section authorizes the commission to restrict or regulate the carrying of a concealed pistol or revolver by a person who holds a current and valid license to carry a concealed deadly weapon except as expressly authorized in §18B-4-5b of this code.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-4. Powers and duties of governing boards generally.

Each governing board separately shall:

(a) Determine, control, supervise, and manage the financial, business, and education policies and affairs of the state institution of higher education under its jurisdiction;

(b) Develop a master plan for the institution under its jurisdiction.

(1) The ultimate responsibility for developing and updating each master plan at the institution resides with the governing board, but the ultimate responsibility for approving the final version of each master plan, including periodic updates, resides with the commission or council, as appropriate: *Provided*, That commission approval is not required for master plans of exempted schools.

(2) Each master plan shall include, but is not limited to, the following:

(A) A detailed demonstration of how the master plan will be used to meet the goals, objectives, and priorities of the compact;

(B) A well-developed set of goals, objectives, and priorities outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels, and other planning determinates and projections necessary in a plan to assure that the needs of the institution's area of responsibility for a quality system of higher education are addressed;

(C) Documentation showing how the governing board involved the commission or council, as appropriate, constituency groups,

clientele of the institution, and the general public in the development of all segments of the master plan.

(3) The plan shall be established for periods of not fewer than three nor more than five years and shall be revised periodically as necessary, including adding or deleting programs. The commission may review and comment upon the master plan of an exempted school. The commission may review, but may not approve or disapprove, additions or deletions of degree programs, except as expressly provided for in §18B-1B-4(a)(39) of this code.

(4) For the exempted schools, the master plan shall be updated at least bi-annually and include the steps taken to meet the legislatively established policies contained in §18B-1D-1 *et seq.* of this code and reports on each of the data elements identified in §18B-1D-1 *et seq.* of this code, including progress that the exempted schools are making relating to retention and graduation rates for resident students by organization and each college within the organization. The exempted schools shall provide copies of their respective master plan to the Legislative Oversight Commission on Education Accountability and the commission.

(c) Develop a 10-year campus development plan in accordance with §18B-19-1 *et seq.* of this code;

(d) Prescribe for the institution, under its jurisdiction, in accordance with its master plan and compact, specific functions and responsibilities to achieve the goals, objectives, and priorities established in §18B-1-1 *et seq.* and §18B-1D-1 *et seq.* of this code to meet the higher education needs of its area of responsibility and to avoid unnecessary duplication;

(e) Direct the preparation of an appropriation request for the institution under its jurisdiction, which relates directly to missions, goals and projections found in the master plan and the compact;

(f) Consider, revise, and submit for review and approval to the commission or council, as appropriate, an appropriation request on behalf of the institution under its jurisdiction, including the exempted schools;

(g) Review, at least every five years, all academic programs offered at the institution under its jurisdiction. The review shall address the viability, adequacy, and necessity of the programs in relation to established state goals, objectives and priorities, the master plan, the compact, and the education and workforce needs of its responsibility district. As a part of the review, each governing board shall require the institution under its jurisdiction to conduct periodic studies of its graduates and their employers to determine placement patterns and the effectiveness of the education experience. Where appropriate, these studies should coincide with the studies required of many academic disciplines by their accrediting bodies;

(h) Ensure that the sequence and availability of academic programs and courses offered by the institution under its jurisdiction is such that students have the maximum opportunity to complete programs in the time frame normally associated with program completion. Each governing board is responsible to see that the needs of nontraditional college-age students are appropriately addressed and, to the extent it is possible for the individual governing board to control, to assure core course work completed at the institution is transferable to any other state institution of higher education for credit with the grade earned;

(i) Subject to §18B-1B-1 *et seq.* of this code, approve the teacher education programs offered in the institution under its control. In order to permit graduates of teacher education programs to receive a degree from a nationally accredited program and in order to prevent expensive duplication of program accreditation, the commission may select and use one nationally recognized teacher education program accreditation standard as the appropriate standard for program evaluation;

(j) Involve faculty, students, and classified employees in institution-level planning and decision making when those groups are affected;

(k) Subject to federal law and pursuant to §18B-7-1 *et seq.*, §18B-8-1 *et seq.*, §18B-9-1 *et seq.*, and §18B-9A1 *et seq.* of this code and to rules adopted by the commission and the council,

administer a system for the management of personnel matters, including, but not limited to, discipline for employees at the institution under its jurisdiction: *Provided*, That any rules adopted by the commission and the council do not apply to exempted schools;

(l) Administer a system for hearing employee grievances and appeals. Notwithstanding any other provision of this code to the contrary, the procedure established in §6C-2-1 *et seq.* of this code is the exclusive mechanism for hearing prospective employee grievances and appeals;

(m) Solicit and use or expend voluntary support, including financial contributions and support services, for the institution under its jurisdiction;

(n) Appoint a president for the institution under its jurisdiction, subject to §18B-1B-6 of this code;

(o) Conduct written performance evaluations of the president, pursuant to §18B-1B-6 of this code;

(p) Employ all faculty and staff at the institution under its jurisdiction. The employees operate under the supervision of the president, but are employees of the governing board;

(q) Submit to the commission or council, as appropriate, any data or reports requested by the commission or council within the time frame set by the commission or council;

(r) Enter into contracts or consortium agreements with the public schools, private schools, or private industry to provide technical, vocational, college preparatory, remedial, and customized training courses at locations either on campuses of the state institutions of higher education or at off-campus locations in the institution's responsibility district. To accomplish this goal, the boards may share resources among the various groups in the community;

(s) Provide and transfer funds and property to certain corporations pursuant to §18B-12-10 of this code;

(t) Delegate, with prescribed standards and limitations, the part of its power and control over the business affairs of the institution to the president in any case where it considers the delegation necessary and prudent in order to enable the institution to function in a proper and expeditious manner and to meet the requirements of its master plan and compact. If a governing board elects to delegate any of its power and control under this subsection, it shall enter the delegation in the minutes of the meeting when the decision was made and shall notify the commission or council, as appropriate. Any delegation of power and control may be rescinded by the appropriate governing board, the commission or council, as appropriate, at any time, in whole or in part, except that the commission may not revoke delegations of authority made by the governing board of the exempted schools.

(u) Unless changed by the commission or the council, as appropriate, continue to abide by existing rules setting forth standards for accepting advanced placement credit for the institution under its jurisdiction. Individual departments at a state institution of higher education, with approval of the faculty senate, may require higher scores on the advanced placement test than scores designated by the governing board when the credit is to be used toward meeting a requirement of the core curriculum for a major in that department;

(v) Consult, cooperate, and coordinate with the State Treasurer and the State Auditor to update as necessary and maintain an efficient and cost-effective system for the financial management and expenditure of appropriated and non-appropriated revenue at the institution under its jurisdiction. The system shall ensure that properly submitted requests for payment are paid on or before the due date but, in any event, within 15 days of receipt in the State Auditor's Office;

(w) In consultation with the appropriate chancellor and the Secretary of the Department of Administration, develop, update as necessary, and maintain a plan to administer a consistent method of conducting personnel transactions, including, but not limited to, hiring, dismissal, promotions, changes in salary or compensation, and transfers at the institution under its jurisdiction. Each personnel

transaction shall be accompanied by the appropriate standardized system or forms, as appropriate, which shall be submitted to the respective governing board and the Department of Administration:

(1) Not later than July 1, 2012, the Department of Administration shall make available to each governing board the option of using a standardized electronic system for these personnel transactions.

(2) The Secretary of the Department of Administration may suspend a governing board's participation in the standardized electronic system if he or she certifies to the Governor that the governing board has failed repeatedly and substantially to comply with the department's policies for administering the electronic system;

(x) Notwithstanding any other provision of this code to the contrary, transfer funds from any account specifically appropriated for its use to any corresponding line item in a general revenue account at any agency or institution under its jurisdiction as long as the transferred funds are used for the purposes appropriated;

(y) Transfer funds from appropriated special revenue accounts for capital improvements under its jurisdiction to special revenue accounts at agencies or institutions under its jurisdiction as long as the transferred funds are used for the purposes appropriated in accordance with §18B-19-1 *et seq.* of this code;

(z) Notwithstanding any other provision of this code to the contrary, acquire necessary legal services, including representation of the governing board, its institution, employees, and officers before any court or administrative body. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the governing board may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;

(aa) Contract and pay for disability insurance for a class or classes of employees at a state institution of higher education under its jurisdiction; and

(bb) Contract and pay for any supplemental employee benefit, at the governing board's discretion: *Provided*, That if such supplemental benefit program incurs institutional expense, then the board may not delegate the approval of the supplemental employee benefit program.

(cc) On or after July 1, 2024, nothing in this section authorizes a governing board to restrict or regulate the carrying of a concealed pistol or revolver by a person who holds a current and valid license to carry a concealed deadly weapon except as expressly authorized in §18B-4-5b of this code.

ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION.

§18B-2B-6. Powers and duties of the council.

(a) The council is the sole agency responsible for administration of vocational-technical-occupational education and community and technical college education in the state. The council has jurisdiction and authority over the community and technical colleges and the statewide network of independently accredited community and technical colleges as a whole, including community and technical college education programs as defined in §18B-1-2 of this code.

(b) The council shall propose rules pursuant to §18B-1-6 and §29A-3A-1 *et seq.* of this code to implement the provisions of this section and applicable provisions of §18B-1D-1 *et seq.* of this code;

(1) To implement the provisions of §18B-1D-1 *et seq.* of this code relevant to community and technical colleges, the council may propose rules jointly with the commission, or separately, and may choose to address all components of the accountability system in a single rule or may propose additional rules to cover specific components;

(2) The rules pertaining to financing policy and benchmarks and indicators required by this section shall be filed with the

Legislative Oversight Commission on Education Accountability by October 1, 2008. Nothing in this subsection requires other rules of the council to be promulgated again under the procedure set forth in §29A-3A-1 *et seq.* of this code unless such rules are rescinded, revised, altered, or amended; and

(3) The Legislature finds that an emergency exists and, therefore, the council shall propose an emergency rule or rules to implement the provisions of this section relating to the financing policy and benchmarks and indicators in accordance with §18B-1-6 and §29A-3A-1 *et seq.* of this code by October 1, 2008. The emergency rule or rules may not be implemented without prior approval of the Legislative Oversight Commission on Education Accountability.

(c) The council may relating to the authority established in subsection (a) of this section:

(1) Develop, oversee, and advance the public policy agenda for community and technical college education for the purpose of accomplishing the mandates of this section, including, but not limited to, the following:

(A) Achieving the goals and objectives established in §18B-1-1 *et seq.* and §18B-1D-1 *et seq.* of this code;

(B) Addressing the goals and objectives contained in the institutional compacts created pursuant to §18B-1D-7 of this code; and

(C) Developing and implementing the master plan described in §18B-1D-5 of this code;

(2) Propose a legislative rule pursuant to subsection (b) of this section and §29A-3A-1 *et seq.* of this code to develop and implement a financing policy for community and technical college education in West Virginia. The rule shall:

(A) Provide an adequate level of education and general funding for institutions pursuant to §18B-1A-5 of this code;

(B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and deferred maintenance;

(C) Establish a plan for strategic funding to strengthen capacity for support of community and technical college education; and

(D) Establish a plan that measures progress and provides performance-based funding to institutions which make significant progress in the following specific areas:

(i) Achieving the objectives and priorities established in §18B-1D-1 *et seq.* of this code;

(ii) Serving targeted populations, especially working age adults 25 years of age and over;

(iii) Providing access to high-cost, high-demand, technical programs in every region of the state;

(iv) Increasing the percentage of functionally literate adults in every region of the state; and

(v) Providing high-quality community and technical college education services to residents of every region of the state.

(3) Create a policy leadership structure relating to community and technical college education capable of the following actions:

(A) Developing, building public consensus around, and sustaining attention to a long-range public policy agenda. In developing the agenda, the council shall seek input from the Legislature and the Governor and specifically from the State Board of Education and local school districts in order to create the necessary linkages to assure smooth, effective, and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Ensuring that the governing boards of the institutions under the council's jurisdiction carry out their duty effectively to govern the individual institutions of higher education; and

(C) Holding each community and technical college and the statewide network of independently accredited community and technical colleges as a whole accountable for accomplishing their missions and achieving the goals and objectives established in §18B-1-1 *et seq.*, §18B-1D-1 *et seq.*, and §18B-3C-1 *et seq.* of this code;

(4) Develop for inclusion in the statewide public agenda, a plan for raising education attainment, increasing adult literacy, promoting workforce and economic development, and ensuring access to advanced education for the citizens of West Virginia;

(5) Provide statewide leadership, coordination, support, and technical assistance to the community and technical colleges and to provide a focal point for visible and effective advocacy for their work and for the public policy agendas approved by the commission and council;

(6) Review and adopt annually all institutional compacts for the community and technical colleges pursuant to the provisions of §18B-1D-7 of this code;

(7) Fulfill the mandates of the accountability system established in §18B-1D-1 *et seq.* of this code and report on progress in meeting established goals, objectives, and priorities to the elected leadership of the state;

(8) Propose a legislative rule pursuant to subsection (b) of this section and §29A-3A-1 *et seq.* of this code to establish benchmarks and indicators in accordance with the provisions of this subsection;

(9) Establish and implement the benchmarks and performance indicators necessary to measure institutional progress:

(A) In meeting state goals, objectives, and priorities established in §18B-1-1 *et seq.* and §18B-1D-1 *et seq.* of this code;

(B) In carrying out institutional missions; and

(C) In meeting the essential conditions established in §18B-3C-1 *et seq.* of this code;

(10) Establish a formal process for identifying needs for capital investments and for determining priorities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process. Notwithstanding the language in §18B-1B-4(a)(11) of this code, the commission is not a part of the process for identifying needs for capital investments for the statewide network of independently accredited community and technical colleges;

(11) Draw upon the expertise available within the Governor's Workforce Investment Office and the West Virginia Development Office as a resource in the area of workforce development and training;

(12) Acquire necessary legal services including representation of the council, its institutions, employees, and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the council may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;

(13) Employ a chancellor for community and technical college education pursuant to §18B-2B-3 of this code;

(14) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council consistent with the provisions of §18B-4-2 of this code;

(15) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council who are employed solely by the council;

(16) Provide suitable offices in Charleston for the chancellor and other staff: *Provided*, That the offices may be located outside of Charleston at a technology and research center: *Provided*,

however, That the current employees of WVNET shall not be moved from Monongalia County without legislative approval;

(17) Approve the total compensation package from all sources for presidents of community and technical colleges, as proposed by the governing boards. The governing boards must obtain approval from the council of the total compensation package both when presidents are employed initially and subsequently when any change is made in the amount of the total compensation package;

(18) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(19) Establish and implement policies and programs, jointly with the community and technical colleges, through which students who have gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or Internet-based education programs, may demonstrate by competency-based assessment that they have the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate degree or a bachelor's degree at a state institution of higher education;

(20) Seek out and attend regional and national meetings and forums on education and workforce development-related topics, as council members consider critical for the performance of their duties. The council shall keep abreast of national and regional community and technical college education trends and policies to aid members in developing the policies for this state that meet the education goals and objectives established in §18B-1-1 *et seq.* and §18B-1D-1 *et seq.* of this code;

(21) Assess community and technical colleges for the payment of expenses of the council or for the funding of statewide services,

obligations, or initiatives related specifically to the provision of community and technical college education;

(22) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to community and technical colleges for qualifying noncapital expenditures incurred in the provision of services to students with physical, learning, or severe sensory disabilities;

(23) Assume the prior authority of the commission in examining and approving tuition and fee increase proposals submitted by community and technical college governing boards as provided in §18B-10-1 of this code;

(24) Develop and submit to the commission, a single budget for community and technical college education that reflects recommended appropriations for community and technical colleges and that meets the following conditions:

(A) Incorporates the provisions of the financing rule mandated by this section to measure and provide performance funding to institutions which achieve or make significant progress toward achieving established state objectives and priorities;

(B) Considers the progress of each institution toward meeting the essential conditions set forth in §18B-3C-3 of this code, including independent accreditation; and

(C) Considers the progress of each institution toward meeting the goals, objectives, and priorities established in §18B-1D-1 *et seq.* of this code and its approved institutional compact.

(25) Administer and distribute the independently accredited community and technical college development account;

(26) Establish a plan of strategic funding to strengthen capacity for support and assure delivery of high-quality community and technical college education in all regions of the state;

(27) Foster coordination among all state-level, regional and local entities providing post-secondary vocational education or

workforce development, and coordinate all public institutions and entities that have a community and technical college mission;

(28) Assume the principal responsibility for oversight of those community and technical colleges seeking independent accreditation and for holding governing boards accountable for meeting the essential conditions pursuant to §18B-3C-1 *et seq.* of this code;

(29) Advise and consent in the appointment of the presidents of the community and technical colleges pursuant to §18B-1B-6 of this code. The role of the council in approving a president is to assure through personal interview that the person selected understands and is committed to achieving the goals and objectives established in the institutional compact and in §18B-1-1 *et seq.*, §18B-1D-1 *et seq.*, and §18B-3C-1 *et seq.* of this code;

(30) Provide a single, statewide link for current and prospective employers whose needs extend beyond one locality;

(31) Provide a mechanism capable of serving two or more institutions to facilitate joint problem-solving in areas including, but not limited to the following:

(A) Defining faculty roles and personnel policies;

(B) Delivering high-cost technical education programs across the state;

(C) Providing one-stop service for workforce training to be delivered by multiple institutions; and

(D) Providing opportunities for resource-sharing and collaborative ventures;

(32) Provide support and technical assistance to develop, coordinate, and deliver effective and efficient community and technical college education programs and services in all regions of the state;

(33) Assist the community and technical colleges in establishing and promoting links with business, industry, and labor in the geographic areas for which each community and technical college is responsible;

(34) Develop alliances among the community and technical colleges for resource sharing, joint development of courses and courseware, and sharing of expertise and staff development;

(35) Serve aggressively as an advocate for development of a seamless curriculum;

(36) Cooperate with all providers of education services in the state to remove barriers relating to a seamless system of public and higher education and to transfer and articulate between and among community and technical colleges, state colleges and universities, and public education, preschool through grade 12;

(37) Encourage the most efficient use of available resources;

(38) Coordinate with the commission in informing public school students, their parents, and teachers of the academic preparation that students need in order to be prepared adequately to succeed in their selected fields of study and career plans, including presentation of academic career fairs;

(39) Jointly with the commission, approve and implement a uniform standard, as developed by the chancellors, to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards throughout the public higher education system. The chancellors shall develop a clear, concise explanation of the standard which the governing boards shall communicate to the State Board of Education and the State Superintendent of Schools;

(40) Develop and implement strategies and curriculum for providing developmental education which shall be applied by any state institution of higher education providing developmental education;

(41) Develop a statewide system of community and technical college programs and services in every region of West Virginia for competency-based certification of knowledge and skills, including a statewide competency-based associate degree program;

(42) Review and approve all institutional master plans for the community and technical colleges pursuant to §18B-2A-4 of this code;

(43) Propose rules for promulgation pursuant to subsection (b) of this section and §29A-3A-1 *et seq.* of this code that are necessary or expedient for the effective and efficient performance of community and technical colleges in the state;

(44) In its sole discretion, transfer any rule under its jurisdiction, other than a legislative rule, to the jurisdiction of the governing boards who may rescind, revise, alter, or amend any rule transferred pursuant to rules adopted by the council and provide technical assistance to the institutions under its jurisdiction to aid them in promulgating rules;

(45) Develop for inclusion in the higher education report card, as defined in §18B-1D-8 of this code, a separate section on community and technical colleges. This section shall include, but is not limited to, evaluation of the institutions based upon the benchmarks and indicators developed in subdivision (9) of this subsection;

(46) Facilitate continuation of the Advantage Valley Community College Network under the leadership and direction of Marshall Community and Technical College;

(47) Initiate and facilitate creation of other regional networks of affiliated community and technical colleges that the council finds to be appropriate and in the best interests of the citizens to be served;

(48) Develop with the State Board of Education plans for secondary and post-secondary vocational-technical-occupational and adult basic education, including, but not limited to, the following:

(A) Policies to strengthen vocational-technical-occupational and adult basic education; and

(B) Programs and methods to assist in the improvement, modernization, and expanded delivery of vocational-technical-occupational and adult basic education programs;

(49) Distribute federal vocational education funding provided under the Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, with an emphasis on distributing financial assistance among secondary and post-secondary vocational-technical-occupational and adult basic education programs to help meet the public policy agenda.

In distributing funds the council shall use the following guidelines:

(A) The State Board of Education shall continue to be the fiscal agent for federal vocational education funding;

(B) The percentage split between the State Board of Education and the council shall be determined by rule promulgated by the council under the provisions of §29A-3A-1 *et seq.* of this code. The council shall first obtain the approval of the State Board of Education before proposing a rule;

(50) Collaborate, cooperate, and interact with all secondary and post-secondary vocational-technical-occupational and adult basic education programs in the state, including the programs assisted under the federal Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, and the Workforce Investment Act of 1998, to promote the development of seamless curriculum and the elimination of duplicative programs;

(51) Coordinate the delivery of vocational-technical-occupational and adult basic education in a manner designed to make the most effective use of available public funds to increase accessibility for students;

(52) Analyze and report to the State Board of Education on the distribution of spending for vocational-technical-occupational and

adult basic education in the state and on the availability of vocational-technical-occupational and adult basic education activities and services within the state;

(53) Promote the delivery of vocational-technical-occupational education, adult basic education, and community and technical college education programs in the state which emphasize the involvement of business, industry, and labor organizations;

(54) Promote public participation in the provision of vocational-technical-occupational education, adult basic education, and community and technical education at the local level, emphasizing programs which involve the participation of local employers and labor organizations;

(55) Promote equal access to quality vocational-technical-occupational education, adult basic education, and community and technical college education programs to handicapped and disadvantaged individuals, adults in need of training and retraining, single parents, homemakers, participants in programs designed to eliminate sexual bias and stereotyping, and criminal offenders serving in correctional institutions;

(56) Meet annually between the months of October and December with the Advisory Committee of Community and Technical College Presidents created pursuant to §18B-2B-8 of this code to discuss those matters relating to community and technical college education in which advisory committee members or the council may have an interest;

(57) Accept and expend any gift, grant, contribution, bequest, endowment, or other money for the purposes of this article;

(58) Assume the powers set out in §18B-2B-9 of this code. The rules previously promulgated by the State College System Board of Directors pursuant to that section and transferred to the commission are hereby transferred to the council and shall continue in effect until rescinded, revised, altered or amended by the council;

(59) Pursuant to the provisions of subsection (b) of this section and §29A-3A-1 *et seq.* of this code, promulgate a uniform joint legislative rule with the commission for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;

(60) Determine when a joint rule among the governing boards of the community and technical colleges is necessary or required by law and, in those instances and in consultation with the governing boards, promulgate the joint rule;

(61) Promulgate a joint rule with the commission establishing tuition and fee policy for all institutions of higher education. The rule shall include, but is not limited to, the following:

(A) Comparisons with peer institutions;

(B) Differences among institutional missions;

(C) Strategies for promoting student access;

(D) Consideration of charges to out-of-state students; and

(E) Any other policies the commission and council consider appropriate;

(62) In cooperation with the West Virginia Division of Highways, study a method for increasing the signage signifying community and technical college locations along the state interstate highways, and report to the Legislative Oversight Commission on Education Accountability regarding any recommendations and required costs; and

(63) Implement a policy jointly with the commission whereby any course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement.

(d) In addition to the powers and duties listed in subsections (a), (b), and (c) of this section, the council has the following general

powers and duties related to its role in developing, articulating, and overseeing the implementation of the public policy agenda for community and technical colleges:

(1) Planning and policy leadership including a distinct and visible role in setting the state's policy agenda for the delivery of community and technical college education and in serving as an agent of change;

(2) Policy analysis and research focused on issues affecting the community and technical college network as a whole or a geographical region thereof;

(3) Development and implementation of each community and technical college mission definition including use of incentive and performance funds to influence institutional behavior in ways that are consistent with achieving established state goals, objectives, and priorities;

(4) Academic program review and approval for the institutions under its jurisdiction, including the use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes;

(5) Development of budget and allocation of resources for institutions delivering community and technical college education, including reviewing and approving institutional operating and capital budgets, and distributing incentive and performance-based funding;

(6) Acting as the agent to receive and disburse public funds related to community and technical college education when a governmental entity requires designation of a statewide higher education agency for this purpose;

(7) Development, establishment, and implementation of information, assessment, and internal accountability systems, including maintenance of statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators for community and technical colleges;

(8) Jointly with the commission, development, establishment, and implementation of policies for licensing and oversight of both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs;

(9) Development, implementation, and oversight of statewide and regionwide projects and initiatives related specifically to providing community and technical college education such as those using funds from federal categorical programs or those using incentive and performance-based funding from any source; and

(10) Quality assurance that intersects with all other duties of the council particularly in the areas of planning, policy analysis, program review and approval, budgeting and information, and accountability systems.

(e) The council may withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years if the council makes a determination that any of the following conditions exist:

(1) The governing board has failed for two consecutive years to develop an institutional compact as required in §18B-1D-7 of this code;

(2) The council has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the Board of Governors according to state law; or

(3) Other circumstances which, in the view of the council, severely limit the capacity of the Board of Governors to carry out its duties and responsibilities.

The period of withdrawal of specific powers may not exceed two years during which time the council is authorized to take steps necessary to reestablish the conditions for restoration of sound, stable and responsible institutional governance.

(f) In addition to the powers and duties provided for in subsections (a), (b), (c), and (d) of this section, and any others assigned to it by law, the council has those powers and duties necessary or expedient to accomplish the purposes of this article; and

(g) When the council and commission, each, is required to consent, cooperate, collaborate, or provide input into the actions of the other the following conditions apply:

(1) The body acting first shall convey its decision in the matter to the other body with a request for concurrence in the action;

(2) The commission or the council, as the receiving body, shall place the proposal on its agenda and shall take final action within 60 days of the date when the request for concurrence is received; and

(3) If the receiving body fails to take final action within 60 days, the original proposal stands and is binding on both the commission and the council.

(h) On or after July 1, 2024, nothing in this section provides the authority to restrict or regulate the carrying of a concealed pistol or revolver by a person who holds a current and valid license to carry a concealed deadly weapon except as expressly authorized in §18B-4-5b of this code.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-5b. Concealed carry on higher education campuses; exceptions.

(a) Subject to the provisions of subsection (b) of this section, a person holding a current and valid license to carry a concealed deadly weapon may carry a concealed pistol or revolver on the campus and in the buildings of a state institution of higher education. This subsection only applies to areas of the campus and buildings of a state institution of higher education under the custodial possession of the state institution of higher education and

does not include areas rented, leased, or under an exclusive agreement for the full-time occupancy and use of a private entity.

(b) The provisions of subsection (a) of this section do not limit the authority of a state institution of higher education to regulate possession of a concealed pistol or revolver by a person holding a current and valid license to carry a concealed deadly weapon in the following locations when in compliance with §61-7-14 of this code:

(1) At an organized event taking place at a stadium or arena with a capacity of more than 1,000 spectators;

(2) At a daycare facility located on the property of the state institution of higher education;

(3) In the secure area of any building used by a law-enforcement agency on the property of the state institution for higher education;

(4) In an area of the property of the state institution of higher education that has adequate security measures in place to ensure that pistols or revolvers are not carried by the public into the area. As used in this section, "adequate security measures" means the use of electronic equipment and armed personnel at public entrances to detect and restrict the carrying of any pistols or revolvers into the area, including, but not limited to, metal detectors, metal detector wands, or any other equipment used for similar purposes to ensure that pistols or revolvers are not carried in those areas by members of the public;

(5) In an on-campus room or rooms in which a student or employee disciplinary proceeding is being held;

(6) In sole occupancy offices on the campus and in the buildings of the state institution of higher education. "Sole occupancy office" means a room with at least one door and walls that extend to the ceiling that is assigned to a single person as his or her workspace. This subdivision does not authorize a state institution of higher education to prohibit, regulate, or restrict faculty or staff members who hold a current and valid license to

carry a concealed deadly weapon from carrying a concealed pistol or revolver in his or her assigned office;

(7) At a primary or secondary education school-sponsored function being held in a specific location on the property of the state institution of higher education that is rented, leased, or under the exclusive use of 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;

(8) At a private function that is being held in a specific location on the property of the state institution of higher education that is rented, leased, or under the exclusive use of an entity that is not affiliated with the state institution of higher education for the actual period of time the function is occurring;

(9) In any area on the property of the state institution of higher education where possession of a firearm is prohibited by state or federal law;

(10) In specifically designated areas in which patient-care or mental health counseling is being provided;

(11) In high hazardous and animal laboratories, defined as laboratories with:

(A) Greater than 55 gallons of Class I flammable liquids and/or significant quantities of acids, bases, organics, pyrophorics, peroxides, bio-hazardous materials, extremely toxic materials, or pyrophoric or toxic gases classified NFPA 704 Category 3 or higher;

(B) Hazardous gases with K-size or larger cylinders containing corrosive, reactive, flammable, toxic, and/or oxidizer gases classified NFPA 704 Category 2 or higher;

(C) MRI and/or NMR equipment capable of generating significant magnetic fields with field strength of at least 5 gauss is measured outside the equipment or 5 gauss line typically at least 3 feet and as much as 20 feet from equipment;

(D) Large cylinders of acetylene; or

(E) Animal research laboratory spaces in locations not accessible to the public or generally accessible to students and staff, or

(12) In on-campus residence halls, except common areas such as lounges, dining areas, and study areas.

(c) An employee whose employment responsibilities require him or her to be in an on-campus residence hall and who holds a current and valid license to carry a concealed deadly weapon is permitted to carry a concealed revolver or pistol on or about his or her person while present in on-campus residence halls for purposes of his or her employment.

(d) Institutions of higher education shall provide either: (1) A secure location for the storage of a pistol or revolver in at least one of the institution's on-campus residence halls; or (2) make available an appropriate safe that may be installed in a resident's room in any of the institution's on-campus residence halls. If an institution chooses to make a storage room available to on-campus residents at an on-campus residence hall, the institution shall develop a policy that reserves an appropriate amount of rooms in the on-campus residence hall where the storage room is located for on-campus residents with a current and valid license to carry a concealed deadly weapon. The institution shall make the storage room available at all times during which the on-campus residence hall is open and fully operational for use by its residents. If West Virginia University chooses to provide secure locations instead of making safes available to students, it shall provide a secure location in at least two on-campus residence halls at its Morgantown campus and one at each of its Beckley and Keyser campuses.

(e) An institution of higher education may charge a reasonable fee for the use of the secure storage location or a safe.

(f) The provisions of subsection (a) of this section do not limit the authority of a state institution of higher education from taking disciplinary action against a student or employee with a valid

license to carry a concealed deadly weapon who is convicted of a violation of §61-7-14 of this code related to carrying a firearm in a location listed in subsection (b) of this section.

(g) Notwithstanding any provision of subsection (a) of this section to the contrary, while on the campus or in the buildings of a state institution of higher education, a holder of a license to carry a concealed deadly weapon or any other person not expressly authorized to do so by the state institution of higher education, may not carry a pistol or revolver which is partially or wholly visible, or intentionally or knowingly display a firearm in plain view of another person in a way or manner to cause, or threaten, a breach of the peace, regardless of whether the firearm is holstered. A holder of a license to carry a concealed deadly weapon who violates this subsection may, in addition to any applicable criminal charges, be subject to discipline the state institution of higher education considers appropriate.

(h) It is the intent of the Legislature to establish, by this act, conditions under which persons with a current and valid license to carry a concealed deadly weapon may carry a concealed pistol or revolver at a state institution of higher education. When a person exercises the rights granted by this section, neither the carrying of a concealed pistol or revolver, nor any other conduct of person involving a concealed pistol or revolver, shall be construed to be an act of the state institution of higher education nor of the state, and no liability for any such actions of such person shall be imputed to the state institution of higher education, its officers, agents, or employees, unless the state institution of higher education has expressly requested or directed such person to carry a concealed pistol or revolver: *Provided*, That the failure to provide adequate security measures at any building or location at a state institution of higher education where the carrying of a concealed pistol or revolver is not permitted shall not give rise to a cause action or any liability whatsoever related to or arising from the carrying of a concealed pistol or revolver by any person.

(i) For the purposes of this section, a "license to carry a concealed deadly weapon" refers to a current and valid license, lawfully issued by the State of West Virginia pursuant to §61-7-4

or §61-7-4a of this code, or a current and valid license or permit recognized under §61-7-6a of this code.

(j) These amendments to this section enacted during the regular session of the Legislature, 2023, may be cited as the Campus Self-defense Act.

(k) The provisions of this section apply on or after July 1, 2024.

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CHAPTER 175

**(Com. Sub. for S. B. 121 - By Senators Azinger, Roberts,
Tarr, and Maynard)**

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]

[Approved by the Governor on March 23, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18B-21-1, §18B-21-2, §18B-21-3, and §18B-21-4, all relating to the creation of the Student Journalist Press Freedom Protection Act; making legislative findings; defining terms; requiring that public high schools, colleges, and universities allow for the free expression of student journalists in school sponsored media; providing a framework and parameters for free expression; allowing for civil actions in the event that a student journalist's rights are violated; specifying the judicial relief available in an appeal; and clarifying that provisions of the article do not apply to students attending private high schools, colleges, or universities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. STUDENT JOURNALIST PRESS FREEDOM PROTECTION ACT.

§18B-21-1. Short title.

This article may be cited and known as the Student Journalist Press Freedom Protection Act.

§18B-21-2. Legislative findings.

(a) The Legislature finds that:

(1) Freedom of expression through high school, college, and university sponsored media is protected by the First Amendment to the United States Constitution and Article III, section 7 of the West Virginia Constitution;

(2) A high school, college, and university student press can contribute to the continuing development of informed and civic-minded citizens; and

(3) Instructors and administrators who defend their students' freedom of expression may sometimes do so at professional risk.

(b) It is the intent of the Legislature to protect freedom of expression in school-sponsored media at public high schools and institutions of higher education in this state, and to protect the instructors and administrators who support that right, in order to encourage students to become educated, informed, and responsible members of society.

§18B-21-3. Definitions.

As used in this article:

“School-sponsored media” means any material that is prepared, substantially written, published, or broadcast, in any media, by a student journalist at a public high school, college, or university under the supervision of a student media adviser and distributed or generally made available to members of the student body. School-sponsored media does not include media intended for distribution or transmission for classroom purposes only.

“Student journalist” means a public high school, college, or university student who writes, edits, photographs, records, or prepares information for inclusion in school-sponsored media.

“Student media adviser” means an individual employed, appointed, or designated by a public high school, college, or university to supervise or provide instruction relating to school-sponsored media.

§18B-21-4. Student journalists' freedom of expression.

(a) Except as provided in subsection (b) of this section, a student journalist has the right to freedom of speech and of the press in school-sponsored media regardless of whether the media is supported financially by the school, uses the facilities of the school, or is produced in conjunction with a course or class in which the student is enrolled. Subject to subsection (b) of this section, a student journalist is responsible for determining the news, opinion, feature, and other news reporting content of school-sponsored media. A student journalist is entitled to the protections set forth in §57-3-10 of this code.

(b) This section does not authorize or protect expression by a student that:

- (1) Is libelous or slanderous;
- (2) Constitutes an actionable invasion of privacy;
- (3) Is obscene, vulgar, pornographic, or of sensual or illicit sexual content;
- (4) Violates federal or state law; or
- (5) Expressly incites students to engage in the commission of an unlawful act or acts, or violate a lawful school policy, or is likely to cause the material and substantial disruption of the operation of the school. Administrators must base a forecast of material and substantial disruption on specific facts, including past experience in the school and current events influencing student behavior, and not on undifferentiated fear or apprehension.

(c) There shall be no prior restraint of material prepared for official school publications except insofar as the material violates the standards of subsection (b) of this section. School officials have the burden of showing prior justification for their limitation of student journalists expression under this section and shall afford students a timely opportunity for appeal.

(d) Nothing in this section shall be construed as authorizing the publication of an advertisement in school-sponsored media that

promotes the purchase of a product or service that is unlawful for purchase or use by minors.

(e) A student journalist is not subject to discipline for acting in accordance with this section.

(f) A student media adviser may not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for acting in conformity with this article.

(g)(1) Each county board of education, public college, and public university shall adopt a written policy for the exercise of the right of student journalists to freedom of speech and the press in school-sponsored media in accordance with this section.

(2) The policy shall include a provision allowing for the timely appeal of school administration decisions made regarding behavior protected by this section. A student journalist or student media adviser who believes a violation of this section has occurred must exhaust school administrative review procedures prior to availing himself or herself of the relief authorized by subsection (i) of this section.

(h) A statement or position made or taken by students in the exercise of free speech or free press rights shall not be considered to be an expression of school policy, and school officials shall not be held responsible in any civil or criminal action for any expression made or published by students in conformity with this section.

(i) Any student or student media adviser may institute proceedings for injunctive or declaratory relief in any court of competent jurisdiction to enforce the rights provided in this section. Nothing in this section shall be construed to create any private cause of action on behalf of a student other than for injunctive relief allowing the publication of the speech in question. A court may award reasonable attorneys' fees to a plaintiff who substantially prevails.

(j) This article does not apply to students attending private high schools, colleges or universities.

CHAPTER 176

(S. B. 488 - By Senator Rucker)

[Passed March 11, 2023**, in effect 90 days from passage (June 9, 2023**)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §18B-4-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18B-4-7a, all relating to aligning state and federal accreditation rules; requiring the Higher Education Policy Commission, the Council for Community and Technical College Education and the institutional governing boards of the exempted schools to regularly update their rules regarding accreditation to conform to federal regulations; requiring the council, commission, and governing boards to promulgate rules, by December 31, 2023, to permit institutions to choose to pursue accreditation with a recognized accreditor; making findings; requiring the council, commission, and governing boards to amend their regulations regarding accreditation by December 31, 2023; and providing that any regulations that imply or state that certain accreditors must be used are incorrect and must be amended.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-7. Accreditation of institutions of higher education; standards for degrees.

(a) The council shall make rules for the accreditation of community and technical colleges in this state and shall determine the minimum standards for conferring degrees. The commission shall make rules for the accreditation of colleges in this state except the governing boards of the exempted schools shall make rules for

**NOTE: Incorrect year, 2034, was printed on the enrolled bill.

their respective institutions, and each shall determine the minimum standards for conferring degrees. The governing boards of the exempted schools shall promulgate rules pursuant to the provisions of §18B-1-6 of this code for the accreditation of their respective institutions.

(1) The council, commission, and governing boards of the exempted schools shall regularly update their rules regarding accreditation to conform with changes by, and to take advantage of new flexibilities and data sources made available by, the United States Department of Education and by the United States Congress.

(2) By December 31, 2023, the council, commission, and governing boards must promulgate rules that permit institutions to choose to pursue institutional accreditation with any accreditor recognized by the United States Department of Education.

(b) An institution of higher education may not confer a degree on any basis of work or merit below the minimum standards prescribed by the council or commission.

(c) With the approval of the commission and subject to subsections (e), (f), and (g) of this section, governing boards of institutions which currently offer substantial undergraduate course offerings and a master's degree in a discipline are authorized to grant baccalaureate degrees in that discipline.

(d) Except as otherwise provided in this section, a charter or other instrument containing the right to confer degrees of higher education status may not be granted by the State of West Virginia to an institution, association, or organization within the state, nor may a degree be awarded, until the condition of conferring the degree first has been approved in writing by the council or commission, as appropriate, or by the institution's governing board in the case of the exempted schools.

(e) To retain the authority to confer degrees pursuant to this section, each institution shall provide annually to the commission or council, as requested, all information the commission or council considers necessary to assess the performance of the institution and to determine whether the institution continues to meet the

minimum standards for conferring degrees. This information includes, but is not limited to, the following data:

(1) All information current and future federal or state laws and regulations require the institution to report to the public, to students, to employees, or to federal or state agencies;

(2) Other consumer information the commission or council considers necessary, including, but not limited to, graduation and retention rates, transfers, post-graduation placements, loan defaults, and numbers and types of student complaints;

(3) A detailed explanation of financial operations including, but not limited to, policies, formulas and procedures related to calculation, payment and refund for all tuition and fees; and

(4) An assessment of the adequacy of the institution's curriculum, personnel, facilities, materials, and equipment to meet the minimum standards for conferring degrees.

(f) The commission and council may conduct on-site reviews to evaluate an institution's academic standards, may conduct financial audits, or may require the institution to perform these audits and provide detailed data to the commission or council.

(g) The commission or council shall revoke an institution's authority to confer degrees when the institution's governing body, chief executive officer, or both, have done any one or more of the following:

(1) Failed to maintain the minimum standards for conferring degrees; or

(2) Willfully provided false, misleading, or incomplete information to the commission or council.

(h) The commission and council each shall compile the information collected pursuant to subsections (e), (f) and (g) of this section and submit a report on the information to the Legislative Oversight Commission on Education Accountability annually beginning December 1, 2012. The commission and council each

shall make the information and report available to the public in a form and manner that is accessible to the general public, including, but not limited to, posting on its website.

§18B-4-7a. Choice of accreditors.

(a) The Legislature finds and declares that:

(1) The United States Department of Education promulgated new regulations on November 1, 2019, that revise the criteria used by the department to recognize accrediting agencies to allow competition (84 Fed. Reg. 58834);

(2) The council, commission, and governing boards of the exempted schools must take advantage of the new regulations in order to improve education quality through competition among accreditors by amending their own regulations;

(3) Regulatory references to accreditation involving the North Central Association are out of date because it was dissolved in 2014; and

(4) Seventeen accreditors are currently recognized by the United States Department of Education (seven traditionally "regional" accreditors and 10 traditionally "national" accreditors).

(b) *Competition.* —

(1) By December 31, 2023, the council, commission, and governing boards of the exempted schools must amend their regulations regarding accreditation to ensure that every postsecondary institution in the state may freely choose to pursue accreditation by any accreditor recognized by the United States Department of Education for the kinds of programs offered by the institution; and

(2) To the extent that such regulations imply or state that institutions default to, or normally would, should, or must be accredited by the Higher Learning Commission and/or the now-defunct North Central Association, such regulations are incorrect and must be amended.



CHAPTER 177

(Com. Sub. for Com. Sub. for S. B. 543 - By Senators Grady and Plymale)

[Passed March 11, 2023; in effect from passage]

[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §29A-3A-1 and §29A-3A-2 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §29A-3A-2a; to amend and reenact §29A-3A-3, §29A-3A-4, §29A-3A-5, §29A-3A-6, §29A-3A-7, §29A-3A-8, §29A-3A-9, §29A-3A-10, §29A-3A-11, §29A-3A-11a, §29A-3A-12, §29A-3A-13, §29A-3A-14, §29A-3A-15, §29A-3A-16, §29A-3A-16a, §29A-3A-17, §29A-3A-18, and §29A-3A-20, all relating to higher education and school building authority rule-making authority; revising definitions; requiring all sections of rule to be filed when proposing an amendment to an existing rule; requiring rule to be accompanied by note of explanation; requiring agency proposing to repeal a rule to file the rule in its entirety with the provisions of the rule struck through; making provisions applicable to procedural and interpretive rules applicable to legislative-exempt rules; allowing an agency to hold a public hearing, schedule a public comment period, or both; requiring agency to respond to public comments and explain the reasoning for comments being incorporated or not incorporated into the rule; reducing time period for filing of notices of hearings for receiving public comment on a proposed rule; allowing repeal of a legislative-exempt, procedural, or interpretive rule by filing notice of repeal with the Secretary of State; establishing time limit for filing of notice of approval with the Secretary of State and the Legislative Oversight Commission on Education Accountability (LOCEA); requiring LOCEA make a continuing investigation, study, and review of

the practices, policies, and procedures of the State Board of Education; requiring electronic submission of agency-approved rule to LOCEA; requiring electronic filing of notice of approval in the State Register; adding to information that electronic copies of the proposed legislative rule is to include; modifying topics LOCEA's review of a proposed legislative rule is to include; modifying LOCEA's options in making recommendations to the Legislature after reviewing a legislative rule; requiring bill authorizing legislative rule to incorporate the amendments recommended by LOCEA; modifying date after which proposed legislative rules submitted to LOCEA can be withheld from its report to the clerk of the respective houses; modifying provisions pertaining to bills of authorization; removing provisions pertaining to computation of dates; allowing disapproval of rules not approved or acted upon by the Legislature; requiring Secretary of State to publish an authorized and promulgated legislative rule in the Code of State Rules; adding to information that must be filed with emergency rules in the State Register; providing for effective date for emergency rule and amendment to emergency rule; requiring the agency to file a copy of the emergency rule and the required statement with the Secretary of State and LOCEA; reducing time periods the agency has for filing a notice of public hearing on a proposed emergency rule and for filing the proposed emergency rule with LOCEA; removing provision pertaining to emergency legislative rules currently in effect; making certain provisions pertaining to filing an emergency rule and disapproval of an emergency rule applicable to filing an amendment to an emergency rule and disapproval of an emergency rule; modifying provisions pertaining to LOCEA's review of procedural rules, interpretive rules, or existing legislative rules; providing for prior rules to remain in full force and effect; modifying required sunset date; specifying procedure for renewing legislative rule; and requiring Secretary of State to file a notice of sunset in the State Register within 30 days following expiration of a legislative rule.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3A. HIGHER EDUCATION RULE MAKING.**§29A-3A-1. Definitions.**

As used in this article:

(a) "Commission" means the Legislative Oversight Commission on Education Accountability;

(b) "Agency", for purposes of this article, means the Higher Education Policy Commission created by §18B-1B-1 *et seq.* of this code, the Council for Community and Technical College Education established pursuant to §18B-2B-3 of this code, the School Building Authority established pursuant to §18-9D-1 *et seq.* of this code, or any successor board, commission, agency, or officer.

(c) "Agency" also means any other entity directed by this code to promulgate a rule or rules in accordance with this article, but this definition shall apply solely for the purpose of promulgating the rule or rules required to be promulgated in accordance with this article.

§29A-3A-2. Rules to be promulgated only in accordance with this article.

In addition to other rule-making requirements imposed by law and except to the extent specifically exempted by the provisions of this chapter or other applicable law, every rule and regulation (including any amendment of or rule to repeal any other rule) shall be promulgated by the agency only in accordance with this article and shall be and remain effective only to the extent that it has been or is promulgated in accordance with this article.

§29A-3A-2a. Filing proposed amendments to an existing rule; and repealing an existing rule.

(a) The agency shall file all sections of the proposed rule when proposing an amendment to an existing rule. The proposed rule shall be accompanied by note of explanation as to the effect of the amendment and its relation to the existing rules.

(b) The agency proposing to repeal a rule shall file the rule in its entirety with the provisions of the rule struck through. The agency may not repeal a rule by reference in another rule.

§29A-3A-3. Limitations on authority to exercise rule-making power.

(a) Except when, and to the extent that, this chapter or any other provision of law now or hereafter made expressly exempts the agency or a particular grant of the rule-making power from the provisions of this article, every grant of rule-making authority to the agency heretofore provided shall be construed and applied to be effective only:

(1) If heretofore lawfully exercised in accordance with the prior provisions of this chapter and the resulting rule has not been revoked or invalidated by the provisions hereof or by the agency; or

(2) If exercised in accordance with the provisions hereof.

(b) The agency shall not be deemed to have the power and authority to promulgate a legislative rule without compliance with this article unless: (1) The provision of this code, heretofore or hereafter enacted, granting the power and authority expressly exempts its exercise from legislative rule-making review prior to promulgation or (2) the grant of the power and authority is exempted from the application of this chapter by the express provisions of this chapter. To the extent any grant of power and authority not so exempt is deemed to exceed the limits and provisions of this article, the power and authority to promulgate legislative rules is hereby revoked.

§29A-3A-4. Rules of procedure required.

In addition to other rule-making requirements imposed by law:

(a) The agency shall adopt procedural rules governing the formal and informal procedures prescribed or authorized by this chapter. Procedural rules shall include rules of practice before the

agency, together with forms and instructions in accordance with §29A-1-2 of this code.

(b) To assist interested persons dealing with it, the agency shall, so far as deemed practicable, supplement its rules with descriptive statements of its procedures.

§29A-3A-5. Filing of proposed legislative exempt rules, procedural rules, and interpretive rules.

(a) When the agency proposes a legislative exempt, procedural, or interpretive rule, the agency shall file in the State Register a notice of its action, including the text of the rule as proposed.

(b) All proposed rules filed under subsection (a) of this section shall have a fiscal note attached itemizing the cost of implementing the rules as they relate to this state and to persons affected by the rules. The fiscal note shall include all information included in a fiscal note for either house of the Legislature and a statement of the economic impact of the rule on the state or its residents. The objectives of the rule shall be clearly and separately stated in the fiscal note by the agency issuing the proposed rules. A legislative exempt, procedural, or interpretive rule is not void or voidable by virtue of noncompliance with this subsection.

§29A-3A-6. Notice of proposed rulemaking.

(a) When the agency proposes to promulgate a rule other than an emergency rule, it shall file with the Secretary of State, for publication in the State Register, a notice of its action, including therein any request for the submission of evidence to be presented on any factual determinations or inquiries required by law to promulgate the rule. At the time of filing the notice of its action, the agency shall also file with the Secretary of State a copy of the full text of the rule proposed and a fiscal note as defined in §29A-3A-5 of this code. If the agency is considering alternative draft proposals, it may also file with the Secretary of State the full text of the draft proposals.

(b) The notice shall fix a date, time, and place for the receipt of public comment in the form of oral statements, written statements,

and documents bearing upon any findings and determinations which are a condition precedent to the final approval by the agency of the proposed rule and shall contain a general description of the issues to be decided. If no specific findings and determinations are required as a condition precedent to the final approval by the agency of the approved rule, the notice shall fix a date, time, and place for the receipt of general public comment on the proposed rule. To comply with the public comment provisions of this section, the agency may hold a public hearing or schedule a public comment period for the receipt of written statements or documents, or both.

(c) If findings and determinations are a condition precedent to the promulgation of the rule, then an opportunity for general public comment on the merits of the rule shall be afforded after the findings and determinations are made. In that event, notice of the hearing or of the period for receiving public comment on the proposed rule shall be attached to and filed as a part of the findings and determinations of the agency when filed in the State Register.

(d) In any hearing for public comment on the merits of the rule, the agency may limit presentations to written material. The time, date, and place fixed in the notice shall constitute the last opportunity to submit any written material relevant to any hearing, all of which may be earlier submitted by filing with the agency. After the public hearing or the close of the public comment period, whichever is later, the agency shall not permit the filing or receipt of, nor shall it consider, any attempted *ex parte* communications directed to it in the form of additional comment prior to the submission of its final agency-approved rule to the Legislative Oversight Commission on Education Accountability pursuant to the provisions of §29A-3A-12 of this code.

(e) The agency may also, at its expense, cause to be published as a Class I legal advertisement in every county of the state any notice required by this section.

(f) Any citizen or other interested party may appear and be heard at the hearings as are required by this section.

(g) Prior to the submission of any agency-approved proposed rule to the Secretary of State, the agency shall respond to public comments received during the rulemaking process and explain the reasoning for comments being incorporated or not incorporated into the rule. Failure to adequately respond to public comments may be grounds for rejection of the proposed rule.

§29A-3A-7. Filing findings and determinations for rules in State Register; evidence deemed public record.

(a) Incident to fixing a date for public comment on a proposed rule, the agency shall promulgate the findings and determinations required as a condition precedent thereto and state fully and succinctly the reasons therefor and file those findings and determinations in the State Register. If the agency amends the proposed rule because of the evidence or comment presented pursuant to §29A-3A-5 of this code, the amendment shall be filed with a description of any changes and statement listed for the amendment.

(b) The statement of reasons and a transcript of all evidence and public comment received pursuant to notice are public records and shall be carefully preserved by the agency and be open for public inspection and copying for a period of not less than five years from the date of the hearing.

§29A-3A-8. Notice of hearings.

Notices of hearings required by §29A-3A-6 and §29A-3A-7 of this code shall be filed in the State Register not less than 30 nor more than 60 days before the date of the hearing or the last day specified therein for receiving written material. Any hearing may be continued from time to time and place to place by the agency, which shall have the effect of extending the last day for receipt of evidence or public comment. Notice of the continuance shall be promptly filed thereafter in the State Register.

§29A-3A-9. Adoption of legislative exempt rules, procedural rules, and interpretive rules.

(a) The agency shall consider a legislative exempt, procedural, and interpretive rule for adoption not later than six months after the

close of public comment and file a notice of withdrawal or adoption in the State Register within that period. The agency's failure to file the notice constitutes withdrawal, and the Secretary of State shall note that failure in the State Register immediately upon the expiration of the six-month period.

(b) A legislative exempt, procedural, or interpretive rule may be amended by the agency prior to final adoption without further hearing or public comment. The amendment may not change the main purpose of the rule. If the fiscal implications have changed since the rule was proposed, the agency shall attach a new fiscal note to the notice of filing. Upon adoption of the rule, including any amendment, the agency shall file the text of the adopted legislative exempt, procedural, or interpretive rule with its notice of adoption in the State Register, and the rule is effective on the date specified in the rule or 30 days after filing, whichever is later, or as specified in this code.

(c) The agency may repeal a legislative exempt, procedural, or interpretive rule by filing a notice of repeal with the Secretary of State.

§29A-3A-10. Proposal of legislative rules.

(a) When the agency proposes a legislative rule, other than an emergency rule, it shall be deemed to be applying to the Legislature for permission, to be granted by law, to promulgate the rule as approved by the agency for submission to the Legislature or as amended and authorized by the Legislature by law.

(b) The agency proposing a legislative rule, other than an emergency rule, after filing the notice of proposed rulemaking required by §29A-3A-5 of this code, shall then proceed as in the case of a legislative exempt, procedural, and interpretive rule to the point of, but not including, final adoption. In lieu of final adoption, the agency shall finally approve the proposed rule, including any amendments, for submission to the Legislature and file the notice of approval in the State Register and with the Legislative Oversight Commission on Education Accountability within 90 days after the public hearing was held or within 90 days after the end of the public

comment period required under §29A-3A-6 of this code: *Provided*, That upon receipt of a written request from the agency setting forth valid reasons why the agency is unable to file the agency-approved rule within the 90 day time period, the Legislative Oversight Commission on Education Accountability may grant the agency an extension of time to file the agency-approved rule.

(c) The final agency approval of the rule under this section is deemed to be approved for submission to the Legislature only and does not give any force and effect to the proposed rule. The rule shall have full force and effect only when authority for promulgation of the rule is granted by an act of the Legislature and the rule is promulgated pursuant to §29A-3A-14 of this code.

§29A-3A-11. Creation of a legislative oversight commission on education accountability.

(a) There is hereby created a joint commission of the Legislature known as the Legislative Oversight Commission on Education Accountability to review all legislative rules of the agency and other rules as the commission deems appropriate. The commission shall be composed of six members of the Senate appointed by the President of the Senate and six members of the House of Delegates appointed by the Speaker of the House of Delegates. No more than five of the six members appointed by the President of the Senate and the Speaker of the House of Delegates, respectively, may be members of the same political party. In addition, the President of the Senate and the Speaker of the House of Delegates shall be *ex officio* nonvoting members of the commission and shall designate the co-chairs. At least one of the Senate members and one of the House members shall be members of the committee on education of the Senate and House, respectively, and at least one of the Senate members and at least one of the House members shall be a member of the committee on finance of the Senate and House, respectively. The members shall serve until their successors have been appointed as heretofore provided. Members of the commission shall receive compensation and expenses as provided in §4-2A-1 *et seq.* of this code. Those expenses and all other expenses, including those incurred in the employment of legal, technical, investigative, clerical,

stenographic, advisory, and other personnel shall be paid from an appropriation to be made expressly for the Legislative Oversight Commission on Education Accountability, but if no such appropriation is made, the expenses shall be paid from the appropriation under "Account No. 103 for Joint Expenses", but no expense of any kind whatever payable under the account for joint expenses shall be incurred unless first approved by the Joint Committee on Government and Finance. The commission shall meet at any time, both during sessions of the Legislature and in the interim.

(b) The commission may adopt rules of procedure as it considers necessary for the submission, presentation, and consideration of rules.

§29A-3A-11a. Additional powers and duties; subpoena powers.

(a) In addition to the powers and duties conferred upon the commission pursuant to the provisions of this article, the commission shall make a continuing investigation, study, and review of the practices, policies, and procedures of the agency and of the State Board of Education and of any and all matters related to education in the state and shall make annual reports to the Legislature of the results of those investigations, studies, and reviews.

(b) These reports shall describe and evaluate in a concise manner:

(1) The major activities of the agency and the State Board of Education for the fiscal year immediately past, including important policy decisions reached on initiatives undertaken during that year, especially as those activities, decisions, and initiatives relate to the implementation of: (A) The constitutional requirement of providing a thorough and efficient education to the children of this state; and (B) the objective of improving the quality of education at all levels in this state.

(2) Other information considered by the commission to be important, including recommendations for statutory, fiscal, or other reform and reasons for those recommendations.

(3) Further, these reports may specify in what manner said practices, policies, and procedures may or should be modified to satisfy said Constitutional requirement and to improve the quality of education at all levels in this state.

(c) The commission may meet as often as may be necessary and employ professional, clerical, and technical personnel as it considers necessary to perform effectively the duties herein prescribed.

(d) The commission shall conduct a study to determine whether the bureaucracies of the State Board of Education and each county board of education are of a size and complexity that they do not best serve the educational needs of the children of the state. The commission may request assistance from the Legislative Auditor to conduct this study.

(e) For purposes of carrying out its duties, the commission is hereby empowered and authorized to examine witnesses and to subpoena persons and books, records, documents, papers, or any other tangible things as it believes should be examined to make a complete investigation. All witnesses appearing before the commission shall testify under oath or affirmation, and any member of the commission may administer oaths or affirmations to the witnesses. To compel the attendance of witnesses at hearings or the production of any books, records, documents, papers, or any other tangible thing, the commission is hereby empowered and authorized to issue subpoenas, signed by one of the co-chairs, in accordance with §4-1-5 of this code. The subpoenas shall be served by any person authorized by law to serve and execute legal process and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

If any person subpoenaed to appear at any hearing refuses to appear or to answer inquiries there propounded, or fails or refuses

to produce books, records, documents, papers, or any other tangible thing within his or her control when the same are demanded, the commission shall report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and the court may compel obedience to the subpoena as though the subpoena had been issued by the court in the first instance.

§29A-3A-12. Submission of legislative rules to the Legislative Oversight Commission on Education Accountability.

(a) When the agency finally approves a proposed legislative rule for submission to the Legislature pursuant to §29A-3A-10 of this code, the agency shall electronically submit the agency-approved rule to the Legislative Oversight Commission on Education Accountability and electronically file notice of approval in the State Register. Electronic copies of the proposed legislative rule shall include the following information:

(1) The full text of the legislative rule as finally approved by the agency, with new language underlined and with language to be deleted from any existing rule stricken through but clearly legible;

(2) A brief summary of the content of the legislative rule and a description and a copy of any existing rule which the agency proposes to amend or repeal;

(3) A statement of the circumstances which require the rule;

(4) A detailed description of the rule's purpose and all proposed changes to the rule;

(5) A fiscal note containing all information included in a fiscal note for either house of the Legislature, a statement of the economic impact of the rule on the state or its residents, and, if there are any adjustments to any fees or other special revenue included in the rule, the fiscal note shall include, for any fund affected by adjustments to fees or other special revenue, the fund name, the fund number, and the past five years of actual revenues and expenses of the fund;

(6) One copy of any relevant federal statutes or regulations;

(7) An explanation of the statutory authority for the rule, including a detailed summary of the effect of each provision of the rule with citation to the specific statute which empowers the agency to enact the provision;

(8) All public comments for each proposed rule. The agency may consolidate substantially similar comments in the interest of efficiency;

(9) All written responses by the agency to the substance of any public comments received, including whether the agency chose to modify the proposed rule in response to the comments or, if no changes were made, the rationale for declining to incorporate or make any suggested changes responding to the public comments. The agency may consolidate substantially similar responses in the interest of efficiency: *Provided*, That the agency's responses shall address each issue and concern expressed by all comments received; and

(10) Any other information which the commission may request or which may be required by law. The agency shall submit its final agency-approved rule as required by this subsection.

(b) The commission shall review each proposed legislative rule and, in its discretion, may hold public hearings thereon. The review shall include, but not be limited to, a determination of:

(1) Whether the agency has exceeded the scope of its statutory authority in approving the proposed legislative rule;

(2) Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret, or make specific;

(3) Whether the proposed legislative rule overlaps, duplicates, or conflicts with any other provision of this code, any other rule adopted by the same or a different agency, or any federal statutes or regulations;

(4) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the proposed rule was promulgated;

(5) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

(6) Whether the proposed legislative rule could be made less complex or more readily understandable by the general public;

(7) Whether the proposed legislative rule was proposed for promulgation in compliance with the requirements of this article and with any requirements imposed by any other provision of this code; and

(8) Whether federal funding will be impacted by its expiration and explanation as to how.

(c) After reviewing the legislative rule, the commission shall recommend 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 or modifications;

(4) Require the agency to withdraw the rule; or

(5) Reject the proposed rule.

The commission shall file notice of its action in the State Register and with the agency proposing the rule: *Provided*, That when the commission makes the recommendations of subdivision (2), (3), (4), or (5) of this subsection, the notice shall contain a statement of the reasons for the recommendation.

(d) When the commission recommends that a rule be authorized, in whole or in part, by the Legislature, the commission shall instruct its staff or the office of Legislative Services to draft a

bill authorizing promulgation of all or part of the legislative rule and incorporating the amendments recommended by the commission. If the commission recommends that the rule not be authorized, it shall include in its report a draft of a bill authorizing promulgation of the rule together with a recommendation. Any draft bill prepared under this section shall contain a legislative finding that the rule is within the legislative intent of the statute which the rule is intended to implement, extend, apply, or interpret and shall be available for any member of the Legislature to introduce to the Legislature.

§29A-3A-13. Submission of legislative rules to Legislature.

(a) No later than 40 days before the 60th day of each regular session of the Legislature, the co-chairs of the Legislative Oversight Commission on Education Accountability shall submit to the clerk of the respective houses of the Legislature copies of all proposed legislative rules which have been submitted to and considered by the commission pursuant to §29A-3A-11 of this code and which have not been previously submitted to the Legislature for study, together with the recommendations of the commission with respect to the rules, a statement of the reasons for any recommendation that a rule be amended or withdrawn, and a statement that a bill authorizing the legislative rule has been drafted by the staff of the commission or by Legislative Services pursuant to §29A-3A-12 of this code. The co-chairs of the commission may also submit the rules at the direction of the commission at any time before or during a special session in which consideration thereof may be appropriate. The commission may withhold from its report any proposed legislative rule which was submitted to the commission after the last Friday in July of the previous calendar year: *Provided*, That in 2025 and every four years thereafter, the commission may withhold from its report any proposed legislative rule which was submitted to the commission after the last Friday in August of the previous calendar year. The clerk of each house shall submit the report to his or her house at the commencement of the next session.

(b) All bills introduced authorizing the promulgation of a rule may be referred by the Speaker of the House of Delegates and by

the President of the Senate to appropriate standing committees of the respective houses for further consideration or the matters may be otherwise dealt with as each house or its rules provide. The Legislature may by act authorize the agency to adopt a legislative rule incorporating the entire rule or may authorize the agency to adopt a rule with any amendments adopted by the Legislature. The clerk of the house originating the act shall immediately file a copy of any bill of authorization enacted with the Secretary of State and with the agency proposing the rule, and the clerk of each house may prepare and file a synopsis of legislative action during any session on any proposed rule submitted to the house during the session for which authority to promulgate was not by law provided during the session. Any number of provisions may be included in a bill of authorization, but the single object of the bill shall be to authorize the promulgation of proposed legislative rules by the agency.

(c) If the Legislature during its regular session disapproves all or part of any legislative rule which was submitted to it by the Legislative Oversight Commission on Education Accountability during the session, the agency may not thereafter issue any rule or directive or take other action to implement the rule or part thereof unless and until otherwise authorized to do so, except that the agency may resubmit the same or similar proposed rule to the Legislative Oversight Commission on Education Accountability in accordance with §29A-3A-12 of this code.

(d) Nothing herein shall be construed to prevent the Legislature by law from authorizing, or authorizing and directing, the agency to promulgate legislative rules not proposed by the agency or upon which some procedure specified in this chapter is not yet complete.

(e) Whenever the Legislature is convened by proclamation of the Governor, upon his or her own initiative or upon application of the members of the Legislature, or whenever a regular session of the Legislature is extended or convened by the vote or petition of its members, the Legislature may, by act enacted during the extraordinary or extended session, authorize, in whole or in part, any legislative rule whether submitted to the Legislative Oversight

Commission on Education Accountability or not, if legislative action on the rule during the session is a lawful order of business.

(f) As a part of any act that amends chapter 18B of this code, chapter 18C of this code, and §18-9D-1 *et seq.* of this code, authorizing the promulgation of a proposed legislative rule or rules, the Legislature may also provide, by general language or with specificity, for the disapproval of rules not approved or acted upon by the Legislature.

§29A-3A-14. Adoption of legislative rules; effective date.

(a) Except as the Legislature may by law otherwise provide, within 60 days after the effective date of an act authorizing promulgation of a legislative rule, the agency shall promulgate the rule only in conformity with the provisions of law authorizing and directing the promulgation of the rule.

(b) A legislative rule authorized by the Legislature is effective upon filing in the State Register, or on the effective date fixed by the authorizing act, or if none is fixed by law, a later date not to exceed 90 days, as is fixed by the agency.

(c) The Secretary of State shall note in the State Register the effective date of an authorized and promulgated legislative rule, and shall promptly publish the duly promulgated rule in the Code of State Rules maintained by his or her office.

§29A-3A-15. Withdrawal or modification of proposed rules.

(a) Any legislative rule proposed by the agency may be withdrawn by the agency any time before passage of a law authorizing or authorizing and directing its promulgation, but no such action shall be construed to affect the validity, force, or effect of a law enacted authorizing or authorizing and directing the promulgation of an authorized legislative rule or exercising compliance with the law. The agency shall file a notice of the action to withdraw the rule in the State Register.

(b) At any time before a proposed legislative rule has been submitted by the Legislative Oversight Commission on Education

Accountability to the Legislature pursuant to §29A-3A-13 of this code, the agency may modify the proposed rule to meet the objections of the commission. The agency shall file in the State Register a notice of its modifying action, including a copy of the modified rule, but shall not be required to comply with any provisions of this article requiring opportunity for public comment or taking of evidence with respect to the modification. If a legislative rule has been withdrawn, modified, and then resubmitted to the commission, the rule shall be considered to have been submitted to the commission on the date of the resubmission.

§29A-3A-16. Emergency legislative rules; procedure for promulgation; definition.

(a) The agency may, without hearing, find that an emergency exists requiring that an emergency rule be promulgated and promulgate the emergency rule in accordance with this section. The agency shall file the emergency rule, together with a statement of the facts and circumstances constituting the emergency and a listing of state institutions of higher education, agencies, professions, businesses, and other identifiable interest groups affected by the proposed emergency rule, in the State Register. The agency's good faith failure to list all known state institutions of higher education, agencies, professions, businesses, and other identifiable interest groups is not a basis for disapproval of the emergency rule, nor does it subject the emergency rule to judicial review. The emergency rule becomes effective upon the approval of the Secretary of State in accordance with §29A-3A-16a of this code or upon the 42nd day following the filing, whichever occurs first. The emergency rule may adopt, amend, or repeal any legislative rule, but the agency shall state with particularity the circumstances constituting the emergency requiring the adoption, amendment, or repeal, and the emergency rule is subject to de novo review by any court having original jurisdiction of an action challenging its validity. The agency shall immediately file a copy of the emergency rule and the required statement with the Secretary of State and the Legislative Oversight Commission on Education Accountability.

(b) An emergency rule is effective for not more than 15 months and expires earlier if any of the following occurs:

(1) The Secretary of State, acting under the authority provided for in §29A-3A-16a of this code, disapproves the emergency rule because: (A) The emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing the promulgation of the rule; (B) an emergency does not exist justifying the promulgation of the emergency rule; or (C) the emergency rule was not promulgated in compliance with the provisions of this section. An emergency rule may not be disapproved pursuant to the authority granted by paragraphs (A) or (B) of this subdivision on the basis that the Secretary of State disagrees with the underlying public policy established by the Legislature in enacting the authorizing legislation. An emergency rule which would otherwise be approved as being necessary to comply with a time limitation established by this code or by a federal statute or regulation may not be disapproved pursuant to the authority granted by paragraphs (A) or (B) of this subdivision on the basis that the agency has failed to file the emergency rule prior to the date fixed by the time limitation. When the authorizing statute specifically directs the agency to promulgate an emergency rule, or specifically finds that an emergency exists and directs the promulgation of an emergency rule, the emergency rule may not be disapproved pursuant to the authority granted by paragraph (B) of this subdivision. An emergency rule may not be disapproved on the basis that the Legislature has not specifically directed the agency to promulgate the emergency rule or has not specifically found that an emergency exists and directed the promulgation of an emergency rule;

(2) The agency has not previously filed and fails to file a notice of public hearing on the proposed rule within 30 days of the date the proposed rule was filed as an emergency rule, in which case the emergency rule expires on the 31st day;

(3) The agency has not previously filed and fails to file the proposed rule as approved by the agency following the close of the public comment period with the Legislative Oversight Commission on Education Accountability within 90 days of the date the

proposed rule was filed as an emergency rule, in which case the emergency rule expires on the 91st day;

(4) The Legislature has authorized or directed promulgation of an authorized legislative rule dealing with substantially the same subject matter since the emergency rule was first promulgated, in which case the emergency rule expires on the date the authorized rule is made effective; or

(5) The Legislature has, by law, disapproved the emergency rule, in which case the emergency rule expires on the date the law become effective.

(c) Any amendment to an emergency rule made by the agency shall be filed in the State Register and does not constitute a new emergency rule for the purpose of acquiring additional time or avoiding the expiration dates in subdivision (2), (3), (4) or (5), subsection (b) of this section: *Provided*, That the emergency amendment becomes effective upon the approval of the Secretary of State in accordance with section §29A-3-16a of this code or upon the 42nd day following the filing, whichever occurs first.

(d) Once an emergency rule expires due to the conclusion of 15 months or because of subdivision (2), (3), (4) or (5), subsection (b) of this section, the agency may not refile the same or similar rule as an emergency rule.

(e) The agency may not use the provisions of this section to avoid or evade any provision of this article or any other provisions of this code, including any provisions for legislative review and approval of proposed rules. Any emergency rule promulgated for that purpose may be contested in a judicial proceeding before a court of competent jurisdiction.

(f) The Legislative Oversight Commission on Education Accountability may review any emergency rule to determine: (1) Whether the agency has exceeded the scope of its statutory authority in promulgating the emergency rule; (2) whether there exists an emergency justifying the promulgation of the emergency rule; and (3) whether the emergency rule was promulgated in

compliance with the requirements and prohibitions contained in this section. The commission may recommend to the agency, the Legislature, or the Secretary of State any action it determines appropriate.

(g) For the purposes of this section, an emergency exists when the promulgation of an emergency rule is necessary: (1) For the immediate preservation of the public peace, health, safety or welfare; (2) to comply with a time limitation established by this code or by a federal statute or regulation; or (3) to prevent substantial harm to the public interest.

§29A-3A-16a. Disapproval of emergency rules by the Secretary of State; judicial review.

(a) Upon the filing of an emergency rule or filing of an amendment to an emergency rule by the agency, under the provisions of §29A-3A-16 of this code, the Secretary of State shall review the emergency rule or the amendment to the emergency rule and, within 42 days of the agency's filing, shall issue a decision as to whether the emergency rule or the amendment to an emergency rule should be disapproved.

(b) The Secretary of State shall disapprove an emergency rule or an amendment to an emergency rule if he or she determines:

(1) That the emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing the promulgation thereof; or

(2) That an emergency does not exist justifying the promulgation of the emergency rule or the filing of an amendment to the emergency rule; or

(3) That the emergency rule or an amendment to the emergency rule was not promulgated in compliance with §29A-3A-16 of this code.

(c) If the Secretary of State determines, based upon the contents of the rule or the supporting information filed by the agency, that the emergency rule should be disapproved, he or she may

disapprove the rule without further investigation, notice, or hearing. If, however, the Secretary of State concludes that the information submitted by the agency is insufficient to allow a proper determination to be made as to whether the emergency rule should be disapproved, he or she may make further investigation, including, but not limited to, requiring the agency or other interested parties to submit additional information or comment or fixing a date, time, and place for the taking of evidence on the issues involved in making a determination under the provisions of this section.

(d) If the Secretary of State determines, based upon the contents of the amendment to an emergency rule or the supporting information filed by the agency, that the amendment to the emergency rule should be disapproved, he or she may disapprove the amendment without further investigation, notice, or hearing. If, however, the Secretary of State concludes that the information submitted by the agency is insufficient to allow a proper determination to be made as to whether the amendment should be disapproved, he or she may make further investigation, including, but not limited to, requiring the agency or other interested parties to submit additional information or comment or fixing a date, time, and place for the taking of evidence on the issues involved in making a determination under the provisions of this section.

(e) The determination of the Secretary of State is reviewable by the Supreme Court of Appeals under its original jurisdiction, based upon a petition for a writ of mandamus, prohibition, or certiorari, as appropriate. The proceeding may be instituted by:

(1) The agency that promulgated the emergency rule;

(2) A member of the Legislature; or

(3) Any person whose personal property interests will be significantly affected by the approval or disapproval of the emergency rule by the Secretary of State.

§29A-3A-17. Legislative review of procedural rules, interpretive rules, and existing legislative rules.

(a) The Legislative Oversight Commission on Education Accountability may review any procedural rules, interpretive rules, or existing legislative rules of the agency to determine if the rules are achieving their purpose and based on its determination if the rule should be continued, amended, or repealed.

(b) Following the review, the Legislative Oversight Commission on Education Accountability shall make recommendations regarding the rules to the agency and to the Joint Committee on Government and Finance.

§29A-3A-18. Prior rules.

Any rule lawfully promulgated prior to the effective date of the amendments made to this chapter during the regular session of the Legislature, 2023, shall remain in full force and effect until:

(1) The rule is expressly made ineffective by the provisions of this chapter; or

(2) The rule expires by reason of failure to refile it as provided in §29A-2-5 of this code, or expires pursuant to its own terms and provisions lawfully made before the effective date of this section; or

(3) The rule is repealed by the lawful act of the agency in conformity with this chapter; or

(4) The rule is invalidated by an act of the Legislature or the force and effect of another law.

§29A-3A-20. Sunset provision in rules.

(a) Any new legislative rule promulgated pursuant to this article after April 1, 2016, shall include a sunset provision terminating the rule on August 1 of the fifth year following its promulgation: *Provided*, That the rule may be renewed by the Legislature pursuant to the rulemaking procedures and authority in

this article: *Provided, however,* That if a different sunset or termination provision exists in the statute under which the proposed rule is promulgated, the enabling statute's provision shall control: *Provided further,* That this subsection shall not apply to emergency rules promulgated pursuant to §29A-3A-16 of this code.

(b) Any legislative rule existing as of April 1, 2016, that is thereafter amended pursuant to this article shall include a sunset provision terminating the rule on August 1 of the applicable year as part of the amendment: *Provided,* That the rule may be renewed by the Legislature pursuant to the rule-making procedures and authority in this article: *Provided, however,* That if a different sunset or termination provision exists in the statute under which the legislative rule is promulgated, the enabling statute's provision controls: *Provided further,* That this subsection shall not apply to emergency rules promulgated pursuant to §29A-3A-16 of this code.

(c) The existence of a sunset provision terminating a legislative rule shall not preclude the repeal of the legislative rule by the Legislature prior to its termination.

(d) As part of its rule review under this article, the Legislative Oversight Commission on Education Accountability may establish a procedure for timely review of a legislative rule prior to its termination if the agency has affirmatively sought renewal prior to expiration. The procedure may include a requirement that the agency show cause as to why the terminating legislative rule is required and necessary to be continued for another term of years.

(e) The Secretary of State shall provide notice to the agency and the Legislative Oversight Commission on Education Accountability at least 18 months prior to every legislative rule's termination date. The agency has 60 days from receipt of the notice to file the legislative rule with the Secretary of State and the Legislative Oversight Commission on Education Accountability affirmatively seeking renewal of the legislative rule: *Provided,* That, if the legislative rule that is scheduled to sunset is not being amended or changed, except for a new sunset date, the rule is not

subject to the public comment period requirements contained in §29A-3A-6 of this code. The Legislative Oversight Commission on Education Accountability, as part of its rule review under this article, may begin reviewing a legislative rule upon its filing.

(f) If the agency has promulgated a legislative rule with a sunset date prior to May 1 of the applicable year, the agency may file a technical amendment with the Secretary of State for the purpose of establishing a sunset date of August 1 of the applicable year.

(g) The Secretary of State shall file a notice of sunset in the State Register within 30 days following the expiration of a legislative rule.

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CHAPTER 178

**(Com. Sub. for H. B. 2005 - By Delegates Worrell, Ellington,
Smith, Clark, Dean, Barnhart, Statler, Fehrenbacher, Riley,
Dittman and Hillenbrand)**

[Passed March 10, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-14-4, all relating to the dual enrollment pilot program; providing definitions; establishing the program to be administered by the Higher Education Policy Commission and the Council for Community and Technical College Education in conjunction with the State Board of Education; providing for funding; providing for rulemaking; and requiring annual reporting.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. MISCELLANEOUS.

§18B-14-4. Dual enrollment pilot program established; definitions; funding; annual reporting.

(a) *Definitions.* – As used in this section, unless used in a context that clearly requires a different meaning, the term:

"Dual credit course" means a credit-bearing college-level course offered by an eligible institution to secondary school students in which the students receive credit at both the secondary and post-secondary levels.

"Dual enrollment" means the registration of an eligible secondary student in a post-secondary course creditable toward high school completion and a career technical certificate, associate degree, or baccalaureate degree. A student who is enrolled in post-

secondary instruction that is not creditable toward a high school diploma may not be classified as a dual enrollment student.

"Eligible course" means any class or program of instruction offered at an eligible institution for which the student receives credit toward both high school completion and a post-secondary certificate or degree. Applied academics for adult education instruction, developmental education, physical education courses, and recreation and leisure studies courses are not eligible courses for dual enrollment purposes.

"Eligible institution" means a state institution of higher education as that term is defined in §18B-1-2 of this code.

"Eligible student" means any secondary school student, including a homeschool, charter school, microschool, learning pod, or private school student, who meets minimum criteria established by the state school board and the commission or the council, as appropriate, for the purpose of enrolling in a dual credit course.

(b) *Dual enrollment pilot program established.* – In conjunction with the state board and under the supervision of the commission and the council, the chancellor and the state superintendent shall establish a four-year pilot program whereby eligible institutions shall offer dual enrollment courses that will comprise individualized pathways for career and post-secondary educational opportunities for the state's secondary school students. These students shall be enrolled in eligible courses leading to careers in certain designated career pathways, namely direct care health professions; information technology; science, technology, engineering, and math (STEM) fields; education; advanced manufacturing; welding and fabrication; construction; agriculture; and any other program that meets a workforce need in the state as determined by the Department of Commerce.

(c) *Funding.* – From appropriations to the commission and the council for the purposes of implementing and administering the dual enrollment pilot program established in this section, the commission or the council, as appropriate, shall pay directly to the eligible institutions from such appropriations the cost of the tuition

and academic fees incurred by eligible students taking dual credit courses in accordance with the dual enrollment pilot program established in this section.

(d) *Rulemaking.* – In consultation with the state board, the commission and council may propose legislative and emergency rules pursuant to §29A-3A-1 *et seq.* of this code to implement the provisions of this section.

(e) *Annual reports.* – By December 1, 2024, and annually thereafter for the duration of the pilot program, the chancellor shall report to the Legislative Oversight Commission on Education Accountability on:

- (1) The number of students participating in the program;
- (2) The number and type of credits and certifications or credentials earned by students who have participated in the program;
- (3) The dollar amount expended associated with this program;
- (4) Projected growth in the program and funding needs for the next year;
- (5) The job status of students who have participated in the program;
- (6) Any issues with the program reported by students, parents, secondary schools, and institutions of higher education; how these issues are being addressed; and whether the issues require legislative action; and
- (7) A recommendation from the chancellor and the state superintendent on whether the program should continue beyond its four-year pilot period.

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CHAPTER 179

**(Com. Sub. for H. B. 2757 - By Delegates Summers, Forsht,
Miller, Reynolds, Sheedy, Heckert, Petitto, Jeffries and
Cannon)**

[Passed March 3, 2023; in effect from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §18-2E-11 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18C-9-3 and §18C-9-4, all relating to expanding institutional eligibility for the West Virginia Invests Grant Program.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-11. Advanced Career Education.

(a) The Legislature hereby makes the following findings:

(1) Preparing West Virginia students to achieve post-secondary career education and to excel in the workforce is a responsibility shared among all state education agencies and institutions. The state's education agencies and institutions can fulfill this responsibility by establishing partnerships that enable students to attain advanced career education and valuable workforce skills in a more efficient and advantageous manner;

(2) The formation of partnerships between public secondary schools and community and technical colleges or public or not-for-profit private baccalaureate institutions which establish advanced career education programs would ensure that a full range of

community and technical college programs and services are provided in all areas of the state;

(3) Programs which create clear and efficient pathways that begin during secondary education and lead to obtaining advanced certifications and associate degrees will increase the number of students that ultimately obtain a post-secondary credential or degree; and

(4) West Virginia's economic prosperity is directly tied to the level and quality of its workforce career education. Providing the students of this state with increased access to career education will not only improve the general well-being of its citizens, but greatly enhance the economic prosperity of the state.

(b) The purpose of this section and the Advanced Career Education (ACE) programs authorized herein is to connect secondary schools with community and technical colleges or public or not-for-profit private baccalaureate institutions that provide associate degrees to accomplish the following:

(1) Prepare secondary students for success in post-secondary education and the workforce; and

(2) Provide more opportunities for secondary students to earn post-secondary college credits, certifications, and associate degrees.

(c) To effectuate the purposes set forth in §18-2E-11(b) of this code, community and technical colleges, public or not-for-profit private baccalaureate institutions, career technical education centers, and county boards of education, or any combination of such secondary and postsecondary entities, shall establish partnerships that provide for ACE programs which feature defined pathways that begin when a student is in secondary education and that ultimately lead to advanced certifications or associate degrees awarded by community and technical colleges or baccalaureate institutions. ACE programs shall be equally available to public, nonpublic, and homeschool students.

(d) ACE programs shall include pathways that consist of a curriculum of courses leading to advanced certifications or an associate degree that have been deemed to satisfy a workforce need as determined by the Department of Commerce.

(1) The Department of Commerce shall, on occasion, but at least annually, provide written notification to the State Board of Education, the West Virginia Council for Community and Technical College Education and the West Virginia Higher Education Policy Commission of a determination of areas of workforce need within the state.

(2) The Department of Commerce, in consultation with the council, the commission, and business partners, shall develop a hierarchy of high demand skilled professions and workforce needs with shortages, which shall be given priority in administration of the program.

(e) The State Superintendent of Schools, the Chancellor of the Council for Community and Technical College Education, and the Chancellor of the Higher Education Policy Commission, or their designees, shall facilitate the ACE programs. At a minimum, an ACE program shall satisfy the following objectives:

(1) Provide additional opportunities to students in this state to attain advanced certifications and college credentials leading to associate degrees through ACE pathways;

(2) Increase the number of students in this state that attain advanced certifications and college credentials leading to associate degrees through ACE pathways;

(3) Allow students in this state to attain advanced certifications and college credentials leading to associate degrees through ACE pathways at little or no cost;

(4) Ensure that ACE pathways provide a clear roadmap to the courses and requirements necessary to attain advanced certifications and college credentials leading to associate degrees; and

(5) Ensure that course requirements within ACE pathways are not duplicated.

(f) The board and council shall jointly promulgate guidelines for the administration of ACE programs and pathways, which must be affirmatively adopted by the board and the council. At a minimum, such guidelines shall provide for the following:

(1) That ACE program partnerships established between community and technical colleges, public or not-for-profit private baccalaureate institutions, career technical education centers, and county boards of education, or any combination of such secondary and postsecondary entities, shall be reduced to written partnership agreements;

(2) The information required to be contained within partnership agreements;

(3) That ACE programs and pathways shall meet the requirements of the accrediting entity for the community and technical college or public or not-for-profit private baccalaureate institution awarding the associate degrees or advanced certificates;

(4) That partnership agreements shall be approved by the State Superintendent of Schools, the Chancellor for the Council for Community and Technical College Education and the Chancellor of the Higher Education Policy Commission; and

(5) Any other provisions necessary to effectuate the purposes of this section.

(g) The board and the council shall maintain and annually report to the Governor and the Legislative Oversight Commission on Education Accountability the following information about ACE programs:

(1) The identity and number of partnership agreements;

(2) The ACE programs and pathways that are being utilized by career technical education centers, county boards of education,

community and technical colleges, and public or not-for-profit private baccalaureate institutions; and

(3) The nature and number of degrees and certifications awarded to students participating in ACE programs by each community and technical college, public or not-for-profit private baccalaureate institution and career technical education center.

ARTICLE 9. WEST VIRGINIA INVESTS GRANT PROGRAM.

§18C-9-3. Definitions.

As used in this article:

"Academic fees" means fees charged to students for specific courses or programs to support such expenses such as lab or equipment costs.

"Council" means the West Virginia Council for Community and Technical College Education.

"Commission" means the West Virginia Higher Education Policy Commission.

"Eligible institution" means a public community and technical college under the authority of the West Virginia Council for Community and Technical College Education, or a public or not-for-profit private baccalaureate institution authorized by the Higher Education Policy Commission that grants associate degrees satisfying the requirements of participating in Advanced Career Education (ACE) program partnerships in accordance with §18-2E-11 of this code, or a not-for-profit, hospital-based allied health program authorized by the West Virginia Council for Community and Technical College Education.

"Eligible post-secondary program" means a curriculum of courses leading to a certificate or associate degree at an eligible institution which satisfies a course of study that has been deemed by the Department of Commerce to satisfy a workforce need as

determined by the department in accordance with §18-2E-11(d) of this code.

"Tuition" means the semester or term charges imposed by an eligible institution and, additionally, all mandatory fees required as a condition of enrollment by all students.

§18C-9-4. WV Invests Grant Program.

(a) There is hereby created a grant program known as the WV Invests Grant Program, which shall be administered by the vice chancellor for administration in accordance with this article.

(b) The council shall award WV Invests Grants pursuant to the following terms and conditions:

(1) A WV Invests Grant may only be awarded to applicants satisfying the requirements provided in §18C-9-5 of this code;

(2) The maximum amount of a WV Invests Grant shall be the cost of tuition mandatory fees, and academic program fees for coursework leading to completion of the chosen associate degree or certificate, less all other state and federal scholarships and grants for which the student is eligible: *Provided*, That all academic program fees charged in addition to base tuition must be approved by the Council for Community and Technical College Education to be eligible for the West Virginia Invests Grant as set forth in this article. All other state and federal scholarships and grants for which the grant recipient is eligible shall be deducted from the amount of the WV Invests Grant for each individual student. The amount of a WV Invests Grant at an eligible public or not-for-profit private baccalaureate institution shall not exceed the average cost of tuition and mandatory fees of the community and technical colleges;

(3) Grant payments shall be made directly to the eligible institutions;

(4) If a grant recipient transfers from one eligible institution to another, the grant is transferable only with approval of the vice chancellor for administration;

(5) A WV Invests Grant may be used at any eligible institution to seek an associate degree or certificate in an eligible post-secondary program. An institution is not required to accept a grant recipient for enrollment and may enforce its own admission requirements, standards, and policies; and

(6) If a WV Invests Grant recipient terminates enrollment for any reason during the academic year, the unused portion of the grant shall be returned by the institution to the council in accordance with the council's policy for issuing refunds. The council shall transfer such funds to the WV Invests Fund for allocation and expenditure.

(c) On or before January 1 annually, the council shall provide to the Legislature and the Governor a report on the WV Invests Grant Program, which shall include, but not be limited to, research and data concerning student success and grant retention.

(d) The council shall propose legislative rules for legislative approval pursuant to §29A-3A-1 *et seq.* of this code to implement the provisions of this article, which shall provide for:

(1) Application requirements and deadlines fully implementing requirements of this article;

(2) Appeal procedures for the denial or revocation of the grant; and

(3) Any other provisions necessary to effectuate the purposes of this article.

(e) The Legislature hereby declares that an emergency situation exists and, therefore, the council may establish, by emergency rule, under the procedures of §29A-3A-1 *et seq.* of this code, a rule to implement the provisions of this article.

(f) Beginning with the 2021 fiscal year, and for every fiscal year thereafter, any appropriation by the Legislature to support and or alleviate the cost to citizens in this state to obtain advanced certifications and associate degrees shall only be distributed to those community and technical colleges or public or not-for-profit

private baccalaureate institutions that form one or more partnerships to establish ACE programs and pathways. Once distributed, such funds may be used to support any eligible post-secondary program or pathway provided by an eligible institution leading to the award of such degree or certification.

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CHAPTER 180

(H. B. 2800 - By Delegate Ellington)

[Passed February 15, 2023; in effect from passage.]
[Approved by the Governor on February 24, 2023.]

AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing legislative rules regarding higher education; authorizing legislative rules for the Higher Education Policy Commission regarding Performance-Based Funding Formula, Capital Project Management, Tuition and Fee Policy, Higher Education Grant Program, Annual Reauthorization of Degree-Granting Institutions, and Human Resources Administration; and authorizing legislative rules for the Council for Community and Technical College Education regarding Performance-Based Funding Formula, Capital Project Management, Workforce Development Initiative Grant Programs, Annual Reauthorization of Degree-Granting Institutions, and Human Resources Administration.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-2. Authorizing rules of Higher Education Policy Commission.

(a) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program rule), is authorized.

(b) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission

(West Virginia Engineering, Science, and Technology Scholarship Program rule), is authorized.

(c) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (Medical Education Fee and Medical Student Loan Program rule), is authorized.

(d) The legislative rule filed in the State Register on October 27, 2005, relating to the Higher Education Policy Commission (authorization of degree-granting institutions), is authorized.

(e) The legislative rule filed in the State Register on August 23, 2006, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program), is authorized.

(f) The legislative rule filed in the State Register on January 4, 2008, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE), is authorized.

(g) The legislative rule filed in the State Register on August 25, 2008, relating to the Higher Education Policy Commission (Research Trust Program), is authorized.

(h) The legislative rule filed in the State Register on January 8, 2009, relating to the Higher Education Policy Commission (Guidelines for Governing Boards in Employing and Evaluating Presidents), is authorized.

(i) The legislative rule filed in the State Register on September 10, 2008, relating to the Higher Education Policy Commission (Medical Student Loan Program), is authorized, with the following amendment:

On page two, subsection 5.1, following the words “financial aid office” by inserting a new subdivision 5.1.3 to read as follows: “United States citizenship or legal immigrant status while actively pursuing United States citizenship.”.

(j) The legislative rule filed in the State Register on December 1, 2008, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program), is authorized.

(k) The legislative rule filed in the State Register on January 26, 2009, relating to the Higher Education Policy Commission (Accountability System), is authorized.

(l) The legislative rule filed in the State Register on May 20, 2009, relating to the Higher Education Policy Commission (Energy and Water Savings Revolving Loan Fund Program), is authorized.

(m) The legislative rule filed in the State Register on January 27, 2010, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE), is authorized.

(n) The legislative rule filed in the State Register on December 8, 2010, relating to the Higher Education Policy Commission (authorization of degree-granting institutions), is authorized, with the following amendment:

On page 28, subsection 9.1.b, following the words “Good cause shall consist of” by inserting the words “any one or more of the following”.

(o) The legislative rule filed in the State Register on December 12, 2011, relating to the Higher Education Policy Commission (Tuition and Fee Policy), is authorized.

(p) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher Education Policy Commission (authorization of degree-granting institutions), is authorized.

(q) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher Education Policy Commission (annual reauthorization of degree-granting institutions), is authorized.

(r) The legislative rule filed in the State Register on March 20, 2013, relating to the Higher Education Policy Commission (Human Resources Administration), is authorized.

(s) The legislative rule filed in the State Register on January 24, 2014, relating to the Higher Education Policy Commission (Capital Project Management), is authorized.

(t) The legislative rule filed in the State Register on April 4, 2014, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program), is authorized.

(u) The legislative rule filed in the State Register on August 4, 2014, relating to the Higher Education Policy Commission (Nursing Scholarship Program), is authorized.

(v) The legislative rule filed in the State Register on October 28, 2015, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program), is authorized.

(w) The legislative rule filed in the State Register on October 28, 2015, relating to the Higher Education Policy Commission (Nursing Scholarship Program), is authorized.

(x) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program), is authorized.

(y) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE), is authorized.

(z) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (Research Trust Fund Program), is authorized.

(aa) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (annual reauthorization of degree-granting institutions), is authorized.

(bb) The legislative rule filed in the State Register on January 16, 2018, relating to the Higher Education Policy Commission (Tuition and Fee Policy), is authorized.

(cc) The legislative rule filed in the State Register on January 16, 2018, relating to the Higher Education Policy Commission (Human Resources Administration), is authorized.

(dd) The legislative rule filed in the State Register on January 22, 2018, relating to the Higher Education Policy Commission (Capital Project Management), is authorized, with the following amendments:

On page one, subsection 2.1, by striking out all of subdivision 2.1.d. and inserting in lieu thereof a new subdivision 2.1.d., to read as follows: “Efficient use of existing classroom and other space by institutions, while maintaining an appropriate deference to the value judgments of the institutional governing boards”;

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.5. and inserting in lieu thereof a new subdivision 4.2.d.5., to read as follows: “Funding will be prioritized for each institution in accordance with institutional plans confirmed by the Commission or approved by the Council.”;

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.6. and inserting in lieu thereof a new subdivision 4.2.d.6., to read as follows: “Facility utilization rates will be an important factor in prioritizing capital projects across the systems.”;

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.7. and inserting in lieu thereof a new subdivision 4.2.d.7., to read as follows: “Institutions with overall net asset values and capacity utilization rates that exceed or equal thresholds set annually by the Commission and Council are the presumptive priority for new facilities. If these projects do not replace an existing facility, they would be included in the Program Improvement category.”; and

On pages 10-11, section 5, by striking out all of subdivision 5.6. and inserting in lieu thereof a new subdivision 5.6., to read as follows: “A governing board may not implement a campus development plan or plan update that has not been confirmed by

the Commission or approved by the Council, as appropriate. The purchase of any property for the construction of a facility that is not included in the campus development plan creates an update to the campus development plan that must be confirmed by the Commission or approved by the Council, as appropriate, prior to its purchase. In the case of institutions governed by the Council, this provision applies equally to property acquired by any means, whether by purchase or otherwise.”.

(ee) The legislative rule filed in the State Register on January 22, 2019, relating to the Higher Education Policy Commission (Acceptance of Advanced Placement Credit), is repealed.

(ff) The legislative rule filed in the State Register on January 22, 2019, relating to the Higher Education Policy Commission (Human Resources Administration), is repealed.

(gg) The legislative rule filed in the State Register on August 28, 2018, relating to the Higher Education Policy Commission (Guidelines for Governing Boards in Employing and Evaluating Presidents), is authorized.

(hh) The legislative rule filed in the State Register on August 7, 2018, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence (PROMISE) Scholarship Program), is authorized, with the following amendments:

On page one, subsection 2.1, by striking out all of subdivision 2.1.a. and inserting in lieu thereof a new subdivision 2.1.a., to read as follows: “Must complete high school graduation requirements at a West Virginia public, private or home school unless he or she qualified as a military dependent under Section 5 of this rule, or has commuted to an out-of-state school pursuant to Section 6 of this rule; and”;

On page one, subsection 2.1, by striking out all of subdivision 2.1.b. and inserting in lieu thereof a new subdivision 2.1.b., to read as follows: “Must complete at least one half of the credits required for high school graduation through attendance at a public, private

or home school in this state, unless he or she qualified as a military dependent under Section 5 of this rule, or has commuted to an out-of-state school pursuant to Section 6 of this rule; and”;

On page one, subdivision 2.1.c., by striking out the words “Section 5” and inserting in lieu thereof the words “Section 4”;

On page one, subsection 2.1, by striking out all of subdivision 2.1.d. and inserting in lieu thereof a new subdivision 2.1.d., to read as follows: “Must have attained a cumulative grade point average of at least 3.0 on a 4.0 scale, based on county board grading policies, in both core courses and overall coursework required for graduation by the State Board of Education, while enrolled in a public or private high school. If home-schooled pursuant to the exemption allowed by W.Va. Code §18-8-1 as documented by the county school board system, the applicant must have completed in both the 11th and 12th grades the required core and elective coursework necessary to prepare students for success in postsecondary education at the associate and baccalaureate levels by attaining a cumulative grade point average of at least 3.0 on a 4.0 grading scale in both core courses and overall coursework as determined by the Commission; and”;

On page one, subsection 2.1, subdivision 2.1.f., preceding the words “have resided in West Virginia”, by striking out the word “Must” and inserting in lieu thereof the words “The applicant and his or her parent or legal guardian must” ;

On page one, subdivision 2.1.f., by striking out the words “Section 5” and inserting in lieu thereof the words “Section 4”;

On page one, subdivision 2.1.f., by striking out the words “Section 6” and inserting in lieu thereof the words “Section 5”;

On page two, subsection 2.4., by striking out the words “Section 10.7 or 10.8” and inserting in lieu thereof the words “Section 9.7 or 9.8”;

On page two, subsection 2.5, by striking out the words “Section 8” and inserting in lieu thereof the words “Section 7”;

On page two, subsection 2.5, by striking out the words “Section 10” and inserting in lieu thereof the words “Section 9”;

On page two, by striking out all of section 3 and renumbering the remaining sections accordingly;

On page three, subsection 4.4, by striking out the words “Section 14” and inserting in lieu thereof the words “Section 13”;

On page five-six, subsection 10.6, by striking out the words “Section 10.3” and inserting in lieu thereof the words “Section 9.3”;

On page six, subsection 10.6, by striking out the words “Section 10.2” and inserting in lieu thereof the words “Section 9.2”;

On page six, subsection 10.9.c., by striking out the words “Section 5” and inserting in lieu thereof the words “Section 4”; and

On page eight, subsection 15.1.b, by striking out the words “Section 11.1” and inserting in lieu thereof the words “Section 10.1”.

(ii) The legislative rule filed in the State Register on September 30, 2019, relating to the Higher Education Policy Commission (Higher Education Accountability System) is authorized.

(jj) The legislative rule filed in the State Register on November 5, 2019, relating to the Higher Education Policy Commission (Underwood-Smith Teaching Scholars Program and Teacher Education Loan Repayment Program) is authorized.

(kk) The legislative rule filed in the State Register on October 4, 2019, relating to the Higher Education Policy Commission (Accountability System) is repealed.

(ll) 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,”.

(mm) The legislative rule filed in the State Register on March 11, 2021, relating to the Higher Education Policy Commission (Administrative Exemption) is authorized.

(nn) The legislative rule filed in the State Register on May 5, 2021, relating to the Higher Education Policy Commission (Research Trust Fund Program) is authorized.

(oo) The legislative rule filed in the State Register on May 5, 2021, relating to the Higher Education Policy Commission (Annual Reauthorization of Degree-Granting Institutions) is authorized.

(pp) The legislative rule filed in the State Register on July 29, 2022 relating to the Higher Education Policy Commission (Performance-Based Funding Formula) is authorized.

(qq) The legislative rule filed in the State Register on June 14, 2022 relating to the Higher Education Policy Commission (Capital Project Management) is authorized.

(rr) The legislative rule filed in the State Register on July 29, 2022 relating to the Higher Education Policy Commission (Tuition and Fee Policy) is authorized.

(ss) The legislative rule filed in the State Register on June 14, 2022 relating to the Higher Education Policy Commission (Higher Education Grant Program) is authorized.

(tt) The legislative rule filed in the State Register on July 29, 2022 relating to the Higher Education Policy Commission (Annual Reauthorization of Degree-Granting Institutions) is authorized.

(uu) The legislative rule filed in the State Register on June 14, 2022 relating to the Higher Education Policy Commission (Human Resources Administration) is authorized.

§18B-17-3. Authorizing rules of the Council for Community and Technical College Education.

(a) The legislative rule filed in the State Register on September 29, 2004, relating to the West Virginia Council for Community and Technical College Education (performance indicators), is authorized.

(b) The legislative rule filed in the State Register on October 13, 2005, relating to the West Virginia Council for Community and Technical College Education (authorization of degree-granting institutions), is authorized.

(c) The legislative rule filed in the State Register on October 30, 2006, relating to the West Virginia Council for Community and Technical College Education (Workforce Development Initiative Program), is authorized.

(d) The legislative rule filed in the State Register on December 4, 2008, relating to the West Virginia Council for Community and Technical College Education (Employing and Evaluating Presidents), is authorized.

(e) The legislative rule filed in the State Register on December 23, 2008, relating to the West Virginia Council for Community and Technical College Education (performance indicators), is authorized.

(f) The legislative rule filed in the State Register on February 5, 2009, relating to the West Virginia Council for Community and Technical College Education (finance), is authorized.

(g) The legislative rule filed in the State Register on February 5, 2009, relating to the West Virginia Council for Community and Technical College Education (Accountability System), is authorized.

(h) The legislative rule filed in the State Register on June 15, 2011, relating to the West Virginia Council for Community and Technical College Education (Workforce Development Initiative Program), is authorized.

(i) The legislative rule filed in the State Register on October 26, 2011, relating to the West Virginia Council for Community and Technical College Education (Tuition and Fees), is authorized.

(j) The legislative rule filed in the State Register on October 17, 2012, relating to the West Virginia Council for Community and Technical College Education (authorization of degree-granting institutions), is authorized.

(k) The legislative rule filed in the State Register on October 17, 2012, relating to the West Virginia Council for Community and Technical College Education (annual reauthorization of degree-granting institutions), is authorized.

(l) The legislative rule filed in the State Register on March 21, 2013, relating to the West Virginia Council for Community and Technical College Education (Human Resources Administration), is authorized.

(m) The legislative rule filed in the State Register on August 21, 2012, relating to the West Virginia Council for Community and Technical College Education (West Virginia EDGE Program), is authorized.

(n) The legislative rule filed in the State Register on January 28, 2014, relating to the West Virginia Council for Community and Technical College Education (Capital Project Management), is authorized.

(o) The legislative rule filed in the State Register on January 18, 2017, relating to the West Virginia Council for Community and

Technical College Education (annual reauthorization of degree-granting institutions), is authorized.

(p) The legislative rule filed in the State Register on January 18, 2017, relating to the West Virginia Council for Community and Technical College Education (Business, Occupational, and Trade Schools), is authorized.

(q) The legislative rule filed in the State Register on January 26, 2018, relating to the West Virginia Council for Community and Technical College Education (Human Resources Administration), is authorized.

(r) The legislative rule filed in the State Register on January 26, 2018, relating to the West Virginia Council for Community and Technical College Education (Capital Project Management), is authorized, with the following amendments:

On page one, subsection 2.1, by striking out all of subdivision 2.1.d. and inserting in lieu thereof a new subdivision 2.1.d., to read as follows: “Efficient use of existing classroom and other space by institutions, while maintaining an appropriate deference to the value judgments of the institutional governing boards.”;

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.5. and inserting in lieu thereof a new subdivision 4.2.d.5., to read as follows: “Funding will be prioritized for each institution in accordance with institutional plans confirmed by the Commission or approved by the Council.”;

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.6. and inserting in lieu thereof a new subdivision 4.2.d.6., to read as follows: “Facility utilization rates will be an important factor in prioritizing capital projects across the systems.”;

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.7. and inserting in lieu thereof a new subdivision 4.2.d.7., to read as follows: “Institutions with overall net asset values and capacity utilization rates that exceed or equal thresholds set annually by the Commission and Council are the presumptive

priority for new facilities. If these projects do not replace an existing facility, they would be included in the Program Improvement category.”; and

On pages 10-11, section 5, by striking out all of subdivision 5.6. and inserting in lieu thereof a new subdivision 5.6., to read as follows: “A governing board may not implement a campus development plan or plan update that has not been confirmed by the Commission or approved by the Council, as appropriate. The purchase of any property for the construction of a facility that is not included in the campus development plan creates an update to the campus development plan that must be confirmed by the Commission or approved by the Council, as appropriate, prior to its purchase. In the case of institutions governed by the Council, this provision applies equally to property acquired by any means, whether by purchase or otherwise.”.

(s) The legislative rule filed in the State Register on July 2, 2018, relating to the West Virginia Council for Community and Technical College Education (Tuition and Fees), is authorized.

(t) The legislative rule filed in the State Register on September 26, 2018, relating to the West Virginia Council for Community and Technical College Education (Acceptance of Advanced Placement Credit), is repealed.

(u) The legislative rule filed in the State Register on November 20, 2018, relating to the West Virginia Council for Community and Technical College Education (initial authorization of degree-granting institutions), is authorized.

(v) The legislative rule filed in the State Register on November 20, 2018, relating to the West Virginia Council for Community and Technical College Education (Workforce Development: Learn and Earn, Technical Program Development, and West Virginia Advance Rapid Response Grants), is authorized.

(w) The legislative rule filed in the State Register on January 25, 2019, relating to the West Virginia Council for Community and

Technical College Education (Human Resources Administration), is repealed.

(x) The legislative rule filed in the State Register on June 3, 2019 relating to the West Virginia Council for Community and Technical College Education (West Virginia Invests Grant Program) is authorized.

(y) The legislative rule filed in the State Register on April 27, 2021 (Business, Occupational, and Trade Schools) is authorized).

(z) The legislative rule filed in the State Register on April 27, 2021 (Annual Reauthorization of Degree-Granting Institutions) is authorized.

(aa) The legislative rule filed in the State Register on November 10, 2021 (West Virginia Invests Grant Program) is authorized.

(bb) The legislative rule filed in the State Register on July 22, 2022 (Performance-Based Funding Formula) is authorized.

(cc) The legislative rule filed in the State Register on June 13, 2022 (Capital Project Management) is authorized.

(dd) The legislative rule filed in the State Register on July 21, 2022 (Workforce Development Initiative Grant Programs) is authorized.

(ee) The legislative rule filed in the State Register on July 21, 2022 (Annual Reauthorization of Degree-Granting Institutions) is authorized, with the following amendment:

On page 13 by adding a new subsection designated 12.23 to read as follows: Nothing in this rule in any way affects or limits the due process protections or other protections afforded to proprietary schools under either W. Va. Code § 18B-2B-9 or 135 C.S.R. 35, *Business, Occupational, and Trade Schools*.

(ff) The legislative rule filed in the State Register on June 13, 2022 (Human Resources Administration) is authorized.

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CHAPTER 181

**(Com. Sub. for H. B. 3224 - By Delegates Statler, Ellington,
Toney, Hansen, Walker, Williams, Warner and Chiarelli)**

[Passed March 9, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §18C-7-3 of the Code of West Virginia, 1931, as amended, relating to adding West Virginia Junior College to the updated list of eligible institutions that may accept PROMISE scholarship recipients.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP PROGRAM.

§18C-7-3. Definitions.

(a) *General.* — For the purposes of this article, terms have the meaning ascribed to them in §18C-1-2 of this code, unless the context in which the term is used clearly requires a different meaning or a specific definition is provided in this section.

(b) *Definitions.* — (1) "Eligible institution" means:

(A) A state institution of higher education as defined in §18B-1-2 of this code;

(B) Alderson-Broaddus University, Appalachian Bible College, Bethany College, Davis and Elkins College, the University of Charleston, West Virginia Wesleyan College and Wheeling University, all in West Virginia. Any institution listed in this subdivision ceases to be an eligible institution if it meets either of the following conditions:

- (i) It loses regional accreditation; or
- (ii) It changes its status as a private, not-for-profit institution;
- (C) West Virginia Junior College; and

(D) Any other public or private regionally accredited institution in this state approved by the commission.

(2) "Tuition" means the quarter, semester or term charges imposed by an eligible state institution of higher education and, additionally, all mandatory fees required as a condition of enrollment by all students. For the purposes of this article, the following conditions apply:

(A) West Virginia University, Potomac State College and West Virginia University Institute of Technology are considered separate institutions for purposes of determining tuition rates; and

(B) The tuition amount paid by undergraduate health sciences students at West Virginia University is considered to be the same as the amount of tuition paid by all other West Virginia University undergraduate students.

(3) "Enrolled" means either currently enrolled or in the process of enrolling in an eligible institution.

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CHAPTER 182

(H. B. 3371 - By Delegates Ellington, Statler and Toney)

[Passed March 9, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §18-10-3 of the Code of West Virginia, 1931, as amended, relating to federal funds for land-grant institutions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FEDERAL AID AND GIFTS FOR EDUCATIONAL PURPOSES.

§18-10-3. Federal aid for West Virginia University and West Virginia State University.

The state of West Virginia hereby renews its assent to the provisions and purposes of the act of Congress of August thirtieth, eighteen hundred and ninety, entitled "An act to apply a portion of the proceeds of the public land to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts established under the provisions of the act of Congress approved July second, eighteen hundred and sixty-two," and of all subsequent acts of Congress amending or supplementing said act, and accepts the appropriations of money authorized thereby.

The state of West Virginia hereby designates West Virginia University as the beneficiary of appropriations under the eighteen hundred and sixty-two act of Congress referred to in section one of this article and West Virginia State University as the beneficiary of appropriations under the eighteen hundred and ninety act of Congress referred to in this section and shall maximize the full federal matching requirement, including, but not limited to, 7 U.S.C. § 3222d(c) through a separate line item appropriation for each of the two institutions.



CHAPTER 183

(H. B. 3441 - By Delegate Ellington)

[Passed March 9, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §18B-1D-9 of the Code of West Virginia, 1931, as amended, all relating to revising the training requirements for members of the Higher Education Policy Commission, the Council for Community and Technical College Education, and the institutional governing boards; requiring that the chancellor of the commission and the chancellor of the council develop a comprehensive orientation and training program for members of the commission, council and the institutional governing boards and ongoing educational opportunities for the ongoing members of those governing bodies; setting forth requirements for new member training; clarifying ongoing member training requirements; allowing for alternative training under certain circumstances; removing reporting requirement to the Legislative Oversight Commission on Education Accountability; and making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-9. Commission, council, and institutional governing board training and development; training and development requirements, applicability and exceptions.

(a) The Chancellor for higher education and the chancellor for community and technical college education, as those terms are defined in §18B-1-2 of this code, or their designees, shall develop a comprehensive orientation and training program for new

members of the commission, the council, and the institutional governing boards and continuing education opportunities for all ongoing members of those bodies, hereinafter referred to as "governing bodies."

(b) Training and development is required as follows:

(1) *New Members*: The orientation and training offered to new members of the governing bodies shall comprise six hours of instruction time and shall include, but not be limited to:

(A) Information concerning the roles of the governing bodies and their members;

(B) The state goals for higher education set forth in §18B-1-1a of this code;

(C) The higher education accountability system established in §18B-1D-1, *et seq.* of this code;

(D) The fiduciary duties and responsibilities of the governing bodies;

(E) Legal considerations including statutory duties, authorities, and responsibilities of the governing bodies and open records and open meetings requirements;

(F) Ethical considerations arising from membership on a governing body, including the provisions of the West Virginia Governmental Ethics Act set forth in §6B-1-1, *et seq.* of this code;

(G) The removal and replacement provisions of members of governing bodies as established in §6-6-5 and §6-6-6 of this code; and

(H) The circumstances under which the commission or the council, as appropriate, may withdraw specific powers from the institutional governing boards, as set forth in §18B-1B-4 and §18B-2B-6 of this code.

(2) The six hours of orientation and training provided to new members of the governing bodies may be completed in one block

or broken up over the member's first year of service: *Provided*, That the new governing body member completes the full six hours of training within twelve months of his or her appointment to the governing body.

(3) *Ongoing members* – With the exception of the ex officio members of the commission and the council and the student member of a governing board, beginning the second year of the member's service on a governing body, each member shall complete at least four hours of training and development related to his or her duties each full fiscal year following his or her appointment.

(4) *Alternate training* – The chancellors may grant credit for training, professional development, or continuing education developed or delivered by an institution of higher education or a third-party training provider: *Provided*, That the chancellors or their designees determine that the training meets the requirements for governing body member training established by this section.

(c) Annually, by July 31, the chairs of the commission, the council, and each governing board shall certify to the chancellors the number of hours of training and development that each member of their respective governing body received during the preceding fiscal year.

(d) If the certification indicates that a member of a governing body has not completed the training and development required by this section, the appropriate chancellor shall send a notice to the affected board member and his or her governing body and to the Governor and the Secretary of State, or to the institutional appointing entity, that the member of the governing body is disqualified from continued service notwithstanding the provisions of §6-6-5 and §6-6-6 of this code. The commission or council, as appropriate, shall request the Governor or appointing entity to appoint a replacement for that governing body member.

(e) As used in this section, "member" means all members of the commission, council and the governing boards unless a specific exception is provided in this section.

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CHAPTER 184

**(H. B. 3555 - By Delegates Statler, Toney, Foggin, Hornby,
Lucas, Mazzocchi, E. Pritt and Willis)**

[Passed March 11, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §18B-10-14 of the Code of West Virginia, 1931, as amended, relating to allowing higher education institutions to offer a courseware and book fee at a lump sum or per credit hour amount if an opt out option is offered for students in advance of the start of each academic term; amending provisions pertaining to requirements imposed on institutions when there are new or increased charges for course materials or digital courseware for certain reasons; adding to exclusions from the requirement that the agreement between an institution and an entity under which the institution assesses on the entity's behalf or allows the entity to assess a charge to students enrolled at the institution include a prohibition against the entity engaging in, or authorizing third parties to engage in, the sale, disclosure, licensing, use, retention, or other exploitation of any data collected under the agreement; and removing prohibition against denial of a student access to educational materials for which the student has been, or would otherwise be, automatically charged on the student's refusal or failure to agree to the sale, disclosure, licensing, use, retention, or other exploitation of any data pertaining to the student that would be obtained through the use of the student's educational materials.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED
AT STATE INSTITUTIONS OF HIGHER EDUCATION.**

§18B-10-14. Bookstores.

(a) Definitions: The following words when used in this section have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) “Digital Courseware” means a system of educational content and software designed to support the delivery of all or part of a particular course. The term does not include a learning management platform or any other software system designed to provide support for courses generally;

(2) “Course material” means a textbook, supplemental material, or open educational resource; and

(3) “Open Education Resource Materials” has the meaning assigned in §10-1-14a of this code.

(b) Each governing board may establish and operate a bookstore at the institutions under its jurisdiction to sell course materials, educational materials, books, stationery, and other school and office supplies generally carried in college bookstores. Institutions may work with booksellers, publishers, or other third parties to offer a courseware and book fee at a lump sum or per credit hour amount, provided that an opt out option is offered to students in advance of the start of each academic term.

(c) The prices to be charged may not be less than the prices fixed by any fair trade agreements and shall, in all cases, include in addition to the purchase price paid by the bookstore, a sufficient handling charge to cover all expenses incurred for personal and other services, supplies and equipment, storage, and other operating expenses.

(d) Each governing board shall establish, or if already established, continue, an educational materials affordability committee consisting of faculty, students, administrators and bookstore representatives and the committee shall make recommendations to the governing board to:

(1) Encourage bookstores operated at institutions under its jurisdiction minimize the costs to students of purchasing educational materials;

(2) Encourage course instructors to select appropriate, high quality course educational materials;

(3) Encourage the use of previous or older versions of basic educational materials to the extent those older versions are available and less costly to students and remain relevant, high quality educational materials with up-to-date information and content;

(4) Require the repurchase and resale of educational materials on an institutional basis;

(5) Encourage the use of certain basic educational materials for a reasonable number of years;

(6) Encourage the use of emerging technologies, such as electronic textbooks, online textbooks, print-on-demand services, and other open resource materials; and

(7) Prohibit employees from profiteering by requiring the purchase of one-time use materials (such as worksheets) or receiving payment or other consideration as an inducement to require students to purchase course materials.

(e) An employee of a governing board:

(1) May not:

(A) Receive a payment, loan, subscription, advance, deposit of money, service, benefit or thing of value, present or promised, as an inducement for requiring students to purchase a specific course material for coursework or instruction; or

(B) Require for any course a course material that includes his or her own writing or work if the course material incorporates either detachable worksheets or workbook-style pages intended to be written on or removed from the course material. This provision

does not prohibit an employee from requiring as a supplement to course materials any workbook or similar material which is published independently from the course material; and

(2) May receive:

(A) Sample copies, instructor's copies and instructional material which are not to be sold; and

(B) Royalties or other compensation from sales of course materials that include the employee's own writing or work.

(f) A governing board shall provide to students a listing of course materials required or assigned for any course offered at the institution.

(1) The listing shall be prominently posted:

(A) In a central location at the institution;

(B) In any campus bookstore; and

(C) On the institution's website.

(2) The list shall include for each textbook the International Standard Book Number (ISBN), the edition number and any other relevant information.

(3) The list shall include whether the course material is an open educational resource material, and whether all educational materials required for the course or course section are generally available at no cost and without limitation to all students enrolled in the course or course section.

(4) The list shall include any associated fee or charge, such as a technology cost, library use cost, or printing or publication fee.

(5) If the student will be charged for the course material or for access to digital courseware for a course by the institution or another entity on the student's enrollment in a course, course section, or program or in the institution for the applicable semester

or term, the list shall include the disclosures required under subsections (g)-(j) of this section.

(6) An institution shall post a course material to the listing when the adoption process is complete and, for course materials that comes at a cost to the student, when the course material is designated for order by the bookstore.

(g) An institution shall disclose to a student enrolled at the institution as provided by this section any charges for course materials or access to digital courseware assessed by the institution or another entity to the student on the student's enrollment in a course, course section, or program or in the institution for the applicable semester or term, regardless of how the charge is assessed on an opt-in, opt-out, or compulsory basis. This subsection does not apply to a charge assessed for a purchase initiated by the student separately from the enrollment process at the institution, such as the purchase of course materials at a bookstore that may be charged to the student's account at the institution.

(h) If the required course materials or digital courseware have not been selected prior to a student's enrollment in a course or course section such that the requirements of subsection (g) are not met, and if that selection would cause an increased charge to the student, the institution shall no later than 30 days prior to the start of the course or course section:

(1) Provide individual notice to each student affected of the new or increased charges, including all of the information required under subsection (g);

(2) Provide each student affected with the opportunity to withdraw from the course or course section, or change to a different course or course section, without penalty; and

(3) Only assess the new or increased charge to a student if the institution has a policy under which the student may opt out of the way the institution provides for the student to obtain or purchase the course materials and receive a full refund for any charges

already incurred for course materials for that specific course or course section.

(i) For a charge described by subsection (g) that is assessed based on the cost of required or recommended course materials or access to digital courseware for a certain course or course section in which the student is enrolled, the institution shall:

(1) In the listing required under subsection (f), state or provide an internet website link to:

(A) The full amount of the charge;

(B) If the charge is for a course material in a primarily electronic format or for access to digital courseware, the terms under which the publisher of the course material or digital courseware collects and uses student data obtained through a student's use of the course material or digital courseware; and

(C) Any provision that allows the student to opt in or opt out of the charge or the collection or use of the student's data; and

(2) Itemize the charge separately from any other charges assessed for the course or course section in the institution's billing to the student.

(j) For a charge described by subsection (g) that is assessed on the basis of the number of semester credit hours or the equivalent or the number of courses in which the student is enrolled or on any other basis not described by subsection (i), the institution shall:

(1) Include the amount of the charge in the institution's tuition or fees under §18B-10-1 of this code;

(2) In a prominent location in any written or electronic agreement authorizing the charge, disclose:

(A) If the charge is for course materials in a primarily electronic format or for access to digital courseware, the terms under which the publisher of the course material or digital

courseware collects and uses student data obtained through a student's use of the course material or digital courseware; and

(B) Any provision that allows the student to opt in or opt out of the charge or the collection or use of the student's data; and

(3) Not assess the charge to a student for a course or course section for which all required educational materials are generally available at no cost in at least one form to the student, such as:

(A) An open educational resource material;

(B) Digital materials available at no cost through a multi-user license held by the institution's library; or

(C) Other lawfully made materials available to the public at no cost and without limitation to all students enrolled in the course or course section.

(k) An institution may enter into an agreement between the institution and an entity under which the institution assesses on the entity's behalf or allows the entity to assess a charge described by subsection (g) to students enrolled at the institution only if:

(1) The institution's educational materials affordability committee established under subsection (d) determines the agreement to be consistent with the goals enumerated in subsection (d);

(2) The governing board of the institution adopts a policy that provides that:

(A) The institution's refund policy would apply with respect to the charges assessed to a student if the student withdraws from the course or course section; and

(B) A student may opt out of the charge at any time during a period beginning no later than when the student enrolls in the course or course section or takes any other action triggering the assessment of the charge, and ending no earlier than the last day to withdraw from the course without penalty;

(3) The agreement does not provide for a penalty or charge added to price of materials provided under the agreement based on failing to meet a target or quota for a number or percentage of:

(A) Students to whom the charge is assessed; or

(B) Courses or course sections for which the charge is assessed; and

(4) The agreement prohibits the entity from engaging in, or authorizing third parties to engage in, the sale, disclosure, licensing, use, retention, or other exploitation of any data collected under the agreement, including but not limited to personally identifiable information, location data, anonymized data, and any materials derived therefrom, except as permitted by the Family Education Rights and Privacy Act (20 U.S.C. § 1232g and 34 CFR Part 99) or other applicable law. Provided, that this subsection shall not apply to:

(A) The disclosure of information to a government entity or scholarship entity in order to be reimbursed for the distribution of course materials to a student using financial aid subsidies for course materials;

(B) The use of student data for research and development of course materials or the entity's educational sites, services, or applications, and to demonstrate the effectiveness of the entity's services;

(C) The use of de-identified student data for adaptive learning purposes and customized student learning;

(D) Disclosures made to a service provider, provided the entity:

(i) Prohibits the service provider from using any student data for any purpose other than providing the contracted service to, or on behalf of, the entity,

(ii) Prohibits the service provider from disclosing any student data provided by the entity with subsequent third parties without explicit permission from the entity, and

(iii) Requires the service provider to implement and maintain reasonable security procedures and practices to protect the student data;

(E) Use, disclosure, or retention of student data to ensure legal and regulatory compliance or to respond or to or participate in judicial process;

(F) Use, disclosure, or retention of student data to protect the safety of users or others or security of entity's sites, services, or applications; and

(G) When the student or guardian, as applicable, has granted prior written consent for the sale, disclosure, licensing, use, or retention of student data.

(l) An agreement authorized under subsection (k) is a public record under chapter 29B of this code.

(m) All moneys derived from the operation of the bookstore shall be paid into a special revenue fund as provided in §12-2-2 of this code. Subject to the approval of the Governor, each governing board periodically shall change the amount of the revolving fund necessary for the proper and efficient operation of each bookstore.

(n) Moneys derived from the operation of the bookstore shall be used first to replenish the stock of goods and to pay the costs of operating and maintaining the bookstore. Notwithstanding any other provision of this section, any institution that has contracted with a private entity for bookstore operation shall deposit into an appropriate account all revenue generated by the operation and enuring to the benefit of the institution. The institution shall use the funds for nonathletic scholarships.

(o) Each governing board shall promulgate a rule in accordance with the provisions of §18B-1-6 of this code to implement the provisions of this section.

(p) This section applies to course material sales and bookstores supported by an institution's auxiliary services and those operated by a private contractor.

(q) This section may not be construed to affect any authority granted to a faculty member by an institution to select course materials for courses taught by the faculty member.

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CHAPTER 185

**(Com. Sub. for H. B. 2412 - By Delegates Hornbuckle,
Rohrbach, Worrell, Linville, Lucas, Griffith, Anderson and
Adkins)**

[Passed February 15, 2023; in effect ninety days from passage.]
[Approved by the Governor on February 22, 2023.]

AN ACT to amend and reenact §2-2-1a of the Code of West Virginia, 1931, as amended, relating to declaring November 14 every year, a special memorial day in remembrance of the Marshall University airplane crash.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-1a. Special memorial days.

(a) The Governor shall, by proclamation, declare the week beginning with the Sunday before Thanksgiving as a special memorial week to be known as Native American Indian Heritage Week.

(b) The first Tuesday after the first Monday of November is designated Susan B. Anthony Day and shall only be a legal holiday in all years ending in an even number. The Governor shall annually issue a proclamation calling on all schools, civic organizations, government departments and citizens to undertake activities on the designated day and surrounding days to pay tribute to the accomplishments of Susan B. Anthony in securing the civil and political rights of all Americans, including securing equal voting rights for women.

(c) The Governor shall, by proclamation, declare the week during which December 7 falls to be a special memorial week, to be known as Pearl Harbor and Military Appreciation week, honoring all West Virginians who fought in World War II and all other military conflicts and shall encourage all municipalities in the state to do the same. The State Department of Education is directed to implement a program involving activities in which students shall participate which shall recognize the contributions West Virginians have made to their country through service in the United States Military.

(d) The Governor shall, by proclamation, declare March 30 as a special memorial day to be known as Vietnam Veteran Recognition Day honoring all West Virginians who served in the United States Armed Forces in the Republic of Vietnam during the period beginning February 28, 1961, and ending May 7, 1975, and shall encourage all counties and municipalities in the state to do the same.

(e) The Governor shall, by proclamation, declare August 7 as a special memorial day, to be known as Purple Heart Recognition Day, honoring all West Virginians who, while serving in the United States Armed Forces, have been wounded or killed in action and shall encourage all municipalities and counties in the state to do the same.

(f) The Governor shall, by proclamation, declare July 27 as a special memorial day to be known as Korean War Veteran Recognition Day honoring all West Virginians who served in the United States Armed Forces in the Korean War, and shall encourage all counties and municipalities in the state to do the same.

(g) The Governor shall, by proclamation, declare the first Thursday in May as the West Virginia Day of Prayer. The West Virginia Day of Prayer corresponds with the National Day of Prayer, 36 U.S.C. §119, on which the people of West Virginia may turn to God in prayer and meditation at churches, in groups, and as individuals.

(h) The Governor shall, by proclamation, declare November 14 as a special memorial day to be known as Marshall University 75 Memorial Day honoring the 75 persons who were killed in that tragic crash, and shall encourage all counties and municipalities in the state to do the same.