

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



**VOLUME II**  
**REGULAR SESSION, 2015**

WEST VIRGINIA HOUSE OF DELEGATES  
**HONORABLE TIM ARMSTEAD**  
SPEAKER OF THE HOUSE

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UNDER THE DIRECTION  
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**STEPHEN J. HARRISON**  
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SATURDAY, FEBRUARY 28, 2015

**FORTY-SIXTH DAY**

[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

The House of Delegates met at 1:00 P.M., and was called to order by the Honorable Tim Armstead, Speaker.

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

The Clerk proceeded to read the Journal of Friday, February 27, 2015, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**REORDERING OF THE CALENDAR**

Delegate Cowles announced that the Committee on Rules had transferred Com. Sub. for H. B. 2688, on second reading, Special Calendar, to the House Calendar.

**COMMITTEE REPORTS**

Delegate McCuskey, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 27<sup>th</sup> day of February, 2015, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**(Com. Sub. for S. B. 255)**, Eliminating certain boards, councils, committees, panels, task forces and commissions,

(**S. B. 298**), Clarifying funds within Public Employees Retirement Fund,

(**S. B. 299**), Clarifying start date of State Police duty-related and nonduty related disability payments,

(**S. B. 302**), Relating to state retirement plans,

And,

(**S. B. 378**), Relicensing electricians without retesting under certain circumstances.

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2968**, Exempting from property tax certain properties in this state owned by nonprofit youth organizations,

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

**Com. Sub. for H. B. 2968** - “A Bill to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating to exempting from property tax certain real properties in this state owned by nonprofit youth organizations and built at a cost of at least \$100 million; specifying restrictions affecting the property; specifying permitted activities; requiring property owner to pay four percent of net revenues from specified uses, operations and activities; specifying how four percent fee is administered, specifying how monies derived from four percent fee are distributed; requiring reports; and defining terms,”

With the recommendation that the committee substitute do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:



Your Committee on the Judiciary has had under consideration:

**H. B. 2595**, Relating to certificates of need for the development of health facilities in this state,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2795**, Providing that when a party's health condition is at issue in a civil action, medical records and releases for medical information may be requested and required without court order,

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

**Com. Sub. for H. B. 2795** – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §56-4-72, all relating to production of medical records; providing in certain circumstances medical records must be produced without court order; prohibiting unilateral restrictions on the maintenance, use or retention of the medical records; requiring the insurance commissioner to promulgate rules; providing that objection to production of medical records is not limited; providing that court ordered production of medical records does not affect application of this section; establishing that an order protecting privacy of medical records may be entered; and, establishing that any action related to unauthorized distribution of medical records is unaffected,”

With the recommendation that the committee substitute do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2796**, Providing paid leave for certain state officers and employees during a declared state of emergency,

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

**Com. Sub. for H. B. 2796** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-5-15b, relating to providing that certain state employees may be granted a leave of absence with pay while providing assistance as an essential member of an emergency aid provider during a declared state of emergency,”

With the recommendation that the committee substitute do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2557**, Clarifying that an insured driver of a motor vehicle is covered by the driver’s auto insurance policy when renting or leasing a vehicle,

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

**Com. Sub. for H. B. 2557** - “A Bill to amend and reenact §33-6-29 of the Code of West Virginia, 1931, as amended, relating generally to motor vehicle insurance policies and coverage provided for rented or leased motor vehicles; clarifying that an insured driver of a motor vehicle is covered by the driver’s motor vehicle insurance policy when renting or leasing a motor vehicle; and providing that if the driver renting or leasing a motor vehicle does not have motor

vehicle insurance coverage, the rental or leasing car company is the provider of security,”

With the recommendation that the committee substitute do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2549**, Relating to the preparation and publication of county financial statements,

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

**Com. Sub. for H. B. 2549** - “A Bill to amend and reenact §7-5-16 of the Code of West Virginia, 1931, as amended, relating to changing the deadline of disclosure of county financial statements; requiring publication as a Class I-0 legal advertisement of the county financial statements; and permitting counties to publish financial statements on the county’s website,”

With the recommendation that the committee substitute do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2664**, Creating “Andrea and Willy’s Law”; increasing certain penalties for driving under the influence of alcohol, controlled substances or drugs,

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

At the request of Delegate Cowles, and by unanimous consent, reference of the bill (H. B. 2664) to the Committee on Finance was dispensed with.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2931**, Adding drugs to the classification of schedule I drugs,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2636**, Exempting information contained in a concealed weapon permit application from the Freedom of Information Act,

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

**Com. Sub. for H. B. 2636** - "A Bill to amend and reenact §29B-1-2 and §29B-1-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §29B-1-3a; to amend and reenact §29B-1-4 of said code; and to amend and reenact §61-7-4 of said code, all relating to the Freedom of Information Act; redefining the term 'public record'; defining and exempting certain fees and costs for reproduction of records; directing the Secretary of State to establish a database of Freedom of Information requests and publication on the Secretary of State's website; directing public bodies to report Freedom of Information request information to the Secretary of State; authorizing emergency and legislative rulemaking authority to the Secretary of State; establishing a

presumption of public accessibility to public records; revising the exemption for communications received or prepared by any public body; exemption information contained in a concealed weapon permit application from the Freedom of Information Act; authorizing disclosure of exempt information to law enforcement agency; protecting the confidentiality of information collected in an application for a concealed weapon permit; and providing criminal penalties,”

With the recommendation that the committee substitute do pass.

Delegate Pasdon, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. B. 2867**, Requiring recommendations for higher education course credit transfer,

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

**Com. Sub. for H. B. 2867** – “A Bill to of the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18B-14-2, relating to providing for recommendations regarding expanded transfer of course credits among higher education institutions in the state; requiring higher education policy commission and council for community and technical college education to report the recommendations to Legislative Oversight Commission on Education Accountability,”

With the recommendation that the committee substitute do pass, but that it first be referred to the Committee on Finance.

At the request of Delegate Cowles, and by unanimous consent, reference of the bill (Com. Sub. for H. B. 2867) to the Committee on Finance was dispensed with.

Delegate Pasdon, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. B. 2645**, Expanding the availability of the Underwood-Smith Teacher Loan Assistance Program,

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

At the request of Delegate Cowles, and by unanimous consent, reference of the bill (H. B. 2645) to the Committee on Finance was dispensed with.

Delegate Pasdon, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. B. 2892**, Authorizing certain legislative rules regarding higher education,

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

Delegate Pasdon, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. B. 2717**, Relating to hiring of public school employees,

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

**Com. Sub. for H. B. 2717** – “A Bill to amend and reenact §18-5-15c of the Code of West Virginia, 1931, as amended; to amend and

reenact §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of said code; to amend and reenact §18A-3-10 of said code; to amend and reenact §18A-4-7a of said code; and to amend and reenact §18A-4-8b and §18A-4-8e of said code, all relating to hiring employees in the public schools; expanding the sources from which background checks may be obtained; modifying certain dates regarding certain actions, notices and hearings; modifying certain time periods and required methods of providing notice; modifying individuals to whom certain notice is required; limiting transfers from certain positions and providing exceptions; specifying certain actions of the county board to be in open, public meetings and authorizing certain executive sessions; authorizing county board to require certain actions of superintendent regarding job applicants; and removing requirement of county board to provide certain training.”

With the recommendation that the committee substitute do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2518**, Requiring insurers issuing group accident and sickness insurance policies to certain employers to furnish claims loss experience to policyholders,

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

**Com. Sub. for H. B. 2518** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-16-18, relating to requiring insurers issuing group accident and sickness insurance policies to certain employers to furnish claims loss experience to policyholders upon request of a policyholder; identifying the claims loss experience information to be provided; and providing claims information may not include information prohibited from disclosure by any applicable federal or state law,”

With the recommendation that the committee substitute do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2479**, Relating to the powers and authority of state and local law enforcement to enforce underage drinking laws at private clubs,

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

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. J. R. 13**, The Homestead Exemption Increase Amendment,

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

**Com. Sub. for H. J. R. 13** - "Proposing an amendment to the Constitution of the State of West Virginia, amending an amendment to the Constitution of the State of West Virginia, amending article X thereof by adding thereto a new section, designated section one-d, relating to homestead exemption increase; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment,"

With the recommendation that the committee substitute be adopted.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:



**H. B. 2429**, Requiring a convicted sex offender who volunteers for an organization whose volunteers have contact with minors to inform that organization of his or her conviction,

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

**Com. Sub. for H. B. 2429** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-12A-1, §15-12A-2 and §15-12A-3, relating to requiring a convicted sex offender who volunteers for an organization whose volunteers have contact with minors to inform that organization of his or her conviction; providing legislative intent and findings; requiring the organization that accepts the sex offender as a volunteer to notify the parents or guardians of those minors of his or her conviction; providing for a limited immunity for organizations; and setting forth penalties,”

With the recommendation that the committee substitute do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2810**, Implementing the West Virginia Property Rescue Initiative to reduce the number of properties posing a threat to public health and safety,

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

**Com. Sub. for H. B. 2810** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31-18-28, generally relating to implementing the West Virginia Property Rescue Initiative; providing legislative findings relating to the need of such program; requiring the West Virginia

Housing Development Fund to facilitate the West Virginia Property Rescue Initiative; providing that the West Virginia Housing Development Fund provide technical assistance to counties and municipalities for identification, purchase, removal and rehabilitation of dilapidated properties; requiring that the West Virginia Housing Development Fund establish and fund a revolving loan fund; directing the West Virginia Housing Development Fund to deposit monies into the revolving loan fund over a five year period; providing that no obligation of the state shall be created by the West Virginia Property Rescue Initiative; and requiring annual reports over five years; and requiring a final report on the effectiveness of the West Virginia Property Rescue Initiative,”

With the recommendation that the committee substitute do pass, and with the recommendation that second reference of the bill to the Committee on Finance be dispensed with.

At the request of Delegate Cowles, and by unanimous consent, reference of the bill (Com. Sub. for H. B. 2810) to the Committee on Finance was dispensed with.

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**Com. Sub. for H. B. 2233**, Requiring that legislative rules be reviewed five years after initial approval by the Legislative Rule-Making Review Committee and the Legislative Auditor’s Office,

And,

**H. B. 2926**, Relating to deferral charges in connection with a consumer credit sale or consumer loan,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2148**, Conforming the motor vehicle law of this state to the requirements of section 1405(a) of the federal Transportation Equity Act for the Twenty-first Century,

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

**Com. Sub. H. B. 2148** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17C-5D-1, §17C-5D-2, §17C-5D-3 and §17C-5D-4; and to amend and reenact §60-6-9 of said code, all relating to creating a misdemeanor offense for open containers of alcoholic beverages in certain areas of vehicles; providing comity with federal law governing open containers of alcoholic beverages in vehicles; providing penalties; defining terms; providing exceptions; and specifying procedure upon arrest,”

With the recommendation that the committee substitute do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2939**, Relating to requirements for mandatory reporting of sexual offenses on school premises involving students,

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

**Com. Sub. for H. B. 2939** - “A Bill to amend and reenact §49-1-201 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-2-803 and §49-2-812 of said code, all relating to

requirements for mandatory reporting of sexual offenses on school premises involving or between students; defining terms; adding conduct that must be reported to law enforcement; defining nature of conduct to be reported; creating criminal penalties for failure to report; and increasing penalties for other reporting requirements,”

With the recommendation that the committee substitute do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2828**, Modifying the requirements that allow a child witness to testify by closed circuit television,

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

**Com. Sub. for H. B. 2828** - “A Bill to amend and reenact §62-6B-2, §62-6B-3 and §62-6B-4 of the Code of West Virginia, 1931, as amended, all relating to modifying the requirements that allow a child witness to testify by closed circuit television,”

With the recommendation that the committee substitute do pass.

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2021**, Implementing drug testing for recipients of federal-state and state assistance,

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

**Com. Sub. for H. B. 2021** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section

designated §9-3-6, relating to drug testing for recipients of benefits from the temporary assistance for needy families program; creating a pilot program; providing definitions; providing basis for reasonable suspicion of drug use; establishing administrative review of decisions to deny benefits; providing a mechanism for dependent children to receive benefits if a parent is deemed ineligible; authorizing rulemaking; requiring results of the drug test remain confidential; providing penalties; and allowing for exceptions.”

With the recommendation that the committee substitute do pass.

### RESOLUTIONS INTRODUCED

Delegates Caputo, Longstreth and Manchin offered the following resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**H. C. R. 103** - “Requesting the Division of Highways to erect two signs in Marion County, one along northbound Interstate 79 at the crossing of the Tygart Valley River Bridge near Exit 133 and one along southbound Interstate 79 at Exit 136, identifying the beginning of the corporate boundary for the City of Pleasant Valley in each direction.”

WHEREAS, The City of Pleasant Valley will celebrate its twentieth anniversary of incorporation in October of 2015; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to erect two signs in Marion County, one along northbound Interstate 79 at the crossing of the Tygart Valley River Bridge near Exit 133 and one along southbound Interstate 79 at Exit 136, identifying the beginning of the corporate boundary for the City of Pleasant Valley in each direction; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a certified copy of this resolution to the City Council of the City of Pleasant Valley.

Delegates Folk, Mr. Speaker, Mr. Armstead, Ambler, Arvon, Azinger, Blair, Butler, Byrd, Cadle, Campbell, Canterbury, Cooper, Deem, Ellington, A. Evans, D. Evans, Faircloth, Fast, Foster, Frich, Guthrie, Hamilton, Hamrick, Hanshaw, Hartman, Hicks, Hill, Householder, Howell, Ihle, Kelly, Kessinger, Kurcaba, Lynch, Marcum, McGeehan, Moffatt, Moye, J. Nelson, O'Neal, Overington, R. Phillips, Reynolds, Rodighiero, Rohrbach, Romine, Rowan, Shott, R. Smith, Sobonya, Sponaugle, Stansbury, Statler, Storch, Summers, Upson, Walters, Waxman, Weld, B. White, H. White, Williams and Zatezalo offered the following resolution, which was read by its title and referred to the Committee on Energy then Rules:

**H. C. R. 104** - "Requesting the Congress of the United States invoke the Congressional Review Act to invalidate the proposed rule published in the Federal Register entitled 'Definition of Waters of the United States Under the Clean Water Act' (79 Fed. Reg. 22188 (April 21, 2014)) and the proposed rule published in the Federal Register entitled 'Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units' (79 Fed. Reg. 34830 (June 18, 2014)), in the event that either or both of the proposed rules go into effect."

WHEREAS, The Tenth Amendment to the United States Constitution guarantees to the states and their people all powers not granted to the federal government elsewhere in the Constitution and reserves to the state and people of West Virginia certain powers as they were understood at the time that West Virginia was admitted to statehood in 1863. The guaranty of those powers is a matter of contract between the state and people of West Virginia and the United States as of the time that the compact with the United States was agreed upon and adopted by West Virginia and the United States in 1863; and

WHEREAS, The Ninth Amendment to the United States Constitution guarantees to the people rights not granted in the Constitution and reserves to the people of West Virginia certain rights

as they were understood at the time that West Virginia was admitted to statehood in 1863. The guarantee of those rights is a matter of contract between the state and people of West Virginia and the United States as of the time that the compact with the United States was agreed upon and adopted by West Virginia and the United States in 1863; and

WHEREAS, The regulation of intrastate commerce, including the natural environment as affected by intrastate business, is vested in the states under the Ninth and Tenth Amendments to the United States Constitution and is specifically retained by the State of West Virginia according to Section 2, Article I of the West Virginia Constitution; and

WHEREAS, Section 101(g) of the Clean Water Act expressly states that it is “the authority of each state to allocate quantities of water within its jurisdiction [that] shall not be superseded, abrogated, or otherwise impaired by this act.” Therefore, it is the duty of the Legislature of this state to adopt any and all measures as may be necessary to prevent the proposed rule described in section (a) and its effect on the property rights of the citizens of the State of West Virginia; and

WHEREAS, Section 7416 of the Clean Air Act expressly states that “nothing in this Act shall preclude or deny the right of any state or political subdivision thereof to adopt or enforce: (1) Any standard or limitation respecting emissions of air pollutants; or (2) any requirement respecting control or abatement of air pollution [ . . . ]”; and

WHEREAS, The Congressional Review Act, 5 U.S.C. §801, *et seq.* allows Congress to review new federal regulations issued by government agencies and overrule a regulation by passage of a joint resolution; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the State of West Virginia hereby respectfully urges the Congress of the United States to exercise its powers under the

Congressional Review Act to invalidate the proposed rules described herein, in the event that either or both of the proposed rules go into effect; and, be it

*Further Resolved*, That the State of West Virginia forward official copies of the resolution to the President of the United States, to the President of the Senate and Speaker of the House of Representatives of the United States Congress with the request that this resolution be officially entered into the Congressional Record as a memorial to the Congress of the United States of America.

Delegates Perry, Kessinger, Fast and Guthrie offered the following resolution, which was read by its title and referred to the Committee on Education then Rules:

**H. C. R. 105** - "Recognizing West Virginia University Institute of Technology as a vital part of higher education in West Virginia."

WHEREAS, For 120 years, West Virginia University Institute of Technology has provided students a means by which to obtain an outstanding education; and

WHEREAS, The institution offers over 40 baccalaureate degrees that ensure opportunities to find gainful employment or continued education; and

WHEREAS, West Virginia University Institute of Technology boasts successful sports teams, such as the men's soccer program, attaining consecutive USCAA Championship victories in 2013 and 2014; and

WHEREAS, Many alumni graduated from West Virginia University Institute of Technology have gone on to have successful careers in professions essential to society; and

WHEREAS, Over 30 student organizations, as well as student athletics are active on campus, involving most of the student population; and



WHEREAS, The university has played a significant role in the continued success and well-being of students at the institution and of the state as a whole; and

WHEREAS, West Virginia University Institute of Technology is a vital part of the character and economic foundation of the city of Montgomery, as well as Fayette and Kanawha Counties; and

WHEREAS, West Virginia University Institute of Technology is an important piece of West Virginia state history, with its “Old Main” building listed on the National Register of Historic Places in 1980; and

WHEREAS, It is the intent of the West Virginia Legislature to support West Virginia University Institute of Technology, and encourage its future success and development; and

WHEREAS, The Legislature will take all necessary actions to ensure that West Virginia University Institute of Technology remain a vital institution of higher learning for future generations; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the West Virginia Legislature recognizes West Virginia University Institute of Technology and its significant role in the higher learning of our state, as well as a future role for our children and our region’s prosperity; and, be it

*Further Resolved,* That the West Virginia House of Delegate hereby commits to do “what it takes” to preserve and expand this institution; and, be it

*Further Resolved,* That the Clerk of the House of Delegates forward a copy of this resolution to the West Virginia Higher Education Policy Commission and West Virginia University Institute of Technology.

Delegates Westfall and Ashley offered the following resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**H. C. R. 106** - “Requesting the Division of Highways designate sections of United States Route 119 from the Roane/Kanawha county border to its intersection at United States Route 33 in Spencer, Roane County, United States Route 33 from the Roane/Calhoun county border to its intersection with Interstate 77 at Ripley, Jackson County, Old United States Route 21 from its intersection at Interstate 77, exit 132 in Ripley, Jackson County to its intersection with Interstate 77, exit 161 in Rockport, Wood County, State Route 14 from its intersection at Interstate 77, exit 185 in Parkersburg, Wood County to its intersection at United States Route 33 in Spencer, Roane County, Route 34 from the Putnam/Jackson county border to its intersection with Interstate 77, exit 124 in Kenna, Jackson County, and Interstate 77 from exit 124 in Kenna, Jackson County to exit 132 in Ripley, Jackson County and from exit 161 in Rockport, Wood County to exit 185 in Parkersburg, Wood County: ‘The Country Roads Wine and Distillery Trail’.”

WHEREAS, The Mid-Ohio Valley of West Virginia is a center of burgeoning development in the wine and distillery industries. In addition, travel and tourism are an increasingly important part of the West Virginia economy. In order to support these wineries and distilleries’ impact on both agriculture and tourism, investment should be made in drawing attention to these unique tourist destinations; and

WHEREAS, It is fitting and proper that the Legislature recognize the growing industries in West Virginia to support economic development and tourism; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways designate sections of United States Route 119 from the Roane/Kanawha county border to its intersection at United States Route 33 in Spencer, Roane County, United States Route 33 from the Roane/Calhoun county border to its intersection with Interstate 77 at Ripley, Jackson County, Old United States Route 21 from its intersection at Interstate 77, exit 132 in Ripley, Jackson County to its intersection with Interstate 77, exit 161 in Rockport, Wood County, State Route 14 from its intersection at Interstate 77, exit

185 in Parkersburg, Wood County to its intersection at United States Route 33 in Spencer, Roane County, Route 34 from the Putnam/Jackson county border to its intersection with Interstate 77, exit 124 in Kenna, Jackson County, and Interstate 77 from exit 124 in Kenna, Jackson County to exit 132 in Ripley, Jackson County and from exit 161 in Rockport, Wood County to exit 185 in Parkersburg, Wood County: “The Country Roads Wine and Distillery Trail”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the sections of United States Route 119 from the Roane/Kanawha county border to its intersection at United States Route 33 in Spencer, Roane County, United States Route 33 from the Roane/Calhoun county border to its intersection with Interstate 77 at Ripley, Jackson County, Old United States Route 21 from its intersection at Interstate 77, exit 132 in Ripley, Jackson County to its intersection with Interstate 77, exit 161 in Rockport, Wood County, State Route 14 from its intersection at Interstate 77, exit 185 in Parkersburg, Wood County to its intersection at United States Route 33 in Spencer, Roane County, Route 34 from the Putnam/Jackson county border to its intersection with Interstate 77, exit 124 in Kenna, Jackson County, and Interstate 77 from exit 124 in Kenna, Jackson County to exit 132 in Ripley, Jackson County and from exit 161 in Rockport, Wood County to exit 185 in Parkersburg, Wood County as the “The Country Roads Wine and Distillery Trail”; and, be it

*Further Resolved*, That to avoid confusion and limit any possible disruption of commerce, the designation shall be one of ceremonial nature and the official name of such highways shall not be changed as a result of this resolution; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a certified copy of this resolution to the Secretary of the Department of Transportation.

Delegate R. Phillips offered the following resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**H. C. R. 107** - “Requesting the Division of Highways to name the bridge on Route 4/01 in Logan County, bridge number 23-4/1-0.02 (23A003) in Logan County, latitude 38.00294, longitude -82.00833, the ‘U.S. Army PFC Edward Lester Memorial Bridge’.”

WHEREAS, U.S. Army Private First Class Edward Lester was born on June 27, 1947, in Grundy, Virginia to Jennings Lester and Edith Lester; and

WHEREAS, U.S. Army Private First Class Edward Lester served as a member of Company L, 2<sup>nd</sup> Battalion, 12<sup>th</sup> Infantry, 25<sup>th</sup> Infantry Division in Vietnam; and

WHEREAS, U.S. Army Private First Class Edward Lester died on July 9, 1968, in Hua Nghla, South Vietnam; and

WHEREAS, It is only fitting that we name this bridge to honor U.S. Army Private First Class Edward Lester for having given the ultimate sacrifice; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature hereby requests the Division of Highways to name bridge number 23-4/1-0.02 (23A003) in Logan County, latitude 38.00294, longitude -82.00833, the “U.S. Army PFC Edward Lester Memorial Bridge”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “U.S. Army PFC Edward Lester Memorial Bridge”; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a certified copy of this resolution to the Secretary of the

Department of Transportation and U.S. Army Private First Class Edward Lester's sister, Kathleen Butcher.

### MOTIONS

Delegate Sponaugle submitted a written motion to discharge the Committee on Education from consideration of H. B. 2846, in accordance with House Rule 82.

Delegate H. White submitted a written motion to call for the previous question.

The Speaker asked if demand for the previous question was sustained, and more than the required number of Members raised their hands.

The question before the House being the motion to call for the previous question, the yeas and nays were demanded, which demand was sustained.

On this question, the yeas and nays were taken (**Roll No. 233**), and there were—yeas 37, nays 60, absent and not voting 3, with the yeas and absent and not voting being as follows:

YEAS: Bates, Boggs, Byrd, Campbell, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Guthrie, Hartman, Hicks, Hornbuckle, Lane, Longstreth, Lynch, Manchin, Marcum, Miley, Moore, Morgan, Moye, Perdue, Perry, Pethtel, L. Phillips, R. Phillips, Pushkin, Reynolds, Rodighiero, Rowe, Skinner, P. Smith, Sponaugle, Trecost, H. White and Williams.

ABSENT AND NOT VOTING: Ellington, Kurcaba and B. White.

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

The question before the House now being the motion to discharge the Committee on Education from consideration of H. B. 2846, Delegate Cowles moved that the motion be postponed indefinitely.

Delegate Cowles then moved the previous question on the motion to postpone indefinitely, which motion was sustained.

On this question, the yeas and nays were taken (**Roll No. 234**), and there were—yeas 58, nays 39, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Bates, Boggs, Byrd, Campbell, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Folk, Guthrie, Hartman, Hicks, Hornbuckle, Longstreth, Lynch, Manchin, Marcum, Miley, Moore, Morgan, Moye, Perdue, Perry, Pethtel, L. Phillips, R. Phillips, Pushkin, Reynolds, Rodighiero, Rohrbach, Rowe, Skinner, P. Smith, Sponaugle, Summers, Trecost, H. White and Williams.

ABSENT AND NOT VOTING: Ellington, Kurcaba and B. White.

So, a majority of the members present and voting having voted in the affirmative, the motion was adopted.

The Speaker again stated the question before the House being the motion to postpone indefinitely the motion to discharge the Committee on Education from the consideration of H. B. 2846.

On this motion, the yeas and nays were taken (**Roll No. 235**), and there were—yeas 59, nays 36, absent and not voting 5, with the nays and absent and not voting being as follows:

NAYS: Bates, Boggs, Byrd, Campbell, Caputo, Eldridge, Faircloth, Ferro, Fleischauer, Fluharty, Folk, Guthrie, Hartman, Hicks, Longstreth, Lynch, Manchin, Marcum, Miley, Moore, Morgan, Moye, Perdue, Perry, Pethtel, L. Phillips, R. Phillips, Pushkin, Rodighiero, Rowe, Skinner, P. Smith, Sponaugle, Trecost, H. White and Williams.

ABSENT AND NOT VOTING: Ellington, Hornbuckle, Kurcaba, Reynolds and B. White.

So, a majority of the members present and voting having voted in the affirmative, the motion prevailed.

### SPECIAL CALENDAR

#### THIRD READING

**Com. Sub. for S. B. 361**, Eliminating prevailing hourly wage requirement for construction of public improvements; on third reading, coming up in regular order, was read a third time.

Delegates Gearheart, Eldridge, Butler, Householder and Cowles requested to be excused from voting on the passage of Com. Sub. for S. B. 361 under the provisions of House Rule 49.

The Speaker replied that the Delegates were members of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the Members from voting.

Delegate Skinner was recognized and moved to suspend the rules to permit the offering and consideration of an amendment on third reading.

On this motion, the yeas and nays were taken (**Roll No. 236**), and there were—yeas 42, nays 51, absent and not voting 7, with the yeas and absent and not voting being as follows:

YEAS: Bates, Boggs, Byrd, Canterbury, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Frich, Guthrie, Hamilton, Hanshaw, Hartman, Hicks, Kelly, Lane, Longstreth, Lynch, Manchin, Marcum, Miley, Moore, Morgan, Moye, Pasdon, Perdue, Perry, Pethel, L. Phillips, Pushkin, Rodighiero, Rohrbach, Romine, Rowe, Shott, Skinner, P. Smith, Trecost, Upson, H. White and Williams.

ABSENT AND NOT VOTING: Campbell, Ellington, Hornbuckle, Kurcaba, Reynolds, Sponaule and B. White.

So, two thirds of the members present and voting not having voted in the affirmative, the motion was not adopted.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 237**), and there were—yeas 56, nays 39, absent and not voting 5, with the nays and absent and not voting being as follows:

NAYS: Bates, Boggs, Byrd, Campbell, Canterbury, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Guthrie, Hamilton, Hanshaw, Hartman, Hicks, Kelly, Lane, Longstreth, Lynch, Manchin, Marcum, Miley, Moore, Morgan, Moye, Perdue, Perry, Pethtel, L. Phillips, Pushkin, Rodighiero, Rowe, Skinner, P. Smith, Sponaugle, Storch, Trecost, H. White and Williams.

ABSENT AND NOT VOTING: Ellington, Hornbuckle, Kurcaba, Reynolds and B. White.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 361) passed.

On motion of Delegate Howell the title of the bill was amended to read as follows:

**Com. Sub. for S. B. 361** - “A Bill to amend and reenact §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-5, §21-5A-6, §21-5A-8, §21-5A-10 and §21-5A-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §21-5A-12, all relating to the fair minimum rate of wages; eliminating, modifying and defining terms; providing for determination and methodology of determining fair minimum rate of wages by Workforce West Virginia; applying fair minimum rate of wages based on monetary threshold; establishing prevailing wages at specific intervals and exception; providing for review of determinations and methodology; addressing data used in determining prevailing wage rates; providing limitation on use of confidential, individual proprietor-



level data and excluding from definition of public record under section three, article one, chapter twenty-nine-b; requiring contract provisions and exceptions; keeping wage records; requiring Workforce West Virginia to propose emergency and legislative rules; and providing provisions of article are severable.”

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

On this question, the yeas and nays were taken (**Roll No. 238**), and there were—yeas 59, nays 35, absent and not voting 6, with the nays and absent and not voting being as follows:

**NAYS:** Bates, Boggs, Byrd, Campbell, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Guthrie, Hamilton, Hicks, Kelly, Longstreth, Lynch, Manchin, Marcum, Miley, Moore, Morgan, Moye, Perdue, Perry, Pethtel, L. Phillips, Pushkin, Rodighiero, Rowe, Skinner, P. Smith, Sponaugle, Storch, Trecost, H. White and Williams.

**ABSENT AND NOT VOTING:** Ellington, Hornbuckle, Kurcaba, Reynolds, Romine and B. White.

So, two thirds of the members elected to the House of Delegates not having voted in the affirmative, the Speaker declared the motion rejected.

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

At 5:32 P.M., on motion of Delegate Cowles, the House of Delegates recessed until 6:00 P.M.

Upon reconvening, the House continued with further bills on third reading.

**THIRD READING**

– CONTINUED–

**S. B. 382**, Declaring claims against state; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 239**), and there were—yeas 86, nays none, absent and not voting 14, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Bates, Deem, Ellington, Folk, Hornbuckle, Kurcaba, E. Nelson, Perdue, L. Phillips, Pushkin, Reynolds, Skinner, Walters and B. White.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 382) passed.

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

On this question, the yeas and nays were taken (**Roll No. 240**), and there were—yeas 89, nays none, absent and not voting 11, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Bates, Deem, Ellington, Folk, Hornbuckle, Kurcaba, Moffatt, L. Phillips, Reynolds, Walters and B. White.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 382) takes effect from its passage.

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

**S. B. 508**, Reorganizing Hatfield-McCoy Regional Recreation Authority; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 241**), and there were—yeas 93, nays none, absent and not voting 7, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Ellington, Hornbuckle, Kurcaba, L. Phillips, Reynolds and B. White.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 508) passed.

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

**Com. Sub. for H. B. 2381**, Providing a teacher mentoring increment for classroom teachers with national board certification who teach and mentor at certain schools; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 242**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Ellington, Hornbuckle, L. Phillips, Reynolds and B. White.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2381) passed.

Delegate Cowles moved that the bill take effect July 1, 2015.

On this question, the yeas and nays were taken (**Roll No. 243**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Ellington, Hornbuckle, L. Phillips, Reynolds and B. White.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2381) takes effect July 1, 2015.

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

**Com. Sub. for H. B. 2478**, Relating to public school finance; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 244**), and there were—yeas 82, nays 11, absent and not voting 7, with the nays and absent and not voting being as follows:

**NAYS:** Byrd, Caputo, Eldridge, Ferro, Lane, Lynch, Miley, Moore, Sponaugle, Trecost and Walters.

**ABSENT AND NOT VOTING:** Deem, Ellington, Fleischauer, Hornbuckle, L. Phillips, Reynolds and B. White.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2478) passed.

On motion of Delegate E. Nelson, the title of the bill was amended to read as follows:

**Com. Sub. for H. B. 2478** - “A Bill to amend and reenact §11-8-6f of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-9A-4, §18-9A-5, §18-9A-7, §18-9A-11 and §18-9A-12 of said code, all relating to public school finance; removing the reduction in a county’s basic foundation allowance to a county school system for professional educators and service personnel if the number employed is less than the maximum allowed for formula funding; adjusting the foundation school program allowance for transportation costs for the school years 2015-2016 and 2016-2017; including propane as an eligible fuel for the ten percent additional percentage allowance for school bus systems using alternative fuels; fixing the amounts to be used for the replacement of buses for school years 2015-2016 and 2016-2017 as a component of the allowance in the foundation school program for transportation; eliminating requirements that payments or contributions in lieu of property taxes which are distributed by the

sheriff to the county board of education be deducted from the allocated state aid share for the county; and eliminating certain adjustments in basic foundation program.”

Delegate Cowles moved that the bill take effect July 1, 2015.

On this question, the yeas and nays were taken (**Roll No. 245**), and there were—yeas 84, nays 10, absent and not voting 6, with the nays and absent and not voting being as follows:

NAYS: Caputo, Eldridge, Ferro, Lynch, Manchin, Marcum, Miley, Moore, Perdue and Sponaugle.

ABSENT AND NOT VOTING: Deem, Ellington, Hornbuckle, L. Phillips, Reynolds and B. White.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2478) takes effect July 1, 2015.

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

**H. B. 2658**, Relating to the inspection and slaughter of nontraditional agriculture; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 246**), and there were—yeas 88, nays 6, absent and not voting 6, with the nays and absent and not voting being as follows:

NAYS: Boggs, Caputo, Fluharty, Moore, Morgan and Storch.

ABSENT AND NOT VOTING: Deem, Ellington, Hornbuckle, L. Phillips, Reynolds and B. White.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2658) passed.

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

**H. B. 2760**, Making a supplementary appropriation to the Bureau of Senior Services - Lottery Senior Citizens Fund; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 247**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Ellington, Hornbuckle, L. Phillips, Reynolds and B. White.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2760) passed.

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

On this question, the yeas and nays were taken (**Roll No. 248**), and there were—yeas 93, nays none, absent and not voting 7, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Ellington, Hornbuckle, L. Phillips, Reynolds, Rohrbach and B. White.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2760) takes effect from its passage.

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

**H. B. 2764**, Making a supplementary appropriation to the State Department of Education - School Building Authority; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 249**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Ellington, Hornbuckle, L. Phillips, Reynolds and B. White.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2764) passed.

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

On this question, the yeas and nays were taken (**Roll No. 250**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Ellington, Hornbuckle, L. Phillips, Reynolds and B. White.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2764) takes effect from its passage.

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

**Com. Sub. for H. B. 2793**, Relating to exemptions from mandatory school attendance; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 251**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Ellington, Hornbuckle, L. Phillips, Reynolds and B. White.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2793) passed.

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

On this question, the yeas and nays were taken (**Roll No. 252**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Ellington, Hornbuckle, L. Phillips, Reynolds and B. White.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2793) takes effect from its passage.

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

**Com. Sub. for H. B. 2811**, Deleting obsolete provisions regarding the Physicians' Mutual Insurance Company; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 253**), and there were—yeas 80, nays 13, absent and not voting 7, with the nays and absent and not voting being as follows:

NAYS: Byrd, Caputo, Fast, Fluharty, Lynch, Manchin, Miley, Moore, Perdue, Pushkin, Rowe, Skinner and Sponaugle.

ABSENT AND NOT VOTING: Cadle, Deem, Ellington, Hornbuckle, L. Phillips, Reynolds and B. White.



So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2811) passed.

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

**Com. Sub. for H. B. 2812**, Clarifying use of subsistence allowance in determining compensation for purposes of calculating pension benefits for natural resources police officers; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 254**), and there were—yeas 87, nays 5, absent and not voting 8, with the nays and absent and not voting being as follows:

NAYS: Caputo, Ferro, Lynch, Marcum and Perry.

ABSENT AND NOT VOTING: Deem, Ellington, Hicks, Hornbuckle, Moore, L. Phillips, Reynolds and B. White.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2812) passed.

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

On this question, the yeas and nays were taken (**Roll No. 255**), and there were—yeas 90, nays 4, absent and not voting 6, with the nays and absent and not voting being as follows:

NAYS: Caputo, Ferro, Moore and Perry.

ABSENT AND NOT VOTING: Deem, Ellington, Hornbuckle, L. Phillips, Reynolds and B. White.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2812) takes effect from its passage.

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

**Com. Sub. for H. B. 2823**, Eliminating the street and interurban and electric railways tax; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 256**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Ellington, Hornbuckle, L. Phillips, Reynolds and B. White.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2823) passed.

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

**H. B. 2835**, Reorganizing the Hatfield-McCoy Regional Recreation Authority; on third reading, coming up in regular order, was, on motion of Delegate Cowles, laid upon the table.

**H. B. 2876**, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 257**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Ellington, Hornbuckle, L. Phillips, Reynolds and B. White.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2876) passed.

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

On this question, the yeas and nays were taken (**Roll No. 258**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Ellington, Hornbuckle, L. Phillips, Reynolds and B. White.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2876) takes effect from its passage.

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

**Com. Sub. for H. B. 2934**, Repealing the common core standards; on third reading, coming up in regular order, was reported by the Clerk.

Delegate Pasdon asked and obtained unanimous consent that the rule be suspended to permit the offering and consideration of an amendment to the bill on third reading.

On motion of Delegates Pasdon, Butler, Perry, Pethtel, Moye and Williams, the bill was amended on page fourteen, section five-b, subsection (c), line two hundred eight, by striking out subdivision (5) and inserting in lieu thereof a new subdivision (5) to read as follows:

“(5) Except for the purposes of section thirty-nine, article two of this chapter, suspend the use of student test score results on any state summative assessment for any purpose other than strategic planning for school improvement, required reporting and professional development until school year 2016-17” and a semicolon.

Having been engrossed, the bill was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 259**), and there were, including pairs—yeas 75, nays 19, absent and not voting 6, paired 2, with the nays, paired and absent and not voting being as follows:

NAYS: Bates, Boggs, Byrd, Campbell, Ferro, Fleischauer, Guthrie, Hartman, Longstreth, Manchin, Marcum, Miley, Moore, L. Phillips, Pushkin, Skinner, Sponaugle, Statler.

ABSENT AND NOT VOTING: Deem, Ellington, Hornbuckle, Morgan, Reynolds and B. White.

Pursuant to House Rule 43, the following pairs were filed and announced by the Clerk:

PAIRED:

YEA: Zatezalo                      NAY: Caputo

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2934) passed.

On motion of Delegate Pasdon, the title of the bill was amended to read as follows:

**Com. Sub. for B. 2934** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-5b, relating to repealing the certain common core standards and certain subsequent standards; making findings with respect to a thorough and efficient education and role of the Legislature; making findings with respect to the Elementary and Secondary Education act and the affect of certain amendments; making findings with respect to changes in standards and assessments; making findings with respect to reverse in trend of improving student National

Assessment of Educational Progress scores and likely causes; making findings with respect to ESEA flexibility relief, state application and subsequent actions; and making findings with respect to school funding sources, the influence of federal funds and the use of federal funds to coerce changes in standards, assessments and accountability system; making findings with respect to inappropriate usurpation of state sovereignty over public education and results sufficient to impede process for improving education; directing certain actions by state board in response to findings; directing comprehensive review of standards by board to ensure repeal of certain common core standards and certain subsequent standards; prohibiting certain assessments; ensuring certain college and career ready standards are aligned and revised as needed; ensuring adequate and appropriate curriculum and instructional strategies, sufficient training and professional development, and information and resources to engage and assist parents; directing state board appoint stakeholder commission to participate in review with certain legislative member appointments; directing state board appointment of standards development committees to advise and assist commission and providing for member selection and qualifications; directing state board conduct regional town hall meetings with certain format for discussion and input; directing suspension of use of summative assessment scores except for certain purpose until certain date; directing limit on number of statewide summative assessment per year; directing prohibition of collection and disclosure of certain student information; directing regular information to Legislature on actions with respect to standards, assessment, accountability and capacity building; providing responsibilities and structure of standards development committees; directing certain actions in response to findings by Governor, Legislature, state board and state superintendent with respect to reauthorization of Elementary and Secondary Education Act; and requiring monitoring by legislative oversight commission.”

Delegate McGeehan moved that the bill take effect from its passage and then asked and obtained unanimous consent that the motion be withdrawn.

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

**H. B. 2976**, Expanding the eligible master's and doctoral level programs for which a Nursing Scholarship may be awarded; on third reading, coming up in regular order, was read a third time.

Delegates Summers, Campbell and Moye requested to be excused from voting under the provisions of House Rule 49.

The Speaker replied that the Delegates were members of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the Members from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 260**), and there were—yeas 91, nays none, absent and not voting 9, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Boggs, Deem, Ellington, Hornbuckle, Moore, Morgan, Reynolds, B. White and Zatezalo.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2976) passed.

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

On this question, the yeas and nays were taken (**Roll No. 261**), and there were—yeas 90, nays none, absent and not voting 10, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Boggs, Deem, Ellington, Hartman, Hornbuckle, Moore, Morgan, Reynolds, B. White and Zatezalo.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2976) takes effect from its passage.

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

SECOND READING

**S. B. 473**, Making supplementary appropriation of federal funds to DMAPS, WV State Police; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 476**, Making supplementary appropriation to Department of Administration, Division of Purchasing, Purchasing Improvement Fund; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for H. B. 2048**, Relating to juvenile proceedings; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2368**, Relating to child welfare; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2395**, Storm Scammer Consumer Protection Act; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2474**, Relating to the compensation of personnel employed at the West Virginia Schools for the Deaf and the Blind; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2485**, Relating to the West Virginia Future Fund; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2496**, Adopting the Interstate Medical Licensure Compact; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2536**, Relating to travel insurance limited lines producers; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2550**, Increasing the number of unexcused absences of a student before action may be taken against the parent; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2716**, Relating to charitable organizations; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2728**, Relating to risk-based capital reporting for health organizations; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2790**, Relating to minimum responsibility limits of car insurance; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2829**, Defining “midwife”, “certified midwife” and “midwifery”; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Campbell, the bill was amended on page seven, line twenty, by striking out subdivision (9) and inserting in lieu thereof the following:

“(9) A brief description of any complications resulting in the mortality or morbidity of a mother or an infant.

(10) If their care still requires a caesarean section.

(b) A direct entry midwife is not a licensed registered nurse, an advanced practice registered nurse or a certified midwife.”



The bill was then ordered to engrossment and third reading.

**FIRST READING**

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

**S. B. 294**, Eliminating certain unnecessary, inactive or redundant councils, committees and boards,

**Com. Sub. for S. B. 343**, Exempting chiropractors from continuing education requirement on mental health conditions common to veterans,

**Com. Sub. for S. B. 435**, Creating WV Sheriffs' Bureau of Professional Standards,

**S. B. 463**, Making supplementary appropriation to DHHR, DHS, Health Care Provider Tax, Medicaid State Share Fund,

**S. B. 466**, Making supplementary appropriation of federal funds to Department of Commerce,

**S. B. 467**, Making supplementary appropriation of federal funds to Department of Agriculture, State Conservation Committee,

**S. B. 469**, Making supplementary appropriation of federal funds to DEP, Division of Environmental Protection,

**S. B. 471**, Making supplementary appropriation of federal funds to DHHR, Human Rights Commission, and DHHR, DHS,

**S. B. 477**, Supplementing, amending, decreasing and increasing appropriation from State Road Fund to DOH,

**Com. Sub. for H. B. 2015**, Requiring the Legislative Auditor to conduct performance reviews and audits for every government spending unit, including all members of the Board of Public Works and the Legislature,

**H. B. 2226**, Eliminating dedication of corporation net income tax revenues to and deposits of such revenues into the Special Railroad Intermodal Enhancement Fund,

**Com. Sub. for H. B. 2239**, Creating a logical advisory committee,

**Com. Sub. for H. B. 2377**, Authorizing State Board of Education to approve certain alternatives with respect to instructional time,

**Com. Sub. for H. B. 2466**, Exempting valid nonprofit organizations from licensing requirements of the West Virginia Alcoholic Beverage Control Authority during certain events,

**Com. Sub. for H. B. 2502**, Possessing deadly weapons on school buses or on the premises of educational facilities,

**Com. Sub. for H. B. 2515**, Relating to elk restoration,

**H. B. 2521**, Clarifying the scope, application and methods for error correction required by the CPRB,

**Com. Sub. for H. B. 2585**, Requiring leaseholders of mineral interests to notify the owners of the minerals when there is an assignment of the lease to another party,

**H. B. 2816**, Relating to the eligibility of a mine operator to receive a tax credit for performing reclamation or remediation at a bond forfeiture site,

**Com. Sub. for H. B. 2840**, Providing an alternative plan to make up lost days of instruction,

**H. B. 2877**, Relating to electronic filing of tax returns and electronic funds transfers in payment of taxes,

**Com. Sub. for H. B. 2878**, Creating a one-stop electronic business portal in West Virginia,

**H. B. 2914**, Providing for voluntary dissolution of resort area district,

**Com. Sub. for H. B. 2916**, Providing limited borrowing authority to the Governor for the completion of renovations to Capitol Complex Building 3,

**Com. Sub. for H. B. 2999**, Relating to neonatal abstinence centers,

**Com. Sub. for H. B. 3006**, Relating to the determination of the adjusted rate established by the Tax Commissioner for the administration of tax deficiencies,

**H. B. 3017**, Addressing sudden cardiac arrest in interscholastic athletes,

And,

**H. B. 3018**, Increasing the allowable range of difference in salary potential of school employees in different counties.

At the request of Delegate Cowles and by unanimous consent, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

### COMMITTEE REPORTS

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2263**, Providing guidance for prosecuting attorneys in cases involving abused and neglected children,

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

**Com. Sub. for H. B. 2263** - “A Bill to amend and reenact §49-4-501 and §49-4-502 of the Code of West Virginia, 1931, as amended, relating to the responsibilities of prosecuting attorneys when representing the Department of Health and Human Resources; clarifying the independence of prosecuting attorneys in abuse and neglect matters and explaining the nature of the attorney-client relationship; and establishing procedure when a dispute or conflict arises,”

With the recommendation that the committee substitute do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2805**, Transferring to an adult correctional facility any juvenile whose sentence runs beyond his or her eighteenth birthday,

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

**Com. Sub. for H. B. 2805** - “A Bill to amend and reenact §49-4-720 and §49-4-722 of the Code of West Virginia, 1931, as amended, relating to requiring the Division of Juvenile Services to transfer to a correctional facility or regional jail any juvenile in its custody that has been transferred to adult jurisdiction of the circuit court and who reaches his or her eighteenth birthday; requiring transfer of juvenile in adult jurisdiction upon reaching 18 if he or she has either been convicted or is in a pre-trial status; directing the division of juvenile services to notify the circuit court of the age of a juvenile reaching the age of 18; authorizing the circuit court to conduct a hearing as to alternative placement; mandating that the position of victim be taken under consideration by the court in considering disposition or alternative placement; prohibiting juveniles that commit an adult offense while under the custody of the Division of Juvenile Services

from returning back to the placement in a juvenile facility if the juvenile has attained the age of 18; and requiring the court to conduct a hearing as to placement of a juvenile that has turned 18 and is remanded back to the custody of the Division of Juvenile Services after completion of an adult sentence,”

With the recommendation that the committee substitute do pass.

Delegate McCuskey, Chair of the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration:

**H. B. 2902**, West Virginia ABLE Act,

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

**Com. Sub. for H. B. 2902** – “A Bill to amend of the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-46-1, §16-46-2, §16-46-3, §16-46-4, §16-46-5, §16-46-6, §16-46-7 and §16-46-8, all relating to providing for the establishment of a program to allow savings accounts for individuals with a disability and their families to save private funds to support the individual with a disability, to be known as the West Virginia ABLE Act; definitions; implementation and administration of the program by the Treasurer; powers and responsibilities of the Treasurer; use of financial organizations as account depositories and managers; establishing procedures and requirements for establishment of an ABLE savings account; limitations on deposits; provisions for change of a designated beneficiary; distributions from accounts; limiting liability of the Treasurer and the state; and establishment of the West Virginia ABLE savings program trust fund and the West Virginia ABLE Savings Expense Fund,”

With the recommendation that the committee substitute do pass, and with the recommendation that second reference of the bill to the Committee on the Judiciary be dispensed with.

Delegate Cowles asked and obtained unanimous consent that second reference of the bill (Com. Sub. for H. B. 2902) to the Committee on the Judiciary be dispensed with.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2366**, Relating generally to the solicitation of minors,

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

**Com. Sub. for H. B. 2366** - “A Bill to amend and reenact §61-3C-14b of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-8A-4 of said code, all relating generally to the solicitation of minors; clarifying the law pertaining to the use of a computer to solicit a minor; deleting reference to offenses defined in the Uniform Controlled Substances Act; defining a new felony offense of soliciting a minor through use of a computer and traveling to engage in prohibited sexual activity with the minor; setting a new criminal penalty; and prohibiting the use or distribution of obscene materials by an adult to solicit or seduce a minor, or a person believed to be a minor, for unlawful sexual activity,”

With the recommendation that the committee substitute do pass.

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

**By Delegates Ireland, Overington, Foster, Fast, Lynch, Azinger, Shott, Hicks and Hanshaw:**

**H. B. 3019** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §2-2-13, all relating to requiring official business and records of the state and its political subdivisions be conducted in English, and providing exceptions, limitations, and a definition.”

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2756**, Authorizing appointees or employees of the Alcohol Beverage Control Commissioner to carry concealed handguns,

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

**Com. Sub. for H. B. 2756** - “A Bill to amend and reenact §61-7-6 of the Code of West Virginia, 1931, as amended, relating to exceptions to prohibitions against carrying concealed handguns; and authorizing appointees or employees of the Alcohol Beverage Control Commissioner to carry concealed handguns,”

With the recommendation that the committee substitute do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2785**, Statewide Interoperable Radio Network Act,

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

Delegate Cowles asked unanimous consent that second reference of the bill (H. B. 2785) to the Committee on Finance be dispensed with.

The Speaker referred the bill to the Committee on Finance.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2712**, Relating to employment and privacy protection,

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

#### **LEAVES OF ABSENCE**

At the request of Delegate Cowles, and by unanimous consent, leaves of absence for the day were granted Delegates Ellington, Reynolds and B. White.

#### **MISCELLANEOUS BUSINESS**

Delegate Moyer filed a form with the Clerk's Office per House Rule 94b to be removed as a cosponsor of H. B. 2717.

Delegate Gearheart noted to the Clerk that he was absent when the vote was taken on Roll No. 225, on yesterday, and had he been present, he would have voted "YEA" thereon.

Delegate L. Phillips noted to the Clerk that she was absent when the votes were taken on Roll Nos. 239 through 258, and that had she been present, she would have voted "YEA" thereon.

Delegates Bates and Perdue announced that they were absent when the votes were taken on S. B. 382 and had they been present, they would have voted "YEA" thereon.



**REMARKS BY MEMBERS**

Delegate Sponaugle asked and obtained unanimous consent that all remarks regarding Com. Sub. for S. B. 361 be printed in the Appendix to the Journal.

Delegate R. Smith asked and obtained unanimous consent that the closing remarks of Delegate Howell regarding Com. Sub. for S. B. 361 be printed in the Appendix to the Journal, and that the remarks of Delegates Duke and Pasdon regarding Com. Sub. for H. B. 2934 be printed in the Appendix to the Journal.

Delegate Perry asked and obtained unanimous consent that all remarks regarding Com. Sub. for H. B. 2934 be printed in the Appendix to the Journal.

At 8:20 P.M., the House of Delegates adjourned until 11:00 A.M., Monday, March 2, 2015.



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MONDAY, MARCH 2, 2015

**FORTY-EIGHTH DAY**

[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

The House of Delegates met at 11:00 A.M., and was called to order by the Honorable Tim Armstead, Speaker.

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

The Clerk proceeded to read the Journal of Saturday, February 28, 2015, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**REORDERING OF THE CALENDAR**

Delegate Cowles announced that the Committee on Rules had transferred H. B. 2880, on second Reading, House Calendar, to the Special Calendar; H. B. 3016 on first reading, House Calendar, to the Special Calendar and Com. Sub. for H. B. 2716, on third reading Special Calendar, to the House Calendar.

**MESSAGES FROM THE SENATE**

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

**Com. Sub. for H. B. 2099**, Extending the time of meetings of local levying bodies when meetings are delayed.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had concurred in the amendments of the House of Delegates, and again passed a bill

of the House of Delegates, heretofore disapproved by the Governor, all in an effort to meet the objections of the Governor, as follows:

**Enr. Com. Sub. for H. B. 2201** - Requiring the Public Service Commission to adopt certain net metering and interconnection rules and standards.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 2576**, Creating new code sections which separate the executive departments.

On motion of Delegate Cowles, the bill was taken up for immediate consideration.

The following Senate amendments were reported by the Clerk:

On page one, by striking out everything after the enacting section and inserting in lieu thereof the following:

**“ARTICLE 2. ORGANIZATION OF STATE AGENCIES, BOARDS AND COMMISSIONS WITHIN DEPARTMENTS OF STATE GOVERNMENT.**

**§5F-2-1. ~~Transfer and incorporation of agencies and boards; funds~~ General provisions.**

~~(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:~~

~~(1) Building Commission provided in article six, chapter five of this code;~~

~~(2) Public Employees Insurance Agency provided in article sixteen, chapter five of this code;~~

~~(3) Governor’s Mansion Advisory Committee provided in article five, chapter five-a of this code;~~

~~(4) Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of this code;~~

~~(5) West Virginia Public Employees Grievance Board provided in article three, chapter six-c of this code;~~

~~(6) Board of Risk and Insurance Management provided in article twelve, chapter twenty-nine of this code;~~

~~(7) Boundary Commission provided in article twenty-three, chapter twenty-nine of this code;~~

~~(8) Public Defender Services provided in article twenty-one, chapter twenty-nine of this code;~~

~~(9) Division of Personnel provided in article six, chapter twenty-nine of this code;~~

~~(10) The West Virginia Ethics Commission provided in article two, chapter six-b of this code;~~

~~(11) Consolidated Public Retirement Board provided in article ten-d, chapter five of this code; and~~

~~(12) Real Estate Division provided in article ten, chapter five-a of this code.~~

~~(b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:~~

~~(1) Division of Labor provided in article one, chapter twenty-one of this code, which includes:~~

~~(A) Occupational Safety and Health Review Commission provided in article three-a, chapter twenty-one of this code; and~~

~~(B) Board of Manufactured Housing Construction and Safety provided in article nine, chapter twenty-one of this code.~~

~~(2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety and Training for purposes of administrative support and liaison with the Office of the Governor:~~

~~(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in article six, chapter twenty-two-a of this code;~~

~~(B) Board of Miner Training, Education and Certification provided in article seven, chapter twenty-two-a of this code; and~~

~~(C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this code.~~

~~(3) The West Virginia Development Office provided in article two, chapter five-b of this code;~~

~~(4) Division of Natural Resources and Natural Resources Commission provided in article one, chapter twenty of this code;~~

~~(5) Division of Forestry provided in article one-a, chapter nineteen of this code;~~

~~(6) Geological and Economic Survey provided in article two, chapter twenty-nine of this code; and~~

~~(7) Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:~~

~~(A) Division of Unemployment Compensation;~~

~~(B) Division of Employment Service;~~

~~(C) Division of Workforce Development, and~~

~~(D) Division of Research, Information and Analysis;~~

~~(8) Division of Energy provided in article two-f, chapter five-b of this code.~~

~~(9) Division of Tourism Commission provided in article two-h, chapter five-b of this code.~~

~~(c) The Economic Development Authority provided in article fifteen, chapter thirty-one of this code is continued as an independent agency within the executive branch.~~

~~(d) The Water Development Authority and the Water Development Authority Board provided in article one, chapter twenty-two-c of this code is continued as an independent agency within the executive branch.~~

~~(e) The following agencies and boards, including all of the allied, advisory and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the office of the Governor:~~

~~(1) Air Quality Board provided in article two, chapter twenty-two-b of this code;~~

~~(2) Solid Waste Management Board provided in article three, chapter twenty-two-c of this code;~~

~~(3) Environmental Quality Board, or its successor board, provided in article three, chapter twenty-two-b of this code;~~

~~(4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;~~

~~(5) Oil and Gas Inspectors' Examining Board provided in article seven, chapter twenty-two-c of this code;~~

~~(6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this code; and~~

~~(7) Oil and Gas Conservation Commission provided in article nine, chapter twenty-two-c of this code.~~

~~(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Education and the Arts:~~

~~(1) Library Commission provided in article one, chapter ten of this code;~~

~~(2) Division of Culture and History provided in article one, chapter twenty-nine of this code; and~~

~~(3) Division of Rehabilitation Services provided in article ten-a, chapter eighteen of this code.~~

~~(g) The Educational Broadcasting Authority provided in article five, chapter ten of this code is part of the Department of Education and the Arts for the purposes of administrative support and liaison with the office of the Governor.~~

~~(h) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:~~

~~(1) Human Rights Commission provided in article eleven, chapter five of this code;~~

~~(2) Division of Human Services provided in article two, chapter nine of this code;~~

~~(3) Bureau for Public Health provided in article one, chapter sixteen of this code;~~



~~(4) Office of Emergency Medical Services and the Emergency Medical Service Advisory Council provided in article four-c, chapter sixteen of this code;~~

~~(5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;~~

~~(6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine of this code;~~

~~(7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and~~

~~(8) The Child Support Enforcement Division provided in chapter forty-eight of this code:~~

~~(i) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Military Affairs and Public Safety:~~

~~(1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;~~

~~(2) Armory Board provided in article six, chapter fifteen of this code;~~

~~(3) Military Awards Board provided in article one-g, chapter fifteen of this code;~~

~~(4) West Virginia State Police provided in article two, chapter fifteen of this code;~~

~~(5) Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in article five, chapter fifteen of this code and Emergency Response Commission provided in article five-a of said chapter;~~

~~(6) Sheriffs' Bureau provided in article eight, chapter fifteen of this code;~~

~~(7) Division of Justice and Community Services provided in article nine-a, chapter fifteen of this code;~~

~~(8) Division of Corrections provided in chapter twenty-five of this code;~~

~~(9) Fire Commission provided in article three, chapter twenty-nine of this code;~~

~~(10) Regional Jail and Correctional Facility Authority provided in article twenty, chapter thirty-one of this code; and~~

~~(11) Board of Probation and Parole provided in article twelve, chapter sixty-two of this code:~~

~~(j) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:~~

~~(1) Tax Division provided in chapter eleven of this code;~~

~~(2) Racing Commission provided in article twenty-three, chapter nineteen of this code;~~

~~(3) Lottery Commission and position of Lottery Director provided in article twenty-two, chapter twenty-nine of this code;~~

~~(4) Insurance Commissioner provided in article two, chapter thirty-three of this code;~~

~~(5) West Virginia Alcohol Beverage Control Commissioner provided in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;~~

~~(6) Board of Banking and Financial Institutions provided in article three, chapter thirty-one-a of this code;~~

~~(7) Lending and Credit Rate Board provided in chapter forty-seven-a of this code;~~

~~(8) Division of Banking provided in article two, chapter thirty-one-a of this code;~~

~~(9) The State Budget Office provided in article two of this chapter;~~

~~(10) The Municipal Bond Commission provided in article three, chapter thirteen of this code;~~

~~(11) The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and~~

~~(12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this code.~~

~~(k) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:~~

~~(1) Division of Highways provided in article two-a, chapter seventeen of this code;~~

~~(2) Parkways, Economic Development and Tourism Authority provided in article sixteen-a, chapter seventeen of this code;~~

~~(3) Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;~~

~~(4) Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this code;~~

~~(5) Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;~~

~~(6) State Rail Authority provided in article eighteen, chapter twenty-nine of this code; and~~

~~(7) Public Port Authority provided in article sixteen-b, chapter seventeen of this code.~~

~~(1) Effective July 1, 2011, the Veterans' Council provided in article one, chapter nine-a of this code, including all of the allied, advisory, affiliated or related entities and funds associated with it, is incorporated in and administered as a part of the Department of Veterans' Assistance.~~

(a) The Legislature finds that in 1989, this chapter was enacted to provide for the reorganization of the executive branch of state government pursuant to the findings set forth under section one, article one of this chapter. This section was enacted as part of that legislation to effect the transfer of agencies and board and related entities into the various departments created within the executive branch of government. Since its initial enactment, the Legislature has amended and reenacted this section on a number of occasions, in most instances to modify the initial reorganization within the executive branch of government. The Legislature further finds that the structure of this section by which it provides an extensive list of executive agencies in a single section of the Code of West Virginia renders this section unnecessarily lengthy and complicated. The designation of a separate statute for each of the agencies and entities as they are organized in subsections (a) through (l) of this section as provided pursuant to the amendment and reenactment of this section in 2015 would reduce the unnecessary length and complexity of the statute without altering the Legislature's intent in providing for the organization of the executive branch of state government pursuant to the original findings set forth under section one, article one of this chapter and the Legislature's subsequent amendments and reenactments of various sections of this chapter. The Legislature therefore finds and declares that the amendment and reenactment of this section and the further amendment of the Code of West Virginia by adding thereto twelve new sections, designated sections one-a, one-b, one-c, one-d, one-e, one-f, one-g, one-h, one-i, one-j, one-k, and one-l of this article, are solely for the

purpose of designating a separate statute for each of the agencies and entities as they are organized in subsections (a) through (l) of this section as provided pursuant to the amendment and reenactment of this section in 2015 and for the purpose of providing corrective descriptions of an agency and corrective code references and deleting references to agencies, boards or commissions that have been repealed. The Legislature further finds and declares that except as otherwise provided in this section, the amendment and reenactment of this section and the enactment of the new sections may not be construed to have altered or modified the application of any other provision of this code to the agencies and entities described in those sections, and that all other provisions of this code, to the extent applicable to those sections, as well as the remaining subsections of this section, shall apply in like manner to the agencies and entities described in those new sections.

~~(m)~~ (b) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the position of administrator and the powers, authority and duties of each administrator and agency are not affected by the enactment of this chapter.

~~(n)~~ (c) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of the boards are not affected by the enactment of this chapter. All boards that are appellate bodies or are independent decision makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

~~(o)~~ (d) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, the reference means a division of the appropriate department and any reference to a division of a

department so transferred and incorporated means a section of the appropriate division of the department.

~~(p)~~ (e) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the Office of the Governor, a department secretary or a bureau. Nothing in this section extends the powers of department secretaries under section two of this article to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

**§5F-2-1a. Department of Administration.**

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

(1) Building Commission provided in article six, chapter five of this code;

(2) Public Employees Insurance Agency provided in article sixteen, chapter five of this code;

(3) Governor's Mansion Advisory Committee provided in article five, chapter five-a of this code;

(4) Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of this code;

(5) West Virginia Public Employees Grievance Board provided in article three, chapter six-c of this code;

(6) Board of Risk and Insurance Management provided in article twelve, chapter twenty-nine of this code;

(7) Boundary Commission provided in article twenty-three, chapter twenty-nine of this code;

(8) Indigent Defense Commission provided in article twenty-one, chapter twenty-nine of this code;

(9) Division of Personnel provided in article six, chapter twenty-nine of this code;

(10) The West Virginia Ethics Commission provided in article two, chapter six-b of this code;

(11) Consolidated Public Retirement Board provided in article ten-d, chapter five of this code; and

(12) Real Estate Division provided in article ten, chapter five-a of this code.

**§5F-2-1b. Department of Commerce.**

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:

(1) Division of Labor provided in article one, chapter twenty-one of this code, which includes:

(A) Occupational Safety and Health Review Commission provided in article three-a, chapter twenty-one of this code;

(B) Board of Manufactured Housing Construction and Safety provided in article nine, chapter

(C) The Manufactured Housing Construction and Safety Standards Board provided in article nine, chapter twenty-one of this code; and

(D) The West Virginia Contractor Licensing Board provided in article 11, chapter twenty-one of this code.

(2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety and Training for purposes of administrative support and liaison with the Office of the Governor:

(A) Board of Miner Training, Education and Certification provided in article seven, chapter twenty-two-a of this code;

(B) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this code; and

(C) Coal Mine Safety Board of Appeals provided in article five, chapter twenty two A of this code.

(D) Board of Miner Training, Education and Certification provided in article seven, chapter twenty two A of this code

(E) Coal Mine Safety and Technical Review Committee provided in article six, chapter twenty two A of this code;

(F) West Virginia Diesel Equipment Commission provided in article two A, chapter twenty two A of this Code; and

(G) Coal Mine Safety and Technology Task Force, provided in article 11, chapter twenty two A of this code.

(3) The West Virginia Development Office provided in article two, chapter five-b of this code;

(A) The West Virginia Guaranteed Work Force Program— this program is frequently referred to as the 'Governor's Guaranteed Work Force Program' provided in article two D, chapter five B of this code.

(4) Division of Natural Resources and Natural Resources Commission provided in article one, chapter twenty of this code;



(5) Division of Forestry provided in article one-a, chapter nineteen of this code;

(6) Geological and Economic Survey provided in article two, chapter twenty-nine of this code; and

(7) Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development; and

(D) Division of Research, Information and Analysis.

(E) Unemployment Compensation Board of Review

(8) Division of Energy provided in article two-f, chapter five-b of this code.

(A) West Virginia Public Energy Authority

(B) Office of Coal Field Development

(9) Division of Tourism and Tourism Commission provided in article two, chapter five-b of this code.

**§5F-2-1c. Economic Development Authority.**

The Economic Development Authority provided in article fifteen, chapter thirty-one of this code is continued as an independent agency within the executive branch.

**§5F-2-1d. Water Development Authority.**

The Water Development Authority and the Water Development Authority Board provided in article one, chapter twenty-two-c of this

code is continued as an independent agency within the executive branch.

**§5F-2-1e. Department of Environmental Protection.**

The following agencies and boards, including all of the allied, advisory and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the Office of the Governor:

(1) Air Quality Board provided in article two, chapter twenty-two-b of this code;

(2) Solid Waste Management Board provided in article three, chapter twenty-two-c of this code;

(3) Environmental Quality Board, or its successor board, provided in article three, chapter twenty-two-b of this code;

(4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;

(5) Office of Oil and Gas provided in article six, chapter twenty-two of this code; and

(6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this code.

**§5F-2-1f. Department of Education and the Arts.**

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Education and the Arts:

(1) Library Commission provided in article one, chapter ten of this code;

(2) Division of Culture and History provided in article one, chapter twenty-nine of this code; and

(3) Division of Rehabilitation Services provided in article ten-a, chapter eighteen of this code.

**§5F-2-1g. Educational Broadcasting Authority.**

The Educational Broadcasting Authority provided in article five, chapter ten of this code is part of the Department of Education and the Arts for the purposes of administrative support and liaison with the Office of the Governor.

**§5F-2-1h. Department of Health and Human Resources.**

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:

(1) Human Rights Commission provided in article eleven, chapter five of this code;

(2) Division of Human Services provided in article two, chapter nine of this code;

(3) Bureau for Public Health provided in article one, chapter sixteen of this code;

(4) Office of Emergency Medical Services and the Emergency Medical Service Advisory Council provided in article four-c, chapter sixteen of this code;

(5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;

(6) State Commission on Intellectual Disability provided in article fifteen, chapter twenty-nine of this code;

(7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and

(8) The Child Support Enforcement Division provided in chapter forty-eight of this code.

**§5F-2-1i. Department of Military Affairs and Public Safety.**

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Military Affairs and Public Safety:

(1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;

(2) Armory Board provided in article six, chapter fifteen of this code;

(3) Military Awards Board provided in article one-g, chapter fifteen of this code;

(4) West Virginia State Police provided in article two, chapter fifteen of this code;

(5) Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in article five, chapter fifteen of this code and Emergency Response Commission provided in article five-a of said chapter;

(8) Division of Justice and Community Services provided in article nine-a, chapter fifteen of this code;

(9) Division of Corrections provided in chapter twenty-five of this code;

(10) Fire Commission provided in article three, chapter twenty-nine of this code;

(11) Regional Jail and Correctional Facility Authority provided in article twenty, chapter thirty-one of this code; and

(12) Board of Probation and Parole provided in article twelve, chapter sixty-two of this code.

**§5F-2-1j. Department of Revenue.**

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:

(1) The State Tax Division provided in article one, chapter eleven of this code;

(2) Racing Commission provided in article twenty-three, chapter nineteen of this code;

(3) Lottery Commission and position of Lottery Director provided in article twenty-two, chapter twenty-nine of this code;

(4) Insurance Commissioner provided in article two, chapter thirty-three of this code;

(5) West Virginia Alcohol Beverage Control Commissioner provided in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;

(6) Board of Banking and Financial Institutions provided in article three, chapter thirty-one-a of this code;

(7) Lending and Credit Rate Board provided in chapter forty-seven-a of this code;

(8) Division of Financial Institutions provided in article two, chapter thirty-one-a of this code;

(9) The State Budget Office provided in article two, chapter eleven-b of this code;

(10) The Municipal Bond Commission provided in article three, chapter thirteen of this code;

(11) The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and

(12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this code.

**§5F-2-1k. Department of Transportation.**

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:

(1) Division of Highways provided in article two-a, chapter seventeen of this code;

(2) Parkways Authority provided in article sixteen-a, chapter seventeen of this code;

(3) Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;

(4) Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this code;

(5) Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;

(6) State Rail Authority provided in article eighteen, chapter twenty-nine of this code;

(7) Public Port Authority provided in article sixteen-b, chapter seventeen of this code; and

(8) Division of Public Transit provided in article sixteen-c, chapter seventeen of this code.

**§5F-2-11. Department of Veterans' Assistance.**

The Veterans' Council provided in article one, chapter nine-a of this code, including all of the allied, advisory, affiliated or related entities and funds associated with it, is incorporated in and administered as a part of the Department of Veterans' Assistance."

On motion of Delegate Cowles, the House of Delegates refused to concur in the Senate amendment and requested the Senate to recede therefrom.

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

A message from the Senate, by

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

**Com. Sub. for S. B. 94** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17B-3-14; and to amend and reenact §17B-4-3 of said code, all relating to suspension or revocation of driver's licenses; making legislative findings; establishing driver's license restoration program; waiving certain reinstatement requirements to restore driving privileges; reducing period for suspension upon receipt of notice of driving while suspended for offenses other than driving under the influence; and granting rule-making authority"; which was referred to the Committee on Roads and Transportation then the Judiciary.

A message from the Senate, by

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

**S. B. 122** - "A Bill to amend and reenact §5A-3-37 of the Code of West Virginia, 1931, as amended; and to amend and reenact §6-13-1

of said code, all relating to disabled veteran's preference eligibility in hiring for state civil service jobs; resident vendor bidding on state contracts; and redefining 'disabled veteran' to meet federal definition"; which was referred to the Committee on Veterans' Affairs and Homeland Security the Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, to take effect from passage, as amended, of

**Com. Sub. for S. B. 175**, Authorizing DHHR promulgate legislative rules.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, to take effect from passage, as amended, of

**Com. Sub. for S. B. 187**, Authorizing Department of Revenue promulgate legislative rules.

A message from the Senate, by

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

**Com. Sub. for S. B. 248** - "A Bill to amend and reenact §17C-4-3 of the Code of West Virginia, 1931, as amended, relating to the duty to give information after a car crash; and requiring person involved in a car crash to provide certain insurance, vehicle owner information and exhibit his or her driver's license"; which was referred to the Committee on Banking and Insurance then the Judiciary.

A message from the Senate, by

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

**Com. Sub. for S. B. 278** - "A Bill to repeal §20-2-42w of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-2-



5, §20-2-5g and §20-2-22a of said code, all relating to hunting; prohibiting hunting with night vision technology, drone or other unmanned aerial vehicle; and permitting hunting with crossbows”; which was referred to the Committee on Agriculture and Natural Resources then the Judiciary.

A messages from the Senate, by

The Clerk of the Senate, announced that, upon reconsideration the Senate had amended and again passed, in an effort to meet the objections of the Governor, and requested the concurrence of the House of Delegates in the same, as to

**Enr. S. B. 389**, Relating to Board Registration for Professional Engineers license renewals and reinstatements.

#### MESSAGES FROM THE EXECUTIVE

The Speaker laid before the House of Delegates a communication from His Excellency, the Governor, setting forth his disapproval of a bill heretofore passed by both houses, as follows:

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
1900 KANAWHA BOULEVARD, EAST  
CHARLESTON, WV 25305

February 27, 2015

#### Veto Message

The Honorable Tim Armstead  
Speaker, West Virginia House of Delegates  
Room 229M, Building 1  
State Capitol  
Charleston, West Virginia 25305

Re: Enrolled Senate Bill No. 389

Dear Speaker Armstead:

Pursuant to the provisions of section fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return the Enrolled Senate Bill No. 389.

This bill's title is defective for several reasons. *See State ex rel. Davis v. Oakley*, 156 W. Va. 154, 191 S.E.2d 610 (1972) (requiring bill title to provide notice of bill's contents). First, the bill provides for a late fee in W. Va. Code §30-13-18(b) that is not noted in the title. Second, the title provides that the bill requires reinstatement of nonrenewed licenses, but the bill does not contain language to that effect. Rather, the bill states in §30-13-18(c) that "[a] certificate that was not timely renewed or for other reason was given a nonpracticing status *may* be reinstated..." (emphasis added). Reinstatement is permissive in the bill, rather than required. Finally, the requires the West Virginia State Board of Registration for Professional Engineers to promulgate emergency rules in §30-13-18(e). Emergency rulemaking authorization is absent from the title.

For the foregoing reasons, I disapprove and return this bill. I urge the Legislature to correct these technical issues, and to return the bill to my desk for signature.

Sincerely,

EARL RAY TOMBLIN,  
*Governor.*

On motion of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates proceeded to reconsider the bill, as amended by the Senate, in an effort to meet the objections of the Governor.

The following Senate title amendment was reported by the Clerk:

**Enr. S. B. 389** - "A Bill to amend and reenact §30-13-18 of the Code of West Virginia, 1931, as amended, relating to the Board of Registration for Professional Engineers; changing time period for

renewal from fiscal year to calendar year; authorizing renewal notification by mail or electronically; providing for reinstatement of nonrenewed licenses; authorizing annual or biennial renewal periods; providing a late fee; and authorizing legislative rules and emergency rules related to renewal and reinstatement.”

On motion of Delegate Cowles, the House of Delegates concurred in the Senate title amendment.

The Speaker propounded, “Shall the bill pass, in an effort to meet the objections of the Governor?”

On this question, the yeas and nays were taken (**Roll No. 262**), and there were—yeas 96, nays none, absent and not voting 4, with the yeas, nays and absent and not voting being as follows:

YEAS: Ambler, Anderson, Ashley, Azinger, Bates, Blair, Boggs, Border, Butler, Byrd, Cadle, Campbell, Canterbury, Caputo, Cooper, Cowles, Deem, Duke, Eldridge, Ellington, Espinosa, A. Evans, D. Evans, Faircloth, Fast, Ferro, Fleischauer, Fluharty, Folk, Foster, Frich, Gearheart, Guthrie, Hamilton, Hamrick, Hartman, Hicks, Hill, Hornbuckle, Householder, Howell, Ihle, Ireland, Kelly, Kessinger, Kurcaba, Lane, Longstreth, Lynch, Manchin, Marcum, McCuskey, McGeehan, Miley, Miller, Moffatt, Morgan, Moye, E. Nelson, J. Nelson, O’Neal, Overington, Pasdon, Perdue, Perry, Pethel, R. Phillips, Pushkin, Reynolds, Rodighiero, Rohrbach, Romine, Rowan, Rowe, Shott, Skinner, P. Smith, R. Smith, Sobonya, Sponaugle, Stansbury, Statler, Storch, Summers, Trecost, Upson, Wagner, Walters, Waxman, Weld, Westfall, B. White, H. White, Williams, Zatezalo and Mr. Speaker, Mr. Armstead.

NAYS: None.

ABSENT AND NOT VOTING: Arvon, Hanshaw, Moore and L. Phillips.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Enr. S. B. 389) passed.

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

On this question, the yeas and nays were taken (**Roll No. 263**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Hanshaw and Moore.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Enr. S. B. 389) takes effect from its passage.

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

A message from the Senate, by

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

**Com. Sub. for S. B. 423** - “A Bill to repeal §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-21, §22-30-22, §22-30-24 and §22-30-25 of said code; to amend said code by adding thereto two new sections, designated §22-30-26 and §22-30-27; and to amend and reenact §22-31-2 of said code, all relating to protection of water resources and public health generally; amending the Aboveground Storage Tank Act; defining terms; requiring secretary to compile inventory of aboveground storage tanks in the state; requiring registration; authorizing certain fees; requiring secretary to develop regulatory program for tanks; providing factors to be considered in a program; requiring inspection and certification of tanks; requiring evidence of financial responsibility; requiring corrective action and

plans; requiring spill prevention response plans; requiring notice of type and quantity of fluids stored in tanks to local water utilities and governments; requiring posting of signs at or near tanks; creating an administrative fund; creating Protect Our Water Fund; authorizing public access to certain information; authorizing inspections, monitoring and testing by secretary; authorizing secretary to issue administrative orders and seek injunctive relief; providing for civil and criminal penalties; allowing appeals to Environmental Quality Board; prohibiting duplicative enforcement; requiring secretary to report to legislative entities; requiring interagency coordination; establishing duties of secretary upon imminent and substantial danger; providing additional duties and powers of secretary generally; providing for waiver of certain requirements; authorizing secretary to require individual NPDES permits; authorizing secretary to inventory potential sources of significant contamination; membership of study commission; scope of study; establishing reporting requirements; requiring the establishment of advance warning, testing and monitoring at certain water utilities; requiring certain information be filed with Public Water Commission; and requiring utility to report back to Legislature if technology is infeasible”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**S. B. 454** - “A Bill to amend and reenact §47-2-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §47-2-14a, §47-2-14b, §47-2-14c and §47-2-14d, all relating to trademark counterfeiting and forfeiture; creating crime of trademark counterfeiting; and providing penalties”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**Com. Sub. for S. B. 488** - “A Bill to repeal §31-15C-10, §31-15C-11 and §31-15C-14 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-7 and §31-15C-9 of said code, all relating to modifying Broadband Deployment Council”; which was referred to the Committee on Government Organization.

A message from the Senate, by

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

**S. B. 502** - “A Bill to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating to the eligibility of a mine operator to receive a tax credit for performing reclamation or remediation at a bond forfeiture site which otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special Reclamation Water Trust Fund.”

At the respective requests of Delegate Cowles, and by unanimous consent, reference of the bill (S. B. 502) to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading.

A message from the Senate, by

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

**S. B. 503** - “A Bill to amend and reenact §7-5-24 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11A-2-2 of said code, all relating to permitting sheriff to hire outside attorneys to assist in the collection of taxes through the courts; and sharing cost of collection with the various taxing units”; which was referred to the Committee on the Judiciary then Finance.

A message from the Senate, by

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

**S. B. 576** - “A Bill to amend and reenact §24-2-1 of the Code of West Virginia, 1931, as amended, relating to internet protocol-enabled service and voice over internet protocol-enabled Service; prohibiting Public Service Commission jurisdiction of internet protocol-enabled service and voice over internet protocol-enabled service; and limiting Public Service Commission jurisdiction of certain telephone company transactions”; which was referred to the Committee on Government Organization.

A message from the Senate, by

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

**Com. Sub. for S. B. 17** - “A Bill to amend and reenact §17F-1-3 of the Code of West Virginia, 1931, as amended, relating to authorization and regulation of unlicensed off-road motorcycles upon public streets, roads and highways by municipalities and counties within the Hatfield-McCoy Recreation Area”; which was referred to the Committee on Roads and Transportation then the Judiciary.

A message from the Senate, by

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

**S. B. 332** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-10-27, relating to administrative fees for the Tax Division of the Department of Revenue; specifying imposition and retention of fees by the Tax Division of the Department of Revenue from specified taxes and fees and from any interest, additions to tax and penalties related thereto; specifying imposition and retention of fees in payment for Tax Division services in the collection, distribution and administration of taxes for state and local departments, divisions, subdivisions and agencies; authorizing reimbursements to the Tax Division for transaction fees imposed by the Enterprise Resource Planning System; authorizing fee increases by legislative rule; specifying limitations; and

specifying effective date”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**Com. Sub. for S. B. 342** - “A Bill to amend and reenact §5-10-44 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-7a of said code; to amend and reenact §8-22A-8 of said code; to amend said code by adding thereto a new section, designated §8-22A-8a; to amend said code by adding thereto a new section, designated §15-2-54; to amend said code by adding thereto a new section, designated §15-2A-23; to amend and reenact §16-5V-8a of said code; to amend and reenact §18-7A-14c of said code; to amend and reenact §18-7B-21 of said code; and to amend said code by adding thereto a new section, designated §51-9-18, all relating to correction of errors under the West Virginia Public Employees Retirement System, West Virginia Deputy Sheriff Retirement System, West Virginia Municipal Police Officers and Firefighters Retirement System, West Virginia Emergency Medical Services Retirement System, the State Teachers Retirement System, Teachers’ Defined Contribution Retirement System, the West Virginia State Police Death, Disability and Retirement System, West Virginia State Police Retirement System and the Judges’ Retirement System; and clarifying scope, application and requirements for error correction by Consolidated Public Retirement Board”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**Com. Sub. for S. B. 455** - “A Bill to amend and reenact §12-3A-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-5-4, §18B-5-6 and §18B-5-7 of said code; and to amend said code by adding thereto a new section, designated §18B-5-4a, all



relating to public higher education procurement and payment generally; receipting of electronic commerce purchases; purchase or acquisition of materials, supplies, equipment, services and printing at institutions of higher education; construction projects at Marshall University and West Virginia University; design-build procurement at institutions of higher education; and disposition of obsolete and unusable equipment, surplus supplies and other needed materials at institutions of higher education”; which was referred to the Committee on Education then Finance.

A message from the Senate, by

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

**S. B. 481** - “A Bill to amend and reenact §8-22-22 and §8-22-22a of the Code of West Virginia, 1931, as amended, all relating to delegating investment authority and diversification of investments of municipal policemen’s and firemen’s pension and relief funds”; which was referred to the Committee on Pensions and Retirement then Finance.

A message from the Senate, by

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

**S. B. 510** - “A Bill to amend and reenact §48-16-102, §48-16-103, §48-16-104, §48-16-201, §48-16-203, §48-16-204, §48-16-205, §48-16-206, §48-16-207, §48-16-208, §48-16-209, §48-16-210, §48-16-211, §48-16-301, §48-16-304, §48-16-305, §48-16-307, §48-16-310, §48-16-311, §48-16-313, §48-16-314, §48-16-316, §48-16-317, §48-16-318, §48-16-319, §48-16-401, §48-16-501, §48-16-502, §48-16-504, §48-16-505, §48-16-506, §48-16-507, §48-16-601, §48-16-602, §48-16-603, §48-16-604, §48-16-605, §48-16-606, §48-16-607, §48-16-608, §48-16-609, §48-16-610, §48-16-611, §48-16-613, §48-16-614, §48-16-615, §48-16-701, §48-16-801, §48-16-802, §48-16-902 and §48-16-903 of the Code of West Virginia, 1931, as amended; and

to amend said code by adding thereto fifteen new sections, designated §48-16-105, §48-16-402, §48-16-616, §48-16-702, §48-16-703, §48-16-704, §48-16-705, §48-16-706, §48-16-707, §48-16-708, §48-16-709, §48-16-710, §48-16-711, §48-16-712 and §48-16-713, all relating to amending the Uniform Interstate Family Support Act; implementing language for the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance; establishing uniform procedures for processing international child support cases; improving enforcement of American child support orders abroad; ensuring that children residing in the United States will receive the financial support due from parents, wherever the parents reside; providing guidelines and procedures for registration, enforcement and modification of foreign support orders from countries that are parties to the convention; providing that a support order from a country that has acceded to the convention must be registered immediately unless a tribunal in the state where the registration is sought determines that the language of the order goes against the policy of the state; providing notice to the nonregistering party; allowing opportunity to challenge order on certain grounds; providing for enforcement of an order unless one of the grounds for denying recognition is established; and requiring documents submitted under the convention be in the original language and a translated version submitted if the original language is not English”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**S. B. 514** - “A Bill to amend and reenact §33-3-14d of the Code of West Virginia, 1931, as amended, relating to investments by local policemen’s and firemen’s pension and relief fund boards; and requiring investment with the Management Investment Board in certain circumstances”; which was referred to the Committee on Pensions and Retirement then Finance.

A message from the Senate, by

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

**S. B. 515** - “A Bill to amend and reenact §8-22-18a and §8-22-18b of the Code of West Virginia, 1931, as amended, all relating to Municipal Pensions Oversight Board; and retention and investment of funds”; which was referred to the Committee on Political Subdivisions then Finance.

A message from the Senate, by

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

**S. B. 530** - “A Bill to amend and reenact §11-21-12d of the Code of West Virginia, 1931, as amended, relating to continuing the personal income tax adjustment to the gross income of certain retirees receiving pensions from defined pension plans that terminated and are being paid a reduced maximum benefit guarantee”; which was referred to the Committee on Pensions and Retirement then Finance.

A message from the Senate, by

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

**S. B. 545** - “A Bill to amend and reenact §31A-4-26 of the Code of West Virginia, 1931, as amended, relating to removing requirement of prior approval of overdrafts made by a director or executive officer of a banking institution under certain conditions” which was referred to the Committee on Banking and Insurance then Finance.

A message from the Senate, by

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

**Com. Sub. for S. B. 548** - “A Bill to amend and reenact §3-10-1, §3-10-3 and §3-10-4 of the Code of West Virginia, 1931, as amended, all relating to filling of vacancies in elected offices; requiring Governor

to call a special election in the event of a vacancy in the office of United States Senator except in certain instances; providing for nominees to be appointed by state executive parties; requiring the Governor to fill a vacancy in United States Senator by appointment; and allowing the appointee to serve until a successor is elected and certified to fill the unexpired term”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**S. B. 574** - “A Bill to amend and reenact §60-3A-17 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60-4-3 and §60-4-3a of said code, all relating to sales of liquor by distilleries and mini-distilleries”; which was referred to the Committee on Small Business, Entrepreneurship and Economic Development, then the Judiciary.

### PETITIONS

Delegates Perry, Kessinger, Fast and Guthrie presented a petition signed by over 7,000 residents of their districts requesting the Legislature to keep West Virginia Tech’s engineering school in Montgomery; which was referred to the Committee on Education.

### SPECIAL CALENDAR

#### THIRD READING

**S. B. 473**, Making supplementary appropriation of federal funds to DMAPS, WV State Police; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 264**), and there were—yeas 96, nays 1, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Moffatt.

ABSENT AND NOT VOTING: Arvon, Hanshaw and Moore.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 473) passed.

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

On this question, the yeas and nays were taken (**Roll No. 265**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Hanshaw and Moore.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 473) takes effect from its passage.

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

**S. B. 476**, Making supplementary appropriation to Department of Administration, Division of Purchasing, Purchasing Improvement Fund; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 266**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Hanshaw and Moore.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S.B. 476) passed.

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

On this question, the yeas and nays were taken (**Roll No. 267**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Hanshaw and Moore.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 476) takes effect from its passage.

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

**Com. Sub. for H. B. 2048**, Relating to juvenile proceedings; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 268**), and there were—yeas 95, nays 2, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: R. Smith and Wagner.

ABSENT AND NOT VOTING: Arvon, Hanshaw and Moore.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2048) passed.

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

**Com. Sub. for H. B. 2368**, Relating to child welfare; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 269**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Hanshaw and Moore.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2368) passed.

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

**Com. Sub. for H. B. 2395**, Storm Scammer Consumer Protection Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 270**), and there were—yeas 93, nays 4, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Azinger, Fast, Folk and McGeehan.

ABSENT AND NOT VOTING: Arvon, Hanshaw and Moore.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2395) passed.

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

**Com. Sub. for H. B. 2474**, Relating to the compensation of personnel employed at the West Virginia Schools for the Deaf and the Blind; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 271**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Hanshaw and Moore.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2474) passed.

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

**Com. Sub. for H. B. 2485**, Relating to the West Virginia Future Fund; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 272**), and there were—yeas 76, nays 21, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Boggs, Campbell, Caputo, Duke, Ferro, Fleischauer, Fluharty, Lane, Lynch, Manchin, Miley, Morgan, Perdue, Perry, Pethtel, L. Phillips, Pushkin, Rodighiero, Skinner, Sponaule and Trecost.

ABSENT AND NOT VOTING: Arvon, Hanshaw and Moore.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2485) passed.

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

**Com. Sub. for H. B. 2496**, Adopting the Interstate Medical Licensure Compact; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 273**), and there were—yeas 86, nays 11, absent



and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Caputo, Ferro, Fluharty, Guthrie, Lynch, Manchin, Pushkin, Rowe, Skinner, Storch and Zatezalo.

ABSENT AND NOT VOTING: Arvon, Hanshaw and Moore.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2496) passed.

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

**Com. Sub. for H. B. 2536**, Relating to travel insurance limited lines producers; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 274**), and there were—yeas 96, nays 1, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Trecost.

ABSENT AND NOT VOTING: Arvon, Hanshaw and Moore.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2536) passed.

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

**Com. Sub. for H. B. 2550**, Increasing the number of unexcused absences of a student before action may be taken against the parent; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 275**), and there were—yeas 95, nays 2, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: L. Phillips and Reynolds.

ABSENT AND NOT VOTING: Arvon, Hanshaw and Moore.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2550) passed.

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

**Com. Sub. for H. B. 2728**, Relating to risk-based capital reporting for health organizations; on third reading, coming up in regular order, was read a third time.

Delegates Ashley, Boggs, Hartman, Miller and Williams requested to be excused from voting on the passage of Com. Sub. for H. B. 2728 under the provisions of House Rule 49.

The Speaker replied that the Delegates were members of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the Members from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 276**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon and Hanshaw.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2728) passed.

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

**Com. Sub. for H. B. 2790**, Relating to minimum responsibility limits of car insurance; on third reading, coming up in regular order, was read a third time.

Delegates Ashley, Hamilton, Walters, Westfall and B. White requested to be excused from voting on the passage of Com. Sub. for H. B. 2790 under the provisions of House Rule 49.

The Speaker replied that the Delegates could possibly have a direct pecuniary interest therein but were members of a class of persons possibly to be affected by the passage of the bill and refused to excuse the Members from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 277**), and there were—yeas 58, nays 40, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Ambler, Ashley, Bates, Boggs, Byrd, Canterbury, Caputo, Cooper, Cowles, Eldridge, Ferro, Fleischauer, Fluharty, Folk, Foster, Guthrie, Hicks, Hornbuckle, Ihle, Longstreth, Lynch, Manchin, Marcum, McGeehan, Miley, Moore, Moye, J. Nelson, Perdue, Pethtel, Pushkin, Reynolds, Rodighiero, Rowe, Skinner, P. Smith, Sponaule, Trecost, Walters and Williams.

ABSENT AND NOT VOTING: Arvon and Hanshaw.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2790) passed.

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

**Com. Sub. for H. B. 2829**, Defining “midwife”, “certified midwife” and “midwifery”; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 278**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon and Hanshaw.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2829) passed.

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

#### SECOND READING

**S. B. 294**, Eliminating certain unnecessary, inactive or redundant councils, committees and boards; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 343**, Exempting chiropractors from continuing education requirement on mental health conditions common to veterans; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Government Organization, was reported by the Clerk and adopted, amending the bill on page one, after the enacting section, by striking out the remainder of the bill and inserting in lieu thereof the following:

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

#### **§30-1-7a. Continuing education.**

(a) Each board referred to in this chapter shall establish continuing education requirements as a prerequisite to license renewal. Each

board shall develop continuing education criteria appropriate to its discipline, which shall include, but not be limited to, course content, course approval, hours required and reporting periods.

(b) Notwithstanding any other provision of this code or the provision of any rule to the contrary, each person issued a license to practice medicine and surgery or a license to practice podiatry or licensed as a physician assistant by the West Virginia Board of Medicine, each person issued a license to practice dentistry by the West Virginia Board of Dental Examiners, each person issued a license to practice optometry by the West Virginia Board of Optometry, each person licensed as a pharmacist by the West Virginia Board of Pharmacy, each person licensed to practice registered professional nursing or licensed as an advanced nurse practitioner by the West Virginia Board of Examiners for Registered Professional Nurses, each person licensed as a licensed practical nurse by the West Virginia State Board of Examiners for Licensed Practical Nurses and each person licensed to practice medicine and surgery as an osteopathic physician and surgeon or licensed or certified as an osteopathic physician assistant by the West Virginia Board of Osteopathy shall complete drug diversion training, ~~and~~ best practice prescribing of controlled substances training and training on prescribing and administration of an opioid antagonist, as the trainings are established by his or her respective licensing board, if that person prescribes, administers or dispenses a controlled substance, as that term is defined in section one hundred one, article one, chapter sixty-a of this code.

(1) Notwithstanding any other provision of this code or the provision of any rule to the contrary, the West Virginia Board of Medicine, the West Virginia Board of Dental Examiners, the West Virginia Board of Optometry, the West Virginia Board of Pharmacy, the West Virginia Board of Examiners for Registered Professional Nurses, the West Virginia State Board of Examiners for Licensed Practical Nurses and the West Virginia Board of Osteopathy shall establish continuing education requirements and criteria appropriate to their respective discipline on the subject of drug diversion training, ~~and~~

best practice prescribing of controlled substances training and prescribing and administration of an opioid antagonist training for each person issued a license or certificate by their respective board who prescribes, administers or dispenses a controlled substance, as that term is defined in section one hundred one, article one, chapter sixty-a of this code, and shall develop a certification form pursuant to subdivision (2) of this subsection.

(2) Each person who receives his or her initial license or certificate from any of the boards set forth in ~~this~~ subsection (b) of this section shall complete the continuing education requirements set forth in ~~this~~ subsection (b) of this section within one year of receiving his or her initial license from that board and each person licensed or certified by any of the boards set forth in ~~this~~ subsection (b) of this section who has held his or her license or certificate for longer than one year shall complete the continuing education requirements set forth in ~~this~~ subsection (b) of this section as a prerequisite to each license renewal: *Provided*, That a person subject to ~~this~~ subsection (b) of this section may waive the continuing education requirements for license renewal set forth in ~~this~~ subsection (b) of this section if he or she completes and submits to his or her licensing board a certification form developed by his or her licensing board attesting that he or she has not prescribed, administered or dispensed a controlled substance, as that term is defined in section one hundred one, article one, chapter sixty-a of this code, during the entire applicable reporting period.

(c) Notwithstanding any other provision of this code or the provision of any rule to the contrary, each person licensed to practice registered professional nursing or licensed as an advanced nurse practitioner by the West Virginia Board of Examiners for Registered Professional Nurses, each person licensed as a licensed practical nurse by the West Virginia State Board of Examiners for Licensed Practical Nurses, each person issued a license to practice midwifery as a nurse-midwife by the West Virginia Board of Examiners for Registered Professional Nurses, ~~each person issued a license to practice chiropractic by the West Virginia Board of Chiropractic~~, each person

licensed to practice psychology by the Board of Examiners of Psychologists, each person licensed to practice social work by the West Virginia Board of Social Work and each person licensed to practice professional counseling by the West Virginia Board of Examiners in Counseling shall complete two hours of continuing education for each reporting period on mental health conditions common to veterans and family members of veterans, as the continuing education is established or approved by his or her respective licensing board. The two hours shall be part of the total hours of continuing education required by each board and not two additional hours.

(1) Notwithstanding any other provision of this code or the provision of any rule to the contrary, on or before July 1, 2015, the boards referred to in this subsection shall establish continuing education requirements and criteria and approve continuing education coursework appropriate to their respective discipline on the subject of mental health conditions common to veterans and family members of veterans in cooperation with the Secretary of the Department of Veterans Assistance. The continuing education shall include training on inquiring about whether the patients are veterans or family members of veterans and screening for conditions such as post-traumatic stress disorder, risk of suicide, depression and grief and prevention of suicide.

(2) On or after July 1, 2017, each person licensed by any of the boards set forth in this subsection shall complete the continuing education described herein as a prerequisite to his or her next license renewal.”

The bill was then and ordered to third reading.

Delegate Perdue noted to the Clerk that he be shown as voting “NAY” on the adoption of the amendment.

**Com. Sub. for S. B. 435**, Creating WV Sheriffs’ Bureau of Professional Standards; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Government Organization, was reported by the Clerk and adopted, amending the bill on page three, section one, line one, by striking out the word “seven” and inserting in lieu thereof the word “nine”.

On page three, section one, line four, by striking out the word “and” and inserting in lieu thereof a comma.

And,

On page three, section one, line six, after the word “Association”, by inserting a comma and the words “and two citizen members representing the general public who shall be appointed by the Secretary of the Department of Military Affairs and Public Safety, with the consent of the Senate, and whose service shall be conditioned upon signing all necessary non-disclosure agreements relating to confidential law enforcement information.”

The bill was then ordered to third reading.

**S. B. 463**, Making supplementary appropriation to DHHR, DHS, Health Care Provider Tax, Medicaid State Share Fund; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 466**, Making supplementary appropriation of federal funds to Department of Commerce; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 467**, Making supplementary appropriation of federal funds to Department of Agriculture, State Conservation Committee; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 469**, Making supplementary appropriation of federal funds to DEP, Division of Environmental Protection; on second reading,



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

**S. B. 471**, Making supplementary appropriation of federal funds to DHHR, Human Rights Commission, and DHHR, DHS; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 477**, Supplementing, amending, decreasing and increasing appropriation from State Road Fund to DOH; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page two, lines fifteen and sixteen, by striking out the following:

“3 Maintenance, Contract Paving and

4 Secondary Road Maintenance. . 27200 14,388,245”

The bill was then ordered to third reading.

**Com. Sub. for H. B. 2015**, Requiring the Legislative Auditor to conduct performance reviews and audits for every government spending unit, including all members of the Board of Public Works and the Legislature; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2226**, Eliminating dedication of corporation net income tax revenues to and deposits of such revenues into the Special Railroad Intermodal Enhancement Fund; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Boggs, the bill was amended on page one, following the enacting section, by inserting the following:

**“ARTICLE 14C. MOTOR FUEL EXCISE TAX.****§11-14C-9. Exemptions from tax; claiming refunds of tax.**

(a) *Per se exemptions from flat rate component of tax.* – Sales of motor fuel to the following, or as otherwise stated in this subsection, are exempt per se from the flat rate of the tax levied by section five of this article and the flat rate may not be paid at the rack:

(1) All motor fuel exported from this state to any other state or nation: *Provided*, That the supplier collects and remits to the destination state or nation the appropriate amount of tax due on the motor fuel transported to that state or nation. This exemption does not apply to motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

(2) Sales of aviation fuel;

(3) Sales of dyed special fuel; and

(4) Sales of propane unless sold for use in a motor vehicle.

(b) *Per se exemptions from variable component of tax.* – Sales of motor fuel to the following are exempt per se from the variable component of the tax levied by section five of this article and the variable component may not be paid at the rack:

All motor fuel exported from this state to any other state or nation: *Provided*, That the supplier collects and remits to the destination state or nation the appropriate amount of tax due on the motor fuel transported to that state or nation. This exemption does not apply to motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle.

(c) *Refundable exemptions from flat rate component of tax.* – A person having a right or claim to any of the following exemptions from the flat rate component of the tax levied by section five of this article

shall first pay the tax levied by this article and then apply to the Tax Commissioner for a refund:

(1) The United States or agency thereof: *Provided*, That if the United States government, or agency or instrumentality thereof, does not pay the seller the tax imposed by section five of this article on a purchase of motor fuel, the person selling tax previously paid motor fuel to the United States government, or its agencies or instrumentalities, may claim a refund of the flat rate component of tax imposed by section five of this article on those sales;

(2) A county government or unit or agency thereof;

(3) A municipal government or any agency thereof;

(4) A county board of education;

(5) An urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code;

(6) A municipal, county, state or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith or to a person who is required to maintain an inventory of motor fuel for the purpose of the program: *Provided*, That motor fueling facilities used for these purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a letter of authority from the Tax Commissioner certifying his or her right to the exemption. In order for this exemption to apply, motor fuel sold under this subdivision and subdivisions (1) through (5), inclusive, of this subsection shall be used in vehicles or equipment owned and operated by the respective government entity or government agency or authority;

(7) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: *Provided*, That the exporter has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund or the

exporter has reported to the destination state or nation that the motor fuel was sold in a transaction not subject to tax in that state or nation. A refund may not be granted on motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

(8) All gallons of motor fuel used and consumed in stationary off-highway turbine engines;

(9) All gallons of fuel used for heating any public or private dwelling, building or other premises;

(10) All gallons of fuel used for boilers;

(11) All gallons of motor fuel used as a dry cleaning solvent or commercial or industrial solvent;

(12) All gallons of motor fuel used as lubricants, ingredients or components of a manufactured product or compound;

(13) All gallons of motor fuel sold for use or used as a motor fuel for commercial watercraft;

(14) All gallons of motor fuel sold for use or consumed in railroad diesel locomotives;

(15) All gallons of motor fuel purchased in quantities of twenty-five gallons or more for use as a motor fuel for internal combustion engines not operated upon highways of this state;

(16) All gallons of motor fuel purchased in quantities of twenty-five gallons or more and used to power a power take-off unit on a motor vehicle. When a motor vehicle with auxiliary equipment uses motor fuel and there is no auxiliary motor for the equipment or separate tank for a motor, the person claiming the refund may present to the Tax Commissioner a statement of his or her claim and is allowed a refund for motor fuel used in operating a power take-off unit on a

cement mixer truck or garbage truck equal to twenty-five percent of the tax levied by this article paid on all motor fuel used in such a truck;

(17) Motor fuel used by a person regularly operating a vehicle under a certificate of public convenience and necessity or under a contract carrier permit for transportation of persons when purchased in an amount of twenty-five gallons or more: *Provided*, That the amount refunded is equal to \$0.06 per gallon: *Provided, however*, That the gallons of motor fuel have been consumed in the operation of urban and suburban bus lines and the majority of passengers use the bus for traveling a distance not exceeding forty miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools; and

(18) All gallons of motor fuel that are not otherwise exempt under subdivisions (1) through (6), inclusive, of this subsection and that are purchased and used by any bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service that has been certified by the municipality or county wherein the bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service is located.

(d) *Refundable exemptions from variable rate component of tax.* – Any of the following persons may claim an exemption from the variable rate component of the tax levied by section five of this article on the purchase and use of motor fuel by first paying the tax levied by this article and then applying to the Tax Commissioner for a refund.

(1) The United States or agency thereof: *Provided*, That if the United States government, or agency or instrumentality thereof, does not pay the seller the tax imposed by section five of this article on any purchase of motor fuel, the person selling tax previously paid motor fuel to the United States government, or its agencies or instrumentalities, may claim a refund of the variable rate of tax imposed by section five of this article on those sales.

(2) This state and its institutions;

(3) A county government or unit or agency thereof;

(4) A municipal government or agency thereof;

(5) A county board of education;

(6) An urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code;

(7) A municipal, county, state or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith, or to a person who is required to maintain an inventory of motor fuel for the purpose of the program: *Provided*, That fueling facilities used for these purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a letter of authority from the Tax Commissioner certifying his or her right to the exemption;

(8) A bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service that has been certified by the municipality or county where the bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service is located; ~~or~~

(9) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: *Provided*, That the exporter has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund. A refund may not be granted on motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle; or

(10) Beginning on January 1, 2017, all gallons of motor fuel sold for use or consumed in railroad diesel locomotives.

(e) The provision in subdivision (9), subsection (a), section nine, article fifteen of this chapter that exempts as a sale for resale those sales of gasoline and special fuel by a distributor or importer to another distributor does not apply to sales of motor fuel under this article.”

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2239**, Creating a logical advisory committee; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2377**, Authorizing State Board of Education to approve certain alternatives with respect to instructional time; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2466**, Exempting valid nonprofit organizations from licensing requirements of the West Virginia Alcoholic Beverage Control Authority during certain events; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2502**, Possessing deadly weapons on school buses or on the premises of educational facilities; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2515**, Relating to elk restoration; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2521**, Clarifying the scope, application and methods for error correction required by the CPRB; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2585**, Requiring leaseholders of mineral interests to notify the owners of the minerals when there is an assignment of the lease to another party; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2816**, Relating to the eligibility of a mine operator to receive a tax credit for performing reclamation or remediation at a bond forfeiture site; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Energy, was reported by the Clerk and adopted, amending the bill on page seven, section eleven, line one hundred four, after the word "Fund", by changing the colon to a period and inserting "The credit authorized pursuant to this subdivision is retroactive and may be claimed for reclamation or remediation performed on or after January 1, 2012" and a colon.

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2840**, Providing an alternative plan to make up lost days of instruction; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2877**, Relating to electronic filing of tax returns and electronic funds transfers in payment of taxes; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2878**, Creating a one-stop electronic business portal in West Virginia; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2880**, Creating an addiction treatment pilot program; on second reading, coming up in regular order, was read a second time.

On motion of Delegates Stansbury, Householder and Ellington, the bill was amended on page two, by striking out everything after the enacting clause and inserting in lieu thereof the following:



“That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §62-15A-1, §62-15A-2, §62-15A-3 and §62-15A-4 to read as follows:

**ARTICLE 15A. ADDICTION TREATMENT PILOT PROGRAM.**

**§62-15A-1. Definition.**

(a) As used in this article:

(1) ‘Adult Drug Court Program’ means an Adult Treatment Court established by the Supreme Court of Appeals of West Virginia pursuant to this article fifteen;

(2) ‘Court’ means the Supreme Court of Appeals of West Virginia;

(3) ‘Parole’ means the release of a prisoner by the Division of Corrections temporarily or permanently before the completion of a sentence, on the promise of good behavior; and

(4) ‘Prescriber’ means an individual currently licensed and authorized by this state to prescribe and administer prescription drugs in the course of their professional practice.

**§62-15A-2. Supreme Court of Appeals of West Virginia Pilot Program.**

(a)(1) The Court is requested to conduct a pilot program to provide addiction treatment, including medication-assisted treatment, to persons who are offenders within the criminal justice system, eligible to participate in a program, and selected under this section to be participants in the pilot program because of their dependence on opioids.

(2) The Court may conduct the pilot program in any circuit court that is conducting an Adult Drug Court Program.

(3) The Court is requested to conduct the pilot program in up to five Adult Drug Court Programs, where the pilot program is authorized by the program's Adult Drug Court Judge.

(b) In conducting the pilot program, the Court and its Division of Probation Services may be assisted by the Department of Health and Human Resources and any other state agency that it determines may be of assistance in accomplishing the objectives of the pilot program.

(c) The Adult Drug Court Program shall select persons who are participants in the Adult Drug Court program, who have been clinically assessed and diagnosed with opioid addiction. Participants must either be eligible for medicaid, or eligible for a state, federal or private grant or other funding sources that provides for the full payment of the treatment necessary to participate in the pilot program. After being enrolled in the pilot program, a participant shall comply with all requirements of the Adult Drug Court Program.

(d) Treatment may be provided under the pilot program only by a treatment provider who is approved by the Court or Adult Drug Court Program consistent with the policies and procedures for Adult Drug Courts developed by the Court. In serving as a treatment provider, a treatment services provider shall do all of the following:

(1) Provide treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the addiction services provider;

(2) Conduct any necessary additional professional, comprehensive substance abuse and mental health diagnostic assessments of persons under consideration for selection as pilot program participants to determine whether they would benefit from substance abuse treatment and monitoring;

(3) Determine, based on the assessments described in subdivision (2), the treatment needs of the participants served by the treatment provider;

(4) Develop, for the participants served by the treatment provider, individualized goals and objectives;

(5) Provide access to the non-narcotic, long-acting antagonist therapy included in the pilot program's medication-assisted treatment.

(6) Provide other types of therapies, including psychosocial therapies, for both substance abuse and any disorders that are considered by the treatment provider to be co-occurring disorders.

(e) In the case of the medication-assisted treatment provided under the pilot program, a drug may be used only if it has been approved by the United States Food and Drug Administration for use in the prevention of relapse to opioid dependence and in conjunction with psychosocial support, provided as part of the pilot program, appropriate to patient needs.

### **§62-15A-3. The Division of Corrections' Pilot Program.**

(a) The Division of Corrections shall conduct a pilot program to provide addiction treatment, including medication-assisted treatment, to persons within the custody of the Division of Corrections, selected under this section to be participants in the pilot program because of their dependence on opioids.

(b) In conducting the pilot program, the Division of Corrections may collaborate with the West Virginia Department of Health and Human Resources and any other state agency that it determines may be of assistance in accomplishing the objectives of the pilot program.

(c) The Division of Corrections shall select persons, within the custody of the Division of Corrections, who are determined to be at high risk using the LS/CMI assessment criteria into the pilot program. Participants must either be eligible for medicaid, or eligible for a state, federal or private grant or other funding sources that provides for the full payment of the treatment necessary to participate in the pilot

program. After being enrolled in the pilot program, a participant shall comply with all requirements of the treatment program.

(d) A participant shall:

(1) Receive treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the addiction services provider;

(2) Submit to professional, comprehensive substance abuse and mental health diagnostic assessments of persons under consideration for selection as pilot program participants to determine whether they would benefit from substance abuse treatment and monitoring;

(3) Receive, based on the assessments described in subdivision (2), the treatment needs of the participants served by the treatment provider;

(4) Submit to the treatment provider, individualized goals and objectives;

(5) Receive the non-narcotic, long-acting antagonist therapy included in the pilot program's medication-assisted treatment;

(6) Participate in other types of therapies, including psychosocial therapies, for both substance abuse and any disorders that are considered by the treatment provider to be co-occurring disorders.

(e) In the case of the medication-assisted treatment provided under the pilot program, a drug may be used only if it has been approved by the United States Food and Drug Administration for use in the prevention of relapse to opioid dependence, and in conjunction with psychosocial support, provided as part of the pilot program, appropriate to patient needs.

#### **§62-15A-4. Report.**

(a) The Division of Corrections shall prepare a report.

(b) The report shall include:

(1) Number of participants;

(2) Number of participants successfully completing the program;

(3) Offenses committed or offense convicted of;

(4) Recidivism Rate;

(5) Potential cost saving or expenditures;

(6) A statistical analysis which determines the effectiveness of the program; and

(7) Any other information the reporting entity finds pertinent.

(b) The Court should provide any information necessary to the Division to complete the report.

(c) The Division of Corrections shall submit the report to:

(1) The Governor;

(2) The Chief Justice of the Supreme Court of Appeals of West Virginia;

(3) The Joint Committee on Government and Finance;

(4) The Secretary of the Department of Health and Human Resources; and

(5) The Commissioner of the Division of Corrections.

(d) The report shall be submitted by July 1, 2017 and shall include twelve months of data from the beginning of the administration of the program.”

The bill was then ordered to engrossment and third reading.

**H. B. 2914**, Providing for voluntary dissolution of resort area district; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2916**, Providing limited borrowing authority to the Governor for the completion of renovations to Capitol Complex Building 3; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2999**, Relating to neonatal abstinence centers; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 3006**, Relating to the determination of the adjusted rate established by the Tax Commissioner for the administration of tax deficiencies; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 3017**, Addressing sudden cardiac arrest in interscholastic athletes; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 3018**, Increasing the allowable range of difference in salary potential of school employees in different counties; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

#### FIRST READING

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

**Com. Sub. for H. J. R. 13**, The Homestead Exemption Increase Amendment,

**Com. Sub. for H. B. 2021**, Implementing drug testing for recipients of federal-state and state assistance,

**Com. Sub. for H. B. 2148**, Conforming the motor vehicle law of this state to the requirements of section 1405 of the federal Transportation Equity Act for the Twenty-first Century,

**Com. Sub. for H. B. 2233**, Requiring that legislative rules be reviewed five years after initial approval by the Legislative Rule-Making Review Committee and the Legislative Auditor's Office,

**Com. Sub. for H. B. 2263**, Providing guidance for prosecuting attorneys in cases involving abused and neglected children,

**Com. Sub. for H. B. 2366**, Relating generally to the solicitation of minors,

**Com. Sub. for H. B. 2429**, Requiring a convicted sex offender who volunteers for an organization whose volunteers have contact with minors to inform that organization of his or her conviction,

**H. B. 2479**, Relating to the powers and authority of state and local law enforcement to enforce underage drinking laws at private clubs,

**Com. Sub. for H. B. 2518**, Requiring insurers issuing group accident and sickness insurance policies to certain employers to furnish claims loss experience to policyholders,

**Com. Sub. for H. B. 2549**, Relating to the preparation and publication of county financial statements,

**Com. Sub. for H. B. 2557**, Clarifying that an insured driver of a motor vehicle is covered by the driver's auto insurance policy when renting or leasing a vehicle,

**H. B. 2595**, Relating to certificates of need for the development of health facilities in this state,

**Com. Sub. for H. B. 2636**, Exempting information contained in a concealed weapon permit application from the Freedom of Information Act,

**H. B. 2645**, Expanding the availability of the Underwood-Smith Teacher Loan Assistance Program,

**H. B. 2664**, Creating “Andrea and Willy’s Law”; increasing certain penalties for driving under the influence of alcohol, controlled substances or drugs,

**H. B. 2712**, Relating to employment and privacy protection,

**Com. Sub. for H. B. 2717**, Relating to hiring of public school employees,

**Com. Sub. for H. B. 2756**, Authorizing appointees or employees of the Alcohol Beverage Control Commissioner to carry concealed handguns,

**Com. Sub. for H. B. 2795**, Providing that when a party’s health condition is at issue in a civil action, medical records and releases for medical information may be requested and required without court order,

**Com. Sub. for H. B. 2796**, Providing paid leave for certain state officers and employees during a declared state of emergency,

**Com. Sub. for H. B. 2805**, Transferring to an adult correctional facility any juvenile whose sentence runs beyond his or her eighteenth birthday,

**Com. Sub. for H. B. 2810**, Implementing the West Virginia Property Rescue Initiative to reduce the number of properties posing a threat to public health and safety,

**Com. Sub. for H. B. 2828**, Modifying the requirements that allow a child witness to testify by closed circuit television,

**Com. Sub. for H. B. 2867**, Requiring recommendations for higher education course credit transfer,



**H. B. 2892**, Authorizing certain legislative rules regarding higher education,

**Com. Sub. for H. B. 2902**, West Virginia ABLE Act,

**H. B. 2926**, Relating to deferral charges in connection with a consumer credit sale or consumer loan,

**H. B. 2931**, Adding drugs to the classification of schedule I drugs,

**Com. Sub. for H. B. 2939**, Relating to requirements for mandatory reporting of sexual offenses on school premises involving students,

**Com. Sub. for H. B. 2968**, Exempting from property tax certain properties in this state owned by nonprofit youth organizations,

**H. B. 3016**, Creating a meth offender registry,

And,

**H. B. 3019**, Requiring official business and records of the state and its political subdivisions be conducted in English.

#### **LEAVES OF ABSENCE**

At the request of Delegate Cowles, and by unanimous consent, leaves of absence for the day were granted Delegates Arvon and Hanshaw.

#### **MISCELLANEOUS BUSINESS**

Delegate L. Phillips noted that she was absent when the votes were taken on Roll No. 262, and that had she been present, she would have voted "YEA" thereon.

Delegate Perdue noted to the Clerk that the Journal reflect that he voted against the amendment relating to chiropractors on Com. Sub. for S. B. 335.

At 1:16 P.M., the House of Delegates adjourned until 11:00 A.M., Tuesday, March 3, 2015.

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TUESDAY, MARCH 3, 2015

**FORTY-NINTH DAY**

[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

The House of Delegates met at 11:00 A.M., and was called to order by the Honorable Tim Armstead, Speaker.

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

The Clerk proceeded to read the Journal of Monday, March 2, 2015, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**COMMITTEE REPORTS**

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**S. B. 472**, Making supplementary appropriation to DOT, DMV, Motor Vehicle Fees Fund,

And,

**S. B. 475**, Making supplementary appropriation to DMAPS, Division of Corrections, Parolee Supervision Fees, and WV State Police, Motor Vehicle Inspection Fund,

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

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**Com. Sub. for S. B. 351**, Relating to charitable organization contribution levels requiring independent audit reports,

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

Delegate Gearheart, Chair of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

**S. B. 403**, Increasing period during which motor vehicle lien is valid,

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

In accordance with the former direction of the Speaker, the bill (S. B. 403) was referred to the Committee on the Judiciary.

Delegate Gearheart, Chair of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

**H. C. R. 7**, The Kenneth A. Chapman, Sr. Memorial Bridge,

**H. C. R. 58**, The U. S. Army PV2 William Frederick Kump Memorial Bridge,

**Com. Sub. for S. C. R. 18**, Requesting DOH name bridge in Wetzel County “U. S. Army COL William L. Glover Memorial Bridge”,

And,

**Com. Sub. for S. C. R. 19**, Requesting DOH name stretch of road in Wayne County “Darrell W. Sanders Memorial Highway”,

And reports the same back with the recommendation that they each be adopted, but that they first be referred to the Committee on Rules.

In accordance with the former direction of the Speaker, the resolutions (H. C. R. 7, H. C. R. 58, Com. Sub. for S. C. R. 18 and Com. Sub. for S. C. R. 19) were each referred to the Committee on Rules.

Delegate Gearheart, Chair of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

**H. C. R. 24**, The US Army SP5 Johnnie Marvin Ayers Memorial Bridge,

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

**Com. Sub. for H. C. R. 24** – “Requesting the Division of Highways to name the bridge carrying County Route 43 (Frame Road) over Interstate 79 in Kanawha County, bridge number 20-43-1.31 (20A327), latitude 38.45607, longitude -81.49513, locally known as the Elkview I-79 Interchange Bridge, as the ‘U.S. Army SP5 Johnnie Marvin Ayers Memorial Bridge’,”

**H. C. R. 42**, The Boyhood Home of Booker T. Washington,

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

**Com. Sub. for H. C. R. 42** – “Requesting the Division of Highways to identify bridge number 20-77-95.81 (20A643), locally known as the interstate bridge over Campbells Creek, carrying Interstate 77 northbound and southbound lanes over U.S. Route 60 westbound lane and the Norfolk and Southern Railroad, in Kanawha County, as being located at the ‘Boyhood Home of Booker T. Washington’,”

**H. C. R 45**, The US Army COL William L. Glover Memorial Bridge,

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

**Com. Sub. for H. C. R. 45** – “Requesting the Division of Highways to name the bridge on State Route 20 over Fishing Creek, South Fork in Wetzel County, locally known as the Pine Grove Bridge, bridge number 52-20-16.04, as the ‘U.S. Army COL William L. Glover Memorial Bridge’,”

**H. C. R. 55**, The William C. Campbell Memorial Highway,

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

**Com. Sub. for H. C. R. 55** – “Requesting the Division of Highways to name the Section of U.S. Route 60, from the Guyan Golf and Country Club to the Huntington City Limits in Cabell County, the ‘William C. Campbell Memorial Highway’,”

**H. C. R. 60**, The U. S. Army SFC Jesse Muncy Memorial Bridge,

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

**Com. Sub. for H. C. R. 60** – “Requesting the Division of Highways to name the bridge on U.S. Route 52 in Wayne County, bridge number 50-52-54.27 (50A115), locally known as the Marrowbone Creek Bridge, as the ‘U.S. Army SFC Jesse Muncy Memorial Bridge’,”

**H. C. R. 65**, The U. S. Army PFC Willie Paul Wilson Bridge,

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

**Com. Sub. for H. C. R. 65** – “Requesting that bridge number 22-119-0.04 NB & SB (22A102 & 22A103), latitude 38.18215, longitude -81.84941, on U.S. Route 119, otherwise known as the North Pinnacle Rock Creek Bridge, in Lincoln County, be named the ‘U.S. Army PFC Willie Paul Wilson Bridge’,”

**H. C. R. 68**, The Army SSG Harold ‘Dean’ Baker Memorial Bridge,

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

**Com. Sub. for H. C. R. 68** – “Requesting the Division of Highways to name Bridge number 17-9-5.09 (17A350) (39.3443, -80.4013) locally known as Gregory Run Bridge carrying County Route 9 over Tenmile Creek, in Harrison County, the ‘U.S. Army Air Force SSG Harold “Dean” Baker Memorial Bridge’,”

And,

**H. C. R. 98**, Jack Furst Drive,

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

**Com. Sub. for H. C. R. 98** – “Requesting the Division of Highways to rename the road from the entrance of the Summit Bechtel

Family National Scout Reserve to West Virginia Route 61, known as Mill Road or Garden Ground Mountain Road, as ‘Jack Furst Drive’ to match the name of the road through the Summit Bechtel Family National Scout Reserve.”

With the recommendation that the committee substitutes each be adopted, but that they first be referred to the Committee on Rules.

In accordance with the former direction of the Speaker, the resolutions (Com. Sub. for H. C. R. 24, Com. Sub. for H. C. R. 42, Com. Sub. for H. C. R. 45, Com. Sub. for H. C. R. 55, Com. Sub. for H. C. R. 60, Com. Sub. for H. C. R. 65 Com. Sub. for H. C. R. 68 and Com. Sub. for H. C. R. 98) were each referred to the Committee on Rules.

Delegate McCuskey, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 2<sup>nd</sup> day of March, 2015, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**(Com. Sub. for H. B. 2002)**, Predicating actions for damages upon principles of comparative fault,

**(Com. Sub. for H. B. 2010)**, Requiring the elections of justices of the West Virginia Supreme Court of Appeals, circuit court judges, family court judges and magistrates be nonpartisan and by division,

**(Com. Sub. for H. B. 2025)**, Prohibiting certain sex offenders from loitering within one thousand feet of a school or child care facility,

**(H. B. 2212)**, Changing the amount of severance tax revenue annually dedicated to the West Virginia Infrastructure General Obligation Debt Service Fund,



(**Com. Sub. for H. B. 2234**), Requiring a court to permit a party in a divorce proceeding to resume using the name he or she used prior to the marriage,

(**Com. Sub. for H. B. 2568**), The Pain-Capable Unborn Child Protection Act,

And,

(**H. B. 2669**), Relating to compulsory tuberculosis testing.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**Com. Sub. for S. B. 323**, Relating to municipal home rule,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 323) was referred to the Committee on Finance.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**S. B. 518**, Permitting county and municipal economic development authorities invest certain funds,

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

In accordance with the former direction of the Speaker, the bill (S. B. 518) was referred to the Committee on Finance.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**S. B. 559**, Relating to social work licensing exemptions,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 374**, Permitting in absentia parole hearings in certain instances,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 375**, Specifying who receives parole hearing notices via regular or certified mail,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 507**, Relating to monitoring inmates' electronic communications,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2797**, Changing the term “mentally retarded” to “intellectually disabled”; and changing the term “handicapped” to “disabled”,

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

At the respective requests of Delegate Cowles, and by unanimous consent, the bill (H. B. 2797) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Cowles moved that the constitutional rule requiring the bill to be fully and distinctly read on three different days be dispensed with.

On this question, the yeas and nays were taken (**Roll No. 279**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hanshaw and Williams.

So, two thirds of the members present and voting having voted in the affirmative, the motion prevailed.

The bill was then read a second time and ordered to engrossment and third reading.

Having been engrossed, the bill was then read a third time and put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 280**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hanshaw.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2797) passed.

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

#### MESSAGES FROM THE SENATE

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 2726**, Clarifying choice of laws issues in product's liability actions.

On motion of Delegate Cowles, the bill was taken up for immediate consideration.

The following Senate amendments were reported by the Clerk:

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

“(b) The amendments to this section enacted in 2015 shall be applicable prospectively to all civil actions commenced on or after July 1, 2015.”

And,

By amending the title of the bill to read as follows:

**H. B. 2726** - “A Bill to amend and reenact §55-8-16 of the Code of West Virginia, 1931, as amended, relating to choice of law in product liability actions; and establishing the effective date of the amendments enacted in 2015.”

On motion of Delegate Cowles, the House of Delegates concurred in the Senate amendments.

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 281**), and there were—yeas 84, nays 15, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Byrd, Caputo, Eldridge, Fleischauer, Lynch, Manchin, Marcum, Miley, Moore, Perdue, Pushkin, Reynolds, Rowe, Skinner and Sponaugle.

ABSENT AND NOT VOTING: Hanshaw.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2726) passed.

Delegate Cowles moved that the bill take effect July 1, 2015.

On this question, the yeas and nays were taken (**Roll No. 282**), and there were—yeas 89, nays 10, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Caputo, Hornbuckle, Lynch, Manchin, Moore, Pushkin, Reynolds, Skinner, Sponaugle and Walters.

ABSENT AND NOT VOTING: Hanshaw.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2726) takes effect July 1, 2015.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Finance:

**S. C. R. 50** - "Providing for the issuance of not to exceed \$185.390 million of refunding bonds pursuant to the Safe Roads Amendment of 1996, article two-g, chapter thirteen of the Code of West Virginia and article twenty-six, chapter seventeen of said Code."

*Resolved by the Legislature of West Virginia:*

That safe road refunding bonds in the principal amount not to exceed \$185.390 million are authorized to be issued by the State of West Virginia and sold by the Governor by the fiscal year ending June 30, 2015; and, be it

*Further Resolved,* That the bonds shall be issued in registered form, in such denominations, maturing at such times and bearing such date or dates as the Governor may determine; and, be it

*Further Resolved,* That all such bonds shall be payable at the Office of the Treasurer of the State of West Virginia, or at a bank in the City of Charleston to be designated by the Governor; and, be it

*Further Resolved,* That the bonds shall bear interest at rates and be payable in amounts as determined by the Governor; and, be it

*Further Resolved*, That the State Treasurer shall pay the principal and/or interest then due on the bonds to the registered owners thereon at the addresses shown by the record of registration; and, be it

*Further Resolved*, That the bonds shall be signed as provided in section two, article twenty-six, chapter seventeen of the Code of West Virginia; and, be it

*Further Resolved*, That the bonds may be redeemable on such date or dates prior to maturity as determined by the Governor; and, be it

*Further Resolved*, That the Governor shall sell the bonds herein mentioned at such time or times in such amounts, not exceeding the aggregate principal amount described above, at such prices as he may determine necessary to provide funds for the purposes provided below and in article two-g, chapter thirteen of the Code of West Virginia and article twenty-six, chapter seventeen of said code; and, be it

*Further Resolved*, That the net proceeds of sales of all bonds herein authorized shall be paid into a special and irrevocable trust fund, separate and apart from other funds of the State of West Virginia, to be held in the custody of an escrow trustee to be designated by the Governor; and, be it

*Further Resolved*, That an irrevocable deposit of said moneys in trust for, and such moneys and the investments thereof, together with any income or interest earned thereon, shall be applied to the payment of the principal of and interest on certain issued and outstanding safe road bonds to be refunded, to be selected by the Governor, on the date or dates, to be selected by the Governor, when any such outstanding bonds mature or may be called and are called for redemption, respectively, in connection with the refunding herein authorized.

A message from the Senate, by

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

**Com. Sub. for S. B. 14** - “A Bill to amend and reenact §5-16-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §6C-2-2 of said code; to amend and reenact §18-7A-3 of said code; to amend and reenact §18-7B-2 of said code; to amend and reenact §18-9A-2 and §18-9A-12 of said code; to amend and reenact §18-20-5 of said code; to amend said code by adding thereto a new article, designated §18-33-1, §18-33-2, §18-33-3, §18-33-4, §18-33-5, §18-33-6, §18-33-7, §18-33-8, §18-33-9, §18-33-10, §18-33-11, §18-33-12, §18-33-13, §18-33-14, §18-33-15, §18-33-16, §18-33-17 and §18-33-18; and to amend and reenact §29-12-5a of said code, all relating to public charter schools; setting forth legislative purpose and intent; defining terms; requiring state superintendent to report on the charter school program; setting forth provisions pertaining to eligibility and enrollment; prohibiting discrimination; allowing a county board to authorize the creation of a start-up public charter school or the conversion of a noncharter public school to a public charter school; capping the number of public charter schools authorized; setting forth the duties of the authorizer; requiring an authorizer to develop and maintain policies and practices consistent with nationally recognized principles and professional standards for authorizing public charter schools; requiring certain authorizers to submit to the state superintendent an annual report summarizing certain information; prohibiting an employee, trustee, agent or representative of an authorizer from simultaneously serving as an employee, trustee, agent, representative, vendor or contractor of a public charter school operating under that authorizer; prohibiting a public charter school from being required to purchase services from its authorizer; establishing the West Virginia Board of Charter School Appeals and Training; setting forth provisions pertaining to board membership, member terms, board officers, board meetings, removal of board members, employees, duties, funding and training; requiring the state charter school board to issue and broadly publicize requests for proposals; setting forth information the requests for proposals shall contain, including a determination on whether to participate in the public employees grievance procedures; setting forth provisions



pertaining to application for approval as a public charter school; setting forth provisions pertaining to the application review process; setting forth provisions pertaining to application approval and denial; setting forth provisions pertaining to appeal of application denial; requiring the execution of a charter contract; requiring the performance provisions of a charter contract be based on a performance framework developed by the state charter school board that sets forth the academic and operational performance indicators that will guide the authorizer's evaluations of each public charter school; requiring performance targets be set by a public charter school in conjunction with its authorizer; setting forth authorizer responsibilities relating to oversight; providing for an initial charter term of five years and a renewal term of five to ten years; setting forth authorizer responsibilities relating to renewal; requiring submission of renewal application; setting forth provisions pertaining to the renewal decision by the authorizer; setting forth provisions pertaining to charter revocation and nonrenewal, including provisions allowing for appeal; providing for public charter school closure and dissolution; establishing priority in the application of laws, rules, regulations and authorities; allowing a charter contract to include one or more schools; allowing a single governing board to be issued one or more charter contracts; providing that the school district in which the public charter school is located remains the local education agency; providing that the school district retains responsibility for special education; declaring that the county board remains accountable for the performance of the public charter school; setting forth powers of public charter schools; prohibiting public charter schools from certain activities relating to discrimination, religious practices, charging tuition and delegating or assigning responsibilities set forth in a charter contract; limiting fees that may be charged; setting forth provisions pertaining to the applicability of other laws, rules and regulations to public charter schools; prohibiting county boards from certain actions relating to public charter schools; declaring that personnel hired by the charter school are employed by the charter school; requiring a public charter school to comply with applicable federal laws and regulations

regarding the qualifications of teachers and other instructional staff; providing that all public charter school classroom teachers are subject to the same licensing requirements applicable to classroom teachers in noncharter public schools; providing that all personnel in a public charter school continue to accrue seniority in the same manner that they would accrue seniority if employed in a noncharter public school for purposes of employment in noncharter public schools; setting forth provisions pertaining to accounting, financial reporting and auditing; setting forth provisions pertaining to funding for public charter schools; allowing a public charter school to contract with a local school district or other entity for transportation services; requiring any entity providing transportation services to comply with all transportation and safety and administrative regulations applicable to noncharter public schools; setting forth provisions pertaining to public charter school facilities and property; clarifying that county boards not required to seek funds for certain facility-related purposes; setting forth provisions pertaining to building inspections, codes, regulations and fees; setting forth provisions pertaining to the transfer of credits; setting forth provisions pertaining to extracurricular and interscholastic activities; requiring that public charter school employees participate in the Teachers Retirement System or the Teachers' Defined Contribution Retirement System, whichever is applicable; and requiring that all public charter school employees participate in insurance plans established by the Public Employees Insurance Agency"; which was referred to the Committee on Education.

A message from the Senate, by

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

**S. B. 195** - "A Bill to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, relating to authorizing the Conservation Committee to promulgate a legislative rule relating to financial assistance programs"; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**Com. Sub. for S. B. 254** - “A Bill to amend and reenact §5H-1-1 and §5H-1-2 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Fire, EMS and Law-Enforcement Officer Survivor Benefit Act; clarifying process for payment of survivor benefit; defining terms; limiting eligibility for survivor benefit to beneficiaries designated in writing by applicable public safety officer; clarifying circumstances for eligibility of survivor benefit; transferring responsibility for determination of eligibility for survivor benefit from Governor’s Office to Department of Military Affairs and Public Safety, Office of the Secretary; setting forth required information for certified request for survivor benefit; requiring fire, emergency medical service and law-enforcement programs to provide notice of survivor benefit and obtain written designations of beneficiaries from eligible public safety officers; requiring Department of Military Affairs and Public Safety, Office of the Secretary, to prepare a form for written designation of beneficiary; providing exclusions for availability of survivor benefit; providing that payments for survivor benefit be made from general revenue; and authorizing the Department of Military Affairs and Public Safety, Office of the Secretary, to propose rules for legislative approval”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**Com. Sub. for S. B. 336** - “A Bill to amend §16-29B-19 of the Code of West Virginia, 1931, as amended, relating generally to powers and duties of Health Care Authority; and eliminating authority of the Health Care Authority to apply penalties or penalties held in abeyance to any future rate applications filed with the authority”; which was referred to the Committee on Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with a title amendment, and the passage, as amended, of

**Com. Sub. for S. B. 357**, Creating Coal Jobs and Safety Act of 2015.

On motion of Delegate Cowles, the bill was taken up for immediate consideration.

The following Senate title amendment was reported by the Clerk:

**Com. Sub. for S. B. 357** - “A Bill to repeal §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and §22A-2A-307 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-3-13 and §22-3-19 of said code; to amend and reenact §22-11-6 and §22-11-8 of said code; to amend said code by adding thereto a new section, designated §22-11-22a; to amend said code by adding thereto a new section, designated §22A-1-41; to amend and reenact §22A-1A-1 of said code; to amend and reenact §22A-2-6, §22A-2-28 and §22A-2-37 of said code; to amend and reenact §22A-2A-101, §22A-2A-301, §22A-2A-308, §22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405, §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603 and §22A-2A-604 of said code; and to amend said code by adding thereto a new section, designated §22A-2A-204a, all relating to coal mining generally; providing that discharges from waste piles do not exceed applicable water quality standards; promulgating rules regarding procedures for requesting and obtaining inactive status and rules relating to requirements for contemporaneous reclamation under West Virginia Surface Coal Mining and Reclamation Act; abolishing West Virginia Diesel Equipment Commission; transferring duties and responsibilities of West Virginia Diesel Equipment Commission to Director of the Office of Miners’ Health, Safety and Training; defining terms; providing rule-making authority; providing that rules previously

approved by Diesel Equipment Commission continue in full force and effect; requiring rules for statewide hardness-based aluminum water quality criteria for protection of aquatic life; prohibiting wholesale incorporation of water quality standards into permits; modifying the scope of the permit shield as it relates to compliance with water quality standards; establishing an administrative and civil enforcement process for coal mining-related permits that conforms with corresponding federal requirements; making legislative findings; requiring suspension or revocation of a certificate held by a certified person under certain circumstances; disallowing prescription as a defense if prescription is more than one year old; setting forth requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; increasing distance from the nearest working face where transportation of certain personnel in certain instances is done exclusively by rail; requiring certain equipment be readily available in certain circumstances; increasing distance of track to be maintained when a section is fully developed and being prepared for retreating; establishing criteria for the use of sideboards on shuttle cars; changing distance of shelter holes along haulage entries; and setting requirements for riders on locomotives.”

On motion of Delegate Cowles, the House of Delegates concurred in the Senate title amendment.

The bill, as amended by the House, and further amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 283**), and there were—yeas 72, nays 27, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Boggs, Campbell, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Guthrie, Hamilton, Hicks, Hornbuckle, Longstreth, Lynch, Manchin, Miley, Moore, Morgan, Perdue, Perry, Pethtel, Pushkin, Rowe, Skinner, P. Smith, Sponaugle, Trecoast and Williams.

ABSENT AND NOT VOTING: Hanshaw.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 357) passed.

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

A message from the Senate, by

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

**S. B. 386** - “A Bill to amend and reenact §11-27-8 of the Code of West Virginia, 1931, as amended, relating to excluding mobile x-ray services from the health care provider tax”; which was referred to the Committee on Health and Human Resources then Finance.

A message from the Senate, by

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

**Com. Sub. for S. B. 395** - “A Bill to amend and reenact §61-2-9 and §61-2-28 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-7-7 of said code, all relating generally to crimes against the person; modifying definitions of “battery” and “domestic battery” to conform with federal laws relating to firearms possession criminal offenses; and conforming list of persons prohibited from possessing firearms to federal law”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**Com. Sub. for S. B. 407** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated

§17-16E-1, §17-16E-2 and §17-16E-3, all relating to implementation of a state safety oversight program pursuant to a mandate per 49 U. S. C. §5329; designating the Division of Public Transit as the State Safety Oversight Agency; specifying powers and duties of the State Safety Oversight Agency; and requiring rulemaking”; which was referred to the Committee on Roads and Transportation then Finance.

A message from the Senate, by

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

**S. B. 420** - “A Bill to amend and reenact §18-5-18 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18A-4-8 and §18A-4-8b of said code, all relating to retirement benefits for persons employed as an aide or early classroom assistant teacher and braille or sign support specialist in kindergarten programs; creating a class of Early Childhood Classroom Assistant Teacher I, Early Childhood Classroom Assistant Teacher II and Early Childhood Classroom Assistant Teacher III; providing that a person who has held or holds an aide title and becomes employed as an Early Childhood Classroom Assistant Teacher holds a multiclassification status that includes aide and/or paraprofessional titles and are included in the same classification category as aides; and providing that an aide in a kindergarten program that is eligible for full retirement benefits before July 1, 2020, may remain employed as an aide in that position and be granted an Early Childhood Classroom Assistant Teacher permanent authorization by the state superintendent”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**Com. Sub. for S. B. 436** - “A Bill to repeal §29-5A-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §29-5A-1, §29-5A-2, §29-5A-3, §29-5A-3a, §29-5A-5, §29-5A-6, §29-5A-8,

§29-5A-17, §29-5A-19, §29-5A-20 and §29-5A-24 of said code; and to amend said code by adding thereto a new section, designated §29-5A-1a, all relating to the State Athletic Commission; changing composition of commission; providing that office of commission be located on the premises of Lottery Commission office; providing for Lottery Commission to provide administrative support and oversight; proposing rules; providing commission shall follow United States Amateur Boxing Authority rules for amateur boxing; requiring commission to follow the unified rules of boxing adopted by Association of Boxing Commissions and requirements; expenses of commission; increasing payments to referees, judges and timekeepers; weight of boxers; and increasing certain licensing fees”; which was referred to the Committee on Government Organization.

A message from the Senate, by

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

**Com. Sub. for S. B. 439** - “A Bill to amend and reenact §18B-4-2a of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-7-1, §18B-7-2, §18B-7-8, §18B-7-9, §18B-7-11 and §18B-7-16 of said code; to amend and reenact §18B-9-1 and §18B-9-2 of said code; to amend and reenact §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6 and §18B-9A-7 of said code; and to amend said code by adding thereto a new section, designated §18B-9A-5a, all relating to public higher education personnel generally; clarifying roles of Higher Education Policy Commission, Council for Community and Technical College Education and state organizations of higher education; providing legislative purposes and intent for higher education personnel; defining terms; clarifying duties of Vice Chancellor for Human Resources of the Higher Education Policy Commission; eliminating outdated and redundant reporting and review requirements; providing for evaluation and reviews of organizations for certain human resource deficiencies, best practices and compliance with state higher education personnel laws; providing percentages of employees designated as ‘nonclassified’ employees;



directing the Higher Education Policy Commission and the Community and Technical College Council to study employment practices; providing legislative purposes and intent for classified employees salary schedule; defining terms; providing legislative purposes and intent for classification and compensation system; defining terms; clarifying that certain provisions are only applicable to classified employees; clarifying powers and duties of the Job Classification Committee; clarifying powers and duties of the Compensation Planning and Review Committee; eliminating requirement that salary schedules fall within relative market equity; restricting duties of Job Classification Committee and Compensation Planning and Review Committee; clarifying role and considerations of the Higher Education Policy Commission and Community and Technical College Council in developing salary schedules for classified employees; and requiring classification and compensation rules”; which was referred to the Committee on Education then Finance.

A message from the Senate, by

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

**S. B. 447** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-8-12, relating to allowing a person who administers a program of secondary education at a public, private or home school to issue a diploma or other appropriate credential to a person who has completed the program of secondary education”; which was referred to the Committee on Education.

A message from the Senate, by

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

**S. B. 457** - “A Bill to amend and reenact §18A-3-2a of the Code of West Virginia, 1931, as amended, relating to selection of athletic

coaches or other extracurricular activities coaches in West Virginia public schools”; which was referred to the Committee on Education.

A message from the Senate, by

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

**S. B. 479** - “A Bill to amend and reenact §51-2A-3 of the Code of West Virginia, 1931, as amended, relating to adding family court judges to certain family court circuits of the state; providing for terms of office; and providing for election of new family court judges at the regular elections held in the year 2016”; which was referred to the Committee on the Judiciary then Finance.

A message from the Senate, by

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

**S. B. 499** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-29-1, §17-29-2, §17-29-3, §17-29-4, §17-29-5, §17-29-6, §17-29-7, §17-29-8, §17-29-9, §17-29-10, §17-29-11, §17-29-12, §17-29-13 and §17-29-14, all relating to creating Tourist-Oriented Directional Signs Program; stating legislative purpose; setting forth application and eligibility requirements; establishing design and content guidelines; establishing sign location and placement criteria; establishing fee schedule; setting forth maintenance responsibility; permitting revocation of participation in program; exempting rulemaking from State Administrative Procedures Act; requiring rules be filed with Secretary of State; and defining terms”; which was referred to the Committee on Roads and Transportation then Finance.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

**S. B. 508**, Reorganizing Hatfield-McCoy Regional Recreation Authority.

A message from the Senate, by

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

**Com. Sub. for S. B. 529** - “A Bill to amend and reenact §5-10-2, §5-10-14, §5-10-15, §5-10-15a, §5-10-20, §5-10-21 and §5-10-29 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5-10-21a; to amend and reenact §5-13-2 of said code; to amend and reenact §5-16-13 of said code; to amend and reenact §15-2A-21 of said code; to amend and reenact §18-7A-17, §18-7A-23 and §18-7A-25 of said code; and to amend said code by adding thereto two new sections, designated §18-7A-17a and §18-7A-25b, all relating generally to benefits and costs for certain members of the West Virginia Public Employees Retirement System, State Police Retirement System and Teachers Retirement System; calculating final average salary and service credit for certain public employees; purchase of military service for certain members of the West Virginia Public Employees Retirement System, State Police Retirement System and Teachers Retirement System; increasing contribution rate and years of contributing service required for certain public employees; accrued annual and sick leave of certain employees participating in the West Virginia Public Employees Retirement System and Teachers Retirement System may not be applied for retirement service credit; and revising the reciprocal retirement provisions for certain members of the teachers and the public employees system”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**S. B. 549** - “A Bill to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended, relating to classifying civilian positions within West Virginia State Police forensic laboratory; establishing salaries; and requiring a manual”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**S. B. 560** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §51-1-22, relating to establishing a new special revenue fund for the purpose of collecting and remitting moneys to the State Treasury for use of certain advanced technology provided by Supreme Court of Appeals”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**S. B. 577** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §12-1-12e, relating to allowing governing boards of certain four-year colleges and universities to invest certain funds with its respective nonprofit foundation that has been established to receive contributions exclusively for that institution and which exists on January 1, 2015”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**S. B. 578** - “A Bill to amend and reenact §23-4-8d of the Code of West Virginia, 1931, as amended; and to amend and reenact §23-5-7 of said code, all relating to authorization of compromise and settlement of occupational disease claims; permitting final settlement of medical benefits for nonorthopedic occupational disease claims; and requiring claimant be represented by legal counsel in these claims”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**S. B. 579** - “A Bill to amend and reenact §29-22B-328 of the Code of West Virginia, 1931, as amended, relating to clarifying restriction of businesses selling petroleum products from creating a restricted adult-only facility”; which was referred to the Committee on the Judiciary.

Delegate Perry asked and obtained unanimous consent to be removed as a cosponsor of H. B. 3018.

### **SPECIAL CALENDAR**

#### **THIRD READING**

**S. B. 294**, Eliminating certain unnecessary, inactive or redundant councils, committees and boards; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 284**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Eldridge.

ABSENT AND NOT VOTING: Hanshaw.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 294) passed.

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

**Com. Sub. for S. B. 343**, Exempting chiropractors from continuing education requirement on mental health conditions

common to veterans; on third reading, coming up in regular order, was, on motion of Delegate Cowles, laid over.

**Com. Sub. for S. B. 435**, Creating WV Sheriffs' Bureau of Professional Standards; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 285**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hanshaw.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 435) passed.

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

**S. B. 463**, Making supplementary appropriation to DHHR, DHS, Health Care Provider Tax, Medicaid State Share Fund; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 286**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hanshaw.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 463) passed.

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

On this question, the yeas and nays were taken (**Roll No. 287**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hanshaw.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 463) takes effect from its passage.

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

**S. B. 466**, Making supplementary appropriation of federal funds to Department of Commerce; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 288**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hanshaw.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 466) passed.

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

On this question, the yeas and nays were taken (**Roll No. 289**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hanshaw.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 466) takes effect from its passage.

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

**S. B. 467**, Making supplementary appropriation of federal funds to Department of Agriculture, State Conservation Committee; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 290**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hanshaw.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 467) passed.

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

On this question, the yeas and nays were taken (**Roll No. 291**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hanshaw.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 467) takes effect from its passage.

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

**S. B. 469**, Making supplementary appropriation of federal funds to DEP, Division of Environmental Protection; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 292**), and there were—yeas 93, nays 6, absent and not voting 1, with the nays and absent and not voting being as follows:



NAYS: Folk, Marcum, McGeehan, J. Nelson, Reynolds and R. Smith.

ABSENT AND NOT VOTING: Hanshaw.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 469) passed.

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

On this question, the yeas and nays were taken (**Roll No. 293**), and there were—yeas 93, nays 6, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Eldridge, Folk, Marcum, McGeehan, J. Nelson and R. Smith.

ABSENT AND NOT VOTING: Hanshaw.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 469) takes effect from its passage.

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

**S. B. 471**, Making supplementary appropriation of federal funds to DHHR, Human Rights Commission, and DHHR, DHS; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 294**), and there were—yeas 94, nays 4, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Azinger, Folk, McGeehan and R. Smith.

ABSENT AND NOT VOTING: Hanshaw and Walters.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 471) passed.

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

On this question, the yeas and nays were taken (**Roll No. 295**), and there were—yeas 94, nays 4, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Azinger, Folk, McGeehan and R. Smith.

ABSENT AND NOT VOTING: Hanshaw and Walters.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 471) takes effect from its passage.

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

**S. B. 477**, Supplementing, amending, decreasing and increasing appropriation from State Road Fund to DOH; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 296**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hanshaw and Walters.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 477) passed.

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

On this question, the yeas and nays were taken (**Roll No. 297**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hanshaw and Walters.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 477) takes effect from its passage.

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

**Com. Sub. for H. B. 2015**, Requiring the Legislative Auditor to conduct performance reviews and audits for every government spending unit, including all members of the Board of Public Works and the Legislature; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 298**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hanshaw and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2015) passed.

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

**H. B. 2226**, Eliminating dedication of corporation net income tax revenues to and deposits of such revenues into the Special Railroad Intermodal Enhancement Fund; on third reading, coming up in regular order, was, on motion of Delegate Cowles, laid over.

**Com. Sub. for H. B. 2239**, Creating a logistical advisory committee; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 299**), and there were—yeas 93, nays 4, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Fleischauer, Folk, Guthrie, Lynch and Pushkin.

ABSENT AND NOT VOTING: Hanshaw and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2239) passed.

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

**Com. Sub. for H. B. 2377**, Authorizing State Board of Education to approve certain alternatives with respect to instructional time; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 300**), and there were—yeas 96, nays 1, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Gearheart.

ABSENT AND NOT VOTING: Hanshaw, Moffatt and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2377) passed.

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

**Com. Sub. for H. B. 2466**, Exempting valid nonprofit organizations from licensing requirements of the West Virginia Alcoholic Beverage Control Authority during certain events; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 301**), and there were—yeas 82, nays 15, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Speaker Armstead, Arvon, Azinger, Border, A. Evans, Fast, Hamilton, Howell, Ireland, Longstreth, Moye, Overington, Perry, R. Smith and Sobonya.

ABSENT AND NOT VOTING: Hanshaw, O’Neal and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2466) passed.

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

**Com. Sub. for H. B. 2502**, Possessing deadly weapons on school buses or on the premises of educational facilities; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 302**), and there were—yeas 97, nays 1, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Deem.

ABSENT AND NOT VOTING: Hanshaw and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2502) passed.

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

**Com. Sub. for H. B. 2515**, Relating to elk restoration; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 303**), and there were—yeas 87, nays 11, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Anderson, Ashley, Border, Cadle, Canterbury, Cooper, Fast, Kelly, Perdue, Upson and Waxman.

ABSENT AND NOT VOTING: Hanshaw and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2515) passed.

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

**H. B. 2521**, Clarifying the scope, application and methods for error correction required by the CPRB; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 304**), and there were—yeas 96, nays 2, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Kurcaba and Zatezalo.

ABSENT AND NOT VOTING: Hanshaw and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2521) passed.

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

**Com. Sub. for H. B. 2585**, Requiring leaseholders of mineral interests to notify the owners of the minerals when there is an assignment of the lease to another party; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 305**), and there were—yeas 97, nays 1, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Fast.

ABSENT AND NOT VOTING: Hanshaw and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2585) passed.

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

**H. B. 2816**, Relating to the eligibility of a mine operator to receive a tax credit for performing reclamation or remediation at a bond forfeiture site; on third reading, coming up in regular order, was, at the request of Delegate Cowles, and by unanimous consent, laid over one day, retaining its place on the calendar.

**Com. Sub. for H. B. 2840**, Providing an alternative plan to make up lost days of instruction; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 306**), and there were—yeas 97, nays 1, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Gearheart.

ABSENT AND NOT VOTING: Hanshaw and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2840) passed.

Delegate Cowles moved that the bill take effect July 1, 2015.

On this question, the yeas and nays were taken (**Roll No. 307**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Border, Hanshaw and Walters.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2840) takes effect July 1, 2015.

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

**H. B. 2877**, Relating to electronic filing of tax returns and electronic funds transfers in payment of taxes; on third reading, coming up in regular order, was read a third time.



The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 308**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Border, Hanshaw and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2877) passed.

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

**Com. Sub. for H. B. 2878**, Creating a one-stop electronic business portal in West Virginia; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 309**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hanshaw and Walters.

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

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

**H. B. 2880**, Creating an addiction treatment pilot program; on third reading, coming up in regular order, was read a third time.

Delegate Marcum requested to be excused from voting on the passage of H. B. 2880 under the provisions of House Rule 49.

The Speaker replied that the Delegate may have a direct interest therein but that it would be as a member of a class of persons possibly

to be affected by the passage of the bill, and refused to excuse the Gentleman from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 310**), and there were—yeas 92, nays 2, absent and not voting 6, with the nays and absent and not voting being as follows:

NAYS: Pushkin and H. White.

ABSENT AND NOT VOTING: Deem, Guthrie, Hanshaw, Lynch, Moore and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2880) passed.

On motion of Delegate Ellington, the title of the bill was amended to read as follows:

**H. B. 2880** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto by adding thereto a new article, designated §62-15A-1, §62-15A-2, §62-15A-3 and §62-15A-4 relating to creating an addiction treatment pilot program.”

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

**H. B. 2914**, Providing for voluntary dissolution of resort area district; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 311**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Guthrie, Hanshaw, Lynch, Moore and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2914) passed.

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

**Com. Sub. for H. B. 2916**, Providing limited borrowing authority to the Governor for the completion of renovations to Capitol Complex Building 3; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 312**), and there were—yeas 79, nays 18, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Azinger, Cowles, Faircloth, Folk, Frich, Gearheart, Hill, Householder, Ihle, Kelly, Kurcaba, Manchin, Marcum, McGeehan, J. Nelson, Perry, Upson and Wagner.

ABSENT AND NOT VOTING: Hanshaw, Lynch and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2916) passed.

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

**Com. Sub. for H. B. 2999**, Relating to neonatal abstinence centers; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 313**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Duke, Hanshaw, Lynch and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2999) passed.

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

**Com. Sub. for H. B. 3006**, Relating to the determination of the adjusted rate established by the Tax Commissioner for the administration of tax deficiencies; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 314**), and there were—yeas 73, nays 24, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Byrd, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Folk, Guthrie, Hicks, Hornbuckle, Kelly, Manchin, Marcum, Miley, Perdue, Perry, Pushkin, Reynolds, Rodighiero, Skinner, Sobonya, Sponaule, Summers and Wagner.

ABSENT AND NOT VOTING: Hanshaw, Lynch and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3006) passed.

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

**H. B. 3017**, Addressing sudden cardiac arrest in interscholastic athletes; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 315**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hanshaw, Lynch and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3017) passed.

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

**H. B. 3018**, Increasing the allowable range of difference in salary potential of school employees in different counties; on third reading, coming up in regular order, was reported by the Clerk.

Delegate Moyer requested to be excused from voting on the passage of H. B. 3018 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the Gentleman from voting.

On motion of Delegate Cowles, the bill was laid over.

At 3:01 P.M., on motion of Delegate Cowles, the House of Delegates recessed until 5:00 P.M.

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#### AFTERNOON SESSION

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#### REORDERING OF THE CALENDAR

Delegate Cowles announced that the Committee on Rules had transferred H. B. 2675 and Com. Sub. for H. B. 2718, on third reading, House Calendar, to the Special Calendar.

## SPECIAL CALENDAR

## THIRD READING

**H. B. 2675**, Reducing certain severance taxes that are dedicated to the Workers' Compensation Debt Reduction Fund; on third reading, coming up in regular order, with amendments pending, was reported by the Clerk.

An amendment to the bill, offered by Delegates R. Phillips, Cadle and Walters, was reported by the Clerk as follows:

On page two, section four, line ten, by striking out "*Provided*, That the tax is \$.50 per ton and the measure of the tax is tons of clean coal severed or produced in this state by the taxpayer after June 30, 2015, for sale, profit or commercial use during the taxable year."

On page three, section four, line thirty-six, by striking out "*Provided*, That the rate of this additional tax shall be \$.042 per mcf of natural gas and the measure of the tax is natural gas produced after June 30, 2015, determined at the point where the production privilege ends for purposes of the tax imposed by section three-a, article thirteen-a of this chapter, and with respect to which the tax imposed by section three-a of article thirteen-a is paid."

On page four, section four, line fifty-five, by striking "*Provided*, That after June 30, 2015, for the privilege of engaging or continuing within this state in the business of severing timber for sale, profit or commercial use, there is levied and shall be collected from every person exercising this privilege an additional annual privilege tax equal to two and four tenths percent of the gross value of the timber produced, determined at the point where the production privilege ends for purposes of the tax imposed by section three-b, article thirteen-a of this chapter and upon which the tax imposed by section three-b of article thirteen-a is paid."

And,

On page seven, section four, line one hundred nine, after word “expire”, by inserting the words “on June 30, 2015”., and by striking out the remainder of the subsection.

Whereupon,

Delegate R. Phillips asked and obtained unanimous consent that the amendment be withdrawn.

An amendment to the bill, offered by Delegates Reynolds and Boggs, was reported by the Clerk:

On page two, section four, line ten, by striking out “\$.50” and inserting in lieu thereof “\$.55”.

On page three, section four, line thirty-seven, by striking out “\$.42” and inserting in lieu thereof “\$.46”.

On page four, section four, line sixty, following the word “to”, by striking out the words “two and four tenths” and inserting in lieu thereof “two and seventy-seven hundredths”.

On page six, section four, line one hundred, following the period and the word “code”, by inserting the following:

“Except that the net amount of 4 million dollars received by the Tax Commissioner from collection of taxes under this section is to be deposited into the ‘Fight Substance Abuse Fund’ created pursuant to section eight, article nine, chapter sixty-a of this code, and, the net amount of 6 million dollars received by the Tax Commissioner from collection of taxes under this section is to be deposited into the ‘Title XIX Waiver for Seniors Fund’ created pursuant to section nine-d, article two, chapter nine of this code’.”

And,

On page seven, line one hundred twenty-one, following section four, by inserting a new section, to read as follows:

“ARTICLE 5P. SENIOR SERVICES.

**§9-2-9d. Title XIX Waiver for Seniors Fund.**

There is hereby created a special revenue account in the state treasury, designated the Title XIX Waiver for Seniors Fund, which shall be an interest-bearing account and may be invested in accordance with the provisions of article six, chapter twelve of this code, with interest income a proper credit to the fund. The fund shall consist of appropriations by the Legislature, gifts, donations or any other source. Expenditures from the fund shall be made by the secretary for the purpose of providing state funding for title XIX Waivers for seniors.”

Whereupon,

Delegate Reynolds asked and obtained unanimous consent that the amendment be withdrawn.

**SPEAKER PRO TEMPORE ANDERSON IN THE CHAIR**

Mr. Speaker, Mr. Armstead, arose from his seat and requested to be excused from voting on the passage of H. B. 2675 under the provisions of House Rule 49.

The Speaker Pro Tempore replied that Mr. Armstead was a member of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse him from voting.

**MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR**

Delegates R. Phillips, J. Nelson and R. Smith requested to be excused from voting on the passage of H. B. 2675 under the provisions of House Rule 49.

The Speaker replied that the Delegates were members of a class of persons possibly to be affected by the passage of the bill but exhibited



no direct personal or pecuniary interest therein, and refused to excuse the Members from voting.

Having been engrossed the bill was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 316**), and there were—yeas 80, nays 18, absent and not voting 2, with the nays and absent and not voting being as follows:

**NAYS:** Caputo, Ferro, Fleischauer, Fluharty, Guthrie, Hicks, Hornbuckle, Longstreth, Lynch, Manchin, Miley, Moore, Perdue, Pushkin, Reynolds, Rowe, Skinner and Sponaule.

**ABSENT AND NOT VOTING:** Deem and Hanshaw.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2675) passed.

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

**Com. Sub. for H. B. 2718,** Transferring funds remaining in the Racetrack Modernization Fund to the State Road Fund and closing the Racetrack Modernization Fund; on third reading, coming up in regular order, with amendments pending and further right to amend, was reported by the Clerk.

An amendment to the bill, offered by Delegate E. Nelson, was reported by the Clerk.

Whereupon,

Delegate E. Nelson asked and obtained unanimous consent that the amendment be withdrawn.

Delegates E. Nelson and Perdue then asked and obtained unanimous consent to offer another amendment.

On motion of Delegates E. Nelson and Perdue the bill was amended on page two, following the enacting section, by striking out the remainder of the bill and inserting in lieu thereof the following:

“ARTICLE 22A. RACETRACK VIDEO LOTTERY.

**§29-22A-10g. Distributions to various funds during fiscal year 2016.**

(a) Notwithstanding any provision of section ten or ten-d of this article to the contrary, during the fiscal year beginning July 1, 2015, the commission shall not make a deposit of such amounts as are available under subdivision (1), subsection (b), section ten of this article into a separate facility modernization account maintained within the Licensed Racetrack Modernization Fund for each racetrack as prescribed by subdivision (2), subsection (b), section ten of this article. In lieu thereof, the commission shall deposit the amounts otherwise made available by those calculations as follows:

(1) Up to \$6 million shall be deposited into the state road fund of the state to be expended for maintenance, contract paving, and secondary road maintenance purposes;

(2) Up to \$1 million shall be deposited into the Department of Human Services Medical Services Fund established pursuant to section two, article four, chapter nine of this code to be expended for the state’s Title XIX Aged and Disabled Waiver program;

(3) Up to \$1 million shall be deposited into the West Virginia Department of Health and Human Resources Division of Health General Administrative Fund established pursuant to subsection (b) of this section to be expended for Health Right Free Clinics; and

(4) Up to \$1 million shall be deposited into the West Virginia Department of Health and Human Resources Division of Health General Administrative Fund established pursuant to subsection (b) of this section to be expended by the Secretary of Health and Human

Resources after consultation with, and pursuant to the guidance provided by, the Governor's Advisory Council on Substance Abuse created by Executive Order No. 5-11 on September 6, 2011, for the purposes of implementing the approved Statewide Substance Abuse Strategic Action Plan for the improvement of the statewide substance abuse continuum of care, or for other purposes as may be recommended by the Advisory Council pursuant to the duties imposed by said Executive Order.

(b) The West Virginia Department of Health and Human Resources Division of Health General Administrative Fund is hereby established in the State Treasury. The fund shall be administered by the Secretary of the West Virginia Department of Health and Human Resources and shall consist of all moneys made available for the administration of programs or other activities of the Department as established by law or as directed by the Legislature from any source, including, but not limited to, all gifts, grants, bequests, deposits or transfers from any source, any moneys that may be transferred, designated or appropriated to the fund by the Legislature, and all interest or other return earned from investment of the fund. Expenditures from the fund 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 article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this subsection.

(c) Notwithstanding any provision of subsection (b), section ten of this article to the contrary, if a licensed racetrack's facility modernization account contains a balance in the fiscal year ending June 30, 2015, the unexpended balance from that fiscal year will be available for matching for two additional fiscal years, after which time, the remaining unused balance carried forward shall revert to the lottery fund."

Having been engrossed the bill was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 317**), and there were—yeas 88, nays 10, absent and not voting 2, with the nays and absent and not voting being as follows:

**NAYS:** Blair, Espinosa, Fluharty, Folk, McGeehan, Skinner, Storch, Upson, Weld and Zatezalo.

**ABSENT AND NOT VOTING:** Deem and Hanshaw.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2718) passed.

On motion of Delegate E. Nelson, the title of the bill was amended to read as follows:

**Com. Sub. for H. B. 2718** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-22A-10g, relating to directing the lottery commission to suspend the deposit of certain amounts into accounts within the Licensed Racetrack Modernization Fund during the fiscal year beginning July 1, 2015, and in lieu thereof to deposit those amounts into the state road fund and other funds for specific purposes; creating a new fund in the state treasury; and extending the availability of any unexpended balance in the Licensed Racetrack Modernization Fund for matching for two additional fiscal years.”

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

**Com. Sub. for H. J. R. 13**, The Homestead Exemption Increase Amendment; on second reading, coming up in regular order, was read a second time.

Delegates Sponaugle, Caputo, Pushkin, Hornbuckle and Fluharty moved to amend the resolution on page two, section one (d), lines three and four, by striking out the words “a county option”.

On page two, section one (d), line seven, by striking out the word “thirty” and inserting in lieu thereof the word “sixty”.

On page three, section one 1 (d), line thirty, by striking out the words “a county option to allow each county” and inserting in lieu thereof the words “the authority”.

And,

On page four, section one (d), line thirty-two, by striking out “\$30,000” and inserting in lieu thereof “\$60,000”.

On the adoption of the amendment, Delegate Sponaugle demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 318**), and there were—yeas 39, nays 59, absent and not voting 2, with the yeas and absent and not voting being as follows:

YEAS: Bates, Blair, Boggs, Byrd, Campbell, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Folk, Frich, Guthrie, Hartman, Hicks, Hornbuckle, Householder, Ihle, Lane, Longstreth, Lynch, Manchin, Marcum, McGeehan, Miley, Morgan, Moye, Perdue, Perry, R. Phillips, Pushkin, Reynolds, Rodighiero, Skinner, P. Smith, Sponaugle, Trecost, H. White and Williams.

ABSENT AND NOT VOTING: Deem and Hanshaw.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegates Sponaugle, Caputo, Pushkin, Hornbuckle and Fluharty moved to amend the resolution on page two, section one (d), lines three and four, by striking out the words “a county option”.

On page two, section one (d), line seven, by striking out the word “thirty” and inserting in lieu thereof the word “fifty-five”.

On page three, section one (d), line thirty, by striking out the words “a county option to allow each county” and inserting in lieu thereof the words “the authority”.

And,

On page four, section one (d), line thirty-two, by striking out “\$30,000” and inserting in lieu thereof “\$55,000”.

On the adoption of the amendment, Delegate Sponaugle demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 319**), and there were—yeas 40, nays 58, absent and not voting 2, with the yeas and absent and not voting being as follows:

YEAS: Bates, Blair, Boggs, Byrd, Campbell, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Folk, Frich, Guthrie, Hartman, Hicks, Hornbuckle, Householder, Ihle, Lane, Longstreth, Lynch, Manchin, Marcum, McGeehan, Miley, Moye, J. Nelson, Perdue, Perry, L. Phillips, R. Phillips, Pushkin, Reynolds, Rodighiero, Skinner, P. Smith, Sponaugle, Trecost, H. White and Williams.

ABSENT AND NOT VOTING: Deem and Hanshaw.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegates Manchin and Caputo moved to amend the resolution on page two, section one (d), lines three and four, by striking out the words “a county option”.

On page two, section one (d), line seven, by striking out the word “thirty” and inserting in lieu thereof the word “fifty”.

On page three, section one (d), line thirty, by striking out the words “a county option to allow each county” and inserting in lieu thereof the words “the authority”.

And,

On page four, section one (d), line thirty-two, by striking out “\$30,000” and inserting in lieu thereof “\$50,000”.

On the adoption of the amendment, Delegate Manchin demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 320**), and there were—yeas 46, nays 52, absent and not voting 2, with the yeas and absent and not voting being as follows:

YEAS: Bates, Blair, Boggs, Byrd, Campbell, Canterbury, Caputo, Eldridge, Ellington, Ferro, Fleischauer, Fluharty, Folk, Frich, Guthrie, Hartman, Hicks, Hornbuckle, Householder, Ihle, Lane, Longstreth, Lynch, Manchin, Marcum, McGeehan, Miley, Moore, Morgan, Moye, J. Nelson, Overington, Perdue, Perry, Pethtel, L. Phillips, R. Phillips, Pushkin, Reynolds, Rodighiero, Skinner, P. Smith, Sponaule, Trecost, H. White and Williams.

ABSENT AND NOT VOTING: Deem and Hanshaw.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected

Delegates Sponaule, Caputo, Pushkin, Hornbuckle and Fluharty moved to amend the resolution on page two, section one (d), lines three and four, by striking out the words “a county option”.

On page two, section one (d), line seven, by striking out the word “thirty” and inserting in lieu thereof the word “forty-five”.

On page three, section one (d), line thirty, by striking out the words “a county option to allow each county” and inserting in lieu thereof the words “the authority”.

And,

On page four, section one (d), line thirty-two, by striking out “\$30,000” and inserting in lieu thereof “\$45,000”.

On the adoption of the amendment, Delegate Sponaugle demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 321**), and there were—yeas 43, nays 55, absent and not voting 2, with the yeas and absent and not voting being as follows:

YEAS: Bates, Blair, Boggs, Byrd, Campbell, Caputo, Eldridge, Ellington, Ferro, Fleischauer, Fluharty, Folk, Frich, Guthrie, Hartman, Hicks, Hornbuckle, Householder, Ihle, Lane, Longstreth, Lynch, Manchin, Marcum, McGeehan, Miley, Moore, Moye, J. Nelson, Overington, Perdue, Perry, R. Phillips, Pushkin, Reynolds, Rodighiero, Rowe, Skinner, P. Smith, Sponaugle, Trecost, H. White and Williams.

ABSENT AND NOT VOTING: Deem and Hanshaw.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegate Morgan requested to be excused from voting on Com. Sub. for H. J. R. 13 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the Delegate from voting.

The Speaker also stated the same ruling applied to anyone who qualified for the homestead exemption.

Delegates Sponaugle, Caputo, Pushkin, Hornbuckle and Fluharty moved to amend the resolution on page two, section one (d), lines three and four, by striking out the words “a county option”.



On page two, section one (d), line seven, by striking out the word “thirty” and inserting in lieu thereof the word “forty”.

On page three, section one (d), line thirty, by striking out the words “a county option to allow each county” and inserting in lieu thereof the words “the authority”.

And,

On page four, section one (d), line thirty-two, by striking out “\$30,000” and inserting in lieu thereof “\$40,000”.

On the adoption of the amendment, Delegate Sponaugle demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 322**), and there were—yeas 50, nays 48, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Speaker Armstead, Ambler, Anderson, Arvon, Ashley, Azinger, Border, Butler, Cadle, Canterbury, Cooper, Cowles, Duke, Espinosa, A. Evans, D. Evans, Faircloth, Fast, Foster, Gearheart, Hamilton, Hill, Howell, Ireland, Kelly, Kessinger, Kurcaba, McCuskey, Miller, Moffatt, E. Nelson, O’Neal, Pasdon, Romine, Rowan, Shott, R. Smith, Sobonya, Stansbury, Statler, Summers, Upson, Wagner, Waxman, Weld, Westfall, B. White and Zatezalo.

ABSENT AND NOT VOTING: Deem and Hanshaw.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

The resolution was then ordered to engrossment and third reading.

**S. B. 502**, Relating to eligibility for certain reclamation or remediation tax credit; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Ireland, the bill was amended on page one, following the enacting section, by striking out the remainder of the bill and inserting in lieu thereof the following:

“That §22-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.**

**§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.**

(a) After a surface mining permit application has been approved pursuant to this article, but before a permit has been issued, each operator shall furnish a penal bond, on a form to be prescribed and furnished by the secretary, payable to the State of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article and of the permit. The penal amount of the bond shall be not less than \$1,000 nor more than \$5,000 for each acre or fraction of an acre: *Provided*, That the minimum amount of bond furnished for any type of reclamation bonding shall be \$10,000. The bond shall cover: (1) The entire permit area; or (2) that increment of land within the permit area upon which the operator will initiate and conduct surface mining and reclamation operations within the initial term of the permit. If the operator chooses to use incremental bonding, as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the secretary an additional bond or bonds to cover the increments in accordance with this section: *Provided, however*, That once the operator has chosen to proceed with bonding either the entire permit area or with incremental bonding, the operator shall continue bonding in that manner for the term of the permit.

(b) The period of liability for bond coverage begins with issuance of a permit and continues for the full term of the permit plus any

additional period necessary to achieve compliance with the requirements in the reclamation plan of the permit.

(c) (1) The form of the bond shall be approved by the secretary and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, self bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash or collateral securities or certificates as follows: Bonds of the United States or its possessions of the Federal Land Bank or of the Homeowners' Loan Corporation; full faith and credit general obligation bonds of the State of West Virginia or other states and of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the department. The cash deposit or market value of the securities or certificates shall be equal to or greater than the penal sum of the bond. The secretary shall, upon receipt of any deposit of cash, securities or certificates, promptly place the same with the Treasurer of the State of West Virginia whose duty it is to receive and hold the deposit in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the secretary, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof cash or other securities or certificates of the classes specified in this subsection having value equal to or greater than the sum of the bond.

(2) The secretary may approve an alternative bonding system if it will: (A) Reasonably assure that sufficient funds will be available to complete the reclamation, restoration and abatement provisions for all permit areas which may be in default at any time; and (B) provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

(d) The secretary may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the

satisfaction of the secretary the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self insure.

(e) It is unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge of the operator's obligations to the state for the reclamation of lands disturbed by the operator.

(f) All bond releases shall be accomplished in accordance with the provisions of section twenty-three of this article.

(g) (1) The Special Reclamation Fund previously created is continued. The Special Reclamation Water Trust Fund is created within the State Treasury into and from which moneys shall be paid for the purpose of assuring a reliable source of capital to reclaim and restore water treatment systems on forfeited sites. The moneys accrued in both funds, any interest earned thereon and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this section and section seventeen, article one of this chapter. The funds shall be administered by the secretary who is authorized to expend the moneys in both funds for the reclamation and rehabilitation of lands which were subjected to permitted surface mining operations and abandoned after August 3, 1977, where the amount of the bond posted and forfeited on the land is less than the actual cost of reclamation, and where the land is not eligible for abandoned mine land reclamation funds under article two of this chapter. The secretary shall develop a long-range planning process for selection and prioritization of sites to be reclaimed so as to avoid inordinate short-term obligations of the assets in both funds of such magnitude that the solvency of either is jeopardized. The secretary may use both funds for the purpose of designing, constructing and maintaining water treatment systems when they are required for a complete reclamation of the affected lands described in this subsection. The secretary may also expend an amount not to exceed ten percent of the total annual assets in both funds to

implement and administer the provisions of this article and, as they apply to the Surface Mine Board, articles one and four, chapter twenty-two-b of this code.

(2)(A) A tax credit shall be granted against the tax imposed by subsection (i) of this section to any mine operator who performs reclamation or remediation at a bond forfeiture site which otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special Reclamation Water Trust Fund: The credit authorized pursuant to this subdivision is retroactive and may be claimed for reclamation or remediation performed on or after January 1, 2012: *Provided*, That for reclamation or remediation performed prior to July 13, 2013, no tax credit may be granted unless a written application for the tax credit was submitted to the Tax Commissioner prior to September 1, 2014. The amount of credit shall be determined as provided in this section.

(B) The amount of a reclamation tax credit granted under this subsection shall be equal to the amount that the Tax Commissioner determines, based on the project costs, as shown in the records of the secretary, that would have been spent from the Special Reclamation Fund or Special Reclamation Water Trust Fund to accomplish the reclamation or remediation performed by the mine operator, including expenditures for water treatment.

(C) To claim the credit, the mine operator shall from time to time file with the Tax Commissioner a written application seeking the amount of the credit earned. Within thirty days of receipt of the application, the Tax Commissioner shall issue a certification of the amount of tax credit, if any, to be allocated to the eligible taxpayer. Should the amount of the credit certified be less than the amount applied for, the Tax Commissioner shall set forth in writing the reason for the difference. Should no certification be issued within the thirty-day period, the application will be deemed certified. Any decision by the Tax Commissioner is appealable pursuant to the provisions of the 'West Virginia Tax Procedure and Administration Act' set forth in

article ten, chapter eleven of the code. Applications for certification of the proposed tax credit shall contain the information and be in the detail and form as required by the Tax Commissioner.

(h) The Tax Commissioner may promulgate rules for legislative approval pursuant to the provisions of article three, chapter twenty-nine-a of this code to carry out the purposes of this subdivision two, subsection (g) of this section.

(i)(1) *Rate, deposits and review.*

(A) For tax periods commencing on and after July 1, 2009, every person conducting coal surface mining shall remit a special reclamation tax of fourteen and four-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund.

(B) For tax periods commencing on and after July 1, 2012, the rate of tax specified in paragraph (A) of this subdivision is discontinued and is replaced by the rate of tax specified in this paragraph (B). For tax periods commencing on and after July 1, 2012, every person conducting coal surface mining shall remit a special reclamation tax of twenty-seven and nine-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund. Of that amount, fifteen cents per ton of clean coal mined shall be deposited into the Special Reclamation Water Trust Fund.

(C) The tax shall be levied upon each ton of clean coal severed or clean coal obtained from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a combination of coal and waste material as part of a fuel supply.

(D) Beginning with the tax period commencing on July 1, 2009, and every two years thereafter, the special reclamation tax shall be reviewed by the Legislature to determine whether the tax should be

continued: *Provided*, That the tax may not be reduced until the Special Reclamation Fund and Special Reclamation Water Trust Fund have sufficient moneys to meet the reclamation responsibilities of the state established in this section.

(2) In managing the Special Reclamation Program, the secretary shall: (A) Pursue cost-effective alternative water treatment strategies; and (B) conduct formal actuarial studies every two years and conduct informal reviews annually on the Special Reclamation Fund and Special Reclamation Water Trust Fund.

(3) Prior to December 31, 2008, the secretary shall:

(A) Determine the feasibility of creating an alternate program, on a voluntary basis, for financially sound operators by which those operators pay an increased tax into the Special Reclamation Fund in exchange for a maximum per-acre bond that is less than the maximum established in subsection (a) of this section;

(B) Determine the feasibility of creating an incremental bonding program by which operators can post a reclamation bond for those areas actually disturbed within a permit area, but for less than all of the proposed disturbance and obtain incremental release of portions of that bond as reclamation advances so that the released bond can be applied to approved future disturbance; and

(C) Determine the feasibility for sites requiring water reclamation by creating a separate water reclamation security account or bond for the costs so that the existing reclamation bond in place may be released to the extent it exceeds the costs of water reclamation.

(4) If the secretary determines that the alternative program, the incremental bonding program or the water reclamation account or bonding programs reasonably assure that sufficient funds will be available to complete the reclamation of a forfeited site and that the Special Reclamation Fund will remain fiscally stable, the secretary is

authorized to propose legislative rules in accordance with article three, chapter twenty-nine-a of this code to implement an alternate program, a water reclamation account or bonding program or other funding mechanisms or a combination thereof.

(j) This special reclamation tax shall be collected by the State Tax Commissioner in the same manner, at the same time and upon the same tonnage as the minimum severance tax imposed by article twelve-b, chapter eleven of this code is collected: *Provided*, That under no circumstance shall the special reclamation tax be construed to be an increase in either the minimum severance tax imposed by said article or the severance tax imposed by article thirteen of said chapter.

(k) Every person liable for payment of the special reclamation tax shall pay the amount due without notice or demand for payment.

(l) The Tax Commissioner shall provide to the secretary a quarterly listing of all persons known to be delinquent in payment of the special reclamation tax. The secretary may take the delinquencies into account in making determinations on the issuance, renewal or revision of any permit.

(m) The Tax Commissioner shall deposit the moneys collected with the Treasurer of the State of West Virginia to the credit of the Special Reclamation Fund and Special Reclamation Water Trust Fund.

(n) At the beginning of each quarter, the secretary shall advise the State Tax Commissioner and the Governor of the assets, excluding payments, expenditures and liabilities, in both funds.

(o) To the extent that this section modifies any powers, duties, functions and responsibilities of the department that may require approval of one or more federal agencies or officials in order to avoid disruption of the federal-state relationship involved in the implementation of the federal Surface Mining Control and Reclamation Act, 30 U. S. C. §1270 by the state, the modifications will become effective upon the approval of the modifications by the appropriate federal agency or official.”



The bill was then ordered to third reading.

**Com. Sub. for H. B. 2021**, Implementing drug testing for recipients of federal-state and state assistance; on second reading, coming up in regular order, was read a second time.

Delegate Cowles asked unanimous consent that the bill be advanced to third reading with amendments pending, which consent was not given, objection being heard.

Delegate Cowles then so moved.

On this question, the yeas and nays were taken (**Roll No. 323**), and there were—yeas 62, nays 33, absent and not voting 5, with the nays and absent and not voting being as follows:

NAYS: Bates, Boggs, Byrd, Campbell, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Guthrie, Hicks, Hornbuckle, Longstreth, Lynch, Manchin, Marcum, Miley, Moore, Morgan, Moye, Perdue, Perry, Pethtel, L. Phillips, R. Phillips, Reynolds, Rodighiero, Rowe, P. Smith, Sponaugle, Trecost, B. White and H. White.

ABSENT AND NOT VOTING: Deem, Hanshaw, Pushkin, Skinner and Weld.

So, two thirds of the members present and voting not having voted in the affirmative, the motion was rejected.

Delegates Ellington, Gearheart and Householder, moved to amend the bill on page one, line eighteen, by striking out everything after the enacting section and inserting in lieu thereof the following:

“**ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.**

**§9-3-6. Drug testing for recipients of federal-state and state assistance.**

(a) The terms mean:

(1) ‘Department’ means the Department of Health and Human Resources;

(2) ‘Drug screening assessment’ means a process whereby the Secretary determines whether reasonable suspicion exists that the applicant uses a drug.

(3) ‘Secretary’ means the Secretary of the department or his or her designee.

(4) ‘Temporary Assistance for Needy Families Program’ means assistance provided through ongoing cash benefits pursuant to 42 U.S.C. §601, et seq.

(b) The Secretary shall implement and administer a drug screening assessment program for an adult applying for the Temporary Assistance for Needy Families Program.

(c) The Secretary shall propose an emergency and legislative rule for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a developing the criteria used in a drug screening assessment. These criteria may include, but is not limited to:

(1) An assessment conducted during the application process including;

(A) an applicant’s demeanor;

(B) missed appointments at a local county office;

(C) denial of an application for employment due to a positive drug screen; and

(D) termination from employment due to drug use;

(2) Whether the applicant was convicted of a drug-related offense within the previous five years; or

(3) Whether the applicant is a mother who delivered an infant, who has certain controlled substances, not legally prescribed, in his or her system, including amphetamines, tetrahydrocannabinol, oxycodone, cocaine, phencyclidine (PCP), any opiate, barbiturate, benzodiazepine, methamphetamine, propoxyphene, and any tricyclic antidepressants.

(d) The Secretary shall order the drug testing of an applicant when based upon the applicant's drug screening there exists a reasonable suspicion that the applicant is unlawfully using a controlled substance. An applicant who refuses a drug screen or drug test is ineligible for cash assistance. Presentation of a valid prescription of the controlled substance detected is an absolute defense for failure of any drug test administered under the provisions of this section.

(e) Other adult members of a household that includes a person who has been declared ineligible for the Temporary Assistance for Needy Families Program shall, if otherwise eligible, continue to receive temporary assistance for needy families benefits.

(f) (1) No dependent child's eligibility for benefits under the Temporary Assistance for Needy Families Program may be affected by a parent's failure to pass a drug test.

(2) If a parent is deemed ineligible for the Temporary Assistance for Needy Families Program, the dependent child eligibility for benefits is not affected and an appropriate protective payee shall be designated to receive benefits on behalf of the child.

(3) The parent may choose to designate another person to receive benefits for the minor child. The designated person shall be an immediate family member or, if an immediate family member is not available or the family member declines the option, another person, may be designated.

(4) The designated person shall be approved by the secretary. The designated person shall also undergo the process described in subsection (c) before being approved to receive benefits on behalf of

the child. If the designated person tests positive for controlled substances, he or she is ineligible to receive benefits on behalf of the child.

(g) (1) An applicant for the Temporary Assistance for Needy Families Program, who is determined ineligible to receive benefits because of a failed drug test is ineligible to receive, and prohibited from reapplying for, benefits for a period of two years from the date that secretary determined the applicant to be ineligible. An applicant determined to be ineligible under this section shall submit to a mandatory drug test as part of a reapplication for the Temporary Assistance for Needy Families Program; and

(2) An individual who is prohibited to receive benefits under this section may reapply for benefits no sooner than six months after the secretary declares he or she is ineligible for benefits, if the individual can document the successful completion of a drug treatment program as specified in this section,. An individual who has met the requirements of this subsection and reapplies for the Temporary Assistance for Needy Families Program shall also pass a drug test. The cost of any drug testing and drug treatment provided under this subsection is the responsibility of the individual being tested and receiving treatment. An individual may reapply for the Temporary Assistance for Needy Families Program pursuant to the exception contained in this subdivision only once.

(3) Notwithstanding subdivisions (1) and (2), a mother who agrees to undergo a course of substance abuse education and treatment as prescribed in article fifteen, chapter sixty-two of this code, or the substantial equivalent, is immediately eligible for the Temporary Assistance for Needy Families Program, subject to the imposition of a mandatory drug test.

(h) An applicant who is denied admittance to the Temporary Assistance for Needy Families Program under this section may request a review of the denial by the Board of Review. The results of a drug screening and the drug test are admissible without further

authentication or qualification in the review of denial by the Board of Review and in any appeal.

(i) The secretary shall ensure the confidentiality of the drug screening and the drug test results administered as part of this program. The drug screening and drug test results shall only be used for the purpose of determining eligibility for the Temporary Assistance for Needy Families Program. At no time may drug screening or drug test results be released to any public or private person or entity or any law-enforcement agency, except as otherwise authorized by this section.

(j) The secretary shall promulgate a legislative rule according article three, chapter twenty-nine-a to prescribe the design, operation, and standards for the implementation of this section by July 1, 2015.

(k) An individual convicted under federal or state law of any offense which is classified as a felony in West Virginia which has as an element the possession, use, or distribution of a controlled substance, as defined by 21 U.S.C. §802(6) is not eligible for Temporary Assistance for Needy Families.

(l) A person who intentionally misrepresents any material fact in an application filed under the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$100 or more than \$1,000 or by imprisonment in jail not exceeding six months or by both fine and imprisonment.

(m) The secretary shall report to the Legislative Oversight Commission on Health and Human Resources by December 31, 2015 on the status of the program described in this section, and on December 31, 2016 on the program. The report shall include, but not be limited to:

(1) The number of applicants who were deemed ineligible to receive benefits under the program because of a positive test for controlled substances;

(2) The number of applicants who declines testing;

(3) The number of applicants that are deemed ineligible because of a conviction of a drug-related offense or felony as described in this section; and

(4) The number of those applicants that receive benefits after successful completion of a drug treatment program as specified in this section.”

On motion of Delegate Cowles, the bill was laid upon the table.

Delegate Lane filed a form to be recorded in the Journal as having voted “NAY” on the motion to table Com. Sub. for H. B. 2021.

**Com. Sub. for H. B. 2148**, Conforming the motor vehicle law of this state to the requirements of section 1405 of the federal Transportation Equity Act for the Twenty-first Century; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2233**, Requiring that legislative rules be reviewed five years after initial approval by the Legislative Rule-Making Review Committee and the Legislative Auditor’s Office; on second reading, coming up in regular order, was read a second time.

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

**“ARTICLE 3. RULE-MAKING.**

**§29A-3-16. Legislative review of procedural rules, interpretive legislative rules.**

(a) The Legislative Rule-Making Review Committee may review any procedural rules, interpretive rules or existing legislative rules and

may make recommendations concerning such rules to the Legislature, or to the agency or to both the Legislature and the agency.

(b) The Legislative Rule-Making Committee with the assistance of the Legislative Auditor shall review any rule promulgated in or after 2015 within at least five years from its effective date, and make recommendations to the Legislature for modification or repeal of any such rule as the Legislative Rule-Making Committee may determine to be necessary. Areas of review shall include, but not be limited to, the following:

(1) Whether the rule is achieving its purpose; and

(2) Whether the rule should be eliminated, continued or amended.

(c) Following the review, the Legislative Rule-Making Committee and the Legislative Auditor shall submit to the Joint Committee on Government and Finance a summary of their findings and recommendations.”

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2263**, Providing guidance for prosecuting attorneys in cases involving abused and neglected children; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2366**, Relating generally to the solicitation of minors; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2429**, Requiring a convicted sex offender who volunteers for an organization whose volunteers have contact with minors to inform that organization of his or her conviction; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2479**, Relating to the powers and authority of state and local law enforcement to enforce underage drinking laws at private clubs; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2518**, Requiring insurers issuing group accident and sickness insurance policies to certain employers to furnish claims loss experience to policyholders; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2549**, Relating to the preparation and publication of county financial statements; on second reading, coming up in regular order, was read a second time.

Delegate Ihle moved to amend the bill on page three, subsection (e), line one, by striking out all of subsection (e) and inserting in lieu thereof the following:

“(e) By October 15 of every fiscal year, each county commission shall publish a notice that the financial statement required by this section is available to the public, free of charge, at the county’s primary office and on a website maintained by the county. The notice shall contain the office address and the website address where the financial statement is available. The county shall publish the notice annually as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The area of publication is the county.”

Delegate Reynolds requested to be excused from voting on the passage of Com. Sub. for H. B. 2557 under the provisions of House Rule 49.

The Speaker replied that the Delegate may have a direct interest therein but that it would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Gentleman from voting.



On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 324**), and there were—yeas 39, nays 57, absent and not voting 4, with the yeas and absent and not voting being as follows:

YEAS: Anderson, Arvon, Azinger, Bates, Blair, Butler, Canterbury, Duke, Ellington, Espinosa, Faircloth, Folk, Foster, Gearheart, Hill, Householder, Ihle, Kelly, Kessinger, Kurcaba, Lynch, McGeehan, Moffatt, E. Nelson, J. Nelson, Overington, Pasdon, Perry, L. Phillips, R. Smith, Storch, Upson, Wagner, Walters, Waxman, Weld, Westfall, B. White and Zatezalo.

ABSENT AND NOT VOTING: Deem, Ferro, Hanshaw and Morgan.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

The bill was then ordered to ordered to engrossment and third reading.

**Com. Sub. for H. B. 2557**, Clarifying that an insured driver of a motor vehicle is covered by the driver's auto insurance policy when renting or leasing a vehicle; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2595**, Relating to certificates of need for the development of health facilities in this state; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2636**, Exempting information contained in a concealed weapon permit application from the Freedom of Information Act; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2645**, Expanding the availability of the Underwood-Smith Teacher Loan Assistance Program; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Education, was reported by the Clerk and adopted, amending the bill on page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“That §18C-4A-1, §18C-4A-2 and §18C-4A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows

**ARTICLE 4A. UNDERWOOD-SMITH TEACHER LOAN ASSISTANCE PROGRAM.**

**§18C-4A-1. Selection criteria and procedures for loan assistance.**

(a) The Governor shall designate the Higher Education Student Financial Aid Advisory Board created by section five, article one of this chapter to select recipients to receive Underwood-Smith Teacher Loan Assistance Awards.

~~(b) The advisory board shall make decisions regarding loan assistance pursuant to section one, article four of this chapter and the following criteria:~~

~~(A) Eligibility for an award is limited to a teacher who has earned a teaching degree and is certified to teach a subject area of critical need in the public schools of West Virginia. A certified teacher in a subject area of critical need who is enrolled in an advanced in-field degree course or who has earned an advanced in-field degree may apply for an award to be paid toward current education student loans;~~

~~(B) To be eligible for a loan award, a teacher shall agree to teach, or shall currently be teaching, a subject area of critical need or in a state school or geographic area of the state identified as an area of critical need. pursuant to section one, article four of this chapter The~~

advisory board shall make decisions regarding loan assistance pursuant to section one, article four of this chapter.

(c) In accordance with the rule promulgated pursuant to section one, article four of this chapter, the Vice Chancellor for Administration shall develop additional eligibility criteria and procedures for the administration of the loan program.

(d) The Vice Chancellor for Administration shall make available program application forms to public and private schools in the state via the website of the commission and the State Department of ~~Education's~~ websites Education and in other locations convenient to potential applicants.

**§18C-4A-2. Loan assistance agreement.**

(a) Before receiving an award, each eligible teacher shall enter into an agreement with the Vice Chancellor for Administration and shall meet the following criteria:

(1) Provide the commission with evidence of compliance with subsection (b), section four, article four of this chapter;

(2) Teach in a subject area of critical need or in a school or geographic area of critical need full time under contract with a county board for a period of two school years for each year for which loan assistance is received pursuant to this article. The Vice Chancellor for Administration may grant a partial award to an eligible recipient whose contract term is for less than a full school year pursuant to criteria established by commission rule.

(3) Acknowledge that an award is to be paid to the recipient's ~~educational~~ student loan institution, not directly to the recipient, and only after the commission determines that the recipient has complied with all terms of the agreement; and

(4) Repay all or part of an award received pursuant to this article if the award is not paid to the ~~educational~~ student loan institution or if the recipient does not comply with the other terms of the agreement.

(b) Each loan agreement shall disclose fully the terms and conditions under which an award may be granted pursuant to this article and under which repayment may be required. The agreement also is subject to and shall include the terms and conditions established by section five, article four of this chapter.

**§18C-4A-3. Amount and duration of loan assistance; limits.**

(a) Each award recipient is eligible to receive loan assistance of up to ~~\$2,000~~ \$3,000 annually, subject to limits set forth in subsection (b) of this section:

(1) If the recipient has taught ~~math or science~~ for a full school year under contract with a county board in a subject area of critical need or in a school or geographic area of critical need; and

(2) If the recipient otherwise has complied with the terms of the agreement and with applicable provisions of this article and article four of this chapter, and any rules promulgated pursuant thereto.

(b) The recipient is eligible for renewal of loan assistance only during ~~the~~ periods when the recipient is under contract with a county board to teach in a subject area of critical need or in a school or geographic area of critical need and complies with other criteria and conditions established by rule, except that a teacher who is teaching under a contract in a position that no longer meets the definition of critical need under rules established in accordance with section one, article four of this chapter is eligible for renewal of loan assistance until the teacher leaves his or her current position.

(c) ~~No~~ A recipient may not receive loan assistance pursuant to this article which accumulates in excess of \$15,000.”

The bill was then ordered to engrossment and third reading.

**H. B. 2664**, Creating “Andrea and Willy’s Law”; increasing certain penalties for driving under the influence of alcohol, controlled substances or drugs; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page one, following the enacting section, by striking out the remainder of the bill and inserting in lieu thereof the following:

**“ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

**§17C-5-2. Driving under the influence of alcohol, controlled substances or drugs; penalties.**

(a) Legislative findings and intent-

(1) Despite aggressive public campaigns and warnings of the dangers of driving under the influence of alcohol or drugs, the continued rise in impaired driving in this state possess a threat to the public utilizing the roads in this state.

(2) Given the public safety concerns, there is a compelling state interest to require appropriate legislative action and penalties to stem this continuing threat.

(3) In recognition and continued memory of the lives and families that have been so tragically affected by impaired driving in this state, this section shall hereafter be known as ‘Andrea and Willy’s Law’.

(b) 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;

(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) 'Serious Bodily Injury' means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(c) Any person who drives a vehicle in this state while he or she is in an impaired state and proximately causes the death of any person 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 fifteen years and shall be fined not less than \$5,000 nor more than \$20,000: *Provided*, That any death charged under this subsection must occur within one year of the offense and be proximately caused by the driver's impaired state.

(d) Any person who drives a vehicle in this state while he or she is in an impaired state and proximately causes serious bodily injury to any person 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 ten years and shall be fined not less than \$2,000 nor more than \$15,000.

(e) Any person who drives a vehicle in this state while he or she is in an impaired state and 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 more than one year, or fined not less than \$1,000 nor more than \$5,000, or both.

(f) Any person who drives a vehicle in this state while he or she is in an impaired state, but less than fifteen hundredths of one percent 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 and shall be fined not less than \$200 nor more than \$1,000: *Provided*, That such jail term shall include actual confinement of not less than twenty-four 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.

(g) Any person who drives a vehicle 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 three months nor more than nine months, and shall be fined not less than \$1,000 nor more than \$5,000: *Provided*, That such jail term shall include actual confinement of not less than forty-eight 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.

(h) Any person who drives a vehicle 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 sixteenth birthday is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than six months nor more than a year, and shall be fined not less than \$1,000 nor more than \$5,000: *Provided*, That such jail term shall include actual confinement of not less than forty-eight hours: *Provided, however*, That a person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(i) Any person who knowingly permits his or her vehicle to be driven in this state by any other person in an impaired state 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 and shall be fined not less than \$200 nor more than \$1,000.

(j) Offenses by persons under the age of twenty-one- (1) Any person under the age of twenty-one years who drives a vehicle 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, 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 and shall be fined not less than \$200 nor more than \$1,000: *Provided*, That such jail term shall include actual confinement of not less than twenty-four 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.

(2) 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 not less than six months nor more than a year, and shall be fined not less than \$1,000 nor more than \$2,500: *Provided*, That such jail term shall include actual confinement of not less than forty-eight hours: *Provided, however*, That a person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(3) 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 Motor Vehicle Alcohol Test and Lock Program as provided in section three-a, article five-a of this chapter. 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.

(4) A person arrested and charged with an offense under subsection (a), (b), (c), (d), (e), (f), (g) or (h) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(k) Subsequent Offenses- (1) Any person violating any provision of subsection (e), (f), (g), (h) or (i) of this section, for the second offense under this section, is guilty of a misdemeanor and, upon conviction thereof, and shall be confined in jail for not more than one year, and shall be fined not less than \$2,500 nor more than \$5,000.

(2) A person violating any provision of subsection (e), (f), (g), (h) or (i) of this section, for the third or any subsequent offense under this section, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than five years and the court may, in its discretion, impose a fine of not less than \$5,000 nor more than \$10,000.

(3) For purposes of this subsection relating to second, third and subsequent offenses, the following events shall be regarded as offenses under this section:

(i) Any conviction under the provisions of subsection (c), (d), (e), (f), (g) or (h) of this section or under a prior enactment of this section for an offense which occurred within the ten-year period immediately preceding the date of arrest in the current proceeding;

(ii) 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 relates to the operation of a vehicle while under the influence of alcohol or a controlled substance, and which offense occurred within the ten-year period immediately preceding the date of arrest in the current proceeding; and,

(iii) Any period of conditional probation imposed pursuant section two-b of this article for violation of subsection (f) of this article, which violation occurred within the ten-year period immediately preceding the date of arrest in the current proceeding.

(l) A person may be charged in a warrant or indictment or information for a second or subsequent offense under 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 section two-b of this article.

(m) The fact that any person charged with a violation of subsection (a), (b), (c), (d), (e), (f), (g), (h) or (i) of this section, or any person permitted to drive as described under subsection (j) 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 (a), (b), (c), (d), (e), (f), (g), (h), (i) or (j) of this section.

(n) For purposes of this section, the term “controlled substance” has the meaning ascribed to it in chapter sixty-a of this code.

(o) 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 article eleven-a, chapter sixty-two 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 section two-b of this article to persons adjudicated thereunder. An order for home detention by the court pursuant to the provisions of article eleven-b of said chapter 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 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 section five, article eleven-b, chapter sixty-two 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 ten days of the total period of home confinement ordered and the offender may not leave home for those ten days notwithstanding section five, article eleven-b, chapter sixty-two of this code.”

The bill was then ordered to engrossment and third reading.

**H. B. 2712**, Relating to employment and privacy protection; on second reading, coming up in regular order, was read a second time.

On motion of Delegates Skinner and Foster, the bill was amended on page four, section three, line thirty-one, following the words “by the employer”, by striking out the comma and inserting in lieu thereof, the word “or”.

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2717**, Relating to hiring of public school employees; on second reading, coming up in regular order, was read a second time.

On motion of Delegates Espinosa, Duke, Statler and Cooper, the bill was amended on page thirty-eight, section §18A-4-7a, line 267, by striking out the word “ten” and inserting in lieu thereof the word “five”.

And

On page thirty-eight, section §18A-4-7a, line 281, by striking out the word “ten-day” and inserting in lieu thereof the word “five-day”.

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2756**, Authorizing appointees or employees of the Alcohol Beverage Control Commissioner to carry concealed handguns; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2795**, Providing that when a party’s health condition is at issue in a civil action, medical records and releases for medical information may be requested and required without court order; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2796**, Providing paid leave for certain state officers and employees during a declared state of emergency; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2805**, Transferring to an adult correctional facility any juvenile whose sentence runs beyond his or her eighteenth birthday; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2810**, Implementing the West Virginia Property Rescue Initiative to reduce the number of properties posing a threat to public health and safety; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2828**, Modifying the requirements that allow a child witness to testify by closed circuit television; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2867**, Requiring recommendations for higher education course credit transfer; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2892**, Authorizing certain legislative rules regarding higher education; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2902**, West Virginia ABLE Act; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2926**, Relating to deferral charges in connection with a consumer credit sale or consumer loan; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2931**, Adding drugs to the classification of schedule I drugs; on second reading, coming up in regular order, was read a second time.

Delegates Reynolds, Pushkin and Eldridge moved to amend the bill on page one, following the enacting clause, by inserting a new enacting section and new article, all to read as follows:

“That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-8A-1, §16-8A-2, §16-8A-3, §16-8A-4, §16-8A-5, §16-8A-6, §16-8A-7, §16-8A-8, §16-8A-9, §16-8A-10, §16-8A-11, §16-8A-12, §16-8A-13, §16-8A-14, §16-8A-15, §16-8A-16, §16-8A-17, §16-8A-18, §16-8A-19, §16-8A-20, §16-8A-21, §16-8A-22, §16-8A-23 and that §16-8A-24 of said code be amended and reenacted, all to read as follows:

## **“CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 8A. THE COMPASSIONATE USE ACT FOR MEDICAL CANNABIS.**

#### **§16-8A-1. Findings.**

(a) Marijuana's recorded use as a medicine goes back nearly five thousand years. Modern medical research has confirmed the beneficial uses for marijuana in treating or alleviating the pain, nausea and other symptoms associated with a variety of debilitating medical conditions, including cancer, multiple sclerosis and HIV/AIDS, as found by the National Academy of Sciences' Institute of Medicine in March 1999.

(b) Studies, published since the 1999 Institute of Medicine report, have continued to show the therapeutic value of marijuana in treating a wide array of debilitating medical conditions. These include relief of the neuropathic pain caused by multiple sclerosis, HIV/AIDS and other illnesses and injuries that often fails to respond to conventional treatments and relief of nausea, vomiting and other side effects of drugs used to treat HIV/AIDS and hepatitis C, increasing the chances of patients continuing on life-saving treatment regimens.

(c) Marijuana has many currently accepted medical uses in the United States, having been recommended by thousands of licensed physicians to more than one million patients in states with medical marijuana laws. Marijuana's medical utility has been recognized by a wide range of medical and public health organizations, including the American Academy of HIV Medicine, the American College of Physicians, the American Nurses Association, the American Public Health Association, the Leukemia & Lymphoma Society and many others.

(d) Data from the Federal Bureau of Investigation's Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately ninety-nine out of every one hundred marijuana arrests in the United States are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill patients who have a medical need to use marijuana.

(e) Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Massachusetts, Michigan, Montana, Nevada,

New Hampshire, New Jersey, New Mexico, Oregon, Vermont, Rhode Island, Washington state and the District of Columbia have removed state-level criminal penalties from the medical use and cultivation of marihuana. West Virginia joins in this effort for the health and welfare of its citizens.

(f) States are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. Therefore, compliance with this article does not put the State of West Virginia in violation of federal law.

(g) State law should make a distinction between the medical and nonmedical uses of marihuana. Hence, the purpose of this article is to protect patients with debilitating medical conditions, as well as their practitioners and providers, from arrest and prosecution, criminal and other penalties and property forfeiture, if the patients engage in the medical use of marihuana.

#### **§16-8A-2. Definitions.**

For purposes of this article, unless the context otherwise requires:

(a) ‘Bona fide practitioner-patient relationship’ means:

(1) A practitioner and patient have a treatment or consulting relationship, during the course of which the physician has completed a full assessment of the patient’s medical history and current medical condition, including an appropriate personal physical examination;

(2) The practitioner has consulted with the patient with respect to the patient’s debilitating medical condition; and

(3) The physician is available to or offers to provide follow-up care and treatment to the patient, including, but not limited to, patient examinations.

(b) ‘Cardholder’ means a qualifying patient or a designated caregiver who has been issued and possesses a valid registry identification card.

(c) ‘Compassion center agent’ means a principal officer, board member, employee or agent of a registered compassion center who is twenty-one years of age or older and has not been convicted of a disqualifying felony offense.

(d) ‘Debilitating medical condition’ means:

(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn’s disease, agitation of Alzheimer’s disease, Parkinson’s disease, post-traumatic stress disorder, depression, anxiety, addiction to opiates or amphetamines or the treatment of these conditions;

(2) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: Cachexia or wasting syndrome; severe or chronic pain; severe nausea; seizures; or severe and persistent muscle spasms, including, but not limited to, those characteristic of multiple sclerosis; or

(3) Any other medical condition or its treatment added by the department, as provided in section six of this article.

(e) ‘Department’ means the West Virginia Department of Health and Human Resources or its successor agency.

(f) ‘Designated caregiver’ means a person who:

(1) Is at least twenty-one years of age;

(2) Has agreed to assist with a patient’s medical use of marihuana;

(3) Has not been convicted of a disqualifying felony offense; and

(4) Assists no more than five qualifying patients with their medical use of marihuana.

(g) ‘Disqualifying felony offense’ means:



(1) A violent crime that was classified as a felony in the jurisdiction where the person was convicted; or

(2) A violation of a state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted, not including:

(A) An offense for which the sentence, including any term of probation, incarceration or supervised release was completed ten or more years earlier; or

(B) An offense that consisted of conduct for which this article would likely have prevented a conviction, but the conduct either occurred prior to the enactment of this article or was prosecuted by an authority other than the State of West Virginia.

(h) ‘Enclosed, locked facility’ means a closet, room, greenhouse, building or other enclosed area that is equipped with locks or other security devices that permit access only by the cardholder allowed to cultivate the plants or, in the case of a registered compassion center, the compassion center agents working for the registered compassion center. Two or more registered qualifying patients or registered designated caregivers who reside in the same dwelling and have a registry identification card that removes state penalties for marihuana cultivation may share one enclosed, locked facility for cultivation.

(i) ‘Marihuana’ has the meaning given that term in section 101, article one, chapter sixty-a of this code.

(j) ‘Mature marihuana plant’ means a marihuana plant with one or more of the following characteristics:

(1) The plant has flowers;

(2) The plant is twelve or more inches in height; or

(3) The plant is twelve inches or greater in diameter.

(k) ‘Medical use’ includes the acquisition, administration, cultivation or manufacture in an enclosed, locked facility, delivery, possession, transfer, transportation or use of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient’s debilitating medical condition or symptoms associated with the patient’s debilitating medical condition. It does not include cultivation by a visiting qualifying patient or cultivation by a registered designated caregiver or registered qualifying patient who is not designated as being allowed to cultivate.

(l) ‘Practitioner’ means a person who is licensed with authority to prescribe drugs to humans under the provisions of section one-b, article five, chapter thirty of this code, except as otherwise provided in this subsection. If the qualifying patient’s debilitating medical condition is post-traumatic stress disorder, the practitioner must be a licensed psychiatrist. In relation to a visiting qualifying patient, ‘practitioner’ means a person who is licensed with authority to prescribe drugs to humans in the state of the patient’s residence.

(m) ‘Qualifying patient’ means a person who has been diagnosed by a practitioner as having a debilitating medical condition.

(n) ‘Registered compassion center’ means a not-for-profit entity registered pursuant to section fourteen of this article that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marihuana, paraphernalia or related supplies and educational materials to registered qualifying patients.

(o) ‘Registry identification card’ means a document issued by the department that identifies a person as a registered qualifying patient or registered designated caregiver.

(p) ‘Registered safety compliance facility’ means an entity registered under section fifteen by the department to provide one or more of the following services:

(1) Testing marihuana produced for medical use, including for potency and contaminants; and

(2) Training cardholders and compassion center agents. The training may include, but need not be limited to, information related to one or more of the following:

(A) The safe and efficient cultivation, harvesting, packaging, labeling and distribution of marihuana;

(B) Security and inventory accountability procedures; and

(C) Up-to-date scientific and medical research findings related to medical marihuana.

(q) ‘Safety compliance facility agent’ means a principal officer, board member, employee or agent of a registered safety compliance facility who is twenty-one years of age or older and has not been convicted of a disqualifying felony offense.

(r) ‘Seedling’ means a marihuana plant that has no flowers, is less than twelve inches in height and is less than twelve inches in diameter.

(s) ‘Usable marihuana’ means the flowers of the marihuana plant and any mixture or preparation thereof, but does not include the seeds, stalks and roots of the plant. It does not include the weight of any nonmarihuana ingredients combined with marihuana, including ingredients added to prepare a topical administration, food or drink.

(t) ‘Verification system’ means a phone or Web-based system established and maintained by the department that is available to law-enforcement personnel and compassion center agents on a twenty-four-hour basis for verification of registry identification cards.

(u) ‘Visiting qualifying patient’ means a person who:

(1) Has been diagnosed with a debilitating medical condition;

(2) Possesses a valid registry identification card, or its equivalent, that was issued pursuant to the laws of another state, district, territory, commonwealth, insular possession of the United States or country recognized by the United States that allows the person to use marihuana for medical purposes in the jurisdiction of issuance; and

(3) Is not a resident of West Virginia or who has been a resident of West Virginia for less than thirty days.

(v) ‘Written certification’ means a document dated and signed by a practitioner, stating that in the practitioner’s professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient’s debilitating medical condition or symptoms associated with the debilitating medical condition. A written certification shall affirm that it is made in the course of a bona fide practitioner-patient relationship and shall specify the qualifying patient’s debilitating medical condition.

### **§16-8A-3. Protections for the medical use of cannabis.**

(a) A registered qualifying patient is not subject to arrest, prosecution or denial of any right or privilege including, but not limited to, civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for the medical use of marihuana pursuant to this article, if the registered qualifying patient does not possess more than:

(1) Six ounces of usable marihuana; and

(2) Twelve mature marihuana plants and twelve seedlings, if the qualifying patient has not specified that a designated caregiver will be allowed under state law to cultivate marihuana for the qualifying patient.

(b) A registered designated caregiver is not subject to arrest, prosecution or denial of any right or privilege including, but not limited

to, civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau:

(1) For assisting a registered qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana if the designated caregiver does not possess more than:

(A) Six ounces of usable marihuana for each qualifying patient to whom the registered caregiver is connected through the department's registration process; and

(B) Twelve mature marihuana plants and twelve seedlings for each registered qualifying patient who has specified that the designated caregiver will be allowed under state law to cultivate marihuana for the qualifying patient.

(2) For receiving compensation for costs associated with assisting a registered qualifying patient's medical use of marihuana if the registered designated caregiver is connected to the registered qualifying patient through the department's registration process.

(c) All mature marihuana plants and seedlings possessed pursuant to this section must be kept in an enclosed, locked facility, unless they are being transported to a permissible location, including because the cardholder is moving, the registered qualifying patient has changed his or her designation of who can cultivate or the plants are being given to someone allowed to possess them pursuant to this article.

(d) A visiting qualifying patient is not subject to arrest, prosecution or denial of any right or privilege including, but not limited to, civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for the medical use of marihuana pursuant to this article if the visiting qualifying patient does not possess more than six ounces of usable marihuana.

(e) A registered qualifying patient, visiting qualifying patient or registered designated caregiver is not subject to arrest, prosecution or denial of any right or privilege including, but not limited to, civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau for:

(1) Possession of marihuana that is incidental to medical use, but is not mature marihuana plants, seedlings or usable marihuana as defined in this article;

(2) Selling, transferring, or delivering marihuana seeds produced by the registered qualifying patient, visiting qualifying patient or registered designated caregiver to a registered compassion center;

(3) Transferring marihuana to a registered safety compliance facility for testing; or

(4) Giving marihuana to a registered qualifying patient, a registered compassion center or a registered designated caregiver for a registered qualifying patient's medical use where nothing of value is transferred in return or for offering to do this, if the person giving the marihuana does not knowingly cause the recipient to possess more marihuana than is permitted by this section.

(f) (1) There is a presumption that a qualifying patient is engaged in, or a designated caregiver is assisting with, the medical use of marihuana in accordance with this article if the qualifying patient or designated caregiver:

(A) Is in possession of a valid registry identification card or, in the case of a visiting qualifying patient, its equivalent; and

(B) Is in possession of an amount of marihuana that does not exceed the amount allowed under the provisions of this section.

(2) The presumption may be rebutted by evidence that conduct related to marihuana was not for the purpose of treating or alleviating

the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition in compliance with this article.

(g) A practitioner is not subject to arrest, prosecution or penalty in any manner or denied any right or privilege including, but not limited to, civil penalty or disciplinary action by the West Virginia Board of Medicine or by any other occupational or professional licensing board or bureau, solely for providing written certifications or for otherwise stating that, in the practitioner's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition: *Provided*, That nothing in this article prevents a practitioner from being sanctioned for:

(1) Issuing a written certification to a patient with whom the practitioner does not have a bona fide practitioner-patient relationship, or

(2) Failing to properly evaluate a patient's medical condition or otherwise violating the standard of care.

(h) A person is not subject to arrest, prosecution or denial of any right or privilege including, but not limited to, civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for:

(1) Selling marihuana paraphernalia to a cardholder upon presentation of a registry identification card in the recipient's name that has not expired or to a compassion center agent or registered safety compliance facility agent upon presentation of an unexpired copy of the entity's registration certificate;

(2) Being in the presence or vicinity of the medical use of marihuana as allowed under this article; or

(3) Assisting a registered qualifying patient with using or administering marihuana. For purposes of illustration and not limitation, this includes preparing a vaporizer for a registered qualifying patient's use or brewing tea for a registered qualifying patient. It does not include providing marihuana to a patient that the patient did not already possess.

(i) A registered compassion center is not subject to prosecution under state or municipal law, search or inspection, except by the department pursuant to subsection (o) of this section, seizure or penalty in any manner or be denied any right or privilege including, but not limited to, civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this article and department regulations to: Sell marihuana seeds to similar entities that are registered to dispense marihuana for medical use in other jurisdictions, acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, sell or dispense marihuana or related supplies and educational materials to registered qualifying patients and visiting qualifying patients who have designated the compassion center to provide for them, to registered designated caregivers on behalf of the registered qualifying patients who have designated the registered compassion center or to other registered compassion centers.

(j) A registered compassion center agent is not subject to prosecution, search or penalty in any manner or be denied any right or privilege including, but not limited to, civil penalty or disciplinary action by a court or business licensing board or entity, for working for a registered compassion center pursuant to this article and department rules to acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, sell or dispense marihuana or related supplies and educational materials to registered qualifying patients who have designated the registered compassion center to provide for them, to registered designated caregivers on behalf of the registered qualifying patients who have designated the registered compassion center, or to other registered compassion centers.



(k) A registered safety compliance facility and registered safety compliance facility agents acting on behalf of a registered safety compliance facility are not subject to prosecution, search, except by the department pursuant to subsection (o) of this section, seizure or penalty in any manner or be denied any right or privilege including, but not limited to, civil penalty or disciplinary action by a court or business licensing board or entity, solely for acting in accordance with this article and department regulations to provide the following services:

(1) Acquiring or possessing marihuana obtained from registered cardholders or registered compassion centers;

(2) Returning the marihuana to registered cardholders or registered compassion centers;

(3) Transporting marihuana that was produced by registered cardholders and registered compassion centers to or from those registered cardholders and registered compassion centers;

(4) The production or sale of educational materials related to medical marihuana;

(5) The production, sale or transportation of equipment or materials other than marihuana to registered compassion centers or cardholders, including lab equipment and packaging materials, that are used by registered compassion centers and cardholders;

(6) Testing of medical marihuana samples, including for potency, pesticides, mold and contamination;

(7) Providing training to cardholders and prospective compassion center agents, provided that only cardholders may be allowed to possess or cultivate marihuana and any possession or cultivation of marihuana must occur on the location registered with the department; and

(8) Receiving compensation for actions allowed under this section.

(l) Any marihuana, marihuana paraphernalia, licit property or interest in licit property that is possessed, owned or used in connection with the medical use of marihuana as allowed under this article, or acts incidental to such use, may not be seized or forfeited. This article does not prevent the seizure or forfeiture of marihuana exceeding the amounts allowed under this article, nor does it prevent seizure or forfeiture if the basis for the action is unrelated to the marihuana that is possessed, manufactured, transferred, or used pursuant to this article.

(m) Mere possession of, or application for, a registry identification card or registration certificate does not constitute probable cause or reasonable suspicion, nor may it be used to support the search of the person, property or home of the person possessing or applying for the registry identification card. The possession of, or application for, a registry identification card does not preclude the existence of probable cause if probable cause exists on other grounds.

(n) For the purposes of West Virginia state law, the medical use of marihuana by a cardholder or registered compassion center shall be considered lawful as long as it is in accordance with this article.

(o) A law-enforcement officer may not be employed by an agency which receives state or local government funds nor may expend any state or local resources, including the officer's time, to effect any arrest or seizure of marihuana, or conduct any investigation, on the sole basis of activity the officer believes to constitute a violation of the federal Controlled Substances Act if the officer has reason to believe that such activity is in compliance with state medical marihuana laws, nor may any such officer expend any state or local resources, including the officer's time, to provide any information or logistical support related to such activity to any federal law-enforcement authority or prosecuting entity.

(p) An attorney is not subject to disciplinary action by the State Bar Association or other professional licensing association for providing legal assistance to prospective or registered compassion

centers, prospective or registered safety compliance facilities or others related to activity that is no longer subject to criminal penalties under state law pursuant to this article.

**§16-8A-4. Limitations.**

(a) This article does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for engaging in, the following conduct:

(1) Undertaking any task under the influence of marihuana, when doing so would constitute negligence or professional malpractice;

(2) Possessing marihuana, or otherwise engaging in the medical use of marihuana:

(A) In a school bus;

(B) On the grounds of any preschool or primary or secondary school; or

(C) In any correctional facility.

(3) Smoking marihuana:

(A) On any form of public transportation; or

(B) In any public place.

(4) Operating, navigating or being in actual physical control of any motor vehicle, aircraft or motorboat while under the influence of marihuana, except that a registered qualifying patient or visiting qualifying patient may not be considered to be under the influence of marihuana solely because of the presence of metabolites or components of marihuana that appear in insufficient concentration to cause impairment.

(5) Using marihuana, if that person does not have a serious or debilitating medical condition.

**§16-8A-5. Discrimination prohibited.**

(a) Except as provided in this article, a registered qualifying patient who uses marihuana for medical purposes shall be afforded all the same rights under state and local law, including those guaranteed under the provisions of article eleven, chapter five of this code relating to human rights, as the individual would have been afforded if he or she were solely prescribed pharmaceutical medications, as it pertains to:

(1) Any interaction with a person's employer;

(2) Drug testing by one's employer; or

(3) Drug testing required by any state or local law, agency, or government official.

(b) (1) The rights provided by this section do not apply to the extent that they conflict with an employer's obligations under federal law or regulations or to the extent that they would disqualify an employer from a monetary or licensing-related benefit under federal law or regulations.

(2) An employer is not required to allow the ingestion of marihuana in any workplace or to allow any employee to work while under the influence of marihuana. A registered qualifying patient may not be considered to be under the influence of marihuana solely because of the presence of metabolites or components of marihuana that appear in insufficient concentration to cause impairment.

(c) A school or landlord may not refuse to enroll or lease to, or otherwise penalize, a person solely for his or her status as a registered qualifying patient or a registered designated caregiver, unless failing to do so would violate federal law or regulations or cause the school or

landlord to lose a monetary or licensing-related benefit under federal law or regulations.

(d) For the purposes of medical care, including organ transplants, a registered qualifying patient's authorized use of marihuana in accordance with this article is the equivalent of the authorized use of any other medication used at the direction of a physician, and does not constitute the use of an illicit substance or otherwise disqualify a qualifying patient from needed medical care.

(e) A person otherwise entitled to custody of or visitation or parenting time with a minor may not be denied such a right and there is no presumption of neglect or child endangerment for conduct allowed under this article unless the person's actions in relation to marihuana were such that they created an unreasonable danger to the safety of the minor as established by clear and convincing evidence.

(f) A school, landlord or employer may not be penalized or denied any benefit under state law for enrolling, leasing to or employing a cardholder.

#### **§16-8A-6. Addition of debilitating medical conditions.**

Any citizen may petition the department to add conditions or treatments to the list of debilitating medical conditions listed in section two-d of this article. The department shall consider petitions in the manner required by department rule, including public notice and hearing. The department shall approve or deny a petition within one hundred eighty days of its submission. The approval or denial of any petition is a final decision of the department subject to judicial review. Jurisdiction and venue are vested in the circuit court.

#### **§16-8A-7. Acts not required; acts not prohibited.**

(a) Nothing in this article requires:

(1) A government medical assistance program or private insurer to reimburse a person for costs associated with the medical use of marihuana, or

(2) Any person or establishment in lawful possession of property to allow a guest, client, customer or other visitor to smoke marihuana on or in that property.

(b) Nothing in this article prohibits an employer from disciplining an employee for ingesting marihuana in the workplace or working while under the influence of marihuana.

**§16-8A-8. Registration of qualifying patients and designated caregivers.**

(a) The department shall issue registry identification cards to qualifying patients who submit the following, in accordance with the department's rules:

(1) A written certification issued by a practitioner within ninety days immediately preceding the date of an application;

(2) If the patient is not a visiting qualifying patient, documentation required by department rules to reasonably establish proof of residency in West Virginia;

(3) If the patient is a visiting qualifying patient, a copy of his or her registry identification card or its equivalent that was issued pursuant to the laws of the jurisdiction of the person's residence;

(4) The application or renewal fee;

(5) The name, address and date of birth of the qualifying patient, except that if the applicant is homeless no address is required;

(6) The name, address and telephone number of the qualifying patient's practitioner;

(7) The name, address and date of birth of the designated caregiver, if any, chosen by the qualifying patient, except that a visiting qualifying patient may not have a designated caregiver;

(8) The name of the registered compassion center the qualifying patient designates, if any;

(9) If the qualifying patient designates a designated caregiver, a designation as to whether the qualifying patient or designated caregiver will be allowed under state law to possess and cultivate marihuana plants for the qualifying patient's medical use;

(10) A statement signed by the qualifying patient, pledging not to divert marihuana to anyone who is not allowed to possess marihuana pursuant to this article; and

(11) A signed statement from the designated caregiver, if any, agreeing to be designated as the patient's designated caregiver and pledging not to divert marihuana to anyone who is not allowed to possess marihuana pursuant to this article.

(b) The application for qualifying patients' registry identification cards shall ask whether the patient would like the department to notify him or her of any clinical studies needing human subjects for research on the medical use of marihuana. The department shall notify interested patients if it is notified of studies that will be conducted in the United States.

**§16-8A-9. Issuance of registry identification cards.**

(a) Except as provided in subsection (b) of this section, the department shall:

(1) Verify the information contained in an application or renewal submitted pursuant to this article, and approve or deny an application or renewal, within fifteen days of receiving a completed application or renewal application;

(2) Issue registry identification cards to a qualifying patient and his or her designated caregiver, if any, within five days of approving the

application or renewal. A designated caregiver must have a registry identification card for each of his or her qualifying patients; and

(3) Enter the registry identification number of the registered compassion center the patient designates into the verification system.

(b) The department may not issue a registry identification card to a qualifying patient who is younger than eighteen years of age unless:

(1) The qualifying patient's practitioner has explained the potential risks and benefits of the medical use of marihuana to the custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient; and

(2) The custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient consents in writing to:

(A) Allow the qualifying patient's medical use of marihuana;

(B) Serve as the qualifying patient's designated caregiver; and

(C) Control the acquisition of the marihuana, the dosage and the frequency of the medical use of marihuana by the qualifying patient.

**§16-8A-10. Denial of registry identification cards.**

(a) The department may deny an application or renewal of a qualifying patient's registry identification card only if the applicant:

(1) Did not provide the required information or materials;

(2) Previously had a registry identification card revoked; or

(3) Provided false or falsified information.

(b) The department may deny an application or renewal for a designated caregiver chosen by a qualifying patient whose registry identification card was granted only if:



(1) The designated caregiver does not meet the requirements of subsection (f) of section two of this article;

(2) The applicant did not provide the information required;

(3) The designated caregiver previously had a registry identification card revoked; or

(4) The applicant or the designated caregiver provides false or falsified information.

(c) The department may conduct a background check of the prospective designated caregiver in order to carry out this provision.

(d) The department shall notify the qualifying patient who has designated someone to serve as his or her designated caregiver if a registry identification card will not be issued to the designated caregiver.

(e) Denial of an application or renewal is considered a final department action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the circuit court.

**§16-8A-11. Registry identification cards.**

(a) Registry identification cards shall contain all of the following:

(1) The name of the cardholder;

(2) A designation of whether the cardholder is a designated caregiver or qualifying patient;

(3) The date of issuance and expiration date of the registry identification card;

(4) A random 10-digit alphanumeric identification number, containing at least four numbers and at least four letters, that is unique to the cardholder;

(5) If the cardholder is a designated caregiver, the random 10-digit alphanumeric identification number of the qualifying patient the designated caregiver is receiving the registry identification card to assist;

(6) A clear designation as to whether the cardholder will be allowed under state law to possess the marihuana plants for the qualifying patient's medical use, which shall be determined based solely on the qualifying patient's preference;

(7) A photograph of the cardholder, if the department's regulations require one; and

(8) The phone number or Web address for the verification system.

(b) (1) Except as provided in this subsection, the expiration date shall be one year after the date of issuance.

(2) If the practitioner stated in the written certification that the qualifying patient would benefit from marihuana until a specified earlier date, then the registry identification card shall expire on that date.

(c) The department may electronically store in the card all of the information listed in subsection (a), along with the address and date of birth of the cardholder, to allow it to be read by law-enforcement agents.

**§16-8A-12. Notifications to department and responses; Civil penalty.**

(a) The following notifications and department responses are required:

(1) A registered qualifying patient shall notify the department of any change in his or her name or address, or if the registered qualifying patient ceases to have his or her debilitating medical condition, within ten days of the change.

(2) A registered designated caregiver shall notify the department of any change in his or her name or address, or if the designated caregiver becomes aware the qualifying patient passed away, within ten days of the change.

(3) Before a registered qualifying patient changes his or her designated caregiver, the qualifying patient must notify the department.

(4) When a registered qualifying patient changes his or her preference as to who may cultivate marijuana for the qualifying patient, the qualifying patient must notify the department.

(5) If a cardholder loses his or her registry identification card, he or she shall notify the department within ten days of becoming aware the card has been lost.

(b) When a cardholder notifies the department of items listed in subsection (a), but remains eligible under this article, the department shall issue the cardholder a new registry identification card with a new random 10-digit alphanumeric identification number within ten days of receiving the updated information and a \$20 fee. If the person notifying the department is a registered qualifying patient, the department shall also issue his or her registered designated caregiver a new registry identification card within ten days of receiving the updated information.

(c) If a registered qualifying patient ceases to be a registered qualifying patient or changes his or her registered designated caregiver, the department shall promptly notify the designated caregiver. The registered designated caregiver's protections under this article as to that qualifying patient shall expire fifteen days after notification by the department.

(d) A cardholder who fails to make a notification to the department that is required by this section is subject to a civil infraction punishable by a penalty of no more than \$150.

(e) A registered qualifying patient shall notify the department before changing his or her designated registered compassion center and pay a \$20 fee. The department shall, within five business days of receiving the notification, update the registered qualifying patient's entry in the identification registry system to reflect the change in designation and notify the patient that the change has been processed.

(f) If the registered qualifying patient's certifying practitioner notifies the department in writing that either the registered qualifying patient has ceased to suffer from a debilitating medical condition or that the practitioner no longer believes the patient would receive therapeutic or palliative benefit from the medical use of marihuana, the card becomes void. However, the registered qualifying patient has fifteen days to dispose of or give away his or her marihuana.

**§16-8A-13. Affirmative defense and dismissal for medical marihuana.**

(a) Except as provided in section four of this article and this section, an individual may assert a medical purpose for using marihuana as a defense to any prosecution of an offense involving marihuana intended for the patient's medical use and this defense shall be presumed valid and the prosecution shall be dismissed where the evidence shows that:

(1) A practitioner states that, in the practitioner's professional opinion, after having completed a full assessment of the individual's medical history and current medical condition made in the course of a bona fide practitioner-patient relationship, the patient is likely to receive therapeutic or palliative benefit from marihuana;

(2) To treat or alleviate the individual's serious or debilitating medical condition or symptoms associated with the individual's serious or debilitating medical condition; or

(b) To treat any other illness for which marihuana provides relief that, in the practitioner's professional opinion the potential benefits of

the medical use of marihuana would likely outweigh the health risks for the qualifying patient and would likely be superior to treatment without the medical use of marihuana; and

(1) The individual and the individual's designated caregiver were collectively in possession of a quantity of marihuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marihuana for the purpose of treating or alleviating the individual's serious or debilitating medical condition or symptoms associated with the individual's serious or debilitating medical condition or other illness for which marihuana was providing relief; and

(2) The individual was engaged in the acquisition, possession, cultivation, manufacture, use or transportation of marihuana, paraphernalia, or both marihuana and paraphernalia, relating to the administration of marihuana to treat or alleviate the individual's serious or debilitating medical condition or symptoms associated with the individual's serious or debilitating medical condition or other illness for which marihuana was providing relief; and

(3) Any cultivation of marihuana occurred in an enclosed, locked area that only the person asserting the defense could access.

(c) The defense and motion to dismiss may not prevail if either of the following are proven:

(1) The individual had a registry identification card revoked for misconduct; or

(2) The purposes for the possession or cultivation of marihuana were not solely for palliative or therapeutic use by the individual with a serious or debilitating medical condition who raised the defense.

(d) An individual is not required to possess a registry identification card to raise the affirmative defense set forth in this section.

(e) If an individual demonstrates the individual's medical purpose for using marihuana pursuant to this section, except as provided in

section four of this article, the individual is not subject to the following for the individual's use of marihuana for medical purposes:

(1) Disciplinary action by an occupational or professional licensing board or bureau; or

(2) Forfeiture of any interest in or right to nonmarihuana, licit property.

**§16-8A-14. Registration of compassion centers.**

(a) Compassion centers may only operate if they have been issued a valid registration certificate from the department. When applying for a compassion center registration certificate, the applicant shall submit the following in accordance with department rules:

(1) A nonrefundable application fee in an amount determined by the department's rules, not to exceed \$4,000.

(2) The proposed legal name of the compassion center.

(3) The proposed physical address of the compassion center and the proposed physical address of any additional locations where marihuana will be cultivated, harvested, packaged, labeled or otherwise prepared for distribution by the compassion center.

(4) The name, address and date of birth of each principal officer and board member of the compassion center. All such individuals shall be at least twenty-one years of age.

(5) Any instances in which a business or not-for-profit that any of the prospective board members managed or served on the board of was convicted, fined, censured or had a registration or license suspended or revoked in any administrative or judicial proceeding.

(6) Any information required by the department to evaluate the applicant pursuant to the competitive bidding process described in subsection (b) of this section.

(b) The department shall evaluate applications for compassion center registration certificates using an impartial and numerically scored competitive bidding process developed by the department in accordance with this article. The registration considerations consist of the following criteria:

(1) The suitability of the proposed location or locations, including compliance with any local zoning laws and the geographic convenience to patients from throughout the State of West Virginia to compassion centers if the applicant were approved.

(2) The principal officer and board members' character and relevant experience, including any training or professional licensing related to medicine, pharmaceuticals, natural treatments, botany or marihuana cultivation and preparation and their experience running businesses or not-for-profits.

(3) The proposed compassion center's plan for operations and services, including its staffing and training plans, whether it has sufficient capital to operate and its ability to provide an adequate supply of medical marihuana to the registered patients in the state.

(4) The sufficiency of the applicant's plans for record keeping.

(5) The sufficiency of the applicant's plans for safety, security and the prevention of diversion, including proposed locations and security devices employed.

(6) The applicant's plan for making medical marihuana available on an affordable basis to registered qualifying patients enrolled in Medicaid or receiving Supplemental Security Income or Social Security Disability Insurance.

(7) The applicant's plan for safe and accurate packaging and labeling of medical marihuana, including the applicant's plan for ensuring that all medical marihuana is free of contaminants.

(c) No later than one year after the effective date of this article, provided that at least five applications have been submitted, the department shall issue compassion center registration certificates to the five highest-scoring applicants, except that the department may divide the state into geographical areas and grant a registration to the highest scoring applicant in each geographical area.

(d) No later than two years after the effective date of this article, the department shall issue registration certifications to at least one compassion center registration certificate for each two hundred thousand residents of the state of the highest scoring applicants not already awarded a registration certificate: *Provided*, That a sufficient number of additional applications have been submitted. The need to ensure an adequate geographic distribution may supersede the requirement that the approved applicants be granted registration certificates based solely on which applicants receive the highest scores. If the department determines, after reviewing the report issued pursuant to section twenty-two of this article, that additional compassion centers are needed to meet the needs of registered qualifying patients throughout the state, the department shall issue registration certificates to the corresponding number of applicants who score the highest.

(e) (1) At any time after two years after the effective date of this article the number of outstanding and valid registered compassion center certificates is lower than the number of registration certificates the department is required to issue pursuant to subsections (c) and (d) of this section, the department shall accept applications for compassion centers and issue registration certificates to the corresponding number of additional applicants who score the highest or that score the highest in given geographic areas.

(2) Notwithstanding the provisions of subsections (c), (d) and (e) of this section, an application for a compassion center registration certificate must be denied if any of the following conditions are met:



(A) The applicant failed to submit the materials required by this section, including if the applicant's plans do not satisfy the security, oversight or record keeping rules issued by the department;

(B) The applicant would not be in compliance with local zoning regulations issued in accordance with the provisions of section seventeen of this article;

(C) The applicant does not meet the requirements of section twenty;

(D) One or more of the prospective principal officers or board members has been convicted of a disqualifying felony offense;

(E) One or more of the prospective principal officers or board members has served as a principal officer or board member for a registered compassion center that has had its registration certificate revoked; and

(F) One or more of the principal officers or board members is younger than twenty-one years of age.

(f) After a compassion center is approved, but before it begins operations, it shall submit a registration fee to the department in the amount determined by the department's rules and, if a physical address had not been finalized when it applied, it shall submit a complete listing of all its physical addresses.

(g) The department shall issue each compassion center one copy of its registration certificate for each compassion center location. Registration certificates must include the compassion center's identification number. The department shall also provide each registered compassion center with the contact information for the verification system.

(h) Sales tax and special fund. – State sales tax at the rate imposed under article fifteen, chapter eleven of this code shall be imposed on all

sales of marihuana in this state. However, all revenue collected pursuant to this sales tax is to be deposited into the 'Drug and Abuse Prevention Fund' which is hereby created. This fund is to be held by the State Treasurer. The Commissioner of the Bureau for Public Health may distribute proceeds from this fund for drug prevention and substance abuse programs in schools including, but not limited to, after school programs, sports and extracurricular educational opportunities; to offer community grants for substance abuse treatment facilities; and to offer grants for community improvement projects including, but not limited to, playgrounds, public parks and local farmers' markets.

**§16-8A-15. Registration and certification of safety compliance facilities.**

(a) Safety compliance facilities may only operate if they have been issued a valid registration certificate from the department. When applying for a safety compliance facility registration certificate, the applicant shall submit the following in accordance with department rules:

(1) A nonrefundable application fee in an amount determined by the department's rules, not to exceed \$4,000;

(2) The proposed legal name of the safety compliance facility;

(3) The proposed physical address of the safety compliance facility;

(4) The name, address and date of birth of each principal officer and board member of the safety compliance facility. All such individuals shall be at least twenty-one years of age;

(5) Any instances in which a business or not-for-profit that any of the prospective board members managed or served on the board of was convicted, fined, censured or had a registration or license suspended or revoked in any administrative or judicial proceeding; and

(6) Any information required by the department to evaluate the applicant pursuant to the competitive bidding process described in subsection (b) of this section.

(b) The department shall evaluate applications for safety compliance facility registration certificates using an impartial and numerically scored competitive bidding process developed by the department in accordance with this article. The registration considerations shall consist of the following criteria:

(1) The proposed principal officers' and board members' relevant experience, including any training or professional licensing related to analytical testing, medicine, pharmaceuticals, natural treatments, botany or marihuana cultivation, preparation and testing and their experience running businesses or not-for-profits;

(2) The suitability of the proposed location, including compliance with any local zoning laws and the geographic convenience to cardholders and registered compassion centers from throughout the State of West Virginia to registered safety compliance facilities if the applicant were approved;

(3) The sufficiency of the applicant's plans for safety, security and the prevention of diversion, including proposed locations and security devices employed; and

(4) The proposed safety compliance facility's plan for operations and services, including its staffing and training plans, and whether it has sufficient capital to operate.

(c) The department shall issue at least one safety compliance facility registration certificate to the highest scoring applicant within one year of the effective date of this article.

(d) (1) The department may issue additional safety compliance facility registration certificates to the highest scoring applicant or applicants or to the highest applicant or applicants in a given

geographic area. If the department determines, after reviewing the report issued pursuant to section twenty-two of this article, that additional safety compliance facilities are needed to meet the needs of cardholders and registered compassion centers throughout the state, the department shall issue registration certificates to the corresponding number of applicants who score the highest overall or in a geographic area.

(2) Notwithstanding the provisions of subsections (c) and (d) of this section, an application for a safety compliance facility registration certificate must be denied if any of the following conditions are met:

(A) The applicant failed to submit the materials required by this section, including if the plans do not satisfy the security, oversight, or record keeping rules issued by the department;

(B) The applicant would not be in compliance with local zoning regulations issued in accordance with the provisions of section seventeen of this article;

(C) The applicant does not meet the requirements of section nineteen of this article;

(D) One or more of the prospective principal officers or board members has been convicted of a disqualifying felony offense;

(E) One or more of the prospective principal officers or board members has served as a principal officer or board member for a registered safety compliance facility or registered compassion center that has had its registration certificate revoked; and

(F) One or more of the principal officers or board members is younger than twenty-one years of age.

(e) After a safety compliance facility is approved, but before it begins operations, it shall submit a registration fee paid to the department in the amount determined by department rule and, if a

physical address had not been finalized when it applied, its physical address.

(f) The department shall issue each safety compliance facility a registration certificate, which must include an identification number for the safety compliance facility. The department shall also provide the registered safety compliance facility with the contact information for the verification system.

**§16-8A-16. Compassion center and safety compliance facilities suspension and revocation.**

(a) The department may on its own motion or on complaint, after investigation and opportunity for a public hearing at which the compassion center or safety compliance facility has been afforded an opportunity to be heard, suspend or revoke a registration certificate for multiple or serious violations by the registrant or any of its agents of this article or any rules promulgated pursuant to it.

(b) The department shall provide notice of suspension, revocation, fine or other sanction, as well as the required notice of the hearing, by mailing the same in writing to the registration at the address on the registration certificate. A suspension may not be for a longer period than six months.

(c) A registered compassion center may continue to cultivate and possess marihuana plants during a suspension, but it may not dispense, transfer or sell marihuana.

**§16-8A-17. Local ordinances.**

Local governments are not prohibited from enacting ordinances or regulations not in conflict with this article or with department rule regulating the time, place and manner of registered compassion center operations and registered safety compliance facilities: *Provided*, That a local government may not prohibit registered compassion center operation altogether, either expressly or though the enactment of

ordinances, rules or regulations which make registered compassion center and registered safety compliance facility operation unreasonably impracticable in the jurisdiction.

**§16-8A-18. Compassion center and safety compliance facility agents.**

(a) Registered compassion centers and registered safety compliance facilities shall conduct a background check into the criminal history of every person seeking to become a principal officer, board member, agent, volunteer or employee before the person begins working at the registered compassion centers or registered safety compliance facility. A registered compassion center may not employ any person who:

- (1) Was convicted of a disqualifying felony offense; or
- (2) Is under twenty-one years of age.

(b) A registered compassion center or safety compliance facility agent must have documentation when transporting marihuana on behalf of the registered safety compliance facility or registered compassion center that specifies the amount of marihuana being transported, the date the marihuana is being transported, the registry ID certificate number of the registered compassion center or registered safety compliance facility and a contact number to verify that the marihuana is being transported on behalf of the registered compassion center or registered safety compliance facility.

**§16-8A-19. Requirements, prohibitions, penalties.**

(a) A registered compassion center shall be operated on a not-for-profit basis. The bylaws of a registered compassion center shall contain such provisions relative to the disposition of revenues to establish and maintain its not-for-profit character. A registered compassion center need not be recognized as tax-exempt by the

Internal Revenue Service and is not required to incorporate pursuant to the provisions of chapter thirty-one-e of this code.

(b) The operating documents of a registered compassion center shall include procedures for the oversight of the registered compassion center and procedures to ensure accurate record keeping.

(c) A registered compassion center and a registered safety compliance facility shall implement appropriate security measures to deter and prevent the theft of marihuana and unauthorized entrance into areas containing marihuana.

(d) A registered compassion center and a registered safety compliance facility may not be located within one thousand feet of the property line of a preexisting public or private school.

(e) A registered compassion center is prohibited from acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying or dispensing marihuana for the purposes of distributing marihuana to any person except registered qualifying patients directly or through their designated caregivers.

(f) All cultivation of marihuana for registered compassion centers must take place in an enclosed, locked location at the physical address or addresses provided to the department during the registration process, which can only be accessed by compassion center agents working on behalf of the registered compassion center.

(g) A registered compassion center may not acquire usable marihuana or mature marihuana plants from any person other than another registered compassion center, a registered qualifying patient or a registered designated caregiver. A registered compassion center is only allowed to acquire usable marihuana or mature marihuana plants from a registered qualifying patient or a registered designated caregiver if the registered qualifying patient or registered designated caregiver receives no compensation for the marihuana.

(h) Before marihuana may be dispensed to a designated caregiver or a registered qualifying patient, a registered compassion center agent must make a diligent effort to verify each of the following:

(1) That the registry identification card presented to the registered compassion center is valid, including by checking the verification system if it is operational;

(2) That the person presenting the card is the person identified on the registry identification card presented to the registered compassion center agent, including by examining government-issued photo identification; and

(3) That the registered compassion center the compassion center agent is working for is the designated compassion center for the registered qualifying patient who is obtaining the marihuana directly or via his or her designated caregiver.

(i) A registered compassion center may not dispense more than three ounces of marihuana to a registered qualifying patient, directly or via a designated caregiver, in any fourteen-day period. Registered compassion centers shall ensure compliance with this limitation by maintaining internal, confidential records that include records specifying how much marihuana is being dispensed to the registered qualifying patient and whether it was dispensed directly to the registered qualifying patient or to the designated caregiver. Each entry must include the date and time the marihuana was dispensed.

(j) A registered compassion center or registered compassion center agent may only dispense marihuana to a visiting qualifying patient if he or she possesses a valid West Virginia registry identification card and if the procedures in subsections (h) and (i) are followed.

(k) A person may not advertise medical marihuana sales in printed materials, on radio or television or by paid in-person solicitation of customers. This does not prevent appropriate signs on the property of



the registered compassion center, listings in business directories including phone books, listings in marijuana-related or medical publications or the sponsorship of health or not-for-profit charity or advocacy events.

(l) A registered compassion center may not share office space with nor refer patients to a practitioner.

(m) A practitioner may not refer patients to a registered compassion center or registered designated caregiver, advertise in a registered compassion center or, if the practitioner issues written certifications, hold any financial interest in a registered compassion center.

(n) Any person who has been convicted of a disqualifying felony offense may not be a registered compassion center agent.

(o) Registered compassion centers and registered safety compliance facilities must display their registration certificates on the premises at all times.

(p) The department may issue a civil fine of up to \$3,000 for violations of this section.

(q) The suspension or revocation of a certificate is a final department action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the circuit court.

(r) Any cardholder who sells marijuana to a person who is not allowed to possess marijuana for medical purposes under this article shall have his or her registry identification card revoked and is subject to other penalties for the unauthorized sale of marijuana.

(s) The department may revoke the registry identification card of any cardholder who knowingly commits multiple or serious violations of this article.

(t) Registered compassion centers are subject to reasonable inspection by the department. The department shall give a reasonable notice of an inspection under this paragraph.

**§16-8A-20. Confidentiality.**

(a) The following information received and records kept by department rules for purposes of administering this article are confidential and exempt from the West Virginia Freedom of Information Act, and not subject to disclosure to any individual or public or private entity, except as necessary for authorized employees of the department to perform official duties pursuant to this article:

(1) Applications and renewals, their contents and supporting information submitted by qualifying patients and designated caregivers, including information regarding their designated care givers and practitioners.

(2) Applications and renewals, their contents and supporting information submitted by or on behalf of compassion centers and safety compliance facilities in compliance with this article, including their physical addressees.

(3) The individual names and other information identifying persons to whom the department has issued registry identification cards.

(4) Any dispensing information required to be kept under the provisions of section nineteen of this article or department rule shall identify cardholders and registered compassion centers by their registry identification numbers and may not contain names or other personal identifying information.

(5) Any department hard drives or other data-recording media that are no longer in use and that contain cardholder information must be destroyed.

(6) Data subject to this section may not be combined or linked in any manner with any other list or database and it may not be used for any purpose not provided in this article.

(b) Nothing in this section precludes the following:

(1) Department employees may notify state or local law enforcement about falsified or fraudulent information submitted to the department or of other apparently criminal violations of this article if the employee who suspects that falsified or fraudulent information has been submitted conferred with his or her supervisor and both agree that circumstances exist that warrant reporting.

(2) Department employees may notify the West Virginia Board of Medicine if the department has reasonable suspicion to believe a practitioner did not have a bona fide practitioner-patient relationship with a patient for whom he or she signed a written certification, if the department has reasonable suspicion to believe the practitioner violated the standard of care, or for other suspected violations of this article by a practitioner.

(3) Compassion center agents may notify the department of a suspected violation or attempted violation of this article or the rules issued pursuant to it.

(4) The department may verify registry identification cards pursuant to section twenty-one of this article.

(5) The submission of the report to the Legislature required by the provisions of section twenty-two of this article.

(c) Any person, including an employee or official of the department or another state agency or local government, who breaches the confidentiality of information obtained pursuant to this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$1,000 or confined in jail up to one hundred eighty days, or both fined and confined.

**§16-8A-21. Registry identification and registration certificate verification.**

(a) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards and their addresses, phone numbers and registry identification numbers. This confidential list may not be combined or linked in any manner with any other list or database, nor may it be used for any purpose not provided in this article.

(b) Within one hundred twenty days of the effective date of this article, the department shall establish a verification system. The verification system must allow law-enforcement personnel, compassion center agents and safety compliance facility agents to enter a registry identification number to determine whether or not the number corresponds with a current, valid registry identification card. The system shall only disclose whether the identification card is valid; whether the cardholder is a registered qualifying patient or a registered designated caregiver; whether the cardholder is permitted to cultivate under this act; and the registry identification number of the registered compassion center designated to serve the registered qualifying patient who holds the card or the registry identification number of the patient who is assisted by the registered designated caregiver who holds the card.

(c) The department shall, at a cardholder's request, confirm his or her status as a registered qualifying patient or registered designated caregiver to a third party, such as a landlord, employer, school, medical professional or court.

(d) The department shall disclose the fact that a registry identification card was revoked to a prosecutor or court personnel in any case where the prosecutor or court personnel inquires about a specific person who is seeking to assert the protections of the provisions of section thirteen of this article. The prosecutor or court

personnel must provide the department with the person's name and date of birth.

**§16-8A-22. Annual reports.**

(a) (1) The Legislature shall appoint a nine-member oversight committee comprised of: One member of the House of Delegates; one representative of the department; one member of the Senate; one physician with experience in medical marihuana issues; one nurse; one board member or principal officer of a registered safety compliance facility; one individual with experience in policy development or implementation in the field of medical marihuana; and three registered patients.

(2) The oversight committee shall meet at least two times a year for the purpose of evaluating and making recommendations to the Legislature and the Department of Health and Human Resources regarding:

(A) The ability of qualifying patients in all areas of the state to obtain timely access to high-quality medical marihuana.

(B) The effectiveness of the registered compassion centers, individually and together, in serving the needs of qualifying patients, including the provision of educational and support services, the reasonableness of their fees, whether they are generating any complaints or security problems, and the sufficiency of the number operating to serve the registered qualifying patients of West Virginia.

(C) The effectiveness of the registered safety compliance facility or facilities, including whether a sufficient number are operating.

(D) The sufficiency of the regulatory and security safeguards contained in this article and adopted by the department to ensure that access to and use of marihuana cultivated is provided only to cardholders.

(E) Any recommended additions or revisions to the department rules or this article, including relating to security, safe handling, labeling and nomenclature.

(F) Any research studies regarding health effects of medical marihuana for patients.

(b) The department shall submit to the Legislature an annual report that does not disclose any identifying information about cardholders, registered compassion centers or practitioners, but does contain, at a minimum, all of the following information:

(1) The number of applications and renewals filed for registry identification cards;

(2) The number of registered qualifying patients who are residents of West Virginia at the time of the report;

(3) The number of registry identification cards that were issued to visiting qualifying patients at the time of the report;

(4) The nature of the debilitating medical conditions of the qualifying patients;

(5) The number of registry identification cards revoked for misconduct;

(6) The number of practitioners providing written certifications for qualifying patients; and

(7) The number of registered compassion centers.

**§16-8A-23. Department to issue rules.**

(a) Not later than one hundred twenty days after the effective date of this article, the department shall propose rules for legislative

approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, which rules shall include:

(1) Governing the manner in which the department shall consider petitions from the public to add debilitating medical conditions or treatments to the list of debilitating medical conditions set forth in section two-d of this article, including public notice of and an opportunity to comment in public hearings on the petitions;

(2) Establishing the form and content of registration and renewal applications submitted under this article;

(3) Governing the manner in which it shall consider applications for and renewals of registry identification cards, which may include creating a standardized written certification form; and

(4) Governing the following matters related to registered compassion centers, with the goal of protecting against diversion and theft, without imposing an undue burden on the registered compassion centers or compromising the confidentiality of cardholders:

(A) Oversight requirements for registered compassion centers;

(B) Record keeping requirements for registered compassion centers;

(C) Security requirements for registered compassion centers, which shall include, at a minimum, lighting, video security, alarm requirements, on-site parking and measures to prevent loitering;

(D) Electrical safety requirements;

(E) The competitive scoring process addressed in section fourteen of this article;

(F) Procedures for suspending or terminating the registration certificates or registry identification cards of cardholders, registered

compassion centers and registered safety compliance facilities that commit multiple or serious violations of the provisions of this article or the rules promulgated pursuant to this section; and

(G) Labeling requirements for marihuana and marihuana products sold by compassion centers.

(5) Application and renewal fees for registry identification cards, and application and registration fees for compassion center and safety compliance facility certificates, according to the following:

(A) The total fees collected must generate revenues sufficient to offset all expenses of implementing and administering this article, except that fee revenue may be offset or supplemented by private donations: *Provided*, That any excess revenue from fees and private donations shall be distributed according to paragraph (D) of this subdivision;

(B) The department may establish a sliding scale of patient application and renewal fees based upon a qualifying patient's household income;

(C) The department may accept donations from private sources to reduce application and renewal fees; and

(D) Excess revenue from fees and private donations collected pursuant to this article, if any, shall be distributed as follows:

(i) Thirty percent shall be deposited into the Veterans Nursing Home Building Fund created in section nine-a, article twenty-two, chapter twenty-nine of this code; and

(ii) The remainder of the excess revenue shall be deposited into the Drug and Abuse Prevention Fund created in section fourteen of this article.



**§16-8A-24. Enforcement of this article.**

(a) If the department fails to promulgate rules to implement this article within the times provided in this article, any citizen may commence an action in circuit court to compel the department to perform the actions mandated pursuant to the provisions of this article.

(b) If the department fails to issue a valid registry identification card in response to a valid application or renewal submitted pursuant to this article within twenty days of its submission, the registry identification card shall be considered granted, and a copy of the registry identification application or renewal and proof of receipt of the mailing shall be deemed a valid registry identification card.

(c) If at any time after the one hundred forty days following the effective date of this article the department has not established a process for accepting and approving or denying applications, a notarized statement by a qualifying patient containing the information required in an application pursuant to section eight of this article, together with a written certification issued by a practitioner within ninety days immediately preceding the notarized statement, shall be considered a valid registry identification card for all purposes under this article.”

And,

On page eleven, section two hundred two, line one hundred eight-eight, following “(32)”, by inserting “Unless authorized by a prescription issued by a medical practitioner, pursuant to article eight-a, chapter sixteen of this code” and a comma.

Delegate Cowles arose to a point of order as to the germaneness of the amendment.

To the point of order the Speaker replied, stating that the fundamental purpose of the bill was to expand the State’s Schedule I

drug list, and that the amendment creates a new section regarding how drugs are used, and was not germane to the fundamental purpose of the bill.

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2939**, Relating to requirements for mandatory reporting of sexual offenses on school premises involving students; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Shott, the bill was amended on page thirteen, section eight hundred three, line fifty-two, by striking out the word “student” and the comma.

And,

On page thirteen, section eight hundred three, line sixty-five, by striking out the period and replacing it with a colon and the following:

*“Provided, however, That any teacher or other school personnel shall not be in violation of this section if he or she makes known immediately to the principal or county superintendent a disclosure from a credible witness or personal observation of conduct described in this section: Provided further, That a principal or county superintendent made aware of such disclosure or observation from a teacher or other school personnel shall be responsible for immediately reporting such conduct to law enforcement.”*

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2968**, Exempting from property tax certain properties in this state owned by nonprofit youth organizations; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Cowles, and by unanimous consent, the bill was advanced to third reading with amendments pending, and the restricted right to amend jointly by Delegates Ashley and Perry, and

the rule was suspended to permit the consideration of the amendments on that reading.

At 8:33 P.M., on motion of Delegate Cowles, the House of Delegates recessed until 9:15 P.M.

### **REORDERING OF THE CALENDAR**

Delegate Cowles announced that the Committee on Rules had transferred H. B. 3016, on second reading, Special Calendar, to the House Calendar, and Com. Sub. for H. B. 2688, on second reading House Calendar to the Special Calendar.

**H. B. 3019**, Requiring official business and records of the state and its political subdivisions be conducted in English; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page two, section thirteen, line two, immediately following the word “safety”, by striking out the words “during a declared or apparent emergency”.

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2688**, Providing for the unitization of interests in drilling units in connection with all horizontal oil or gas wells; on second reading, coming up in regular order, was read a second time.

### **SPEAKER PRO TEMPORE ANDERSON IN THE CHAIR**

Mr. Speaker, Mr. Armstead, arose from his seat and requested to be excused from voting on the passage of Com. Sub. for H. B. 2688 under the provisions of House Rule 49.

The Speaker Pro Tempore replied that Mr. Armstead was a member of a class of persons possibly to be affected by the passage of

the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse him from voting.

**MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR**

Delegate Howell requested to be excused from voting on the passage of Com. Sub. for H. B. 2688 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the Member from voting.

Delegate Cowles asked unanimous consent that the bill be advanced to third reading with amendments pending, which consent was not given, objection being heard.

Delegate Cowles then so moved.

On this question, the yeas and nays were taken (**Roll No. 325**), and there were—yeas 54, nays 41, absent and not voting 5, with the nays and absent and not voting being as follows:

NAYS: Bates, Boggs, Butler, Byrd, Campbell, Caputo, Eldridge, Faircloth, Fleischauer, Fluharty, Folk, Guthrie, Hamilton, Hicks, Hill, Hornbuckle, Ihle, Lane, Longstreth, Lynch, Manchin, Marcum, McGeehan, Miley, Moffatt, Moore, Moyer, J. Nelson, Perdue, Perry, Pushkin, Reynolds, Rodighiero, Rowe, Skinner, P. Smith, Sponaughle, Trecost, Wagner, H. White and Williams.

ABSENT AND NOT VOTING: Deem, Ferro, Hanshaw, Morgan and L. Phillips.

So, two thirds of the members present and voting not having voted in the affirmative, the motion was rejected.

An amendment to the bill, recommended by Delegate Fast, was reported by the Clerk.

Whereupon,

Delegate Fast asked and obtained unanimous consent that the amendment be withdrawn.

Delegates Manchin and Trecoast moved to amend the bill on page forty-seven, section seven-a, line five hundred ten, by striking out the period, and inserting a semi-colon and the following proviso:

*“Provided, That such consideration shall not be less than the 80<sup>th</sup> percentile of leases measured in terms of favorability to the lessor during the preceding 3 years for tracts lying within a two mile radius of the subject property.”*

Delegate Ireland moved the previous question, which demand was sustained.

On the adoption of the motion, the yeas and nays were demanded, which demand was sustained.

On this question, the yeas and nays were taken (**Roll No. 326**), and there were—yeas 43, nays 52, absent and not voting 5, with the yeas and absent and not voting being as follows:

YEAS: Speaker Armstead, Ambler, Anderson, Arvon, Ashley, Blair, Border, Butler, Cadle, Canterbury, Cooper, Ellington, Espinosa, A. Evans, D. Evans, Foster, Gearheart, Hamrick, Hartman, Householder, Ireland, Kelly, Kessinger, McCuskey, Miller, O’Neal, Pasdon, R. Phillips, Romine, Rowan, Shott, R. Smith, Sobonya, Stansbury, Statler, Storch, Summers, Upson, Walters, Waxman, Weld, Westfall and Zatezalo.

ABSENT AND NOT VOTING: Deem, Ferro, Hanshaw, Morgan and L. Phillips.

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

On the adoption of the amendment, Delegate Manchin demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 327**), and there were—yeas 42, nays 54, absent and not voting 4, with the yeas and absent and not voting being as follows:

YEAS: Bates, Boggs, Butler, Byrd, Canterbury, Caputo, Eldridge, Faircloth, Fast, Ferro, Fleischauer, Fluharty, Folk, Frich, Guthrie, Hamilton, Hicks, Hill, Hornbuckle, Ihle, Kurcaba, Lane, Longstreth, Lynch, Manchin, McGeehan, Miley, Moore, Moye, J. Nelson, Perdue, Pushkin, Reynolds, Rodighiero, Rohrbach, Rowe, Skinner, P. Smith, Sponaugle, Trecost, H. White and Williams.

ABSENT AND NOT VOTING: Deem, Hanshaw, Morgan and L. Phillips.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegates Manchin and Fluharty moved to amend the bill on page one, line twenty-two, following the enacting section, by inserting the following:

**“ARTICLE 13A. SEVERANCE & BUSINESS PRIVILEGE TAX.**

**§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil; Tax Commissioner to develop a uniform reporting form.**

(a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the business of severing natural gas or oil for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual

privilege tax: *Provided*, That effective for all taxable periods beginning on or after January 1, 2000, there is an exemption from the imposition of the tax provided in this article on the following: (1) Free natural gas provided to any surface owner; (2) natural gas produced from any well which produced an average of less than five thousand cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (3) oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; and (4) for a maximum period of ten years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.

(b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section shall be five percent of the gross value of the natural gas or oil produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(c) *Tax in addition to other taxes.* — The tax imposed by this section shall apply to all persons severing gas or oil in this state, and shall be in addition to all other taxes imposed by law.

(d)(1) The Legislature finds that in addition to the production reports and financial records which must be filed by oil and gas producers with the State Tax Commissioner in order to comply with this section, oil and gas producers are required to file other production reports with other agencies, including, but not limited to, the office of oil and gas, the Public Service Commission and county assessors. The reports required to be filed are largely duplicative, the compiling of the information in different formats is unnecessarily time consuming and costly, and the filing of one report or the sharing of information by agencies of government would reduce the cost of compliance for oil and gas producers.

(2) On or before July 1, 2003, the Tax Commissioner shall design a common form that may be used for each of the reports regarding production that are required to be filed by oil and gas producers, which form shall readily permit a filing without financial information when such information is unnecessary. The commissioner shall also design such forms so as to permit filings in different formats, including, but not limited to, electronic formats.

(3) Effective July 1, 2006, this subsection shall have no force or effect.

(e) Upon the certification by the Governor, pursuant to subsection (g) of section four, article thirteen-v of this chapter, that the workers compensation debt known as the "old fund" has been paid in its entirety, the additional tax of \$.047 per mcf shall be continued and collected as a severance tax on natural gas or oil, pursuant to this section. This tax shall be dedicated to the state road fund and specifically dedicated and used to repair and upgrade secondary roads.

#### ARTICLE 13V. WORKERS' COMPENSATION DEBT REDUCTION ACT.

##### **§11-13V-4. Imposition of tax.**

(a) *Imposition of additional tax on privilege of severing coal.* — Upon every person exercising the privilege of engaging within this state in severing, extracting, reducing to possession or producing coal for sale, profit or commercial use, there is hereby imposed an additional annual severance tax for exercising the privilege after November 30, 2005. The tax ~~shall be~~ is \$.56 per ton and the measure of the tax is tons of clean coal severed or produced in this state by the taxpayer after November 30, 2005, for sale, profit or commercial use during the taxable year. When the person mining the coal sells raw coal, the measure of tax shall be ton of clean coal determined in accordance with rules promulgated by the Tax Commissioner as provided in article three, chapter twenty-nine-a of this code. ~~If this rule is filed for public comment before July 1, 2005, the rule may be~~



~~promulgated as an emergency legislative rule.~~ This tax ~~shall be~~ is in addition to all taxes imposed with respect to the severance and production of coal in this state including, but not limited to, the taxes imposed by articles twelve-d and thirteen-a of this chapter and the taxes imposed by sections eleven and thirty-two, article three, chapter twenty-two of this code, if applicable.

(b) *Imposition of additional tax on privilege of severing natural gas.* — For the privilege of engaging or continuing within this state in the business of severing natural gas for sale, profit or commercial use, there is ~~hereby~~ levied and shall be collected from every person exercising this privilege an additional annual privilege tax. The rate of this additional tax shall be \$.047 per mcf of natural gas and the measure of the tax is natural gas produced after November 30, 2005, determined at the point where the production privilege ends for purposes of the tax imposed by section three-a, article thirteen-a of this chapter, and with respect to which the tax imposed by section three-a of ~~said~~ article thirteen-a is paid: Provided, That upon certification by the Governor of the entire satisfaction of the unfunded liability of the “old fund” pursuant to subsection (g) of this section, the \$0.47 per mcf shall continue and be treated as a severance tax on natural gas or oil, pursuant to section three-c, article thirteen -v of this chapter . This tax shall be dedicated to the state road fund and specifically dedicated and used to repair and upgrade secondary roads.. The additional tax imposed by this subsection shall be collected with respect to natural gas produced after November 30, 2005.

(c) *Imposition of additional tax on privilege of severing timber.* — For the privilege of engaging or continuing within this state in the business of severing timber for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising this privilege an additional annual privilege tax equal to two and seventy-eight hundredths percent of the gross value of the timber produced, determined at the point where the production privilege ends for purposes of the tax imposed by section three-b, article thirteen-a of this chapter and upon which the tax imposed by section three-b of ~~said~~

article thirteen-a is paid. The additional tax imposed by this subsection shall be collected with respect to timber produced after November 30, 2005: *Provided*, That during the period of discontinuance of the tax as provided in subsection (d), section three-b, article thirteen-a of this chapter, the additional tax imposed by this subsection shall be determined as provided in this subsection in the same manner as if the tax described under section three-b, article thirteen-a of this chapter is being imposed and collected, subject to the provisions of subsection (g) of this section.

(d) *No pyramiding of tax burden.* — Each ton of coal and each mcf of natural gas severed in this state after the effective date of the taxes imposed by this section shall be included in the measure of a tax imposed by this section only one time.

(e) *Effect on utility rates.* — The Public Service Commission shall, upon the application of any public utility that, as of the effective date of the taxes imposed by this section, is not currently making periodic adjustments to its approved rates and charges to reflect changes in its fuel costs because the mechanism historically used to make such periodic adjustments is suspended by an order of the commission, allow such utility to defer, for future recovery from its customers, any increase in its costs attributable to the taxes imposed by this section upon: Coal and natural gas severed in this state and utilized in the production of electricity generated or produced in this state and sold to customers in this state; coal and natural gas severed in this state and utilized in the production of electricity not generated or produced in this state that is sold to customers in this state; and natural gas severed in this state that is sold to customers in this state.

(f) *Dedication of new taxes.* — The net amount of all moneys received by the Tax Commissioner from collection of the taxes imposed by this section, including any interest, additions to tax, or penalties collected with respect to these taxes pursuant to article ten, chapter eleven of this code, shall be deposited in the Workers' Compensation Debt Reduction Fund created in article two-d, chapter

twenty-three of this code. As used in this section, “net amount of all taxes received by the Tax Commissioner” means the gross amount received by the Tax Commissioner less the amount of any refunds paid for overpayment of the taxes imposed by this article, including the amount of any interest on the overpayment amount due the taxpayer under the provisions of section fourteen, article ten of this chapter.

(g) *Sunset expiration date of taxes.* — The new taxes imposed by this section shall expire and not be imposed with respect to privileges exercised on and after the first day of the month following the month in which the Governor certifies to the Legislature that ~~(1) The revenue bonds issued pursuant to article two-d, chapter twenty-three of this code, have been retired, or payment of the debt service provided for; and (2) 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 for in its entirety.~~ Expiration of the taxes imposed in this section as provided in this subsection shall not relieve any person from payment of any tax imposed with respect to privileges exercised before the expiration date.”

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 328**), and there were—yeas 33, nays 63, absent and not voting 4, with the yeas and absent and not voting being as follows:

YEAS: Bates, Boggs, Byrd, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Frich, Guthrie, Hicks, Hornbuckle, Kurcaba, Longstreth, Lynch, Manchin, Marcum, Moore, Moye, Perdue, Perry, Pethtel, Pushkin, Reynolds, Rodighiero, Rohrbach, Rowe, Skinner, P. Smith, Sponaugle, Trecost, H. White and Williams.

ABSENT AND NOT VOTING: Deem, Hanshaw, Morgan and L. Phillips.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegates Manchin and Fluharty moved to amend the bill on page fifty-three, section seven-a, lines six hundred thirty-one through six hundred thirty-three, by striking out the words “Any interested party aggrieved by the order may seek judicial review pursuant to section eleven of this article” and inserting in lieu thereof, the following:

“Any interested party adversely affected by a final decision or order of the commission setting just and reasonable consideration, may appeal in the manner prescribed in section four, article five, chapter twenty-nine-a of this code. Appeals filed from a final decision or order of the commission issued pursuant to subdivision (3) of this subsection, however, are subject to a de novo review by the circuit court and are not subject to the standards of review set forth in subsection (g), section four, article five, chapter twenty-nine-a of this code. Any interested party aggrieved by the order for reasons other than the setting of just and reasonable consideration may seek judicial review pursuant to section eleven of this article.”

Delegate Ireland arose to a point of order during debate on the amendment, asking if the amendment was being addressed when Delegate Sponaugle was questioning Delegate Fluharty.

The Speaker reminded the Gentlemen to direct their remarks to the amendment before the House.

On the adoption of the amendment, Delegate Fluharty demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 329**), and there were—yeas 43, nays 53, absent and not voting 4, with the yeas and absent and not voting being as follows:

YEAS: Bates, Boggs, Butler, Byrd, Caputo, Cowles, Eldridge, Faircloth, Ferro, Fleischauer, Fluharty, Folk, Frich, Guthrie, Hamilton,

Hicks, Hill, Hornbuckle, Ihle, Kurcaba, Lane, Longstreth, Lynch, Manchin, Marcum, McCuskey, McGeehan, Miley, Moore, Moye, J. Nelson, Perdue, Pushkin, Reynolds, Rodighiero, Rohrbach, Rowe, Skinner, P. Smith, Sponaugle, Trecost, H. White and Williams.

ABSENT AND NOT VOTING: Deem, Hanshaw, Morgan and L. Phillips.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegate J. Nelson moved to amend the bill on page thirty-eight, line three hundred forty-six, following the word “commission”, by changing the period to a semicolon and inserting the words “*Provided, however,* That any royalty owner who has not consented to the pooling or unitization shall be permitted to deduct the dollar amount difference between the property tax that has been paid for each year of ownership based on the property valuation with the mineral rights and the new property tax amount based on the property valuation without the mineral rights from his or her federal adjusted gross income for West Virginia state tax purposes.”

On the adoption of the amendment, the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 330**), and there were—yeas 45, nays 51, absent and not voting 4, with the yeas and absent and not voting being as follows:

YEAS: Azinger, Bates, Boggs, Byrd, Caputo, Eldridge, Faircloth, Ferro, Fleischauer, Fluharty, Folk, Frich, Guthrie, Hamilton, Hicks, Hill, Hornbuckle, Householder, Howell, Ihle, Lane, Longstreth, Lynch, Manchin, Marcum, McGeehan, Miley, Moffatt, Moore, Moye, J. Nelson, O’Neal, Perdue, Pushkin, Reynolds, Rodighiero, Rohrbach, Shott, Skinner, P. Smith, Sponaugle, Storch, Trecost, Wagner and H. White.

ABSENT AND NOT VOTING: Deem, Hanshaw, Morgan and L. Phillips.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegates Fluharty and Manchin moved to amend the bill on page two, following the enacting section, by inserting a new section, to read as follows:

**“ARTICLE 1. DIVISION OF LABOR.**

**§21-1-3a. Duties of employers and owners conducting horizontal well drilling activities.**

(a) For the purpose of this section:

(1) ‘Residence’ means the place where a person files a state income tax return.

(2) ‘Employer’ means an employer or owner, including contractors and subcontractors of those employers and owners, who performs the following:

(1) Conducts horizontal drilling pursuant to article six-a, chapter twenty two of this code;

(2) Any site preparation work which involves any disturbance of land to a horizontal natural gas well; or

(3) Work on pipelines from a pursuant to article six-a, chapter twenty two of this code.

(b) Beginning January 1, 2016, an employer shall submit the following information to the Division of Labor:

(1) The total number of employees identified by full time and part-time status;

(2) The city and state in which the employee lives;

(3) The state or states in which the employee pays income tax;

(4) A comparison of the number of in-state residents versus the number of out of state residents being employed in the above activities; and

(5) The average salary per job type.

(d) The employer or owner shall submit this information to the division no later than January 31 of each year.

(e) The division shall utilize the collected information and report to the legislature no later the February 15 of each year.

Delegate Ireland arose to a point of order, asking if the amendment was germane.

To the point of order, the Speaker replied that the bill is to establish unitization and the amendment relates to reporting requirements for horizontal drilling, therefore, the amendment was not germane to the bill.

Delegates Manchin and Fluharty moved to amend the bill on page two, following the enacting section, by inserting the following section, to read as follows:

## **“CHAPTER 11. TAXATION.**

### **ARTICLE 13A. SEVERANCE & BUSINESS PRIVILEGE TAX**

#### **§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil; Tax Commissioner to develop a uniform reporting form.**

(a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the business of severing natural gas or

oil for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax: *Provided*, That effective for all taxable periods beginning on or after January 1, 2000, there is an exemption from the imposition of the tax provided in this article on the following: (1) Free natural gas provided to any surface owner; (2) natural gas produced from any well which produced an average of less than five thousand cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (3) oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; and (4) for a maximum period of ten years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.

(b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section shall be ~~five~~ six percent of the gross value of the natural gas or oil produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article: Provided, That notwithstanding any provisions of this code to the contrary, one percent of this tax shall be deposited into the state road fund, and specifically dedicated and used to repair and upgrade secondary roads.”

(c) *Tax in addition to other taxes.* — The tax imposed by this section shall apply to all persons severing gas or oil in this state, and shall be in addition to all other taxes imposed by law.

(d)(1) The Legislature finds that in addition to the production reports and financial records which must be filed by oil and gas producers with the State Tax Commissioner in order to comply with this section, oil and gas producers are required to file other production reports with other agencies, including, but not limited to, the office of oil and gas, the Public Service Commission and county assessors. The



reports required to be filed are largely duplicative, the compiling of the information in different formats is unnecessarily time consuming and costly, and the filing of one report or the sharing of information by agencies of government would reduce the cost of compliance for oil and gas producers.

(2) On or before July 1, 2003, the Tax Commissioner shall design a common form that may be used for each of the reports regarding production that are required to be filed by oil and gas producers, which form shall readily permit a filing without financial information when such information is unnecessary. The commissioner shall also design such forms so as to permit filings in different formats, including, but not limited to, electronic formats.

(3) Effective July 1, 2006, this subsection shall have no force or effect.”

Delegate Ireland arose to a point of order, asking if the amendment was germane.

To the point of order the Speaker replied that the fundamental purpose of the bill is to deal with the subject of unitization and the process to be used as unitization. The amendment relates to an entirely different section of the code related to severance and business taxes, therefore, the amendment was not germane to the bill.

Delegates Manchin and Trecost moved to amend the bill on page forty-three, section seven-a, line four hundred thirty-seven, by striking out the word “doubles” and inserting in lieu thereof, the words “one hundred fifty percent”.

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 331**), and there were—yeas 33, nays 63, absent and not voting 4, with the yeas and absent and not voting being as follows:

YEAS: Bates, Boggs, Caputo, Eldridge, Fast, Ferro, Fleischauer, Fluharty, Folk, Frich, Guthrie, Hamilton, Hicks, Hornbuckle, Howell, Lane, Longstreth, Lynch, Manchin, Moore, Moye, Perdue, Pushkin, Reynolds, Rodighiero, Rohrbach, Rowe, Skinner, P. Smith, Sponaugle, Trecoast, H. White and Williams.

ABSENT AND NOT VOTING: Deem, Hanshaw, Morgan and L. Phillips.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

The bill was then ordered to engrossment and third reading.

At the request of Delegate Cowles and by unanimous consent, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

### COMMITTEE REPORTS

Delegate McCuskey, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 3<sup>rd</sup> day of March, 2015, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**(S. B. 238)**, Limiting certain county board of education liability arising from unorganized recreation,

**(Com. Sub. for S. B. 335)**, Creating Access to Opioid Antagonists Act,

And,

**(S. B. 398)**, Extending expiration date for health care provider tax on eligible acute care hospitals.

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

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

**S. B. 250**, Relating to Conservation Agency financial assistance applications from district supervisors,

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

In accordance with the former direction of the Speaker, the bill (S. B. 250) was referred to the Committee on the Judiciary.

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

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

**Com. Sub. for S. B. 261**, Clarifying definition of ‘owner’ of dam,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 261) was referred to the Committee on the Judiciary.

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

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

**S. B. 304**, Relating to farmers markets,

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

In accordance with the former direction of the Speaker, the bill (S. B. 304) was referred to the Committee on Finance.

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

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

**H. C. R. 31**, Declaring the Northern Red Salamander to be the official state amphibian,

And reports the same back with the recommendation that it be adopted, but that it first be referred to the Committee on Rules.

In accordance with the former direction of the Speaker, the bill (H. C. R. 31) was referred to the Committee on Rules.

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

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

**Com. Sub. for S. B. 278**, Relating to lawful and unlawful methods of hunting,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 278) was referred to the Committee on the Judiciary.

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

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

**Com. Sub. for S. B. 413**, Relating to commercial pesticide control licensing requirements,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 413) was referred to the Committee on Government Organization.

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

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

**S. B. 399**, Relating to hospitals owned or operated by nonprofit corporations or associations or local governmental units,

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

In accordance with the former direction of the Speaker, the bill (S. B. 399) was referred to the Committee on the Judiciary.

Mr. Speaker, Mr. Armstead, Chair of the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

**H. R. 13**, “Self Injury Awareness Day”,

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

**Com. Sub. for H. R. 13** – “Designating March 4, 2015 as ‘Self Injury Awareness Day’”.

With the recommendation that the committee substitute do pass.

Mr. Speaker, Mr. Armstead, Chair of the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

**H. C. R. 91**, Designating days for the display of the Honor and Remember Flag,

And,

**Com. Sub. for S. C. R. 14**, Home of Francis H. Pierpont - Father of West Virginia and Governor of Restored Virginia,

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

#### **LEAVES OF ABSENCE**

At the request of Delegate Cowles, and by unanimous consent, leave of absence for the day was granted Delegate Hanshaw.

**MISCELLANEOUS BUSINESS**

Delegate Duke noted to the Clerk that he was absent when the vote was taken on Roll No. 313, and that had he been present, he would have voted “YEA” thereon.

Delegate Hamilton announced that he was absent when the vote was taken on Roll No. 299, and that had he been present, he would have voted “YEA” thereon.

Delegate Border announced that she was absent when the vote was taken on Roll No. 308, and that had she been present, she would have voted “YEA” thereon.

Delegate Lane noted to the Clerk that he be recorded as having voted “Nay” on the motion to table Com. Sub. for H. B. 2021.

Delegate Hornbuckle noted that he was absent when the votes were taken on Roll Nos. 236, 237 and 238, and that had he been present, he would have voted “YEA” on Roll No. 236 and “NAY” on Roll Nos. 237 and 238.

Delegate Perdue asked and obtained unanimous consent that the remarks of Delegates Marcum, H. White, J. Nelson and Rodighiero regarding Com. Sub. for H. B. 2515, Relating to elk restoration, be printed in the Appendix to the Journal.

Delegate Guthrie asked and obtained unanimous consent that the remarks of Delegate Moye regarding H. B. 3018, West Virginia Health Benefit Exchange Act, be printed in the Appendix to the Journal.

Delegate Caputo asked and obtained unanimous consent that the remarks of Delegate Boggs regarding Com. Sub. for H. B. 2718 be printed in the Appendix to the Journal.

Delegate Marcum announced that his vote did not register in the affirmative on the roll call on the final amendment to Com. Sub. for H. B. 2688.

At 11:39 P.M., the House of Delegates adjourned until 9:00 A.M.,  
Wednesday, March 4, 2015.



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WEDNESDAY, MARCH 4, 2015

**FIFTIETH DAY**

[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

The House of Delegates met at 9:00 A.M., and was called to order by the Honorable Tim Armstead, Speaker.

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

The Clerk proceeded to read the Journal of Tuesday, March 3, 2015, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**REORDERING OF THE CALENDAR**

Delegate Cowles announced that the Committee on Rules had moved Com. Sub. for S. B. 343, S. B. 502, H. B. 2816 and H. B. 3018, on third reading, Special Calendar to the House Calendar; Com. Sub. for H. B. 2636, third reading Special Calendar to follow Com. Sub. for H. B. 2756; and H. B. 2931, Com. Sub. for H. B. 2939 and Com. Sub. for H. B. 2968, third reading Special Calendar, to follow H. B. 2595.

**MESSAGES FROM THE EXECUTIVE**

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
1900 KANAWHA BLVD., EAST  
CHARLESTON, WV 25305

March 2, 2015

**Veto Message**

The Honorable Tim Armstead  
Speaker, West Virginia House of Delegates  
Room 229M, Building 1  
State Capitol  
Charleston, West Virginia 25305

Re: Enrolled Committee Substitute for House Bill No. 2568

Dear Speaker Armstead:

Pursuant to the provisions of section fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return the Enrolled Committee Substitute for House Bill No. 2568. I am advised the bill is unconstitutional under controlling precedent of the Supreme Court of the United States because it prohibits the termination of certain pregnancies prior to viability. *See Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U. S. 833, 879 (1992) (holding a state “may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability”); *see also Isaacson v. Horne*, 716 F.3d 1213 (9<sup>th</sup> Cir. 2013), *cert. denied*, 134 S. Ct. 905 (Jan. 13, 2014) (declaring Arizona’s fetal pain statute unconstitutional; statute prohibited the termination of pregnancy at twenty weeks gestation, before the fetus is viable).

Sincerely,

EARL RAY TOMBLIN,  
*Governor.*

On motion of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates proceeded to reconsider the bill, notwithstanding the objections of the Governor.

The Speaker propounded, “Shall the bill pass, notwithstanding the objections of the Governor?”

On this question, the yeas and nays were taken (**Roll No. 332**), and there were—yeas 77, nays 16, absent and not voting 7, with the yeas, nays and absent and not voting being as follows:

YEAS: Ambler, Anderson, Arvon, Ashley, Azinger, Bates, Blair, Boggs, Border, Butler, Byrd, Cadle, Campbell, Canterbury, Cooper, Cowles, Deem, Duke, Eldridge, Ellington, Espinosa, A. Evans, D. Evans, Faircloth, Fast, Ferro, Folk, Foster, Frich, Gearheart, Hamilton, Hamrick, Hartman, Hicks, Householder, Howell, Ihle, Ireland, Kessinger, Kurcaba, Lane, Lynch, Manchin, Marcum, McCuskey, McGeehan, Moye, E. Nelson, J. Nelson, O’Neal, Overington, Pasdon, Perry, R. Phillips, Rodighiero, Romine, Rowan, Shott, P. Smith, R. Smith, Sobonya, Sponaugle, Stansbury, Statler, Storch, Summers, Upson, Wagner, Walters, Waxman, Weld, Westfall, B. White, H. White, Williams, Zatezalo and Mr. Speaker (Mr. Armstead).

NAYS: Caputo, Fleischauer, Fluharty, Guthrie, Hornbuckle, Longstreth, Miley, Moore, Morgan, Perdue, Pethtel, L. Phillips, Pushkin, Rowe, Skinner and Trecost.

ABSENT AND NOT VOTING: Hanshaw, Hill, Kelly, Miller, Moffatt, Reynolds and Rohrbach.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Enr. Com. Sub. for H. B. 2568) passed, notwithstanding the objections of the Governor.

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

### **RESOLUTIONS INTRODUCED**

Delegates Sobonya, Rohrbach, Duke, Moffatt, Summers, Hicks, Arvon, Bates, Byrd, A. Evans, Faircloth, Fleischauer, Fluharty, Folk, Frich, Guthrie, Hamrick, Hill, Howell, Lynch, McGeehan, Morgan, Moye, Perdue, Perry, R. Phillips, Pushkin, Romine, Rowe, P. Smith,

Stansbury, Statler, Waxman and B. White offered the following resolution, which was read by its title and referred to the Committee Rules:

**H. C. R. 108** - “Requesting the Joint Committee on Government and Finance study a program called Recovery Kentucky, which is designed to reduce the state’s drug problem and homelessness issues. The program provides housing and recovery services to help residents recover from substance abuse, which often leads to chronic homelessness.”

WHEREAS, West Virginia’s citizens suffer from substance abuse problems in large numbers, and also the rate of drug-induced deaths is one of the highest in the country; and

WHEREAS, Without a stable place to live and a support system to help them address their underlying problems, many homeless people who suffer from substance abuse problems move between shelters, public hospitals, prisons, psychiatric institutions, and detoxification centers; and

WHEREAS, Inmates who are approaching parole and release, especially those with a history of substance abuse, need transition services that assist their reintegration into the community; and

WHEREAS, Other states have successfully enacted laws and programs that assist adults that are seeking recovery from alcohol and other drugs by providing services for abstinence and recovery; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance study the desirability, feasibility and cost of implementing a program similar to Recovery Kentucky, which is designed to address resident’s substance abuse problems and chronic homelessness, as well as save the state’s tax dollars that would have been spent on jail costs and emergency room visits; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved*, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

### SPECIAL CALENDAR

#### UNFINISHED BUSINESS

The following resolutions, coming up in regular order, as unfinished business, were reported by the Clerk and adopted:

**Com. Sub. for H. R. 13**, Self Injury Awareness Day,

**Com. Sub. for S. C. R. 14**, Requesting DOH erect signs in Marion County designated “Home of Francis H. Pierpont, Father of West Virginia and Governor of Restored Virginia”,

And,

**H. C. R. 91**, Designating days for the display of the Honor and Remember Flag.

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

#### THIRD READING

**Com. Sub. for H. J. R. 13**, The Homestead Exemption Increase Amendment; on third reading, coming up in regular order, was read a third time.

Delegates Ambler, Anderson, Boggs, Cadle, Cooper, Duke, A. Evans, Guthrie, Hartman, Ireland, Kelly, Lynch, Overington, Romine, Perdue, Perry, Pethtel, L. Phillips, Rowe, Shott, P. Smith, H. White, Williams and Zatezalo requested to be excused from voting on the passage of Com. Sub. for H. J. R. 13 under the provisions of House Rule 49.

The Speaker replied that the Delegates may have a direct interest therein but that it would be as members of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Members from voting.

On the adoption of the resolution, the yeas and nays were taken (**Roll No. 333**), and there were—yeas 93, nays 3, absent and not voting 4, with the nays and absent and not voting being as follows:

YEAS: Ambler, Anderson, Arvon, Ashley, Azinger, Bates, Blair, Boggs, Border, Butler, Byrd, Cadle, Campbell, Canterbury, Caputo, Cooper, Cowles, Deem, Duke, Eldridge, Ellington, Espinosa, Evans, A., Faircloth, Fast, Ferro, Fleischauer, Fluharty, Folk, Foster, Frich, Guthrie, Hamilton, Hamrick, Hartman, Hicks, Hill, Hornbuckle, Householder, Howell, Ihle, Ireland, Kelly, Kessinger, Kurcaba, Lane, Longstreth, Lynch, Manchin, Marcum, McCuskey, McGeehan, Miley, Moore, Morgan, Moye, E. Nelson, J. Nelson, O'Neal, Overington, Pasdon, Perdue, Perry, Pethtel, L. Phillips, R. Phillips, Pushkin, Rodighiero, Rohrbach, Romine, Rowan, Rowe, Shott, Skinner, P. Smith, R. Smith, Sobonya, Sponaule, Stansbury, Statler, Storch, Summers, Trecost, Upson, Wagner, Walters, Waxman, Weld, Westfall, H. White, Williams, Zatezalo and Mr. Speaker (Mr. Armstead).

NAYS: D. Evans, Gearheart and B. White.

ABSENT AND NOT VOTING: Hanshaw, Miller, Moffatt and Reynolds.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the resolution (Com. Sub. for H. J. R. 13) adopted, as follows:

**Com. Sub. for H. J. R. 13** – “Proposing an amendment to the Constitution of the State of West Virginia, amending article X thereof by adding thereto a new section, designated section one-d, relating to homestead exemption increase; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.”

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

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2016, which proposed amendment is that article X thereof, be amended by adding thereto a new section, designated section one-d, to read as follows:

**ARTICLE X. TAXATION AND FINANCE.**

**§1d. Increase in Homestead Exemption.**

Notwithstanding the provisions of section one of this Article or any other provision of this Constitution to the contrary, the Legislature has the authority to provide by general law to increase the exemption from ad valorem property taxation authorized by Subsection C, Section 1b, Article X, of this Constitution, in an amount not less than the first twenty thousand dollars nor more than the first forty thousand dollars of value of any real property, or of personal property in the form of a mobile home, used exclusively for residential purposes and occupied by the owner or one of the owners thereof as his or her residence who is a citizen of this state, and who is sixty-five years of age or older or is totally and permanently disabled as that term may be prescribed by general law: *Provided*, That in no event may any one person and his or her spouse, or one homestead be entitled to more than one exemption under these provisions: *Provided, however*, That these provisions are subject to requirements, limitations and conditions as shall be prescribed by general law: *Provided, further*, That any

property tax revenue decrease experienced by a county adopting an increase to the exemption as provided in this section shall be deducted from that county's basic state aid allocation provided pursuant to the public school support plan.

*Resolved further*, That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such proposed amendment is hereby numbered "Amendment No. 1" and designated as the "Homestead Exemption Increase Amendment" and the purpose of the proposed amendment is summarized as follows: "The purpose of this amendment is to authorize the Legislature to provide by general law the authority to increase the homestead exemption from \$20,000 to an amount not to exceed \$40,000."

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

**Com. Sub. for H. B. 2148**, Conforming the motor vehicle law of this state to the requirements of section 1405 of the federal Transportation Equity Act for the Twenty-first Century; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 334**), and there were—yeas 92, nays 4, absent and not voting 4, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hanshaw, Miller, Moffatt and Reynolds.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2148) passed.

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

**H. B. 2226**, Eliminating dedication of corporation net income tax revenues to and deposits of such revenues into the Special Railroad



Intermodal Enhancement Fund; on third reading, coming up in regular order, was reported by the Clerk.

Delegate E. Nelson asked and obtained unanimous consent to amend the bill on third reading and the rule was suspended to allow the offering and consideration of an amendment on third reading.

On motion of Delegate E. Nelson, the bill was amended on page one, following the enacting clause, by striking out the enacting section and inserting in lieu thereof the following:

“That §11-14C-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-24-43a of said code be amended and reenacted, all to read as follows” followed by a colon.

Having been engrossed, the bill was read a third time.

Delegate Boggs requested to be excused from voting on the passage of H. B. 2226 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the gentleman from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 335**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Miller, Moffatt and Reynolds.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2226) passed.

On motion of Delegate E. Nelson, the title of the bill was amended to read as follows:

**H. B. 2226** - “A Bill to amend and reenact §11-14C-9 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-24-43a of said code, all relating to railroads and railways generally; providing a refundable exemption from the flat rate component of the state motor fuel excise tax on all gallons of motor fuel sold for use or consumed in railroad diesel locomotives beginning on January 1, 2017; and expiring, nulling and voiding provisions requiring the Tax Commissioner to pay into the Special Railroad and Intermodal Enhancement Fund any amount from annual collections of the state corporate net income tax for the purpose of construction, reconstruction, maintenance and repair of railways, the construction of railway-related structures and payment of principal and interest on state bonds issued for railway purposes, as approved by the West Virginia Public Port Authority, on and after July 1, 2015.”

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

**Com. Sub. for H. B. 2233**, Requiring that legislative rules be reviewed five years after initial approval by the Legislative Rule-Making Review Committee and the Legislative Auditor’s Office; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 336**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Azinger, Miller, Moffatt, L. Phillips and Reynolds.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2233) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

**Com. Sub. for H. B. 2233** - “A Bill to amend and reenact §29A-3-16 of the Code of West Virginia, 1931, as amended, relating to requiring the Legislative Rule-Making Committee with the assistance of the Legislative Auditor’s Office to review each interpretive, procedural and legislative rule promulgated in or after 2015 within at least five years from its effective date, and make recommendations to the Legislature for modification or repeal of any such rule; and requiring submission of summary of findings and recommendations to the Joint Committee on Government and Finance.”

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

**Com. Sub. for H. B. 2263**, Providing guidance for prosecuting attorneys in cases involving abused and neglected children; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 337**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Canterbury, Ireland, Lynch, Miller and Reynolds.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2263) passed.

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

**Com. Sub. for H. B. 2366**, Relating generally to the solicitation of minors; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 338**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Canterbury, Lynch, Miller, Moffatt and Reynolds.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2366) passed.

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

**Com. Sub. for H. B. 2429**, Requiring a convicted sex offender who volunteers for an organization whose volunteers have contact with minors to inform that organization of his or her conviction; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 339**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Canterbury, McGeehan, Miller, Moffatt and Reynolds.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2429) passed.

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

**H. B. 2479**, Relating to the powers and authority of state and local law enforcement to enforce underage drinking laws at private clubs; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 340**), and there were—yeas 96, nays 1, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: McGeehan.

ABSENT AND NOT VOTING: Canterbury, Miller and Reynolds.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2479) passed.

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

**Com. Sub. for H. B. 2518**, Requiring insurers issuing group accident and sickness insurance policies to certain employers to furnish claims loss experience to policyholders; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 341**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Miller and Reynolds.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2518) passed.

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

**Com. Sub. for H. B. 2549**, Relating to the preparation and publication of county financial statements; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 342**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Hicks, Miller and Reynolds.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2549) passed.

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

**Com. Sub. for H. B. 2557**, Clarifying that an insured driver of a motor vehicle is covered by the driver's auto insurance policy when renting or leasing a vehicle; on third reading, coming up in regular order, was read a third time.

Delegate Pushkin requested to be excused from voting on the passage of Com. Sub. for H. B. 2557 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the gentleman from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 343**), and there were—yeas 81, nays 17, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Boggs, Caputo, Deem, Eldridge, Fluharty, Guthrie, Hicks, Hornbuckle, Lynch, Pushkin, Rodighiero, Rowe, Skinner, P. Smith, Sponaugle, Trecost and Upson.

ABSENT AND NOT VOTING: Miller and Reynolds.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2557) passed.

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

**H. B. 2595**, Relating to certificates of need for the development of health facilities in this state; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 344**), and there were—yeas 96, nays 1, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Cowles.

ABSENT AND NOT VOTING: Miller, Reynolds and Zatezalo.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2595) passed.

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

**H. B. 2931**, Adding drugs to the classification of schedule I drugs; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 345**), and there were—yeas 96, nays 1, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: McGeehan.

ABSENT AND NOT VOTING: Miller, Reynolds and Zatezalo.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2931) passed.

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

**Com. Sub. for H. B. 2939**, Relating to requirements for mandatory reporting of sexual offenses on school premises involving students; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 346**), and there were—yeas 86, nays 9, absent and not voting 5, with the nays and absent and not voting being as follows:

**NAYS:** Azinger, Cadle, Fast, Lynch, McGeehan, Morgan, Perry, P. Smith and Wagner.

**ABSENT AND NOT VOTING:** Marcum, Miller, Moffatt, Reynolds and Westfall.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2939) passed.

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

At 11:32 A.M., on motion of Delegate Cowles, the House of Delegates recessed until 12:15 P.M.

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#### AFTERNOON SESSION

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#### REORDERING OF THE CALENDAR

Delegate Cowles announced that the Committee on Rules had moved Com. Sub. for H. B. 2796 and H. B. 2892 to follow H. B. 2664, on third reading, Special Calendar.



## SPECIAL CALENDAR

## THIRD READING

-CONTINUED-

**Com. Sub. for H. B. 2968**, Exempting from property tax certain properties in this state owned by nonprofit youth organizations; on third reading, coming up in regular order, with amendments pending and restricted right to amend, was reported by the Clerk.

On motion of Delegate Fast, the bill was amended on page seventeen, section twelve, line three hundred ten, following the word “property”, by inserting the words “provided that the area of property to be severed shall be approved by the county commission wherein the property lies so as to include in the severance all property substantially supporting the for profit or business activity giving rise to the specific purpose of the severance and excluding all property entitled to the continued benefits of this Act.”

On motion of Delegate Perry, the bill was amended on page seventeen, section nine, line three hundred ten, following the period, by inserting a new subsection (i), to read as follows:

“(i) To assure the implementation of subsection (h) of this section does not harm local and regionally located businesses by use of the tax exempt facility in a manner that cause unfair competition and unreasonable loss or revenue to those businesses, studies shall be periodically conducted to assure that further legislation is in order regarding the uses of the tax exempt facility. The County commission of any county where such a property is located shall report to the Joint Committee on Government and Finance by the first day of January every five years after the effective date of this section. The report shall include information on any unfair business competition resulting from the establishment of the non-profit status, and include a report of the costs and benefits to its county of the tax exemption and associated fee, including an audit of that county’s use of the net revenues. The West

Virginia University Bureau of Business and Economic Research in coordination of the Center for Business and Economic Research at Marshall University, by January 1, two thousand twenty, shall undertake a study and report to the Committee, the economic impact of this tax exemption and fee to the county and that region of the state, and make any recommendations regarding the benefits and disadvantages for continuing the provision of this tax exemption and fee, included, but not limited to, the impacts to other small and large businesses in the county, the costs to the county has incurred as a result of use of the facility, and any other relevant data that the universities may deem relevant.”

On motion of Delegates Perry and Ashley, the bill was amended on page nine, section nine, line one-hundred forty-one, following the words “and administration of”, by striking out the word “four” and inserting in lieu thereof the words “one and one quarter”.

On page nine, section nine, line one-hundred fifty-one, following the words “upon which the”, by striking out the word “four” and inserting in lieu thereof the words “one and one quarter”.

On page ten, section nine, line one-hundred fifty-six, following the words “an amount equal to”, by striking out the words “four percent of the net revenues” and inserting in lieu thereof the words “one and one quarter percent of the gross revenues”.

On page ten, section nine, line one-hundred fifty-eight, following the words “this subsection” and the comma, by striking out the words “net revenues” and inserting in lieu thereof the words “gross revenues”.

On page ten, section nine, line one-hundred sixty, following the words “facilities thereon”, by striking out the comma and the remainder of the subdivision (2), and inserting a period.

On page ten, section nine, line one-hundred sixty-five, by striking out the words “net revenues” and inserting in lieu thereof the words “gross revenues”.

On page ten, section nine, beginning on line one-hundred sixty-six, following the words “to a fee of”, by striking out the words “four percent of such net revenues” and inserting in lieu thereof the words “one and one quarter percent of such gross revenues”.

On page ten, section nine, line one-hundred sixty-eight, by striking out the words “net revenues” and inserting in lieu thereof the words “gross revenues”.

On page eleven, section nine, line one-hundred seventy-seven, by striking out the words “net revenues” and inserting in lieu thereof the words “gross revenues”.

On page eleven, section nine, line one-hundred eighty-one, by striking out the words “net revenues” and inserting in lieu thereof the words “gross revenues”.

On page eleven, section nine, line one-hundred eighty-five, by striking out the words “net revenues” and inserting in lieu thereof the words “gross revenues”.

On page twelve, section nine, line one-hundred ninety-four, by striking out the words “net revenues” and inserting in lieu thereof the words “gross revenues”.

On page twelve, section nine, line two hundred, by striking out the words “net revenues” and inserting in lieu thereof the words “gross revenues”.

On page thirteen, section nine, line two-hundred seventeen, following the words “subject to the”, by striking out the word “four” and inserting in lieu thereof the words “one and one quarter”.

On page thirteen, section nine, line two-hundred twenty-seven, following the words “subject to the”, by striking out the word “four” and inserting in lieu thereof the words “one and one quarter”.

On page fourteen, section nine, line two-hundred thirty-four, following the words “from the fee of”, by striking out the words “four percent of the net revenues” and inserting in lieu thereof the words “one and one quarter percent of the gross revenues”.

And,

On page fourteen, section nine, beginning on line two-hundred forty, following the words “reporting of the”, by striking out the words “four percent fee specified in this subsection on net revenues” and inserting in lieu thereof the words “one and one quarter percent fee specified in this subsection on gross revenues”.

Having been engrossed, the bill was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 347**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Lynch, Miller and Reynolds.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2968) passed.

On motion of Delegate E. Nelson, the title of the bill was amended to read as follows:

**Com. Sub. for H. B. 2968** - “A Bill to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating to exempting from property tax certain real properties in this state owned by nonprofit youth organizations and built at a cost of at least \$100 million; specifying restrictions affecting the property; specifying permitted activities; requiring property owner to pay one and one quarter percent of gross revenues from specified uses, operations and activities; specifying how one and one quarter percent fee is

administered, specifying how monies derived from one and one quarter percent fee are distributed; requiring reports; and defining terms.”

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

**H. B. 2645**, Expanding the availability of the Underwood-Smith Teacher Loan Assistance Program; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 348**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Lynch, Miller and Reynolds.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2645) passed.

On motion of Delegate Pasdon, the title of the bill was amended to read as follows:

**H. B. 2645** - “A Bill to amend and reenact §18C-4A-1, §18C-4A-2, and §18C-4A-3 of the Code of West Virginia, 1931, as amended, all relating to modifying the Underwood-Smith Teacher Loan Assistance Program; increasing annual award from program; and expanding teacher eligibility for program awards.”

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

**H. B. 2664**, Creating “Andrea and Willy’s Law”; increasing certain penalties for driving under the influence of alcohol, controlled substances or drugs; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 349**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Lynch, Miller and Reynolds.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2664) passed.

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

**Com. Sub. for H. B. 2796**, Providing paid leave for certain state officers and employees during a declared state of emergency; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 350**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Lynch, Miller and Reynolds.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2796) passed.

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

**H. B. 2892**, Authorizing certain legislative rules regarding higher education; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 351**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Lynch, Miller and Reynolds.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2892) passed.

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

On this question, the yeas and nays were taken (**Roll No. 352**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Lynch, Miller and Reynolds.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2892) takes effect from passage.

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

**Com. Sub. for H. B. 2688**, Providing for the unitization of interests in drilling units in connection with all horizontal oil or gas wells; on third reading, coming up in regular order, was read a third time.

Delegate Cowles submitted a written motion, limiting debate on the bill to four hours, in accordance with House Rule 38.

Delegate O'Neal demanded the previous question, which demand was sustained.

The question before the House being the motion by Delegate O'Neal, the same was put and prevailed.

Delegate Deem was recognized and arose to a point of order, seeking to amend the motion.

The Speaker stated that the previous question had been called, and the question now before the House being on the motion by Delegate Cowles, the yeas and nays were demanded, which demand was sustained.

On this question, the yeas and nays were taken (**Roll No. 353**), and there were—yeas 52, nays 44, absent and not voting 4, with the nays and absent and not voting being as follows:

NAYS: Bates, Boggs, Butler, Campbell, Caputo, Eldridge, Faircloth, Fast, Ferro, Fleischauer, Fluharty, Folk, Guthrie, Hartman, Hicks, Hornbuckle, Howell, Ihle, Lane, Longstreth, Manchin, Marcum, McCuskey, McGeehan, Miley, Moffatt, Moore, Morgan, Moyer, J. Nelson, Overington, Pasdon, Perdue, Perry, Pethel, L. Phillips, Rodighiero, Shott, Skinner, Sponaugle, Trecost, Wagner, H. White and Williams.

ABSENT AND NOT VOTING: Lynch, Miller, Pushkin and Reynolds.

So, a majority of the members elected having voted in the affirmative, the motion prevailed.

#### **SPEAKER PRO TEMPORE ANDERSON IN THE CHAIR**

Mr. Speaker, Mr. Armstead, arose from his seat and requested to be excused from voting on the passage of Com. Sub. for H. B. 2688 under the provisions of House Rule 49.

The Speaker Pro Tempore replied that Mr. Armstead was a member of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse him from voting.

Delegate Howell requested to be excused from voting on the passage of Com. Sub. for H. B. 2688 under the provisions of House Rule 49.

The Speaker Pro Tempore replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the member from voting.



**MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR**

Delegate J. Nelson requested to be excused from voting on the passage of Com. Sub. for H. B. 2688 under the provisions of House Rule 49.

The Speaker replied that the Delegate may have a direct interest therein but that it would be a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the gentleman from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 354**), and there were—yeas 60, nays 40, absent and not voting none, paired 2, with the nays and paired being as follows:

NAYS: Azinger, Blair, Butler, Caputo, Cowles, Eldridge, Faircloth, Fast, Ferro, Fleischauer, Fluharty, Folk, Frich, Gearheart, Guthrie, Hamilton, Hicks, Hill, Householder, Howell, Ihle, Kurcaba, Lane, Lynch, Manchin, McGeehan, J. Nelson, Perdue, L. Phillips, Pushkin, Rodighiero, Rowe, P. Smith, Sponaugle, Storch, Summers, Trecost, Wagner and Weld.

Pursuant to House Rule 43, the following pairs were filed and announced by the Clerk:

PAIRED:

YEA: Miller

NAY: Longstreth

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2688) passed.

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

**H. B. 2712**, Relating to employment and privacy protection; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 355**), and there were—yeas 93, nays 3, absent and not voting 4, with the nays and absent and not voting being as follows:

NAYS: Ambler, Cooper and D. Evans.

ABSENT AND NOT VOTING: Deem, Guthrie, Kelly and Miller.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2712) passed.

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

At 5:05 P.M., Delegate Cowles moved that the House of Delegates recess until 5:45 P.M., which motion was not adopted.

At 5:07, Delegate Cowles again moved that the House of Delegates recess until 5:45 P.M., which motion was adopted.

**Com. Sub. for H. B. 2717**, Relating to hiring of public school employees; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 356**), and there were—yeas 63, nays 31, absent and not voting 6, with the nays and absent and not voting being as follows:

NAYS: Bates, Boggs, Byrd, Campbell, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Folk, Hartman, Hicks, Hornbuckle, Longstreth, Lynch, Manchin, Miley, Moore, Morgan, Moye, Perdue, Perry, Pethtel,

L. Phillips, Pushkin, Rowe, Skinner, P. Smith, Sponaugle, Trecost and Williams.

ABSENT AND NOT VOTING: Arvon, Deem, Guthrie, Kelly, Miller and Summers.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2717) passed.

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

**Com. Sub. for H. B. 2756**, Authorizing appointees or employees of the Alcohol Beverage Control Commissioner to carry concealed handguns; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 357**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Deem, Guthrie, Kelly, Miller and Summers.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2756) passed.

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

**Com. Sub. for H. B. 2636**, Exempting information contained in a concealed weapon permit application from the Freedom of Information Act; on third reading, coming up in regular order, was read a third time.

Delegate Moye requested to be excused from voting on the passage of Com. Sub. for H. B. 2636 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the member from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 358**), and there were—yeas 95, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Guthrie, Kelly, Miller and Summers.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2636) passed.

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

**Com. Sub. for H. B. 2795**, Providing that when a party's health condition is at issue in a civil action, medical records and releases for medical information may be requested and required without court order; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 359**), and there were—yeas 74, nays 19, absent and not voting 7, with the nays and absent and not voting being as follows:

NAYS: Bates, Campbell, Fast, Fleischauer, Fluharty, Folk, Gearheart, Hicks, Hornbuckle, Lynch, Manchin, Marcum, Moye, Perdue, Perry, Pushkin, Rodighiero, Skinner and Upson.

ABSENT AND NOT VOTING: Boggs, Deem, Guthrie, Kelly, Miller, R. Phillips and Summers.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2795) passed.

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

**Com. Sub. for H. B. 2805**, Transferring to an adult correctional facility any juvenile whose sentence runs beyond his or her eighteenth birthday; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 360**), and there were—yeas 93, nays 1, absent and not voting 6, paired 2, with the paired and absent and not voting and being as follows:

Pursuant to House Rule 43, the following pairs were filed and announced by the Clerk:

PAIRED:

YEA: R. Phillips

NAY: Pushkin

ABSENT AND NOT VOTING: Boggs, Deem, Guthrie, Kelly, Miller and Summers.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2805) passed.

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

**Com. Sub. for H. B. 2810**, Implementing the West Virginia Property Rescue Initiative to reduce the number of properties posing a threat to public health and safety; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 361**), and there were—yeas 92, nays 1, absent and not voting 7, with the nays and absent and not voting being as follows:

NAYS: Waxman.

ABSENT AND NOT VOTING: Boggs, Deem, Guthrie, Kelly, Miller, R. Phillips and Summers.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2810) passed.

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

**Com. Sub. for H. B. 2828**, Modifying the requirements that allow a child witness to testify by closed circuit television; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 362**), and there were—yeas 93, nays none, absent and not voting 7, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Boggs, Deem, Guthrie, Kelly, Miller, R. Phillips and Summers.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2828) passed.

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

**Com. Sub. for H. B. 2867**, Requiring recommendations for higher education course credit transfer; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 363**), and there were—yeas 93, nays none, absent and not voting 7, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Boggs, Deem, Guthrie, Kelly, Miller, R. Phillips and Summers.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2867) passed.

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

**Com. Sub. for H. B. 2902**, West Virginia ABLE Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 364**), and there were—yeas 92, nays 1, absent and not voting 7, with the nays and absent and not voting being as follows:

NAYS: McGeehan.

ABSENT AND NOT VOTING: Boggs, Deem, Guthrie, Kelly, Miller, R. Phillips and Summers.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2902) passed.

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

**H. B. 2926**, Relating to deferral charges in connection with a consumer credit sale or consumer loan; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 365**), and there were—yeas 81, nays 11, absent and not voting 8, with the nays and absent and not voting being as follows:

NAYS: Fleischauer, Hicks, Lane, Lynch, Marcum, Perdue, Pushkin, Reynolds, Rodighiero, Rowe and Sponaugle.

ABSENT AND NOT VOTING: Boggs, Deem, D. Evans, Guthrie, Kelly, Miller, R. Phillips and Summers.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2926) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

**H. B. 2926** - “A Bill to amend and reenact §46A-3-114 of the Code of West Virginia, 1931, as amended, relating to making and collecting deferral charges in connection with a consumer credit sale or consumer loan, refinancing or consolidation; making and collecting modification charges in connection with a consumer credit sale or consumer loan, refinancing or consolidation; specifying the requirements for a modification; and requiring the Commissioner of Financial Institutions to prescribe by rule the method or procedure for the calculation of deferral charges for certain consumer credit sale or consumer loans.”

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



**H. B. 3019**, Requiring official business and records of the state and its political subdivisions be conducted in English; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 366**), and there were—yeas 88, nays 4, absent and not voting 8, with the nays and absent and not voting being as follows:

NAYS: Fleischauer, Hornbuckle, Pushkin and Skinner.

ABSENT AND NOT VOTING: Boggs, Deem, Guthrie, Kelly, Miller, Moore, R. Phillips and Summers.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3019) passed.

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

#### FIRST READING

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

**Com. Sub. for S. B. 351**, Relating to charitable organization contribution levels requiring independent audit reports,

**Com. Sub. for S. B. 374**, Permitting in absentia parole hearings in certain instances,

**Com. Sub. for S. B. 375**, Specifying who receives parole hearing notices via regular or certified mail,

**S. B. 472**, Making supplementary appropriation to DOT, DMV, Motor Vehicle Fees Fund,

**S. B. 475**, Making supplementary appropriation to DMAPS, Division of Corrections, Parolee Supervision Fees, and WV State Police, Motor Vehicle Inspection Fund,

**S. B. 507**, Relating to monitoring inmates' electronic communications,

And,

**S. B. 559**, Relating to social work licensing exemptions.

#### MESSAGES FROM THE SENATE

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

**Com. Sub. for H. B. 2157**, Relating to absentee ballot fraud.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

**H. B. 2213**, Reducing the distributions to the West Virginia Infrastructure Fund.

On motion of Delegate Cowles, the bill was taken up for immediate consideration.

The following Senate amendments were reported by the Clerk:

On page three, section eighteen-d, lines thirty-one and thirty-two, by striking out "With a minimum of ten percent of the aforementioned fifty percent being used to fund veteran-related projects."

Delegate Cowles moved that the House of Delegates concur in the Senate amendments.

Delegate Cowles then asked and obtained unanimous consent that the motion be withdrawn.

On motion of Delegate Cowles, the House of Delegates refused to concur in the Senate amendments and requested that the Senate recede therefrom.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had refused to recede from its amendment and requested the House of Delegates to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses as to:

**H. B. 2576**, Creating new code sections which separate the executive departments.

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

Senators Blair, Boso and Miller.

On motion of Delegate Cowles, the House of Delegates agreed to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates Arvon, Hill and R. Phillips.

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

A message from the Senate, by

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

**S. B. 310** - “A Bill to amend and reenact §11-13-3 of the Code of West Virginia, 1931, as amended, relating to exempting nonprofit public utility companies from the West Virginia Business and Occupation Tax”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, to take effect April 13, 2015, of

**Com. Sub. for S. B. 361**, Eliminating prevailing hourly wage requirement for construction of public improvements.

Delegate Cowles moved that the bill take effect April 13, 2015.

On this question, the yeas and nays were taken (**Roll No. 367**), and there were—yeas 86, nays 4, absent and not voting 10, with the nays and absent and not voting being as follows:

NAYS: Blair, Foster, Hicks and Ihle.

ABSENT AND NOT VOTING: Boggs, Deem, Ferro, Fleischauer, Guthrie, Kelly, Kessinger, Miller, R. Phillips and Summers.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 361) takes effect April 13, 2015.

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

A message from the Senate, by

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

**S. B. 550** - “A Bill to amend and reenact §7-1-3ff of the Code of West Virginia, 1931, as amended; and to amend and reenact §8-12-16

of said code, all relating to authorizing county commissions and municipalities to cooperate and enter into agreements removing or demolishing dwellings or buildings unfit for human habitation”; which was referred to the Committee on Political Subdivisions then the Judiciary.

A message from the Senate, by

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

**S. B. 580** - “A Bill to amend and reenact §55-7B-4 of the Code of West Virginia, 1931, as amended, relating to the statute of limitations on claims by minors for health care injuries under the Medical Professional Liability Act”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect July 1, 2015, and requested the concurrence of the House of Delegates in the passage, of

**S. B. 581** - “A Bill to amend and reenact §5B-2-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17-1-3 of said code, all relating to transferring the Courtesy Patrol from Division of Tourism to Division of Highways; eliminating requirement that moneys be transferred from the Tourism Promotion Fund to the Courtesy Patrol Fund; and specifying how funds may be spent”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

**S. C. R. 31** - “Authorizing the Joint Select Committee on Tax Reform, created under the authority of Joint Rule 12, to meet to study tax reform in West Virginia.”

*Resolved by the Legislature of West Virginia:*

That the Legislature hereby authorizes the Joint Select Committee on Tax Reform to study the West Virginia tax system for the purpose of preparing a report with recommendations for comprehensive tax reform; and, be it

*Further Resolved,* That the Joint Select Committee on Tax Reform may meet after the adjournment *sine die* of the Regular Session of the 2015 Legislature, under the supervision of the Joint Committee on Government and Finance, and all members of the committee are entitled to compensation and reimbursement for expenses as authorized for members of the Legislature in accordance with the performance of their interim duties; and, be it

*Further Resolved,* That, at the conclusion of its study, the Joint Select Committee on Tax Reform report to the Joint Committee on Government and Finance its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

**S. C. R. 37** - “Requesting Joint Committee on Government and Finance study future legislation relating to the pharmaceutical benefits management industry in the State of West Virginia.”

WHEREAS, In most areas of West Virginia, the complexities of prescription drug programs administered by pharmacy benefit managers (PBM) are impacting pharmacies; and

WHEREAS, PBMs influence and impact consumers’ purchases of prescriptions drugs; and

WHEREAS, PBMs contract with out-of-state prescription drug manufacturers for the purpose of selling prescription drugs to West Virginia consumers; and

WHEREAS, The State uses PBMs to administer several prescription drug programs for its employees, retirees and beneficiaries of Medicaid; and

WHEREAS, PBMs can be a vital benefit to consumers, pharmacies and state agencies; and

WHEREAS, There may be a need for oversight or regulation of PBMs, including, but not limited to, establishing criteria for contracts between PBMs and pharmacies and criteria for provider manuals that pharmacies are required to comply with by the PBMs, timely adjustments with reimbursements to pharmacies, pricing of prescriptions, auditing and appeal processes and the impact on consumer selection, consumption and cost of prescriptions ; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the pharmaceutical benefits management industry in the State of West Virginia; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the Legislature on the first day of the regular session, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved*, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

**S. C. R. 39** - “Requesting the Joint Committee on Government and Finance study how Cedar Lakes Camp and Conference Center and its facilities are currently being used and how they may best be utilized in the future, including possible transfer from the West Virginia Board of Education to a private, nonstock, not-for-profit corporation.”

WHEREAS, Over the decades, Cedar Lakes has fulfilled this purpose and has become an integral part of the local economy and the Jackson County community; and

WHEREAS, The Legislature recognizes the economic and social value of Cedar Lakes and that its continued viability depends on it becoming an independent, self-sustaining entity; and

WHEREAS, The Legislature desires to review and study on how Cedar Lakes Camp and Conference Center may best fulfill its purpose of developing competent leadership, developing character, training for useful citizenship, fostering patriotism and of providing and



encouraging the development of organized recreational activities for Future Farmers of America, Future Homemakers of America members, and other youth and adult groups; and

WHEREAS, A private, not-for-profit structure may be the best means of assuring prudent financial management and, in turn, fulfilling the purposes of Cedar Lakes and serving the local economy, the Jackson County community and the state; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature hereby requests the Joint Committee on Government and Finance study how Cedar Lakes Camp and Conference Center and its facilities are currently being used and how they may best be utilized in the future, including possible transfer to a private, nonstock, not-for-profit corporation; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

**S. C. R. 47** - "Amending the Joint Rules of the Senate and House of Delegates relating to printing of enrolled bills."

*Resolved by the Legislature of West Virginia:*

That Rule 15 of the Joint Rules of the Senate and House of Delegates be amended to read as follows:

### **Printing Enrolled Bills**

15. After a bill has been passed by both houses, the text from which it was originally printed shall be corrected as to any typographical errors that may not previously have been corrected and to include any amendments that may have been made by either house since the last printing of the bill. After the text has been so corrected, not less than fifty copies of the bill shall be printed. ~~Twelve of these copies shall be on seven and one-fourth by ten bond paper, twenty-pound basis of at least fifty percent rag content for the use of the Joint Committee on Enrolled Bills, One of which the~~ copies, when properly authenticated, shall become the Enrolled Bill. ~~and the remainder shall be on twenty-pound basis, sulphite bond paper.~~ In the case of enrolled bills authorizing the promulgation of a proposed legislative rule, a copy of the full text of the proposed legislative rule which the bill incorporates by reference shall be appended to the bill which has been properly authenticated and designated to be the Enrolled Bill. The copy appended to the Enrolled Bill shall conform to the copy of the full text of the proposed legislative rule appended to the introduced bill. Copies of the proposed legislative rule ~~shall~~ are not to be appended to the additional copies of the Enrolled Bill. Following action by the Governor, or the failure or refusal of the Governor to approve or disapprove a bill of authorization, the copy of the Enrolled Bill with the proposed legislative rule appended ~~shall be~~ is the copy of the bill filed with the Secretary of State in accordance with the provisions of Rule 19 of these Joint Rules.

### **LEAVES OF ABSENCE**

At the request of Delegate Cowles, and by unanimous consent, leave of absence for the day was granted Delegate Miller.

**MISCELLANEOUS BUSINESS**

Delegate Kelly announced that he was absent when the vote was taken on Roll No. 332, and that had he been present, he would have voted “YEA” thereon.

Delegate Azinger announced that he was absent when the vote was taken on Roll No. 336, and that had he been present, he would have voted “YEA” thereon.

Delegate McGeehan announced that he was absent when the vote was taken on Roll No. 339, and that had he been present, he would have voted “YEA” thereon.

Delegate Ireland noted that he was absent when the vote was taken on Roll No. 337, and that had he been present, he would have voted “YEA” thereon.

Delegate Westfall noted that he was absent when the vote was taken on Roll No. 346, and that had he been present, he would have voted “YEA” thereon.

Delegate Guthrie announced that she was absent on yesterday when the votes were taken on Roll Nos. 310 and 311, and that had she been present, she would have voted “YEA” thereon.

Delegate Canterbury announced that he was absent when the votes were taken on Roll Nos. 337 through 340, and that had he been present, he would have voted “YEA” thereon.

Delegate Rohrbach noted to the Clerk that he be recorded in the Journal as having voted “YEA” on the vote to pass Com. Sub. for H. B. 2568, notwithstanding the objections of the Governor.

Delegate Hill noted to the Clerk that he was absent when the votes were taken on the adoption of H. R. 13, Com. Sub. for S. C. R. 14 and H. C. R. 91 and that had he been present, he would have voted “YEA”

thereon, and that he was absent when the vote was taken on Roll No. 332, and that had he been present he would have voted "YEA" thereon.

Delegate L. Phillips noted to the Clerk she was absent when the vote was taken on Roll No. 336, and that had she been present, she would have voted "YEA" thereon.

Delegate Moffatt noted to the Clerk that he was absent when the votes were taken on the following Roll Nos. and had he been present he would have voted as follows:

<u>Roll No.</u>	<u>Bill No.</u>	<u>Voting Preference</u>
300	Com. Sub. for H. B. 2377	YEA
332	Com. Sub. for H. B. 2568	YEA
333	Com. Sub. for H. J. R. 13	NAY
334	Com. Sub. for H. B. 2148	YEA
335	Com. Sub. for H. B. 2226	YEA
336	Com. Sub. for H. B. 2233	YEA
338	Com. Sub. for H. B. 2366	YEA
339	Com. Sub. for H. B. 2429	YEA
346	Com. Sub. for H. B. 2939	YEA

Delegate Guthrie noted to the Clerk that she was absent when the votes were taken on the following Roll Nos. And had she been present she would have voted as follows:

<u>Roll No.</u>	<u>Voting Preference</u>
355	"YEA"
356	"NAY"
357	"YEA"

358       “YEA”  
359       “YEA”  
360       “YEA”  
361       “YEA”  
362       “YEA”  
363       “YEA”  
364       “YEA”  
365       “NAY”  
366       “YEA”  
367       “YEA”

#### **REMARKS BY MEMBERS**

Delegate Border asked and obtained unanimous consent that the remarks of Delegates McGeehan, Ireland, Anderson, Deem, Kelly, Cadle, Foster, Shott and Canterbury regarding Com. Sub. for H. B. 2688 be printed in the Appendix to the Journal.

Delegate Eldridge asked and obtained unanimous consent that all remarks regarding Com. Sub. for H. B. 2688 be printed in the Appendix to the Journal.

At 7:39 P.M., the House of Delegates adjourned until 11:00 A.M., Wednesday, March 5, 2015.



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THURSDAY, MARCH 5, 2015

**FIFTY-FIRST DAY**

[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

The House of Delegates met at 11:00 A.M., and was called to order by the Honorable Tim Armstead, Speaker.

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

The Clerk proceeded to read the Journal of Wednesday, March 4, 2015, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**COMMITTEE REPORTS**

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 277**, Requiring issuance of certificate of birth resulting in stillbirth,

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

Delegate Shott, Chair of the Committee on the Judiciary submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 532**, Relating to civil liability immunity for clinical practice plans and medical and dental school personnel,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, and with the recommendation that second reference of the bill to the Committee on Finance be dispensed with.

In the absence of objection, reference of the bill (**S. B. 532**) to the Committee on Finance was abrogated.

Delegate Storch, Chair of the Committee on Political Subdivisions, submitted the following report, which was received:

Your Committee on Political Subdivisions has had under consideration:

**S. B. 106**, Excepting professional engineer member from sanitary board when project engineer is under contract,

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

In accordance with the former direction of the Speaker, the bill (**S. B. 106**) was referred to the Committee on Government Organization.

Delegate McCuskey, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 5<sup>th</sup> day of March, 2015, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

(**Com. Sub. for S. B. 175**), Authorizing DHHR promulgate legislative rules,

(**Com. Sub. for S. B. 187**), Authorizing Department of Revenue promulgate legislative rules,



And,

**(Com. Sub. for S. B. 382)**, Declaring claims against state.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 421**, Relating to punitive damages in civil actions,

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

#### MESSAGES FROM THE EXECUTIVE

Mr. Speaker, Mr. Armstead, presented a communication from His Excellency, the Governor, advising that on March 3, 2015, he approved **Com. Sub. for H. B. 2004, Com. Sub. for H. B. 2025, H. B. 2212, Com. Sub. for H. B. 2234, H. B. 2669, Com. Sub. for S. B. 13, Com. Sub. for S. B. 255, S. B. 298, S. B. 299, S. B. 302 and Com. Sub. for S. B. 378.**

#### MESSAGES FROM THE SENATE

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had concurred in the changed effective date, to take effect July 1, 2015, a bill of the House of Delegates as follows:

**H. B. 2726**, Clarifying choice of laws issues in product's liability actions.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

**Com. Sub. for H. C. R. 6**, The Army Air Force SGT Everett Wayne “Bud” Sell Memorial Bridge.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

**Com. Sub. for H. C. R. 20**, The Virginia and U. S. Army Major Woodrow Cook Memorial Road.

A message from the Senate, by

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

**Com. Sub. for S. B. 234** - “A Bill to repeal §8-16-19 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-12-17 of said code; to amend and reenact §8-19-4 of said code; to amend and reenact §16-13A-1a, §16-13A-9 and §16-13A-25 of said code; to amend and reenact §24-1-1 and §24-1-1b of said code; to amend and reenact §24-2-1, §24-2-2, §24-2-3, §24-2-4a, §24-2-4b, §24-2-7 and §24-2-11 of said code; and to amend and reenact §24-3-5 of said code, all relating to removing from the jurisdiction of the Public Service Commission certain water and sewer utilities owned or operated by political subdivisions of the state; providing that bondholders may petition the court for redress in the event of significant insufficiencies; expanding jurisdiction of Public Service Commission to provide assistance to Public Service Districts regarding proposed rate changes; expanding powers of certain Public Service Boards; limiting use of certain information collected by Public Service Commission; providing mechanism for Public Service Commission to address deficiencies in the measurements, practices acts or services provided by certain public utility that is a political subdivision of the state; and providing mechanisms for various functions of political subdivisions related to water and sewer services”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**Com. Sub. for S. B. 320** - “A Bill to amend and reenact §31B-10-1006 of the Code of West Virginia, 1931, as amended; and to amend and reenact §47-9-53a of said code, all relating to notices of revocation of certificate of authority; requiring notice of revocation to foreign limited liability companies and foreign limited partnerships to be sent to their registered agent or if there is no registered agent to their principal office”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**Com. Sub. for S. B. 325** - “A Bill to amend and reenact §6B-2-6 of the Code of West Virginia, 1931, as amended, relating to filing dates for financial disclosure statements by candidates; setting deadlines for candidates to file financial disclosure statements with Ethics Commission; setting deadlines for Ethics Commission to file duplicate copies of statements to certain offices; clarifying to which office Ethics Commission sends copies of statements; and disqualifying candidates who fail to file statement by deadline”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**Com. Sub. for S. B. 352** - “A Bill to amend and reenact §19-4-1, §19-4-2, §19-4-3, §19-4-4, §19-4-5, §19-4-13, §19-4-16 and §19-4-22 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24A-1-3 of said code, all relating to cooperative associations; clarifying definitions; expanding scope of cooperative associations to

goods and services, including recycling; limiting scope of recycling cooperatives; expanding membership of cooperative associations; and revising exemptions for motor carriers to allow nonprofit recycling cooperatives”; which was referred to the Committee on Government Organization.

A message from the Senate, by

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

**S. B. 363** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §14-2A-19b, relating to allowing the Court of Claims to establish maximum rates and service limitations for reimbursement of health care services”; which was referred to the Committee on Health and Human Resources then the Judiciary.

A message from the Senate, by

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

**Com. Sub. for S. B. 366** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-50-1, §33-50-2 and §33-50-3, all relating to the West Virginia Health Benefit Exchange; providing for publishing online information to assist consumers in making informed decisions concerning the purchase of a qualified health plan; and permitting rule-making”; which was referred to the Committee on Health and Human Resources.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

**Com. Sub. for S. B. 435** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §7-26-1, §7-26-2, §7-26-3, §7-26-4, §7-26-5 and §7-26-6, all relating to creating West Virginia Sheriffs’ Bureau of Professional Standards;

purpose and composition; general powers and duties; officers; promotion of training; standards for vehicles, badges and uniforms; and standards for interagency cooperation.”

A message from the Senate, by

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

**Com. Sub. for S. B. 446** - “A Bill making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2015, to the Department of Commerce, Workforce West Virginia - Workforce Investment Act, fund 8749, fiscal year 2015, organization 0323, and to the Department of Commerce, Office of the Secretary - Office of Economic Opportunity - Community Services, fund 8781, fiscal year 2015, organization 0327, by supplementing and amending the appropriation for the fiscal year ending June 30, 2015”; which was referred to the Committee on the Judiciary then Finance.

A message from the Senate, by

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

**Com. Sub. for S. B. 453** - “A Bill to amend and reenact §17A-6A-1, §17A-6A-3, §17A-6A-4, §17A-6A-5, §17A-6A-6, §17A-6A-8, §17A-6A-8a, §17A-6A-9, §17A-6A-10, §17A-6A-11, §17A-6A-12, §17A-6A-13, §17A-6A-15, and §17A-6A-18 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto five new sections, designated §17A-6A-12a, §17A-6A-14a, §17A-6A-15a, §17A-6A-15b and §17A-6A-15c, all relating generally to motor vehicle dealers, distributors, wholesalers and manufacturers; adopting legislative findings; defining terms; modifying terms relating to cancellations of dealer agreements; modifying circumstances not constituting good cause to cancel an agreement; clarifying the standard of proof in termination, cancellation and nonrenewal disputes; modifying compensation terms when contract is discontinued; setting

interest rate where payments to dealers from manufacturers or distributors are untimely; adding conduct which is considered a prohibited practice; increasing to one hundred eighty days the notice period afforded dealers should a manufacturer or distributor not approve a successor dealer; clarifying that air miles are used to determine distances between dealerships; restricting manufacturer and distributor use of dealership property; modifying obligations under warranties; and clarifying indemnity practices”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

**S. B. 477** - “A Bill supplementing, amending, decreasing and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2015, organization 0803, for the fiscal year ending June 30, 2015.”

A message from the Senate, by

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

**Com. Sub. for S. B. 541** - “A Bill to amend and reenact §3-8-1a, §3-8-2, §3-8-3, §3-8-4, §3-8-5, §3-8-5a, §3-8-5b, §3-8-7, §3-8-8, §3-8-9, §3-8-10 and §3-8-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §3-8-9a, all relating generally to the regulation and control of elections; modifying what qualifies as a federal reporting exemption; requiring certain contributions be reported to State Election Commission within forty-eight hours of their receipt; deleting certain reports by membership organizations that raise funds for political purposes by payroll; permitting certain financial statements by mail or in person; requiring Secretary of State to maintain an online database; setting forth additional powers of State Election Commission; requiring

Attorney General to provide assistance when requested; permitting a political committee to transfer funds to a national, state or local committee of a political party without limitation; permitting a candidate committee to contribute to another candidate committee for the purpose of retiring debt incurred during a prior election; permitting a political action committee to contribute to another political action committee; establishing expenditure limits by political party committees, political party caucuses and candidates; permitting candidates, after a general election, to transfer any unused contributions to state party executive committees, state party legislative caucus committees, local committees of a political party or any other candidate for public office without limitation; modifying and adding definitions; and creating criminal penalties”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**Com. Sub. for S. B. 542** - “A Bill to amend and reenact §46A-2-125, §46A-2-126 and §46A-2-128 of the Code of West Virginia, 1931, as amended; to amend and reenact §46A-3-112 and §46A-3-113 of said code; to amend and reenact §46A-5-101 and §46A-5-106 of said code; and to amend said code by adding thereto a new section, designated §46A-5-107, all relating to clarifying permitted and prohibited actions with regard to the prohibition on oppression and abuse in the course of debt collection; clarifying permitted and prohibited actions with regard to the prohibition of unreasonable publication; clarifying permitted and prohibited actions and communications with regard to the prohibition on the use of unfair or unconscionable means in the course of debt collection; increasing permitted delinquency charges; modifying damages and penalties for violations; modifying the limitation of actions brought under this chapter; adjusting time allowed after discovery to correct an error without liability in certain circumstances; adjusting damages for inflation; and specifying venue of an action or

proceeding brought by a consumer”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**S. B. 582** - “A Bill to amend and reenact §5-26-1 and §5-26-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §5-26-3 and §5-26-4, all relating to the Herbert Henderson Office of Minority Affairs; requiring office to report to Select Committee on Minority Affairs; requiring director to implement recommendations of select committee; defining terms; continuing Minority Affairs Fund; establishing a community-based pilot demonstration project; providing for operation and funding of pilot project; setting forth objectives and goals of pilot project; and requiring leverage of existing resources”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect July 1, 2015, and requested the concurrence of the House of Delegates in the passage, of

**S. B. 583** - “A Bill to amend and reenact §11-27-11 of the Code of West Virginia, 1931, as amended, increasing the tax rate on providers of certain nursing facility services for one year”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**S. B. 584** - “A Bill to amend and reenact §18-2-16 and §18-2-16a of the Code of West Virginia, 1931, as amended; to amend said code



by adding thereto a new article, designated §18-2L-1, §18-2L-2, §18-2L-3, §18-2L-4, §18-2L-5, §18-2L-6, §18-2L-7, §18-2L-8, §18-2L-9, §18-2L-10 and §18-2L-11; and to amend and reenact §18-9D-15 of said code, all relating to the transfer of the Cedar Lakes Camp and Conference Center from the State Board of Education to a private, nonstock, not-for-profit corporation established under the laws of this state; and providing available funding for said corporation from the School Building Authority for a period of three years after the transfer”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**S. B. 585** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter designated §17H-1-1, §17H-1-2, §17H-1-3, §17H-1-4, §17H-1-5, §17H-1-6, §17H-1-7, §17H-1-8, §17H-1-9, §17H-1-10, §17H-1-11, §17H-1-12, §17H-1-13, §17H-1-14, §17H-1-15, §17H-1-16, §17H-1-17, §17H-1-18, §17H-2-1, §17H-2-2, §17H-2-3, §17H-2-4, §17H-2-5, §17H-2-6, §17H-2-7, §17H-2-8, §17H-2-9, §17H-2-10, §17H-2-11, §17H-2-12, §17H-2-13, §17H-2-14, §17H-2-15, §17H-2-16, §17H-2-17 and §17H-2-18, all relating to regulation of transportation network companies and regulation of taxicab companies; defining terms; establishing a permit and permit fee; establishing requirements relating to insurance, disclosures, transportation network companies and its drivers, safety and records; limiting controlling authority; and permitting Commissioner of the Division of Motor Vehicles to propose rules for legislative approval; exempting taxicab companies from the regulatory jurisdiction of Public Service Commission; establishing a permit and permit fee; establishing requirements relating to insurance, disclosures, taxicab companies and its drivers, safety and records; limiting controlling authority; and permitting Commissioner of the Division of Motor Vehicles to propose rules for legislative approval”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**Com. Sub. for S. C. R. 20** - “Requesting the Division of Highways name the ten-mile stretch of Route 83 in McDowell County, beginning at milepost 18.05 and ending at milepost 8.05, between its intersection with Route 16 at Yukon and the Bradshaw city line, as the ‘U. S. Army 1SG Joe C. Alderman Memorial Road’.”

WHEREAS, First Sergeant Alderman was born in Bartley, McDowell County, on September 11, 1940; and

WHEREAS, First Sergeant Alderman enlisted in the Army in 1958 following his graduation from Big Creek High School; and

WHEREAS, First Sergeant Alderman began his career with the Army Special Forces in 1962; and

WHEREAS, During his time in the Special Forces, First Sergeant Alderman spent seven years on special detachments in Vietnam; and

WHEREAS, First Sergeant Alderman’s awards and honors include the Silver Star, Legion of Merit, Soldier’s Medal, six Bronze Stars, the Meritorious Service Medal, five Air Medals, the Joint Service Medal, six Army Commendation Medals and three Purple Hearts. Other awards from his time in Vietnam include the Special Service Medal for Heroism, the Cross of Gallantry with a Silver Star, two Bronze Stars and the Armed Forces Honor Medal; and

WHEREAS, First Sergeant Alderman retired in November 1980, and his career achievements were marked with his 1996 induction into the prestigious U. S. Army Ranger Hall of Fame; and

WHEREAS, First Sergeant Alderman died on August 19, 1994, and was interred at Arlington National Cemetery with full military honors; and

WHEREAS, It is fitting to honor First Sergeant Alderman's life and service by naming the stretch of Route 83 after him; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name the ten-mile stretch of Route 83 in McDowell County, beginning at milepost 18.05 and ending at milepost 8.05, between its intersection with Route 16 at Yukon and the Bradshaw city line, as the "U. S. Army 1SG Joe C. Alderman Memorial Road"; and, be it

*Further Resolved,* That the Division of Highways is hereby requested to have made and be placed signs identifying the road as the "U. S. Army 1SG Joe C. Alderman Memorial Road"; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Secretary of the Department of Transportation and U. S. Army First Sergeant Alderman's surviving relatives.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**S. C. R. 22** - "Requesting the Division of Highways name a portion of U. S. Route 119 in Boone County, beginning at a point, latitude 38.52773, longitude -81.50927, and ending at a point, latitude 38.54209, longitude -81.501417, the 'U. S. Army SGT Mark Andrew Messer Memorial Road'."

WHEREAS, Sergeant Messer was born in Charleston on January 4, 1965, to the Reverend Melvin and Barbara Messer; and

WHEREAS, After graduating from Scott High School, where he played football, Sergeant Messer enrolled in the Army and was stationed at Fort Leonard Wood in Missouri, Fort Lewis in Washington and Fort Campbell in Kentucky; and

WHEREAS, Sergeant Messer served in the military for more than ten years, including a life-altering, front-line tour in the Middle East during Desert Storm. He was a member of the 5<sup>th</sup> Special Forces Group, the 101<sup>st</sup> Airborne and the Green Berets. He fought in Honduras, Iraq, Iran, Kuwait and Saudi Arabia and trained with the Egyptian Special Forces; and

WHEREAS, Sergeant Messer received the Army Service Ribbon, Army Lapel Button, Sharpshooter Qualification Badge (M16 Rifle), Driver's Badge, Army Good Conduct Medal, Army Achievement Medal, NCO Professional Development Ribbon, National Defense Service Medal, Driver Mechanic Badge, Mechanic Badge, Southwest Asia Service Medal and Saudi Arabia/Kuwait Liberation Medal; and

WHEREAS, Sergeant Messer returned home to Boone County after he received a medical discharge because of injuries sustained during Desert Storm, including post-traumatic stress disorder. He was a VFW member; and

WHEREAS, Sergeant Messer passed away in his home on March 18, 2012, survived by his parents; his sons, Elijah Messer, Justin Green, Gage Messer and Dane Messer; and his brothers, David Messer and Jacob Messer; and

WHEREAS, It is fitting and proper that U. S. Army Sergeant Mark Andrew Messer be remembered and acknowledged for his dedicated service to his country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name a portion of U. S. Route 119 in Boone County, beginning at a point, latitude 38.52773, longitude -81.50927, and ending at a point, latitude 38.54209, longitude -81.501417, the 'U. S. Army SGT Mark Andrew Messer Memorial Road'; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs at both ends identifying the road as the 'U. S. Army SGT Mark Andrew Messer Memorial Road'; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways and the family of U. S. Army Sergeant Mark Andrew Messer.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**S. C. R. 25** - "Requesting the Division of Highways name bridge number 17-79-117.174, (17A257, 17A258), latitude 39.25769, longitude -80.28684), on Interstate 79, in Anmoore, Harrison County, heading south the 'U. S. Army PFC Nick A. Cavallaro Memorial Bridge' and heading north the 'U. S. Army SSG Benjamin T. Portaro Memorial Bridge'."

WHEREAS, Nick Cavallaro was born in Caulonia, Reggio Calabria, Italy, October 28, 1920, and came to the United States in August, 1922, with his brother Celestino (Charley) and mother Maria Rosa Strangio Cavallaro and settled in Anmoore, West Virginia; and

WHEREAS, Benjamin Portaro (Nick Cavallaro's cousin) was born in Caulonia, Reggio Calabria, Italy, March 8, 1921, and immigrated to Anmoore, West Virginia, with his family; and

WHEREAS, When World War II broke out, Nick Cavallaro and Benjamin Portaro both enlisted in the United States Army; and

WHEREAS, Nick Cavallaro participated in battles in North Africa and Sicily, Italy, and was one of the thousands of paratroopers dropped behind German lines the night before the invasion of Normandy, France; and

WHEREAS, Nick Cavallaro was scheduled to come home on leave when the Battle of the Bulge occurred and his leave was canceled; and

WHEREAS, Sadly, Nick Cavallaro lost his life in the battle at Fosse, Belgium, on January 3, 1945, leaving behind his mother, brother, sister Louise and a host of other family and friends; and

WHEREAS, Nick Cavallaro was awarded two Purple Heart Medals, the Bronze Star Medal and the Combat Infantryman Badge, as well as various medals by the French and Belgian governments; and

WHEREAS, Benjamin Portaro was a staff sergeant when he was discharged, having fought in two battles in France before fighting at the Battle of the Bulge in Belgium, where he was captured by German forces and eventually escaped; and

WHEREAS, Benjamin Portaro was awarded the Bronze Star Medal, Purple Heart Medal, POW Medal, Good Conduct Medal, American Campaign Medal, European-African-Middle Eastern Campaign Medal with two bronze service stars, World War II Victory Medal, Combat Infantryman Badge 1st Award, Honorable Service Lapel Button WWII and the Marksman Badge with Rifle Bar; and

WHEREAS, Nick Cavallaro and Benjamin Portaro were Italian immigrants, cousins and citizens of Anmoore, West Virginia, and fought for their adopted country, the United States of America; and

WHEREAS, It is fitting to recognize the service and sacrifice of cousins Nick Cavallaro and Benjamin Portaro by naming this bridge in their honor as an everlasting tribute to their memory; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 17-79-117.174, (17A257, 17A258), latitude 39.25769, longitude -80.28684), on Interstate 79, in Anmoore, Harrison County, heading south the “U. S. Army PFC Nick A. Cavallaro Memorial Bridge” and heading north the “U. S. Army SSG Benjamin T. Portaro Memorial Bridge”; and, be it

*Further Resolved,* That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge heading south as the “U. S. Army PFC Nick A. Cavallaro Memorial Bridge” and heading north the “U. S. Army SSG Benjamin T. Portaro Memorial Bridge”; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**S. C. R. 29** - “Requesting the Division of Highways name bridge number 20-77-99.01 (20A418), locally known as I-77 Greenbrier Street Overpass, with latitude of 38.34157 and longitude of -81.61183 in Kanawha County the ‘Rosie the Riveter Memorial Bridge’.”

WHEREAS, Women who worked on the home front during World War II were a significant force in shortening and winning that history-changing war. West Virginia women contributed significantly to the effort by working in factories, farms, government and as volunteers doing any and all that could be done on the home front; and

WHEREAS, Rosie the Riveters as a group and with individual examples in West Virginia are noted for caring for their loved ones who were wounded in many ways by the war, who pioneered proof of what women do for society, and who showed what older Americans do when given the right guidance and opportunity. Most Rosie the Riveters have died without being recognized or learned from; and

WHEREAS, The West Virginia Rosie the Riveter Program has proven from 2009 to the present that these women were critical to the well-being of America, allied nations and freedom and showing the value of the strengths of women; and

WHEREAS, The Greater Kanawha Valley is the first model Rosie the Riveter Community in America, based on work done by the nonprofit called, Thanks! Plain and Simple, Inc. (“Thanks!”) which has the mission of creating projects that need to be done in America and then guiding other Americans to join in the effort. “Thanks!” has been significantly helped by Rosie the Riveters, many of whom have died since “Thanks!” began work in 2009. Families and the overall communities of West Virginia have been supporting these and other efforts to honor Rosie the Riveters; and

WHEREAS, The Charleston Gold Dome Lions Club has initiated naming a bridge the “Rosie the Riveter Memorial Bridge” as an example of what can be done by communities nationwide. Increasing numbers of entities across the United States and internationally are recognizing that the ways West Virginia has recognized Rosie the Riveters are significant and achievable. A small bridge in Wetzel County was named for a living Rosie, Freda Bell, which is a first in America and shows West Virginia’s spirit and commitment to contributors to freedom; and

WHEREAS, It is only fitting and proper that the class of Americans known as Rosie the Riveters and their good work for family, community, the nation and the world be recognized and remembered; therefore, be it



*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 20-77-99.01 (20A418), locally known as I-77 Greenbrier Street Overpass, with latitude of 38.34157 and longitude of -81.61183 in Kanawha County the “Rosie the Riveter Memorial Bridge”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs at both ends of the bridge identifying it as the “Rosie the Riveter Memorial Bridge”; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways, to “Thanks! Plain and Simple, Inc.” and to the Charleston Gold Dome Lions Club.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**Com. Sub. for S. C. R. 34** - “Requesting the Division of Highways name bridge number 13-64-165.87 on Interstate 64 near Lewisburg, Greenbrier County, the ‘U. S. Army Air Corps LT William H. Corkrean, Jr., Memorial Bridge’.”

WHEREAS, William H. Corkrean, Jr., was born on June 7, 1922, in Ronceverte, Greenbrier County. He lived in Ronceverte and was educated in Greenbrier County schools. He joined the West Virginia National Guard at age 15 in 1939 with his fathers’s permission. He was employed by the Hecht Co. before entering military service in 1941. In the military, he was a B-17 pilot assigned to 390th BG 570th BS. On May 11, 1944, while piloting the 42-31971 “Twenty-one or Bust” on his twenty-third mission, the aircraft was hit by flak and crashed at Gilz-Rijer, Belgium. It was reported that he remained with the plane until it crashed; and

WHEREAS, William H. Corkrean, Jr. died defending the principals of freedom upon which his country, state and community were established; and

WHEREAS, Naming bridge number 13-64-165.87 on Interstate 64 near Lewisburg, Greenbrier County, the “U. S. Army Air Corps LT William H. Corkrean, Jr. Memorial Bridge” is an appropriate recognition of his contributions and his supreme sacrifice to his country, state, community and Greenbrier County; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 13-64-165.87 on Interstate 64 near Lewisburg, Greenbrier County, the “U. S. Army Air Corps LT William H. Corkrean, Jr. Memorial Bridge”; and, be it

*Further Resolved,* That the Division of Highways is requested to have made and be placed signs identifying the bridge as the “U. S. Army Air Corps LT William H. Corkrean, Jr. Memorial Bridge”; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Secretary of the Department of Transportation and the surviving relatives of William H. Corkrean, Jr.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**Com. Sub. for S. C. R. 35** - “Requesting the Division of Highways name bridge number 24-13-0.01 (24A089), locally known as Gary Bridge, carrying County Route 13 over the Tug Fork of the Big Sandy River in McDowell County the ‘U. S. Army CPL Zane Joseph Gero

and U. S. Marine Corps CPL John Anthony “Tony” Gero Memorial Bridge’.”

WHEREAS, Zane Joseph Gero was born January 26, 1911, in Thorpe, McDowell County, into a coal-mining family of immigrant ancestors; and

WHEREAS, While attending Gary High School, Zane Joseph Gero led the Gary Coaldigger football team to many victories and received an honorable mention as a state football player/quarterback; and

WHEREAS, While attending Gary High School, Zane Joseph Gero was also the band drum-major and at half time would lead the band in its performance; and

WHEREAS, As a high school senior, Zane Joseph Gero won the title of state drum-major in a statewide competition; and

WHEREAS, Following high school, Zane Joseph Gero earned a bachelor’s degree from Concord College qualifying him to teach social studies; and

WHEREAS, Concord College had no band at the time he enrolled there, so Zane Joseph Gero gained approval to start a band, now known as the Concord Commanders, and was the band leader; and

WHEREAS, Following college, as the emergency services chief for the U. S. Coal and Coke Company, Zane Joseph Gero taught volunteers to be well qualified in emergency responses, including fire and ambulance. He taught how to provide first response in mine accidents. In a partly segregated community Zane Joseph Gero was welcomed by all ethnic and racial groups. He spoke numerous languages and at times acted as an interpreter; and

WHEREAS, The coal company allowed Zane Joseph Gero to enlist in the U. S. Army and, following training, he was attached to General

Joseph Patton's 3rd Army with a specialization in demolitions, land mine, bridge and highway issues, serving in 1944 and 1945; and

WHEREAS, Zane Joseph Gero reached the rank of corporal and served with Company C, 314th Battalion, 89th Infantry Division, 3rd Army; and

WHEREAS, Corporal Gero's knowledge of several European languages helped him serve often as an interpreter. He led a squad which, under fire, helped put the first bridge across the Rhine River; and

WHEREAS, Corporal Gero's squad, on a mission April 4, 1945, to find and clear a route for advancing troops, was moving through a wooded area near Ohrdruf, Germany, when they encountered a lightly guarded facility containing piles of corpses, ovens with human remains, a terrible stench and a few surviving internees. The unit had come across the first concentration camp to be liberated by United States troops. It was part of the Buchenwald Concentration Camp network; and

WHEREAS, Corporal Gero later became a social studies teacher at Berwind Middle School, was the Big Creek High School Band Director and was honored with the Freedom's Foundation at Valley Forge Classroom Teacher's Medal for, through his life and work, having made a significant contribution to a better understanding of the American way of life; and

WHEREAS, Corporal Gero died October 23, 1968, in Welch, West Virginia; and

WHEREAS, John Anthony "Tony" Gero, son of Zane Joseph Gero, was born August 22, 1947, in Welch, McDowell County; and

WHEREAS, John Anthony Gero was named for his father's friend, David Anthony, of New Martinsville, West Virginia, fulfilling a

promise made by the senior Gero to his friend while the two were serving in Europe during World War II, to name any future son after him; and

WHEREAS, Members of the Gero family have served in the military as early as the American Revolution; and

WHEREAS, Corporal John Anthony Gero was a sniper in the 1st Platoon, Company G, 2nd Battalion, 3rd Marines, 3rd Marine Division; and

WHEREAS, Corporal John Anthony Gero was mortally wounded by friendly fire in combat in Vietnam and died on the U. S. Hospital Ship, USS Sanctuary, June 29, 1968; and

WHEREAS, Corporal John Anthony Gero was buried with honors at Fort Rosecrans Military Cemetery in San Diego, California; and

WHEREAS, Corporal John Anthony Gero was a late-discovered qualifying West Virginian to have his name on the State Capitol military monument and his name is on a list to be added to the monument in the future; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 24-13-0.01 (24A089), locally known as Gary Bridge, carrying County Route 13 over the Tug Fork of the Big Sandy River in McDowell County the “U. S. Army CPL Zane Joseph Gero and U. S. Marine Corps CPL John Anthony ‘Tony’ Gero Memorial Bridge”; and, be it

*Further Resolved,* That the Commissioner of the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “U. S. Army CPL Zane Joseph Gero and U. S. Marine Corps CPL John Anthony ‘Tony’ Gero Memorial Bridge”; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**S. C. R. 40** - "Requesting the Division of Highways name the bridge in Putnam County, bridge number 40-35-9.68(40A157) northbound and bridge number 40-35-9.68(40A158) southbound, on Route 35 crossing over 5 and 20 Creek Road, 1.17 miles north of CR 19, the 'U. S. Army Sgt. Deforest Lee Talbert Memorial Bridge'."

WHEREAS, Sgt. Deforest Lee Talbert was born January 24, 1982, in Alexandria, Virginia, the son of Gloria Nesbitt and Benjamin Dickens. He graduated from T. C. Williams High School. He moved to West Virginia to attend West Virginia State University where he majored in communications. He enlisted in the West Virginia Army National Guard at Dunbar, West Virginia, and was assigned to Bravo Company 1/150 AR in 2001; and

WHEREAS, Sgt. Deforest Lee Talbert was mobilized as part of Operation Iraqi Freedom on October 1, 2003, and was reassigned to Charlie Company 1/150 AR. His company was deployed to the Iraqi Theater of Operations along with the 1-150th Armor Battalion and the 30th Brigade Team on February 29, 2004. He served as an assistant gunner with the First Platoon, Charlie 12 gun truck. While patrolling on the evening of July 27, 2004, Sgt. Talbert's convoy was the target of an enemy attack using an improvised explosive device. Three of his fellow soldiers were injured, but Sgt. Talbert absorbed the brunt of the explosion and was instantly killed. Sgt. Deforest Lee Talbert received the Army Service Ribbon, the Sharpshooter Marksmanship Badge (Pistol), the Expert Marksmanship Badge (Grenade), SSI/FWS for the

30th Brigade Combat Team and the 1st Infantry Division and, posthumously, a Purple Heart and a Bronze Star with V Device; and

WHEREAS, Sgt. Deforest Lee Talbert made the ultimate sacrifice for his country and in doing so represented West Virginia and his country with the highest levels of honor and courage and his sacrifice should not go unnoticed. Naming this bridge in Putnam County for him is an appropriate recognition of his ultimate sacrifice for state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name the bridge in Putnam County, bridge number 40-35-9.68(40A157) northbound and bridge number 40-35-9.68(40A158) southbound, on Route 35 crossing over 5 and 20 Creek Road, 1.17 miles north of CR 19, the “U. S. Army Sgt. Deforest Lee Talbert Memorial Bridge”; and, be it

*Further Resolved,* That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “U. S. Army Sgt. Deforest Lee Talbert Memorial Bridge”; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Secretary of the Department of Transportation and the surviving family members of Sgt. Deforest Lee Talbert: Mother, Gloria Nesbitt; father, Benjamin Dickens; sisters, Tawanna Talbert-Loving, Latasha Marble and Chiquita Talbert; brother, James Talbert; and his devoted friend, Frances Hamlet.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**S. C. R. 41** - “Requesting the Division of Highways name bridge number 2-9-4.81 (2A022) on Route 9 over Back Creek in Berkeley County the ‘W. C. Honaker and Clyde Spies Memorial Bridge’.”

WHEREAS, Tomahawk’s Ruritan Club members W. C. Honaker and Clyde Spies circulated a petition among the fine folks of Back Creek Valley, Cherry Run and Hedgesville over twenty-five years ago to have the bridge spanning Back Creek replaced as it posed a hazard to worried travelers, including public school students from Berkeley and Morgan counties; and

WHEREAS, After W. C. Honaker and Clyde Spies brought the unsafe bridge to the attention of then Delegates Patrick Murphy and Vicki Douglas, the Honorable Gaston Caperton, then Governor, approved the construction of a new bridge; and

WHEREAS, W. C. Honaker and Clyde Spies were honored for their noble efforts by being the first individuals to cross the newly replaced bridge at its grand opening; and

WHEREAS, W. C. Honaker and Clyde Spies lived a few more years and passed on to Heaven’s embrace as both were fine and honored Christian men, loved by many and missed by all; and

WHEREAS, On May 20, 2014, the Berkeley County Association of Retired School Employees passed a resolution urging the Legislature to name the bridge for W. C. Honaker and Clyde Spies; and

WHEREAS, It is only fitting and proper that W. C. Honaker and Clyde Spies and their good deeds for family, schools and the community be recognized and remembered; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 2-9-4.81 (2A022) on Route 9 over Back Creek in Berkeley



County the “W. C. Honaker and Clyde Spies Memorial Bridge”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs at both ends of the bridge identifying it as the “W. C. Honaker and Clyde Spies Memorial Bridge”; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways, to the families of W. C. Honaker and Clyde Spies, to Patrick Murphy and to the Berkeley County Association of Retired School Employees.

#### **RESOLUTIONS INTRODUCED**

Delegates Miley, Trecost, Hamrick, Waxman and Lane offered the following resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**H. C. R. 109** - “Requesting the Division of Highways to name bridge number 17-20-25.38 (17A106), locally known as Haywood Bridge, carrying West Virginia Route 20 over West Fork River and CSX railroad in Harrison County, the ‘U.S. Army PFC John Belcastro Bridge’.”

WHEREAS, John Belcastro was born on June 12, 1922, in Shinnston, West Virginia. He was the first born of one of the first set of twins born in Shinnston and one of six sons born to Frank and Anita Bartolo Belcastro; and

WHEREAS, After graduation from Shinnston High School in 1942, John Belcastro spent four years in the United States Army during World War II. He entered the United States Army in October of 1942 and was honorably discharged on January 18, 1946. Mr. Belcastro was a member of the Tenth Armored Division, 90th Reconnaissance Cavalry, Third Army under General George Patton; and

WHEREAS, John Belcastro spent Christmas of 1944 fighting in the Battle of the Bulge in which the Tenth Armored Division led the Third Army all the way to Austria. He also fought in the Ardennes Forest, the Rhineland and Central Europe. In May of 1945, Mr. Belcastro was chosen to be a part of a secret mission. As soon as the war ended, he was part of the team hand-picked to rescue 118 German scientists who were defecting to America. Those German scientists included Weyher Von Braun who was instrumental in starting the American space program in Huntsville, Alabama; and

WHEREAS, John Belcastro received a Purple Heart, a Bronze Star for bravery, the Croix De Guerre Presidential Citation and Good Conduct Medal. He also was awarded the American Theater Ribbon, the Middle Eastern Theater Ribbon, the World War II Victory Ribbon, the Diplome from the Republique Francais' Ministere De La Defense Liberation of France and the Knight of the French Legion of Honor; and

WHEREAS, When the war ended, Mr. Belcastro returned to Shinnston where he worked in the coal industry for forty-three years. While working in the mines, he volunteered to be a member of the mine rescue squad, serving in that capacity from 1950 to 1964 during which time he helped in rescue efforts in twelve explosions and fires. Mr. Belcastro received Consol Safety Award for twenty-five years with no lost time accidents. He was a member of United Mine Workers Local #1501 where he held many offices including serving on the COMPAC committee for twelve years, holding the office of treasurer for eight years and social chairman for eighteen years; and

WHEREAS, Mr. Belcastro displayed his talent as an imitator and impersonator by being named the winner of the Wilken's Amateur Hour held in Pittsburgh; the winner of the All Stars Amateur Hour held at the Ritz Theater in Clarksburg; performed with the Paul Whitman Orchestra at the Warner Theater in Morgantown; with Vaughn Monroe at the Ritz in Clarksburg; and Frank Yankovic's Polish Band at the Clarksburg Armory; and

WHEREAS, Mr. Belcastro and Sylvia, his wife of sixty-seven years, are members of St. Ann's Catholic Church where he has served as an usher, lector, and president of the men's Holy Name Society for three terms. He served as both Vice-President and Treasurer of the Clarksburg Deanery of the Holy Name Society and on the Board of Directors for the Wheeling-Charleston Diocese. He is also a member of the Knights of Columbus #942 and a weekly adorer in the Perpetual Adoration Chapel. For years he was the "Voice of the Spartans" as he served as the announcer for the Shinnston High football games and also for the Shinnston Little League baseball games. Mr. Belcastro held the position of Cub Master for Pack 59 for the Shinnston Area Boy Scouts. He belongs to the Clarksburg Senior Citizens and delivered Meals on Wheels. He is a Life Member of the Veterans of Foreign Wars #573 in Clarksburg, AARP, and a Life Member of the Shinnston American Legion Post 31 where he served on the Color Guard and as chairman of various committees as well as serving as Service Officer for the VA Hospital and the Old Soldier's Home in Weston; and

WHEREAS, Mr. Belcastro was captain of the seven time winning Italian Trivia Team in conjunction with the Italian Heritage Festival and received a diploma from the University of Hard Knocks at Alderson-Broaddus College in 1999. He is one of the longest serving members of the Board of Directors of the Monongahela Valley Association of Health Centers Fairmont Clinic, having served for over forty years; and

WHEREAS, On June 12, 2015, Mr. Belcastro will celebrate his 93<sup>rd</sup> birthday. He has lived all his life in Shinnston. He is a long time pillar of his community and it is fitting that an enduring memorial be established to commemorate his service to his community and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 17-20-25.38 (17A106), locally known as Haywood Bridge,

carrying West Virginia Route 20 over West Fork River and CSX railroad in Harrison County, the “U.S. Army PFC John Belcastro Bridge”; and, be it

*Further Resolved*, That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridges the “U.S. Army PFC John Belcastro Bridge”; and, be it

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

Delegates J. Nelson, Pasdon, Moffatt, R. Phillips, Butler, Ellington, Perry, Upson, Wagner, R. Smith and Duke offered the following resolution, which was read by its title and referred to the Committee on Education then Rules:

**H. C. R. 110** - “Requesting the Joint Committee on Government and Finance to study reducing the State Board of Education budget and redirecting those funds toward increasing teacher salaries.”

WHEREAS, A disproportionate share of funding for public education in the state is allocated to the West Virginia Board of Education budget, rather than to teacher compensation and classroom level expenses, where funding is needed most; and

WHEREAS, In recent years, teachers are retiring at an increasing rate and the percentage of students at local colleges majoring in education has decreased; and

WHEREAS, According to the West Virginia Education Association, teachers in 47 states receive higher salaries, on average, than teachers in West Virginia; and

WHEREAS, Competitive salaries for teachers will attract and retain highly qualified individuals for teaching positions in West Virginia and

could significantly improve the overall quality of public education in this state; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is requested to study reducing the State Board of Education budget and redirecting those funds toward increasing teacher salaries; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance submit its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations, to the Legislature at the beginning of the 2016 Regular Legislative Session; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

## SPECIAL CALENDAR

### SECOND READING

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

**Com. Sub. for S. B. 351**, Relating to charitable organization contribution levels requiring independent audit reports,

**Com. Sub. for S. B. 374**, Permitting in absentia parole hearings in certain instances,

**Com. Sub. for S. B. 375**, Specifying who receives parole hearing notices via regular or certified mail,

**S. B. 472**, Making supplementary appropriation to DOT, DMV, Motor Vehicle Fees Fund,

**S. B. 475**, Making supplementary appropriation to DMAPS, Division of Corrections, Parolee Supervision Fees, and WV State Police, Motor Vehicle Inspection Fund,

And,

**S. B. 507**, Relating to monitoring inmates' electronic communications.

**S. B. 559**, Relating to social work licensing exemptions; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Government Organization, was reported by the Clerk and adopted, amending the bill on page one, following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

“That §30-30-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

**ARTICLE 30. SOCIAL WORKERS.**

**§30-30-16. Provisional License to practice as a social worker.**

(a) To be eligible for a provisional license to practice as a social worker, the applicant must:

- (1) Submit an application to the board;
- (2) Be at least eighteen years of age;
- (3) Be of good moral character;

(4) Have a baccalaureate degree in a related field, as provided by legislative rule: Provided, That an individual seeking employment as a provisionally licensed social worker with the West Virginia Department of Health and Human Resources shall have a baccalaureate degree;

(5) Have obtained regular supervised employment, or the reasonable promise of regular supervised employment contingent upon receiving a provisional license, in a critical social work workforce shortage position, area or setting requiring a social work license: *Provided*, That such employment shall not as an independent practitioner, contracted employee, sole proprietor, consultant, or other nonregular employment;

(6) Have satisfied the board that he or she merits the public trust by providing the board with three letters of recommendation from persons not related to the applicant;

(7) Not be an alcohol or drug abuser, as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in an acknowledged substance abuse treatment and/or recovery program may be considered;

(8) Not have been convicted of a felony in any jurisdiction within five years preceding the date of application for license which conviction remains unreversed;

(9) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of social work, which conviction remains unreversed; ~~and~~

(10) Meet any other requirements established by the board: ; and

(11) The board shall promulgate emergency rules, in accordance with section fifteen, article three, chapter twenty nine-a of this code, to implement the provisions of this subsection.

(b) A provisionally licensed social worker may become a licensed social worker, by completing the following:

(1) Be continuously employed for four years as a social worker and supervised. The board shall promulgate by legislative rule the supervision requirements;

(2) Complete twelve credit hours of core social work study from a program accredited by the council on social work education, as defined by legislative rule, within the four-year provisional license period: Provided, That an individual employed as a provisionally licensed social worker with the West Virginia Department of Health and Human Resources shall satisfy this requirement upon completion of the social work training program with the West Virginia Department of Health and Human Resources. The Secretary of the West Virginia Department of Health and Human Resources shall, with the advice of the Higher Education Policy Commission, West Virginia University School of Social Work, and Marshall University Department of Social Work, promulgate legislative rules, in accordance with article three, chapter twenty nine-a of this code, to implement the provisions of this subdivision;

(3) Complete continuing education as required by legislative rule; and

(4) Pass an examination approved by the board.

(c) On or before July 1, 2020, the Legislative Auditor shall cause to be performed a performance audit of the provisional license to practice as a social worker application process and the application process by which a provisional licensee may become a licensed social worker.

~~(c) A provisionally licensed social worker or a person previously licensed as a provisionally licensed social worker may not reapply for licensure through this process if the process is not completed.”~~

The bill was then ordered to third reading.



At the request of Delegate Cowles and by unanimous consent, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

### COMMITTEE REPORTS

On motion for leave, bills were introduced (Originating in the Committee on Finance and reported with the recommendation that they each do pass), which were read by their titles, as follows:

**By Delegates E. Nelson, Ashley, Anderson, Williams, A. Evans, Boggs, Hamilton, L. Phillips, Butler, Espinosa and O’Neal:**

**H. B. 3020** - “A Bill making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Military Affairs and Public Safety, Division of Corrections - Correctional Units, fund 0450, fiscal year 2015, organization 0608, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015,”

**By Delegates E. Nelson, Ashley, Anderson, Williams, Boggs, Espinosa, O’Neal and Bates:**

**H. B. 3021** - “A Bill making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Health, Central Office, fund 0407, fiscal year 2015, organization 0506, and to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2015, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015,”

And,

**By Delegates Ashley, E. Nelson, Williams, Canterbury, Hamilton, Pethel, Householder, Butler, L. Phillips, Espinosa and Westfall:**

**H. B. 3022** - “A Bill making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Treasurer’s Office, fund 0126, fiscal year 2015, organization 1300, to the State Board of Education - State FFA-FHA Camp and Conference Center, fund 0306, fiscal year 2015, organization 0402, to the State Board of Education - West Virginia Schools for the Deaf and the Blind, fund 0320, fiscal year 2015, organization 0403, to Mountwest Community and Technical College, fund 0599, fiscal year 2015, organization 0444, to the West Virginia School of Osteopathic Medicine, fund 0336, fiscal year 2015, organization 0476, and to West Virginia State University, fund 0373, fiscal year 2015, organization 0490, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.”

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2766**, Expiring funds to the unappropriated balance in the State Fund, General Revenue from the Joint Expenses, and from the Department of Health and Human Resources,

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

**Com. Sub. for H. B. 2766** - “A Bill expiring funds to the unappropriated balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2015, in the amount of \$5,650,000 from the Joint Expenses, fund 0175, fiscal year 2008, organization 2300, appropriation 64200, and in the amount of \$1,850,000 from the Joint Expenses, fund 0175, fiscal year 2009, organization 2300,

appropriation 64200, and in the amount of \$75,365.64 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2002, organization 0100, appropriation 11400, and in the amount of \$67,553.27 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2002, organization 0100, appropriation 23800, and in the amount of \$122,113 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2003, organization 0100, appropriation 23800, and in the amount of \$212,500 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2003, organization 0100, appropriation 61400, and in the amount of \$635,179.58 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2004, organization 0100, appropriation 23800, and in the amount of \$346,521.90 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2004, organization 0100, appropriation 26300, and in the amount of \$1,207,149.67 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2004, organization 0100, appropriation 61400, and in the amount of \$34,378.53 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 11400, and in the amount of \$397,276.39 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 23800, and in the amount of \$1,272,323.47 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2006, organization 0100, appropriation 61400, and in the amount of \$2,227,821.66 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2008, organization 0100, appropriation 11400, and in the amount of \$901,816.89 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100, appropriation 11400, and in the amount of \$7,500,000 from the Treasurer's Office - Special Income Tax Refund Reserve Fund, fund 1313, fiscal year 2015, organization 1300,"

**H. B. 2769**, Expiring funds to the unappropriated surplus balance in the State Fund, General Revenue from various agencies,

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

**Com. Sub. for H. B. 2769** - “A Bill expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2015 in the amount of \$1,500,000 from the Department of Military Affairs and Public Safety, Division of Corrections - Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 59200, and in the amount of \$400,103.30 from the Department of Transportation, Division of Public Transit, fund 0510, fiscal year 2013, organization 0805, appropriation 25800, and in the amount of \$3,861,297 from the Department of Administration, Risk and Insurance Management Board - Premium Tax Savings Fund, fund 2367, fiscal year 2015, organization 0218, and in the amount of \$1,329.28 from the Department of Health and Human Resources, Division of Health, Uniform Health Professional Data Collection Systems Fund, fund 5109, fiscal year 2015, organization 0506, and in the amount of \$478.81 from the Department of Health and Human Resources, Division of Health, Commonly Based Fetal and Infant Mortality Review Fund, fund 5131, fiscal year 2015, organization 0506, and in the amount of \$18,609.27 from the Department of Health and Human Resources, Division of Health, Claude Worthington Benedum Foundation Fund, fund 5132, fiscal year 2015, organization 0506, and in the amount of \$2,500 from the Department of Health and Human Resources, Division of Health, Behavioral Health Clearing Fund, fund 5151, fiscal year 2015, organization 0506, and in the amount of \$13,193.90 from the Department of Health and Human Resources, Division of Health, Special Education Title I Fund, fund 5161, fiscal year 2015, organization 0506, and in the amount of \$45 from the Department of Health and Human Resources, Division of Health, Rural Health Networking Project Fund, fund 5184, fiscal year 2015, organization 0506, and in the amount of \$1,400,000 from the Department of Health and Human Resources, Division of Health, Vital Statistics Improvement Fund, fund 5225, fiscal year 2015, organization 0506,

and in the amount of \$6,000,000 from the Department of Health and Human Resources, West Virginia Health Care Authority - Health Care Cost Review Fund, fund 5375, fiscal year 2015, organization 0507, and in the amount of \$4,000,000 from the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Information Network Account, fund 5380, fiscal year 2015, organization 0507, and in the amount of \$2,000,000 from the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Care Authority Revolving Loan Fund, fund 5382, fiscal year 2015, organization 0507, and in the amount of \$4,976.37 from the Department of Health and Human Resources, Division of Human Services, Special County General Relief Fund, fund 5054, fiscal year 2015, organization 0511, and in the amount of \$18,118.01 from the Department of Health and Human Resources, Division of Human Services, Individual and Family Grant Program, fund 5055, fiscal year 2015, organization 0511, and in the amount of \$251,657.05 from the Department of Health and Human Resources, Division of Human Services, TRIP Fund, fund 5070, fiscal year 2015, organization 0511, and in the amount of \$4,000,000 from the Department of Health and Human Resources, Division of Human Services, Medicaid Fraud Control Fund, fund 5141, fiscal year 2015, organization 0511, and in the amount of \$223,310.69 from the Department of Health and Human Resources, Division of Human Services - Marriage Education Fund, fund 5490, fiscal year 2015, organization 0511, and in the amount of \$16,700,000 from the Department of Revenue, Insurance Commissioner, fund 7152, fiscal year 2015, organization 0704,”

And,

**H. B. 2772**, Expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, from the Auditor’s Office - Purchasing Card Administration Fund,

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

**Com. Sub. for H. B. 2772** - “A Bill expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2015, in the amount of \$315,496.80 from the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 72500, and in the amount of \$210,268 from the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 77900, and in the amount of \$774,644.65 from the Attorney General, fund 0150, fiscal year 2014, organization 1500, appropriation 26000, and in the amount of \$1,000,000 from the Auditor’s Office - Purchasing Card Administration Fund, fund 1234, fiscal year 2015, organization 1200, and in the amount of \$3,410,629 from the Treasurer’s Office - Flood Insurance Tax Fund, fund 1343, fiscal year 2015, organization 1300, and in the amount of \$750,000 from the Department of Agriculture - Agriculture Fees Fund, fund 1401, fiscal year 2015, organization 1400, and in the amount of \$700,000 from the Attorney General - Antitrust Enforcement Fund, fund 1507, fiscal year 2015, organization 1500, and in the amount of \$750,000 from the Secretary of State - General Administrative Fees Account, fund 1617, fiscal year 2015, organization 1600,”

With the recommendation that the committee substitutes each do pass.

### MISCELLANEOUS BUSINESS

Delegate Lane filed a form with the Clerk’s Office per House Rule 94b to be added as a cosponsor of H. C. R. 109.

Delegate R. Phillips noted to the Clerk that he was absent when the votes were taken on the following Roll Nos. and had he been present he would have voted as follows:

<u>Roll No.</u>	<u>Bill No.</u>	<u>Voting Preference</u>
359	Com. Sub. for H. B. 2795	“YEA”
361	Com. Sub. for H. B. 2810	“YEA”

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362	Com. Sub. for H. B. 2828	“YEA”
363	Com. Sub. for H. B. 2867	“YEA”
364	Com. Sub. for H. B. 2902	“YEA”
365	Com. Sub. for H. B. 2926	“YEA”
366	Com. Sub. for H. B. 3019	“YEA”
367	Com. Sub. for S. B. 361	“YEA”

At 11:30 A.M., the House of Delegates adjourned until 11:00 A.M.,  
Friday, March 6, 2015.







FRIDAY, MARCH 6, 2015

**FIFTY-SECOND DAY**

[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

The House of Delegates met at 11:00 A.M., and was called to order by the Honorable Tim Armstead, Speaker.

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

The Clerk proceeded to read the Journal of Thursday, March 5, 2015, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**COMMITTEE REPORTS**

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 249**, Prohibiting straight party voting,

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

Delegate Canterbury, Chair of the Committee on Pensions and Retirement, submitted the following report, which was received:

Your Committee on Pensions and Retirement has had under consideration:

**S. B. 481**, Relating to municipal policemen's and firemen's pension and relief funds' investment,

**S. B. 514**, Relating to investments of local policemen's and firemen's pension and relief funds,

And,

**S. B. 530**, Extending income tax exemption for retirees receiving pensions from certain defined pension plans,

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

In accordance with the former direction of the Speaker, the bills (S. B. 481, S. B. 514 and S. B. 530) were each referred to the Committee on Finance.

Delegate McCuskey, Chair of the Committee Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration:

**Com. Sub. for S. B. 373**, Allowing wireless communication image serve as proof of motor vehicle insurance,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 373) was referred to the Committee on the Judiciary.

Delegate McCuskey, Chair of the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration:

**Com. Sub. for S. B. 248**, Requiring certain insurance and owner information be provided following car accident,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 248) was referred to the Committee on the Judiciary.

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

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

**Com. Sub. for S. B. 366**, Creating Patient Protection and Transparency Act,

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

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

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

**Com. Sub. for S. B. 30**, Permitting shared animal ownership agreement to consume raw milk,

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

Delegate Storch, Chair of the Committee on Political Subdivisions, submitted the following report, which was received:

Your Committee on Political Subdivisions has had under consideration:

**Com. Sub. for S. B. 416**, Relating to hotel occupancy tax,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 416) was referred to the Committee on Finance.

Delegate Storch, Chair of the Committee on Political Subdivisions, submitted the following report, which was received:

Your Committee on Political Subdivisions has had under consideration:

**S. B. 515**, Allowing Municipal Pensions Oversight Board invest funds with Investment Management Board or Board of Treasury Investments,

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

In accordance with the former direction of the Speaker, the bill (S. B. 515) was referred to the Committee on Finance.

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

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

**S. B. 363**, Establishing maximum rates and service limitations for reimbursement of health care services by Court of Claims,

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

In accordance with the former direction of the Speaker, the bill (S. B. 363) was referred to the Committee on the Judiciary.

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

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

**Com. Sub. for S. B. 523**, Creating Alcohol and Drug Overdose Prevention and Clemency Act,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 523) was referred to the Committee on the Judiciary.

Delegate Espinosa, Vice Chair of the Committee on Small Business, Entrepreneurship and Economic Development, submitted the following report, which was received:

Your Committee on Small Business, Entrepreneurship and Economic Development has had under consideration:

**Com. Sub. for S. B. 273**, Relating to brewer, resident brewer and brewpub licensing and operations,

And,

**S. B. 574**, Relating to liquor sales by distilleries and mini-distilleries,

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

In accordance with the former direction of the Speaker, the bills (Com. Sub. for S. B. 273 and S. B. 574) were each referred to the Committee on the Judiciary.

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. R. 11**, For the Lottery Commission to implement creative methods for selling Veneral Lottery tickets to help fund the West Virginia Veterans Home,

With the recommendation that it be adopted, but that it first be referred to the Committee on Rules.

In accordance with the former direction of the Speaker, the bill (H. R. 11) was referred to the Committee on Rules.

Delegate Pasdon, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**S. B. 425**, Providing WVU, MU and WVSOM more authority to invest assets,

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

In accordance with the former direction of the Speaker, the resolutions (S. B. 425) was referred to the Committee on Finance.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 37**, Creating Revised Uniform Arbitration Act,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 434**, Relating to horse racing,

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

In accordance with the former direction of the Speaker, the bill (S. B. 434) was referred to the Committee on Finance.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 411**, Creating Asbestos Bankruptcy Trust Claims Transparency Act and Asbestos and Silica Claims Priorities Act,

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

Delegate Pasdon, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**S. B. 455**, Relating to public higher education procurement and payment of expenses,

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

In accordance with the former direction of the Speaker, the bill (S. B. 455) was referred to the Committee on Finance.

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**S. B. 332**, Relating to administrative fees for Tax Division, Department of Revenue,

And,

**S. B. 445**, Relating to investment of RJCFA excess funds,

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

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**S. B. 89**, Providing Prosecuting Attorneys Institute's council establish Executive Director's salary,

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

#### MESSAGES FROM THE EXECUTIVE

Mr. Speaker, Mr. Armstead, presented a communication from His Excellency, the Governor, advising that on March 5, 2015, he approved **Com. Sub. for H. B. 2002, Com. Sub. for S. B. 187, Com. Sub. for S. B. 238, S. B. 382 and S. B. 398.**

#### MESSAGES FROM THE SENATE

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had refused to recede from its amendment and requested the House of Delegates to



agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses as to

**H. B. 2213**, Reducing the distributions to the West Virginia Infrastructure Fund.

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

Senators M. Hall, Walters and Prezioso.

On motion of Delegate Cowles, the House of Delegates agreed to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates E. Nelson, Anderson and Boggs.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

**H. B. 2879**, Relating to certain limitations on amount of state funds on deposit in any depository.

### **RESOLUTIONS INTRODUCED**

Delegates Pasdon, Fleischauer, Frich, Statler, Williams, Pethtel, Summers and R. Smith offered the following resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**H. C. R. 111** - “Requesting the Division of Highways to name bridge number 31-119/39-0.12 (31A281) crossing over Deckers Creek in Morgantown, Monongalia County, the ‘John W. Pyles Bridge’.”

WHEREAS, John W. Pyles has devoted over fifty years of his life in service to Monongalia County and the community of Morgantown; and

WHEREAS, John W. Pyles, as an elected representative of the West Virginia House of Delegates, worked tirelessly to better the quality of life in Monongalia County and Morgantown; and

WHEREAS, John W. Pyles served as the leader of the Democratic Party and Assessor of Monongalia County and then was elected as a member of the County Commission; and

WHEREAS, John W. Pyles volunteered his time and talents serving in many capacities on Morgantown and Monongalia County Boards and Committees such as the United Way of Monongalia and Preston Counties, Monongalia County Development Authority, Metropolitan Foundation Board, Morgantown Convention and Visitors Bureau, Main Street Morgantown, Monongalia County Historical Landmarks Committee and the Greater Morgantown Community Trust; and

WHEREAS, John W. Pyles was a founder of the Morgantown Celebration of America Committee to observe the birth of our great nation on July 4<sup>th</sup>, with special recognition of veterans and other community members who worked faithfully in service to America; and

WHEREAS, John W. Pyles proposed and obtained funding for the Veterans Plaza at the Monongalia County Court House Square that recognizes veterans of all wars; and

WHEREAS, John W. Pyles spearheaded the renaming of South University Avenue in Morgantown as Don Knotts Boulevard and is currently working to place a statue of Don Knotts on the Boulevard; and

WHEREAS, John W. Pyles, in 1998, worked with Governor Cecil Underwood to gain state funding to replace the South High Street Bridge when it fell into complete disrepair; and

WHEREAS, On November 5, 2013, the City Council of Morgantown passed a Resolution directed to the West Virginia Legislature in support of changing the name of the South High Street Bridge to the “John W. Pyles Bridge”; and

WHEREAS, It is only fitting that we honor John W. Pyles for his commitment, dedication and public service to Morgantown, Monongalia County and the State of West Virginia; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 31-119/39-0.12 (31A281) crossing over Deckers Creek in Morgantown, Monongalia County, the “John W. Pyles Bridge”; and, be it

*Further Resolved*, That the Division of Highways is requested to have made and be placed signs identifying the bridge as the “John W. Pyles Bridge”; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a certified copy of this resolution to the Secretary of the Department of Transportation and John W. Pyles.

Delegates Canterbury, Ambler and Cooper offered the following resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**H. C. R. 112** - “Requesting the Division of Highways to name a section of road on U.S. Route 219, locally known as Frankford Road and Main Street, running through Ronceverte, West Virginia, Greenbrier County, the ‘Howard M. “Toddy” Loudin Memorial Highway’.”

WHEREAS, Howard M. “Toddy” Loudin grew up in the West Virginia hills, spending his early years in Randolph County and then moving to Morgantown where his mother taught English and where he played on the first basketball team at Morgantown High School; and

WHEREAS, “Toddy” Loudin subsequently attended Davis and Elkins College where he earned a B.S. degree and became the team captain in football, baseball and basketball, earning four letters in each of those sports and played on the unbeaten 1923 football team; and

WHEREAS, “Toddy” Loudin began an unparalleled coaching career in West Virginia high schools, starting at Cameron High School, then Middlebourne High School and then Rowlesburg High School. He subsequently learned of a coaching position at Greenbrier High School in Ronceverte, and lacking a car of his own, he hitchhiked to Ronceverte where he landed the job that he would maintain for the next thirty-two years; and

WHEREAS, By the time of his retirement in 1966, Coach Loudin had established a record of 1038 overall wins in three different sports compared to just 278 losses, making him West Virginia’s winningest coach at the time and his record of 698 wins in basketball still stands as the most wins of any basketball coach in West Virginia; and

WHEREAS, The man known to the public as “Coach” or “Toddy” has been named to the Davis and Elkins College Sports Hall of Fame, the West Virginia Sports Hall of Fame and Greenbrier County’s “Centennial Sports Great” in 1963, it is appropriate for this body to acknowledge his outstanding achievements and to honor his memory in the city where he made his home and made history; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways name the section of road on U.S. Route 219, locally known as Frankford Road and Main Street, running through Ronceverte, West Virginia, Greenbrier County, the “Howard M. ‘Toddy’ Loudin Memorial Highway”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to make two signs that state, in bold and prominent lettering, the “Howard M. ‘Toddy’ Loudin Memorial Highway “and to erect these signs on either side of that portion of road; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a certified copy of this resolution to the Secretary of the Department of Transportation, the Commissioner of Highways, and to the City of Ronceverte, West Virginia.

### SPECIAL CALENDAR

#### THIRD READING

**Com. Sub. for S. B. 351**, Relating to charitable organization contribution levels requiring independent audit reports; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 368**), and there were—yeas 90, nays 4, absent and not voting 6, with the nays and absent and not voting being as follows:

NAYS: Eldridge, Hornbuckle, Marcum and Sponaule.

ABSENT AND NOT VOTING: Arvon, Azinger, Ellington, Morgan, L. Phillips and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 351) passed.

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

**Com. Sub. for S. B. 374**, Permitting in absentia parole hearings in certain instances; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 369**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Azinger, Ellington, Morgan, L. Phillips and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 374) passed.

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

On this question, the yeas and nays were taken (**Roll No. 370**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Azinger, Ellington, Morgan, L. Phillips and Walters.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 374) takes effect from its passage.

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

**Com. Sub. for S. B. 375**, Specifying who receives parole hearing notices via regular or certified mail; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 371**), and there were—yeas 91, nays 3, absent and not voting 6, with the nays and absent and not voting being as follows:

NAYS: Marcum, Perdue and Rodighiero.

ABSENT AND NOT VOTING: Arvon, Azinger, Ellington, Morgan, L. Phillips and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 375) passed.

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

On this question, the yeas and nays were taken (**Roll No. 372**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Azinger, Ellington, Morgan, L. Phillips and Walters.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 375) takes effect from its passage.

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

**S. B. 472**, Making supplementary appropriation to DOT, DMV, Motor Vehicle Fees Fund; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 373**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Azinger, Ellington, Morgan, L. Phillips and Walters.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 472) passed.

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

On this question, the yeas and nays were taken (**Roll No. 374**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Azinger, Ellington, Morgan, L. Phillips and Walters.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 472) takes effect from its passage.

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

**S. B. 475**, Making supplementary appropriation to DMAPS, Division of Corrections, Parolee Supervision Fees, and WV State Police, Motor Vehicle Inspection Fund; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 375**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Azinger, Ellington, Guthrie, Morgan, L. Phillips and Walters.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 475) passed.

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

On this question, the yeas and nays were taken (**Roll No. 376**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:



ABSENT AND NOT VOTING: Azinger, Ellington, Morgan, L. Phillips and Walters.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 475) takes effect from its passage.

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

**S. B. 507**, Relating to monitoring inmates' electronic communications; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 377**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Azinger, Ellington, Morgan, L. Phillips and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 507) passed.

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

On this question, the yeas and nays were taken (**Roll No. 378**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Azinger, Ellington, Morgan, L. Phillips and Walters.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 507) takes effect from its passage.

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

**S. B. 559**, Relating to social work licensing exemptions; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 379**), and there were—yeas 62, nays 33, absent and not voting 5, with the nays and absent and not voting being as follows:

NAYS: Anderson, Boggs, Byrd, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Folk, Frich, Guthrie, Hamilton, Hornbuckle, Longstreth, Lynch, Manchin, Marcum, Miller, Moore, Moye, Perdue, Perry, Pethtel, Pushkin, Reynolds, Rodighiero, Rowe, Skinner, Sobonya, Sponaugle, Summers, Trecoast and H. White.

ABSENT AND NOT VOTING: Azinger, Ellington, Morgan, L. Phillips and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 559) passed.

On motion of Delegate Howell, the title of the bill was amended to read as follows:

**S. B. 559** - “A Bill to amend and reenact §30-30-16 of the Code of West Virginia, 1931, as amended, all relating to qualifications for a provisional license to practice as a social worker; providing that certain individuals applying for a provisional license to practice social work meet the education requirement with a baccalaureate degree; requiring the board of social work to promulgate emergency rules; providing an education alternative for a provisionally licensed social worker seeking to become a licensed social worker; requiring the Secretary of the West Virginia Department of Health and Human Resources to promulgate rules; and requiring a legislative audit of the social worker license application process.”

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

**FIRST READING**

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

**Com. Sub. for S. B. 277**, Requiring issuance of certificate of birth resulting in stillbirth,

**Com. Sub. for S. B. 421**, Relating to punitive damages in civil actions,

**S. B. 532**, Relating to civil liability immunity for clinical practice plans and medical and dental school personnel,

**Com. Sub. for H. B. 2766**, Expiring funds to the unappropriated balance in the State Fund, General Revenue from the Joint Expenses, and from the Department of Health and Human Resources,

**Com. Sub. for H. B. 2769**, Expiring funds to the unappropriated surplus balance in the State Fund, General Revenue from various agencies,

**Com. Sub. for H. B. 2772**, Expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, from the Auditor's Office - Purchasing Card Administration Fund,

**H. B. 3020**, Making a supplementary appropriation to the Department of Military Affairs and Public Safety, Division of Corrections,

**H. B. 3021**, Making a supplementary appropriation to the Department of Health and Human Resources,

And,

**H. B. 3022**, Making a supplementary appropriation to the Treasurer's Office, to the State Board of Education, to Mountwest Community and Technical College, to the West Virginia School of Osteopathic Medicine, and to West Virginia State University.

#### **LEAVES OF ABSENCE**

At the request of Delegate Cowles, and by unanimous consent, leaves of absence for the day were granted Delegates Azinger, Ellington, Morgan, L. Phillips and Walters.

#### **MISCELLANEOUS BUSINESS**

Delegate Arvon announced that she was absent when the votes were taken on Roll Nos. 368 through 374, and that had she been present, she would have voted "YEA" thereon.

Mr. Speaker, Mr. Armstead, asked and obtained unanimous consent that he be removed as a sponsor of H. B. 2772.

Delegate Guthrie noted to the Clerk that she was absent yesterday when the votes were taken on Roll Nos. 355 through 367, and had she been present, she would have voted "YEA" on all Roll Nos. except Roll Nos. 356 and 365, on which she would have voted "NAY".

At 12:11 P.M., on motion of Delegate Cowles, the House of Delegates recessed until 5:30 P.M.

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#### **EVENING SESSION**

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#### **CONFERENCE COMMITTEE REPORT AVAILABILITY**

At 5:44 P.M., the Clerk announced availability in his office of the report of the Committee of Conference on Com. Sub. for H. B. 2576, Creating new code sections which separate the executive departments.

At the request of Delegate Cowles and by unanimous consent, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

### COMMITTEE REPORTS

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 489**, Imposing statute of limitations on civil actions derived from surveying of real property,

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

Delegate Frich, Vice Chair of the Committee Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration:

**S. B. 292**, Relating to licenses for business of currency exchange, transportation or transmission,

And,

**S. B. 545**, Removing certain prior bank overdraft approval by director or executive officer,

And reports the same back with the recommendation that they each do pass, and with the recommendation that second reference of the bills to the Committee on Finance be dispensed with.

In the absence of objection, reference of the bills (S. B. 292 and S. B. 545) to the Committee on Finance was abrogated.

Delegate Frich, Vice Chair of the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration:

**S. B. 283**, Relating to branch banking,

And reports the same back, with a title amendment, with the recommendation that it do pass, as amended, and with the recommendation that second reference of the bill to the committee on the Judiciary be dispensed with.

In the absence of objection, reference of the bill (S. B. 283) to the Committee on the Judiciary was abrogated.

Delegate Pasdon, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**Com. Sub. for S. B. 14**, Creating Public Charter Schools Act of 2015,

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

In the absence of objection the bill was referred to the Committee on Finance.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**Com. Sub. for S. B. 436**, Relating to State Athletic Commission,

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

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**S. B. 576**, Prohibiting PSC jurisdiction of internet protocol-enabled service or voice over internet protocol-enabled service and certain telephone company transactions,

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

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**S. C. R. 50**, Providing for issuance of refunding bonds pursuant to Safe Roads Amendment of 1966,

With the recommendation that it be adopted.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 578**, Relating to occupational disease claims,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 454**, Criminalizing trademark counterfeiting,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 344**, Relating to limitations on back and front pay and punitive damages,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 574**, Relating to liquor sales by distilleries and mini-distilleries,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 322**, Eliminating mandatory electronic recount of ballots in recounts,

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



**MESSAGES FROM THE SENATE**

A message from the Senate, by

The Clerk of the Senate, announced that upon reconsideration the Senate had again passed, notwithstanding the objections of the Governor, a bill of the House of Delegates as follows:

**Com. Sub. for H. B. 2568**, The Pain-Capable Unborn Child Protection Act.

A message from the Senate, by

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

**H. B. 2760**, Making a supplementary appropriation to the Bureau of Senior Services - Lottery Senior Citizens Fund.

A message from the Senate, by

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

**H. B. 2764**, Making a supplementary appropriation to the State Department of Education - School Building Authority.

A message from the Senate, by

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

**H. B. 2770**, Making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, to the Division of Human Services.

A message from the Senate, by

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

**H. B. 2933**, Making a supplementary appropriation to the Department of Administration, Public Defender Services.

### **MISCELLANEOUS BUSINESS**

Delegate Eldridge asked and obtained unanimous consent that the remarks of Delegate Campbell regarding Com. Sub. for H. B. 2902, West Virginia ABLE Act, be printed in the Appendix to the Journal.

Delegate Skinner asked and obtained unanimous consent that the remarks of Delegate Eldridge on Wednesday, March 4, regarding H. B. 2805 and his remarks of today, regarding S. B. 559 be printed in the Appendix to the Journal.

At 5:52 P.M., the House of Delegates adjourned until 10:00 A.M., Saturday, March 7, 2015.

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SATURDAY, MARCH 7, 2015

**FIFTY-THIRD DAY**

[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

The House of Delegates met at 10:00 A.M., and was called to order by the Honorable Tim Armstead, Speaker.

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

The Clerk proceeded to read the Journal of Friday, March 6, 2015, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**COMMITTEE REPORTS**

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**Com. Sub. for S. B. 336**, Eliminating Health Care Authority's power to apply certain penalties to future rate applications,

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

**RESOLUTIONS INTRODUCED**

Delegates Howell, A. Evans and Rowan offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 113** - “Requesting the Division of Highways place signs on United States Route 220 at the Mineral/Hampshire County border, United States Route 50 at the Mineral/Grant County border, State Route 28 at the Mineral/Hampshire County border and also the Maryland/West Virginia state line, State Route 42 at the Mineral/Grant County border, State Route 46 at the Maryland/West Virginia state line, State Route 93 at the Mineral/Grant County border, and State Route 956 at the Maryland/West Virginia state line stating: ‘Mineral County, Celebrating the Sesquicentennial, 1866 - 2016’.”

WHEREAS, Mineral County was created on February 1, 1866, by an Act of the West Virginia Legislature, from the existing Hampshire County. The name was selected for the great mineral reserves that are found in the county; and

WHEREAS, Mineral County has played an important role in West Virginia history. Two important forts for the early settlers of Mineral County were built in Frankfort Village and New Creek. In 1755, during the French and Indian War, Colonel George Washington gave orders to build a stockade and fort at Frankfort Village. During a battle at the fort, Colonel John Ashby was attacked but made “a most remarkable escape to the fort”. Colonel Ashby was later put in command of the fort and remained there through the Revolutionary War. The fort and the town were later named Fort Ashby. In addition, the fort in New Creek helped secure the area for the English during the French and Indian War. New Creek was also an important military base during the Civil War because its fort, located on the site where Potomac State College now stands, commanded roads leading to the South Branch and Shenandoah Valleys. In addition, it was a training camp for Union soldiers from Pennsylvania, Ohio, Indiana, and Illinois. After the Civil War, New Creek Station became the “railhead” for the commercial interests of a large territory; and

WHEREAS, Many immigrants in the 19th century worked their way across the coalfields of Pennsylvania, down through Maryland, and settled in Mineral County. The area’s population reflects a diverse

mixture of Mennonites, Germans, Swiss, English, Scots, Italians, Chinese, Irish and Jews; and

WHEREAS, Perhaps the most prominent historic figure was the industrialist Henry Gassaway Davis, who began as a brakeman for the Baltimore & Ohio Railroad at age 20 and lived in Piedmont early in his life. Davis later was elected to the U.S. Senate and ran for vice president in 1904, when he and Democratic presidential candidate Alston Parker lost to Teddy Roosevelt. Davis founded Elkins and owned his own railroad; and

WHEREAS, Mineral County is the birthplace of many notable West Virginians including Nancy Hanks Lincoln, the mother of Abraham Lincoln, Walter E. “Jack” Rollins, who co-wrote “Here Comes Peter Cottontail” and “Frosty the Snowman”, John Kruk, former All-Star Major League baseball player, and Henry Louis Gates, Jr., a prominent African-American scholar and author; and

WHEREAS, It is fitting and proper that the Legislature recognize Mineral County and celebrate its Sesquicentennial; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to have made and place signs on United States Route 220 at the Mineral/Hampshire County border, United States Route 50 at the Mineral/Grant County border, State Route 28 at the Mineral/Hampshire County border and also the Maryland/West Virginia state line, State Route 42 at the Mineral/Grant County border, State Route 46 at the Maryland/West Virginia state line, State Route 93 at the Mineral/Grant County border, and State Route 956 at the Maryland/West Virginia State line stating: “Mineral County, Celebrating the Sesquicentennial, 1866 - 2016”; and, be it

*Further Resolved,* That the Clerk of the House of Delegates, forward a certified copy of this resolution to the Secretary of the Department of Transportation.

**SPECIAL CALENDAR****UNFINISHED BUSINESS**

**S. C. R. 50**, Providing for issuance of refunding bonds pursuant to Safe Roads Amendment of 1966; coming up in regular order, as unfinished business, was reported by the Clerk and adopted.

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

**SECOND READING**

**Com. Sub. for S. B. 277**, Requiring issuance of certificate of birth resulting in stillbirth; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 421**, Relating to punitive damages in civil actions; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Miller, and by unanimous consent, the bill was advanced to third reading with an amendment pending, and the rule was suspended to permit the consideration of the amendment on that reading.

**S. B. 532**, Relating to civil liability immunity for clinical practice plans and medical and dental school personnel; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page two following the enacting section, by striking out the remainder of the bill and inserting in lieu thereof the following:

**“ARTICLE 7E. IMMUNITY FROM CIVIL LIABILITY FOR CLINICAL PRACTICE PLANS AND PERSONNEL ASSOCIATED WITH MEDICAL AND DENTAL SCHOOLS.**

**§55-7E-1. Findings and declaration of public purpose.**

The Legislature finds and declares:

That the citizens of this state have been and should continue to be well served by physicians and dentists educated and trained at the Marshall University School of Medicine, the West Virginia School of Osteopathic Medicine, the West Virginia University School of Medicine and the West Virginia University School of Dentistry;

That the state's medical and dental schools play a vital role in ensuring an adequate supply of qualified and trained physicians throughout the state;

That the education, training and research provided at the state's medical and dental schools and state medical schools are is an essential governmental function in which the state has a substantial and compelling interest;

That the provision of clinical services to patients by faculty members, ~~resident physicians~~, residents, fellows and students of the state's medical and dental schools and state medical school, is an inseparable component of the aforementioned education, training and research;

That the provision of the clinical services significantly contributes to the ongoing quality, effectiveness and scope of the state's health care delivery system;

That the provision of the clinical services also raises the public profile and reputation of the respective institutions both regionally and nationally, thereby facilitating the recruitment of talented faculty, residents, fellows and students to their programs of study;

That the provision of the clinical services generates additional revenues needed to fund faculty salaries and other costs associated with

the overall operation of the state medical school and state's medical and dental schools;

That the continued availability of the revenues to the state medical school and state's medical and dental schools is necessary to their ongoing operation and delivery of the benefits described above;

That the continued availability of the revenues is compromised by the cost of medical professional liability insurance, the cost of defending medical professional liability claims, and the cost of compensating patients who suffer medical injury or death;

That the state concurrently has an interest in providing a system that makes available adequate and fair compensation to those individual patients who suffer medical injury or death;

That it is the duty and responsibility of the Legislature to balance the rights of individual patients to obtain adequate and fair compensation, with the substantial and compelling state interests set forth herein supporting the need for a financially viable system of medical and dental schools;

That, in balancing these important state interests, the Legislature acknowledges the sovereign immunity set forth in the West Virginia Constitution under Article VI, Section 35, to prevent the diversion of state moneys from legislatively appropriated purposes;

That, in conjunction with the provision of clinical services to patients by faculty members, ~~resident physicians~~, residents, fellows and students of the state's medical and dental schools, or state medical school, it is a common practice both here and in other states to create one or more clinical practice plans as nonprofit corporations;

That the clinical practice plans, among other things, administratively support clinical activities by holding real and personal property, offering personnel and financial management, providing



billing and collection for services rendered, and disbursing excess revenues back to the respective medical and dental schools;

That the clinical practice plans become integrated with their respective state medical school and state's medical and dental schools and exclusively serve the interests of these schools and their faculty;

That any moneys the clinical practice plans expend for the defense, settlement, and satisfaction of medical professional liability claims inevitably result in a shortfall of funds available to the medical and dental schools for faculty compensation and other operational purposes, thereby undermining the sovereign immunity otherwise granted to state institutions by the West Virginia Constitution;

That it is therefore reasonable and appropriate for the Legislature to provide immunity from civil liability to clinical practice plans and their respective directors, officers, employees and agents given the substantial and compelling state interests being served; and

That it is further reasonable and appropriate to require the state's medical and dental schools to maintain a level of medical professional liability insurance to adequately and fairly compensate patients who suffer medical injuries or death.

#### **§55-7E-2. Definitions.**

For purposes of this article:

(1) 'Clinical practice plan' means any of the nonprofit corporations that are operated to assist the state medical school and state's medical and dental schools in providing clinical services to patients and which are controlled by governing boards all the voting members of which are faculty members or university officials. Clinical practice plans as defined herein shall be considered agents of the state.

(2) 'Contractor' means an independent contractor, whether compensated or not, who is licensed as a health care professional under

chapter thirty of this code, ~~and~~ who is acting within the scope of his or her authority for a state medical school, state's medical and dental schools, or a clinical practice plan, and is a member of the faculty of a state's medical and dental schools or state medical school.

(3) 'Employee' means a director, officer, employee, agent or servant, whether compensated or not, who is licensed as a health care professional under chapter thirty of this code and who is acting within the scope of his or her authority or employment for a state's medical and dental schools, a state medical school or a clinical practice plan.

(4) 'Health care' means any act or treatment performed or furnished, or which should have been performed or furnished, by any director, officer, employee, agent or contractor of a state medical school, state's medical and dental schools, or a clinical practice plan for, to or on behalf of a patient during the patient's medical care, treatment or confinement.

(5) 'Medical injury' means injury or death to a patient arising or resulting from the rendering or failure to render health care.

(6) 'Medical professional liability insurance' means a contract of insurance, or any self-insurance retention program established under the provisions of section ten, article five, chapter eighteen-b of this code, that pays for the legal liability arising from a medical injury.

(7) 'Patient' means a natural person who receives or should have received health care from a director, officer, employee, agent or contractor of a state medical school, state's medical and dental schools, or a clinical practice plan under a contract, express or implied.

(8) 'Scope of authority or employment' means performance by a director, officer, employee, agent or contractor acting in good faith within the duties of his or her office, employment or contract with a state medical school, state's medical and dental schools, or a clinical practice plan, but does not include corruption or fraud.

(9) ‘State’s medical and dental schools’ or ‘state medical school’ means the Marshall University School of Medicine, the West Virginia School of Osteopathic Medicine, the West Virginia University School of Medicine and the West Virginia University School of Dentistry.

**§55-7E-3. Immunity for clinical practice plans and their directors, officers, employees, agents and contractors.**

Notwithstanding any other provision of this code, all clinical practice plans, and all employees and contractors of a state’s medical and dental schools, state medical school or a clinical practice plan, ~~are not liable~~ are only liable up to the limits of insurance coverage procured through the State Board of Risk and Insurance Management in accordance with section four, article seven-e, chapter fifty-five, arising from ~~for~~ a medical injury to a patient, including death resulting, in whole or in part, from the medical injury, either through act or omission, or whether actual or imputed, while acting within the scope of their authority or employment for a state’s medical and dental schools, state medical school or a clinical practice plan. The provisions of this article apply to the acts and omissions of all full-time, part-time, visiting and volunteer directors, officers, faculty members, ~~resident physicians~~ residents, fellows, students, employees, agents and contractors of a state’s medical and dental schools, state medical school or a clinical practice plan, regardless of whether the persons are engaged in teaching, research, clinical, administrative or other duties giving rise to the medical injury, regardless of whether the activities were being performed on behalf of a state’s medical and dental schools, state medical school or on behalf of a clinical practice plan and regardless of where the duties were being carried out at the time of the medical injury.

**§55-7E-4. Medical professional liability insurance for state’s medical and dental schools and state medical schools.**

The State Board of Risk and Insurance Management shall provide medical professional liability insurance to all of the state's medical and dental schools, state medical school, all of their clinical practice plans and all of their directors, officers, employees, agents and contractors in an amount to be determined by the State Board of Risk and Insurance Management, but in no event less than \$~~1~~ \$1.5 million for each occurrence, to increase to account for inflation by an amount equal to the consumer price index published by the United States department of labor, up to \$2 million for each occurrence. The clinical practice plans shall pay for this insurance. The provision of professional liability insurance is not a waiver of immunity that any of the foregoing entities or persons may have pursuant to this article or under any other law. Any judgment obtained for a medical injury to a patient as a result of health care performed or furnished, or which should have been performed or furnished, by any employee or contractor of a state's medical and dental school, state medical school or clinical practice plan shall not exceed the limits of medical professional liability insurance coverage provided by the State Board of Risk and Insurance Management pursuant to this section.

**§55-7E-5. Applicability of provisions.**

The provisions of this article are applicable prospectively to all civil actions commenced on or after July 1, 2015.

**§55-7E-6. Construction.**

The provisions of this article operate in addition to, and not in derogation of, any of the provisions contained in article seven-b of this chapter.”

The bill was then ordered to third reading.

**Com. Sub. for H. B. 2766**, Expiring funds to the unappropriated balance in the State Fund, General Revenue from the Joint Expenses,

and from the Department of Health and Human Resources; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2769**, Expiring funds to the unappropriated surplus balance in the State Fund, General Revenue from various agencies; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2772**, Expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, from the Auditor's Office - Purchasing Card Administration Fund; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Miller, and by unanimous consent, the bill was advanced to third reading with amendments pending, and the rule was suspended to permit the consideration of the amendments on that reading.

**H. B. 3020**, Making a supplementary appropriation to the Department of Military Affairs and Public Safety, Division of Corrections; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 3021**, Making a supplementary appropriation to the Department of Health and Human Resources; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 3022**, Making a supplementary appropriation to the Treasurer's Office, to the State Board of Education, to Mountwest Community and Technical College, to the West Virginia School of Osteopathic Medicine, and to West Virginia State University; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

## FIRST READING

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

**Com. Sub. for S. B. 30**, Permitting shared animal ownership agreement to consume raw milk,

**Com. Sub. for S. B. 37**, Creating Revised Uniform Arbitration Act,

**S. B. 89**, Providing Prosecuting Attorneys Institute's council establish Executive Director's salary,

**Com. Sub. for S. B. 249**, Prohibiting straight party voting,

**S. B. 283**, Relating to branch banking,

**S. B. 292**, Relating to licenses for business of currency exchange, transportation or transmission,

**S. B. 322**, Eliminating mandatory electronic recount of ballots in recounts,

**S. B. 332**, Relating to administrative fees for Tax Division, Department of Revenue,

**Com. Sub. for S. B. 344**, Relating to limitations on back and front pay and punitive damages,

**Com. Sub. for S. B. 366**, Creating Patient Protection and Transparency Act,

**Com. Sub. for S. B. 411**, Creating Asbestos Bankruptcy Trust Claims Transparency Act and Asbestos and Silica Claims Priorities Act,

**Com. Sub. for S. B. 436**, Relating to State Athletic Commission,

**S. B. 445**, Relating to investment of RJCFA excess funds,

**S. B. 454**, Criminalizing trademark counterfeiting,

**S. B. 489**, Imposing statute of limitations on civil actions derived from surveying of real property,

**S. B. 545**, Removing certain prior bank overdraft approval by director or executive officer,

**S. B. 574**, Relating to liquor sales by distilleries and mini-distilleries,

**S. B. 576**, Prohibiting PSC jurisdiction of internet protocol-enabled service or voice over internet protocol-enabled service and certain telephone company transactions,

And,

**S. B. 578**, Relating to occupational disease claims.

At 10:28 A.M., the House of Delegates adjourned until 11:00 A.M., Monday, March 9, 2015.





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MONDAY, MARCH 9, 2015

**FIFTY-FIFTH DAY**

[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

The House of Delegates met at 11:00 A.M., and was called to order by the Honorable Tim Armstead, Speaker.

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

The Clerk proceeded to read the Journal of Saturday, March 7, 2015, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**CONFERENCE COMMITTEE REPORT AVAILABILITY**

At 11:16 A.M., the Clerk announced availability in his office of the report of the Committee of Conference on H. B. 2213, Reducing the distributions to the West Virginia Infrastructure Fund.

**COMMITTEE REPORTS**

Delegate Pasdon, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**Com. Sub. for S. B. 287**, Providing posthumous high school diplomas,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, and with the recommendation that second reference of the bill to the Committee on Finance be dispensed with.

In the absence of objection, reference of the bill (Com. Sub. for S. B. 287) to the Committee on Finance was abrogated.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 479**, Adding additional family court judges,

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

In accordance with the former direction of the Speaker, the bill (S. B. 479) was referred to the Committee on Finance.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 347**, Creating Firearms Act of 2015,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 415**, Relating to circuit judges,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 430**, Permitting mutual orders enjoining certain contact between parties to domestic relations actions,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 390**, Authorizing PSC approve expedited cost recovery of natural gas utility infrastructure projects,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 498**, Clarifying tax map rules apply to paper and electronic documents,

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

Delegate McCuskey, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 6<sup>th</sup> day of March, 2015, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

(**Com. Sub. for S. B. 357**), Creating Coal Jobs and Safety Act of 2015,

And,

(**Com. Sub. for S. B. 361**), Eliminating prevailing hourly wage requirement for construction of public improvements.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**S. B. 106**, Excepting professional engineer member from sanitary board when project engineer is under contract,

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

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**Com Sub. for S. B. 352**, Expanding scope of cooperative associations to goods and services including recycling,

And,

**Com. Sub. for S. B. 488**, Reestablishing and modifying Broadband Deployment Council,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 182**, Authorizing Department of Military Affairs and Public Safety promulgate legislative rules,

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

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**Com. Sub. for S. B. 342**, Clarifying scope, application and requirements for error corrections by CPRB,

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

#### MESSAGES FROM THE EXECUTIVE

The Clerk laid before the House of Delegates a communication from His Excellency, the Governor, which was read by the Clerk as follows:

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
1900 KANAWHA BLVD., EAST  
CHARLESTON, WV 25305

March 6, 2015

The Honorable William P. Cole III, President  
Senate of West Virginia, Office of the President  
State Capitol  
Building 1, Room 229-M  
Charleston, West Virginia 25305

The Honorable Tim Armstead, Speaker

West Virginia House of Delegates, Office of the Speaker  
State Capitol  
Building 1, Room 228-M  
Charleston, West Virginia 25305

Dear President Cole and Speaker Armstead:

After the submission of my recommended FY 2016 Executive Budget on January 14, 2015, and my first adjustment letter on January 22, 2015, there have been a few areas that require adjustments, and therefore, pursuant to Section 51, Article VI of the Constitution of the State of West Virginia, I submit additional revisions to the FY 2016 Budget Bill for the TITLE II – APPROPRIATIONS as follows:

**Section 1. Appropriations from general revenue.**

**Executive**

*Governor's Office, Fund 0101, Fiscal Year 2016, Org 0100*

(To move GO HELP funding to the Department of Health and Human Resources and to restore budget reductions.)

- Decrease “GO HELP” Appropriation 11600 by \$241,571.
- Increase “Current Expenses” Appropriation 13000 by \$599,600.

**Department of Administration**

*Department of Administration - Office of the Secretary, Fund 0186, Fiscal Year 2016, Org 0201*

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$46,824.

- Decrease “Financial Advisor” Appropriation 30400 by \$100,000.

*Division of Finance, Fund 0203, Fiscal Year 2016, Org 0209*

(To adjust the budget reduction due to vacancies.)

- Decrease “Personal Services and Employee Benefits” Appropriation 00100 by \$7,235.
- Decrease “Current Expenses” Appropriation 13000 by \$30,000.
- Increase “GAAP Project” Appropriation 12500 by \$14,032.

*Division of General Services, Fund 0230, Fiscal Year 2016, Org 0211*

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$95,349.

*Division of Purchasing, Fund 0210, Fiscal Year 2016, Org 0213*

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$102,829.
- Decrease “Current Expenses” Appropriation 13000 by \$50,000.

*Travel Management, Fund 0615, Fiscal Year 2016, Org 0215*

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$154,936.

- Decrease “Repairs and Alterations” Appropriation 06400 by \$200,000.

*Commission of Uniform State Laws, Fund 0214, Fiscal Year 2016, Org 0217*

(To adjust the budget reduction due to vacancies.)

- Decrease “Current Expenses” Appropriation 13000 by \$1,000.

*West Virginia Public Employees Grievance Board, Fund 0220, Fiscal Year 2016, Org 0219*

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$1,823.

*Ethics Commission, Fund 0223, Fiscal Year 2016, Org 0220*

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$30,651.

*Public Defender Services, Fund 0226, Fiscal Year 2016, Org 0221*

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$94,785.
- Decrease “Public Defender Corporations” Appropriation 35200 by \$120,967.



*Committee for the Purchase of Commodities and Services from the Handicapped, Fund 0233, Fiscal Year 2016, Org 0224*

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$1,104.
- Decrease “Current Expenses” Appropriation 13000 by \$1,000.

*West Virginia Prosecuting Attorneys Institute, Fund 0557, Fiscal Year 2016, Org 0228*

(To adjust the budget reduction due to vacancies.)

- Increase “Forensic Medical Examinations” Appropriation 68300 by \$736.
- Increase “Federal Funds/Grant Match” Appropriation 74900 by \$1,533.

*Children’s Health Insurance Agency, Fund 0588, Fiscal Year 2016, Org 0230*

(To move the Children’s Health Insurance Agency to the Department of Health and Human Resources in accordance with Senate Bill No. 262.)

- Decrease “Personal Services and Employee Benefits” Appropriation 00100 by \$110,992.
- Decrease “Current Expenses” Appropriation 13000 by \$9,379,734.
- Decrease “Autism Spectrum Disorder Coverage” Appropriation 85600 by \$497,035.

*Real Estate Division, Fund 0610, Fiscal Year 2016, Org 0233*

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$145.
- Decrease “Current Expenses” Appropriation 13000 by \$35,617.

**Department of Commerce***West Virginia Development Office, Fund 0256, Fiscal Year 2016, Org 0307*

(To combine the National Coal Heritage Area Authority and the Coal Heritage Highway Authority in accordance with House Bill No. 2227.)

- Delete the directive language from “Highway Authorities” Appropriation 43100 “\$85,239 is for Coal Heritage Highway Authority;”.
- Increase the directive language from “Highway Authorities” Appropriation 43100 for the Coal Heritage Area Authority by \$85,239.

*Division of Natural Resources, Fund 0265, Fiscal Year 2016, Org 0310*

(To provide funding for the increase in minimum wage.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 for \$500,000.

**Department of Education***State Board of Education - School Lunch Program, Fund 0303, Fiscal Year 2016, Org 0402*

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$24,801.
- Decrease “Unclassified” Appropriation 09900 by \$24,801.

*State Board of Education - State Department of Education, Fund 0313, Fiscal Year 2016, Org 0402*

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$150,000.
- Decrease “21<sup>st</sup> Century Learners” Appropriation 88600 by \$150,000.

*State Board of Education - Aid for Exceptional Children, Fund 0314, Fiscal Year 2016, Org 0402*

(To adjust the budget reduction to maintain federal maintenance of effort.)

- Increase “Special Education - Institutions” Appropriation 16000 by \$389,443.

*State Board of Education - State Aid to Schools, Fund 0317, Fiscal Year 2016, Org 0402*

(To adjust School Aid Formula based on latest estimates.)

- Decrease “Transportation” Appropriation 15400 by \$3,789,007.
- Increase “Improved Instructional Programs” Appropriation 15600 by \$1,300,228.

- Increase “21<sup>st</sup> Century Strategic Technology Learning Growth” Appropriation 93600 by \$2,600,457.
- Increase “Less Local Share” line by \$12,486,259 from (\$443,582,379) to (\$456,068,638).

*State Board of Education - West Virginia Schools for the Deaf and the Blind, Fund 0320, Fiscal Year 2016, Org 0403*

(To adjust the budget reduction to maintain federal maintenance of effort.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$500,000.

### **Department of Education and the Arts**

*Educational Broadcasting Authority, Fund 0300, Fiscal Year 2016, Org 0439*

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$63,825.
- Decrease “Current Expenses” Appropriation 13000 by \$63,825.

*State Board of Rehabilitation - Division of Rehabilitation Services, Fund 0310, Fiscal Year 2016, Org 0932*

(To adjust the budget reduction to maintain federal maintenance of effort.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$500,000.

**Department of Health and Human Resources**

*Department of Health and Human Resources - Office of the Secretary,  
Fund 0400, Fiscal Year 2016, Org 0501*

(To move funding for GO HELP from the Governor's Office.)

- Increase "Personal Services and Employee Benefits" Appropriation 00100 by \$212,720.
- Increase "Unclassified" Appropriation 09900 by \$2,506.
- Increase "Current Expenses" Appropriation 13000 by \$26,345.

*Division of Human Services, Fund 0403, Fiscal Year 2016, Org 0511*

(To increase the appropriation for Medical Services and to move the Children's Health Insurance Agency to the Department of Health and Human Resources in accordance with Senate Bill No. 262.)

- Increase "Medical Services" Appropriation 18900 by \$9,145,000.
- Add "Autism Spectrum Disorder Coverage" Appropriation 85600 for \$497,035.
- Add "CHIP Administrative Costs" Appropriation 85601 for \$112,064.
- Add "CHIP Services" Appropriation 85602 for \$9,379,734.

**Department of Military Affairs and Public Safety**

*Department of Military Affairs and Public Safety - Office of the Secretary,  
Fund 0430, Fiscal Year 2016, Org 0601*

(To restore the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$911.
- Increase “Fusion Center” Appropriation 46900 by \$19,128.
- Increase “Homeland State Security Administrative Agency” Appropriation 95300 by \$48,609.

*Division of Homeland Security and Emergency Management, Fund 0443, Fiscal Year 2016, Org 0606*

(To adjust the budget reduction to maintain federal maintenance of effort.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$82,634.
- Increase “Radiological Emergency Preparedness” Appropriation 55400 by \$11,652.
- Increase “Federal Funds/Grant Match” Appropriation 74900 by \$139,625.
- Increase “Mine and Industrial Accident Rapid Response Call Center” Appropriation 78100 by \$93,113.
- Increase “Early Warning Flood System” Appropriation 87700 by \$35,723.

*Division of Corrections - Correctional Units, Fund 0450, Fiscal Year 2016, Org 0608*

(To adjust reappropriation language.)

- Add following to the end of the reappropriation language “...with the exception of fund 0450, fiscal year 2015,

appropriation 13000 (\$8,000,000) and fund 0450, fiscal year 2015, appropriation 53500 (\$3,000,000) which shall expire on June 30, 2015.”

*Division of Protective Services, Fund 0585, Fiscal Year 2016, Org 0622*

(To restore the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$132,533.

### **Department of Revenue**

*Tax Division Fund 0470, Fiscal Year 2016, Org 0702*

(To adjust reappropriation language.)

- Add following to the end of the reappropriation language “...with the exception of fund 0470, fiscal year 2015, appropriation 00100 (\$1,000,000) which shall expire on June 30, 2015.”

### **Department of Transportation**

*Aeronautics Commission, Fund 0582, Fiscal Year 2016, Org 0807*

(To restore the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$23,279.

### **Bureau of Senior Services**

*Bureau of Senior Services, Fund 0420, Fiscal Year 2016, Org 0508*

(To move part of the appropriation for Title XIX Waiver from the Lottery Fund.)

- Increase “Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens” Appropriation 53900 by \$150,000.

### **Section 3. Appropriations from other funds.**

#### **Executive**

*Auditor’s Office - Local Government Purchasing Card Expenditure Fund, Fund 1224, Fiscal Year 2016, Org 1200*

(To add language relating to statutory revenue distributions.)

- Add the language “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 provide a proportionate share of rebates back to the general fund of local governments based on utilization of the program in accordance with W.Va. Code §6-9-2b.”

#### **Department of Education and the Arts**

*State Board of Rehabilitation - Division of Rehabilitation Services - West Virginia Rehabilitation Center Special Account, Fund 8664, Fiscal Year 2016, Org 0932*

(To adjust the appropriations to add an appropriation for equipment.)

- Decrease “Current Expenses” Appropriation 13000 by \$220,000.
- Add “Equipment” Appropriation 00700 for \$220,000.

#### **Department of Health and Human Resources**

*Division of Human Services - Medical Services Trust Fund, Fund 5185, Fiscal Year 2016, Org 0511*



(To adjust the appropriation to due to the reduced transfer from the Revenue Shortfall Reserve Fund.)

- Decrease “Medical Services” Appropriation 18900 by \$9,145,000.

### **Department of Revenue**

*Office of the Secretary - Revenue Shortfall Reserve Fund, Fund 7005, Fiscal Year 2016, Org 0701*

(To reduce the transfer to the Medical Services Trust Fund now funded from General Revenue.)

- Decrease “Medical Services Trust Fund - Transfer” Appropriation 51200 by \$9,145,000.

### **Department of Transportation**

*Division of Motor Vehicles - Motor Vehicle Fees Fund, Fund 8223, Fiscal Year 2016, Org 0802*

(To continue an increase in special revenue spending authority from supplemental appropriation bill.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$184,000.
- Increase “Current Expenses” Appropriation 13000 by \$2,000,000.
- Add “Equipment” Appropriation 00700 for \$75,000.

### **Section 4. Appropriations from lottery net profits.**

### **Department of Commerce**

*West Virginia Development Office - Division of Tourism, fund 3067, Fiscal Year 2016, Org 0304*

(To restore the budget reduction due to vacancies.)

- Increase “Tourism - Operations” Appropriation 66200 by \$150,000.

### **Bureau of Senior Services**

*Bureau of Senior Services - Lottery Senior Citizens Fund, Fund 5405, Fiscal Year 2016, Org 0508*

(To adjust the appropriation for Title XIX Waiver moved to General Revenue.)

- Decrease “Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens” Appropriation 53900 by \$150,000.

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

#### **Executive**

*Department of Agriculture - State Conservation Committee, Fund 8783, Fiscal Year 2016, Org 1400*

(To continue an increase in federal spending authority from supplemental appropriation bill.)

- Increase “Current Expenses” Appropriation 13000 by \$12,382,910.

#### **Department of Administration**

*Children’s Health Insurance Agency, Fund 8838, Fiscal Year 2016, Org 0230*

(To move the Children’s Health Insurance Agency to the Department of Health and Human Resources in accordance with Senate Bill No. 262.)

- Decrease “Personal Services and Employee Benefits” Appropriation 00100 by \$533,752.
- Decrease “Current Expenses” Appropriation 13000 by \$47,422,974.

### **Department of Commerce**

*Division of Natural Resources, Fund 8707, Fiscal Year 2016, Org 0310*

(To increase federal spending authority for improvements at Wildlife Management Areas.)

- Increase “Repairs and Alterations” Appropriation 06400 by \$100,000.
- Increase “Equipment” Appropriation 07000 by \$250,000.
- Increase “Other Assets” Appropriation 69000 by \$700,000.

### **Department of Health and Human Resources**

*Division of Human Services, Fund 8722, Fiscal Year 2016, Org 0511*

(To move the Children’s Health Insurance Agency to the Department of Health and Human Resources in accordance with Senate Bill No. 262.)

- Add “CHIP Administrative Costs” Appropriation 85601 for \$533,752.
- Add “CHIP Services” Appropriation 85602 for \$47,422,974.

**Miscellaneous Board and Commissions**

*National Coal Heritage Area Authority, Fund 8869, Fiscal Year 2016, Org 0941*

(To combine the National Coal Heritage Area Authority and the Coal Heritage Highway Authority in accordance with House Bill No. 2227.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$47,059.
- Increase “Current Expenses” Appropriation 13000 by \$152,941.

*Coal Heritage Highway Authority, Fund 8861, Fiscal Year 2016, Org 0942*

(To combine the National Coal Heritage Area Authority and the Coal Heritage Highway Authority in accordance with House Bill No. 2227.)

- Decrease “Personal Services and Employee Benefits” Appropriation 00100 by \$47,059.
- Decrease “Current Expenses” Appropriation 13000 by \$152,941.

**Section 8. Awards for claims against the state.**

Amend the language to read as follows:

*“There are hereby appropriated for fiscal year 2016, from the fund as designated, in the amounts as specified, general revenue funds in the amount of \$203,331, special revenue funds in the amount of \$747,870, and state road funds in the amount of \$730,433 for payment of claims against the state.”*

**Section 9. Appropriations from lottery net  
profits surplus accrued.**

**Bureau of Senior Services**

*Bureau of Senior Services - Lottery Senior Citizens Fund, Fund 5405,  
Fiscal Year 2016, Org 0508*

(To adjust appropriation from surplus lottery revenue based on most recent estimates.)

- Decrease “Senior Services Medicaid Transfer - Lottery Surplus” Appropriation 68199 by \$10,000,000.

**Section 10. Appropriations from state excess lottery revenue  
surplus accrued.**

**Department of Health and Human Resources**

*Division of Human Services, Fund 5365, Fiscal Year 2016, Org 0511*

(To adjust appropriation from surplus lottery revenue based on most recent estimates.)

- Increase “Medical Services - Lottery Surplus” Appropriation 68100 by \$10,000,000.

Thank you for your prompt attention of this matter. Your cooperation is always appreciated.

Should you have any questions or require additional information, please call me at any time.

Sincerely,

EARL RAY TOMBLIN,  
*Governor.*

**MESSAGES FROM THE SENATE**

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

**S. C. R. 3** - "Requesting the Division of Highways to name the portion of Route 25, from its intersection at West 11th Street to its intersection at Republic Way, in Kanawha County, West Virginia, the 'U. S. Army Sgt. James Lawrence Taylor Memorial Road'."

WHEREAS, Sergeant James Lawrence Taylor was born on June 9, 1943, the son of Monte and Ruth Taylor of Nitro, and brother of Monte, Jr., Kent, Jerry and David; and

WHEREAS, Sergeant James Lawrence Taylor attended Nitro High School, but left in 1960 before graduating to enlist in the Army, serving in Germany and Vietnam; and

WHEREAS, While in Vietnam, Sergeant James Lawrence Taylor was a member of the 5th Mobile Strike Force Command, Detachment A-503, known as the Green Berets; and

WHEREAS, On March 9, 1966, Sergeant James Lawrence Taylor was on a special mission to reinforce a special force detachment located at Camp A Shau in South Vietnam when Camp A Shau came under attack by Viet Cong; and

WHEREAS, Sergeant James Lawrence Taylor assumed command when the company commander was killed by enemy fire; and

WHEREAS, Sergeant James Lawrence Taylor was injured by Viet Cong rifle fire, and he was carried out of Camp A Shau when troops were forced to abandon the evacuation; and

WHEREAS, Sergeant James Lawrence Taylor's body was never recovered, and he was presumed dead by the military; and

WHEREAS, Sergeant James Lawrence Taylor was awarded the Purple Heart medal posthumously and the Award of the Silver Star posthumously in 1966; and

WHEREAS, It is only fitting and proper that this stretch of road, in the county of his birth and the area in which he lived all his young life, be named in his honor so that Sergeant James Lawrence Taylor's supreme sacrifice will be memorialized and not forgotten; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name the portion of Route 25, from its intersection at West 11th Street to its intersection at Republic Way, in Kanawha County, West Virginia, the "U. S. Army Sgt. James Lawrence Taylor Memorial Road"; and, be it

*Further Resolved,* That the Division of Highways is hereby requested to have made and be placed signs identifying the portion of Route 25 as the "U. S. Army Sgt. James Lawrence Taylor Memorial Road"; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Secretary of the Department of Transportation, the Commissioner of Highways and to the family of the late Sergeant James Lawrence Taylor.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

**S. C. R. 23** - "Requesting the Division of Highways name bridge number 24-16-13.39 (3961) (37.30512, -81.67535), locally known as

Big Creek Owl Bridge, carrying WV Route 16 over Dry Fork in McDowell County, West Virginia, the ‘U. S. Army SFC Anthony Barton Memorial Bridge’.”

WHEREAS, Anthony Barton was born in Bluefield, West Virginia, on April 25, 1980; and

WHEREAS, Anthony Barton graduated from Big Creek High School in War, West Virginia, where he was co-valedictorian of the class of 1998 and excelled in football and wrestling. He subsequently received an organizational leadership degree from Mountain State University; and

WHEREAS, SFC Anthony Barton served in the West Virginia Army National Guard from December 2001 until his death in 2012; and

WHEREAS, SFC Anthony Barton served fourteen months in Iraq with the West Virginia Army National Guard as a military police officer during Operation Iraqi Freedom; and

WHEREAS, SFC Anthony Barton was a highly decorated soldier who received numerous awards and medals for his service, including the Meritorious Service Medal (Posthumous), Army Commendation Medal with Oak Leaf Cluster, Army Achievement Medal, Army Reserve Component Achievement Medal, Army Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, Armed Forces Reserve Medal with M Device, NCO Professional Development Ribbon with Numeral 2, Army Service Ribbon, Combat Action Badge, Meritorious Unit Citation, Joint Meritorious Unit Award, West Virginia Emergency Service Ribbon with 2 Oak Leaf Clusters, West Virginia State Service Ribbon with 2 Oak Leaf Clusters, West Virginia Service Ribbon and Shoulder Sleeve Insignia for Wartime Service — 101<sup>st</sup> Airborne and 15<sup>th</sup> MP Brigade; and

WHEREAS, SFC Anthony Barton also served the state’s citizenry on many occasions as a member of the West Virginia National Guard



when he assisted during severe flooding, major snowstorms and other state emergencies; and

WHEREAS, SFC Anthony Barton was a certified police officer who graduated from the West Virginia State Police Academy and he served as a McDowell County deputy sheriff and as a police officer with the Town of War while serving in the West Virginia National Guard; and

WHEREAS, SFC Anthony Barton also enjoyed riding his Harley and playing guitar, and he was actively involved in the New Testament Christian Church, where he played guitar; and

WHEREAS, SFC Anthony Barton suffered from post traumatic stress disorder (PTSD) resulting from the highly stressful conditions of his deployment in Iraq; and

WHEREAS, Sadly, SFC Anthony Barton lost his battle with PTSD on December 26, 2012; and

WHEREAS, SFC Anthony Barton is survived by his spouse, Jessica Barton; children, James Tanner Beckett and Jared Ray Barton; parents, Donald and Mary Barton; sister, Tara Adkins and her husband, Matthew; grandparents, Clinton and Delores Tyree; four nephews, Michael Anthony and Andrew Reid Adkins, Declan Patrick O'Neil and Bodhi Jasper Hines; and numerous aunts and uncles and other family and friends; and

WHEREAS, It is only fitting that we honor the life of SFC Anthony Barton by naming this bridge in his memory as a lasting tribute to his dedicated service and sacrifice on behalf of his country, state and community; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 24-16-13.39 (3961) (37.30512, -81.67535), locally known as Big Creek Owl Bridge, carrying WV Route 16 over Dry Fork in

McDowell County, West Virginia, the “U. S. Army SFC Anthony Barton Memorial Bridge”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs at both ends of the bridge identifying the bridge as the “U. S. Army SFC Anthony Barton Memorial Bridge”; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways and to the family of SFC Anthony Barton.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

**S. C. R. 42** - “Requesting the Division of Highways name bridge number 10-77-63.83 (10A222), on I-77 near mile marker 63, 2.31 miles south of the Mahan exit in Fayette County, the ‘Tygrett Brothers Seven Veterans Bridge’.”

WHEREAS, Charles R. Tygrett, John D. Tygrett, Harold M. Tygrett, Paul A. Tygrett, R. G. Tygrett, Tommy E. Tygrett and Reginald D. Tygrett are the seven sons of Marion A. and June O. Tygrett. The seven Tygrett brothers served in the armed forces during World War II and the Korean War; and

WHEREAS, The seven brothers’ primary units and areas of service included: CPL Charles R. Tygrett, WWII, 302 AAF, Algeria, French Morocco and Tunisia; CPL John D. Tygrett, WWII, U. S. Army Medical Det.; PFC Harold M. Tygrett, WWII, U. S. Army 577<sup>th</sup> Ambulance Co., Normandy, Northern France, Ardennes; SSGT Paul A. Tygrett, WWII, 47<sup>th</sup> Armored Artillery, Northern France, Ardennes, Rhineland; PFC R. G. Tygrett, WWII, 127<sup>th</sup> Anti-Aircraft Battalion,

Ardennes, Central Europe; PFC Tommy E. Tygrett, U. S. Army 21<sup>st</sup> AFA and 1<sup>st</sup> Infantry (Big Red One), Germany; and SSGT Reginald D. Tygrett, Korean War, U. S. Air Force, 19<sup>th</sup> Supply Squadron; and

WHEREAS, At a Veterans Day Ceremony on November 9, 2001, American Legion Post 149 of Fayetteville, West Virginia, honored the seven brothers for their selfless service and commitment to the United States military and a grateful nation; and

WHEREAS, It is only fitting and proper that CPL Charles R. Tygrett, CPL John D. Tygrett, PFC Harold M. Tygrett, SSGT Paul A. Tygrett, PFC R. G. Tygrett, PFC Tommy E. Tygrett and SSGT Reginald D. Tygrett be remembered and acknowledged for their dedicated service on behalf of their country, state and communities; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 10-77-63.83 (10A222), on I-77 near mile marker 63, 2.31 miles south of the Mahan exit in Fayette County, the “Tygrett Brothers Seven Veterans Bridge”; and, be it

*Further Resolved,* That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “Tygrett Brothers Seven Veterans Bridge”; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways, to Tommy Tygrett, the sole surviving Tygrett brother, and to the families of the remaining Tygrett brothers.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

**S. C. R. 43** - “Requesting the Division of Highways name the bridge carrying County Route 13 over Hominy Creek in Nicholas County, bridge number 34-13-11.85 (34A017), latitude 38.14543, longitude -80.71810, the ‘U. S. Army SPC Richard Nesselrotte Bridge’.”

WHEREAS, U. S. Army Specialist Richard Nesselrotte served in the Vietnam War as a Specialist Four and Squad Leader with Company B, 2nd Battalion, 8th Infantry, 4th Infantry Division; and

WHEREAS, US Army Specialist Richard Nesselrotte was awarded the Silver Star Medal for his bravery on February 4, 1968, when he led his squad in a dismounted assault against an entrenched North Vietnamese Army Company. On that day, Specialist Nesselrotte continuously exposed himself to enemy fire, which he countered with his M-60 machine gun, grenaded several enemy positions, and led three of his men across the enemy’s front to bring a heavy volume of effective fire against the insurgents. As a result of Specialist Nesselrotte’s brave actions, the enemy was ultimately routed and defeated; and

WHEREAS, It is only fitting that an appropriate landmark be named to honor U. S. Army Specialist Richard Nesselrotte’s outstanding courage and exemplary devotion to duty in defending his country; therefore, be it

*Resolved by the West Virginia Legislature:*

That the Division of Highways is hereby requested to name the bridge carrying County Route 13 over Hominy Creek in Nicholas County, bridge number 34-13-11.85 (34A017), latitude 38.14543, longitude -80.71810, the “U. S. Army SPC Richard Nesselrotte Bridge”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “U. S. Army SPC Richard Nesselrotte Bridge”; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Secretary of the Department of Transportation and to U. S. Army SPC Richard Nesselrotte.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

**S. C. R. 44** - "Requesting the Division of Highways name the bridge on U. S. Route 219 crossing Files Creek, bridge number 42-219-33.10 (42A137) 38.83753, -79.87568, near Beverly, Randolph County, the 'U. S. Navy PO2 Robert Paul Laderach Memorial Bridge'."

WHEREAS, Robert Paul Laderach was born May 8, 1917, in Beverly, Randolph County, the son of Ernest and Mary Agnes Adams Laderach. His family lived on a farm on Dotson Run and he was educated in Beverly, attending Beverly High School. He joined the Navy in October 1937. Robert was serving on board the U.S.S. Arizona in Hawaii on December 7, 1941, when that ship was attacked and sunk without provocation by the Japanese Navy on the "Date that Shall Live in Infamy". Robert and five other West Virginians were killed that day and he and 102 of his shipmates are still entombed and are on 'Eternal Patrol' in the U. S. S. Arizona in Pearl Harbor. He received the posthumous awards of Purple Heart, WW II Victory Award Ribbon Bar, Asiatic Pacific Medal and Campaign Medal and USS Arizona BB-39 Pearl Harbor Patch. Robert was survived by his parents and sisters Anna Pauline Laderach and Margaret Virginia Laderach; and

WHEREAS, Naming the bridge on U. S. Route 219 crossing Files Creek, bridge number 42-219-33.10 (42A137) 38.83753, -79.87568, near Beverly in Randolph County, the "U. S. Navy PO2 Robert Paul Laderach Memorial Bridge" is an appropriate recognition of his

ultimate sacrifice to his country, state, community and Randolph County; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name the bridge on U. S. Route 219 crossing Files Creek, bridge number 42-219-33.10 (42A137) 38.83753, -79.87568, near Beverly, Randolph County, the “U. S. Navy PO2 Robert Paul Laderach Memorial Bridge”; and, be it

*Further Resolved,* That the Division of Highways is requested to have made and be placed signs identifying the bridge as the “U. S. Navy PO2 Robert Paul Laderach Memorial Bridge”; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Secretary of the Department of Transportation and the surviving relatives of Robert Paul Laderach.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

**S. C. R. 45** - “Requesting the Division of Highways name bridge number 18-68-0.44 (18A006) Lat/Long 38.94633, -81.76020, locally known as Ravenswood Town BR, carrying WV 68 over Sandy Creek near Ravenswood, Jackson County, the ‘James P. Spano, Jr. Memorial Bridge’.”

WHEREAS, James P. Spano, Jr was born May 13, 1929, in Chattaroy, Mingo County. His parents were James Spano, Sr. and Mica Panzera Spano. He was one of eight siblings. He grew up in Chattaroy and was a star athlete and star basketball player for Chattaroy High School where he was the leading scorer at point guard. His basketball skills allowed him to earn a scholarship to Morris

Harvey College in Charleston, West Virginia, being the only member of his family to attend college. Jim was encouraged by the late Eddie King to go out for football. He did and ended up playing all four years under the basketball scholarship that he had earned. Jim was a four-year letterman, starter and was noted as a superior blocker. Jim also started at nose guard, the position for which he was known best. He played in three bowl games while at Morris Harvey College, most notably the Tangerine Bowl in Orlando Florida. He was captain of the team his senior season in 1950 when the team was 11-0. He studied history and physical education while at Morris Harvey College. After college Jim joined the Navy and continued to play football and became a coach for the Naval Training Camp team. In 1951, Jim married Mary Winter from Fairplain, West Virginia. He was hired as head coach of the Ravenswood High School football and basketball teams in 1954. He also coached the baseball team, started the little league baseball program and the summer basketball league and wrote the Ravenswood High School fight song that is still used today. In 1957 he led Ravenswood High School to its first ever state championship, beating Rupert High School. Jim also coached the Little Kanawha Conference bowl game three times. In 1959 Jim led Ravenswood High School to its second state championship; and

WHEREAS, Students who played for him remember Jim as a supreme motivator, getting the best out of each player. Jim Spano was a community service mentor as he started all of the youth programs, worked with the community and was instrumental in getting the current Ravenswood High School built. On June 27, 1962, James Spano died of a massive heart attack at the young age of 33 after coaching summer basketball games. He left the small community in shock and is still revered today 53 years after his passing. Jim left two sons, James P. Spano III and Joseph H. Spano, Sr., who carried on his rich football tradition. Coach Spano was inducted into the Mid-Ohio Valley Hall of Fame in 2002; and

WHEREAS, Naming bridge number 18-68-0.44 (18A006) Lat/Long 38.94633, -81.76020, locally known as Ravenswood Town BR,

carrying WV 68 over Sandy Creek near Ravenswood Jackson County, the “James P. Spano, Jr. Memorial Bridge” is an appropriate recognition of his contributions to his country, state, community and Jackson County; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 18-68-0.44 (18A006) Lat/Long 38.94633, -81.76020, locally known as Ravenswood Town BR, carrying WV 68 over Sandy Creek near Ravenswood, Jackson County, the “James P. Spano, Jr. Memorial Bridge”; and, be it

*Further Resolved,* That the Division of Highways is requested to have made and be placed signs identifying the bridge as the “James P. Spano, Jr. Memorial Bridge”; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Secretary of the Department of Transportation and the surviving relatives of James P. Spano, Jr.

## SPECIAL CALENDAR

### THIRD READING

**Com. Sub. for S. B. 277**, Requiring issuance of certificate of birth resulting in stillbirth; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 380**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hartman.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 277) passed.



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

**Com. Sub. for S. B. 421**, Relating to punitive damages in civil actions; on third reading, coming up in regular order, was reported by the Clerk.

An amendment to the bill, offered by Delegate Fast, was reported by the Clerk.

Whereupon,

Delegate Fast asked and obtained unanimous consent that the amendment be withdrawn.

Delegate Shott asked and obtained unanimous consent to amend the bill on third reading.

On motion of Delegate Shott, the bill was amended on page two, after the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

“That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-27, to read as follows:

**ARTICLE 7. ACTIONS FOR INJURIES.**

**§55-7-27. Limitations on punitive damages.**

(a) An award of punitive damages may only occur in a civil action against a defendant if a plaintiff establishes by clear and convincing evidence that the damages suffered were the result of the conduct that was carried out by the defendant with actual malice toward the plaintiff or a conscious, reckless and outrageous indifference to the health, safety and welfare of others.

(b) Any civil action tried before a jury involving punitive damages ~~shall~~may, upon request of any defendant, be conducted in a bifurcated trial in accordance with the following guidelines:

(1) In the first stage of a bifurcated trial, the jury shall determine liability for compensatory damages and the amount of compensatory damages, if any.

(2) If the jury finds during the first stage of a bifurcated trial that a defendant is liable for compensatory damages, then the court shall determine whether sufficient evidence exists to proceed with a consideration of punitive damages.

(3) If the court finds that sufficient evidence exists to proceed with a consideration of punitive damages, the same jury shall determine if a defendant is liable for punitive damages in the second stage of a bifurcated trial and may award such damages.

(4) If the jury returns an award for punitive damages that exceeds the amounts allowed under subsection (c) of this section, the court shall reduce any such award to comply with the limitations set forth therein.

(c) The amount of punitive damages that may be awarded in a civil action may not exceed the greater of four times the amount of compensatory damages or \$500,000, whichever is greater.”

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 381**), and there were—yeas 69, nays 30, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Boggs, Byrd, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Guthrie, Hicks, Hornbuckle, Longstreth, Lynch, Manchin, Marcum, Miley, Moore, Morgan, Moye, Perdue, Perry, Pethtel, L. Phillips, Pushkin, Rodighiero, Rowe, Skinner, Sponaugle, Trecost, H. White and Williams.

ABSENT AND NOT VOTING: Hartman.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 421) passed.

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

**S. B. 532**, Relating to civil liability immunity for clinical practice plans and medical and dental school personnel; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 382**), and there were—yeas 96, nays 3, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Fluharty, Folk and H. White.

ABSENT AND NOT VOTING: Hartman.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 532) passed.

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

**Com. Sub. for H. B. 2766**, Expiring funds to the unappropriated balance in the State Fund, General Revenue from the Joint Expenses, and from the Department of Health and Human Resources; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 383**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Sponaugle.

ABSENT AND NOT VOTING: Hartman.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2766) passed.

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

On this question, the yeas and nays were taken (**Roll No. 384**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hartman.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2766) takes effect from its passage.

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

**Com. Sub. for H. B. 2769**, Expiring funds to the unappropriated surplus balance in the State Fund, General Revenue from various agencies; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 385**), and there were—yeas 96, nays 3, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Skinner, Sponaule and Upson.

ABSENT AND NOT VOTING: Hartman.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2769) passed.

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

On this question, the yeas and nays were taken (**Roll No. 386**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Skinner and Upson.

ABSENT AND NOT VOTING: Hartman.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2769) takes effect from its passage.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and takes effect from its passage.

**Com. Sub. for H. B. 2772**, Expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, from the Auditor's Office - Purchasing Card Administration Fund; on third reading, coming up in regular order, with amendments pending, was reported by the Clerk.

#### **SPEAKER PRO TEMPORE ANDERSON IN THE CHAIR**

Mr. Speaker, Mr. Armstead, arose from his seat and requested to be excused from voting on the amendment and the passage to Com. Sub. for H. B. 2722 and the passage of said bill under the provisions of House Rule 49.

The Speaker Pro Tempore replied that the passage of the bill would not have a direct impact on the Gentleman and that he would be required to vote.

On motion of Delegate E. Nelson the bill was amended on page three, following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

“That the balance of the funds available for expenditure in the fiscal year ending June 30, 2015, in the Department of Agriculture,

fund 0131 fiscal year 2012, organization 1400, appropriation 11900, be decreased by expiring the amount of \$339,000, and in the Department of Agriculture, fund 0131, fiscal year 2013, organization 1400, appropriation 11900, be decreased by expiring the amount of \$411,000, and in the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 72500, be decreased by expiring the amount of \$315,496.80, and in the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 77900, be decreased by expiring the amount of \$210,268, and in the Attorney General, fund 0150, fiscal year 2014, organization 1500, appropriation 26000, be decreased by expiring the amount of \$774,644.65, and in the Auditor's Office - Purchasing Card Administration Fund, fund 1234, fiscal year 2015, organization 1200, be decreased by expiring the amount of \$1,000,000, and in the Treasurer's Office - Flood Insurance Tax Fund, fund 1343, fiscal year 2015, organization 1300, be decreased by expiring the amount of \$3,410,629, and in the Attorney General - Antitrust Enforcement Fund, fund 1507, fiscal year 2015, organization 1500, be decreased by expiring the amount of \$700,000, and in the Secretary of State - General Administrative Fees Account, fund 1617, fiscal year 2015, organization 1600, in the amount of \$750,000, all to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2015."

And,

On page two, following the title, by striking out the preamble and inserting in lieu thereof the following:

"WHEREAS, the Legislature finds that the account balance in the Department of Agriculture, fund 0131, fiscal year 2012, organization 1400, appropriation 11900, in the Department of Agriculture, fund 0131, fiscal year 2013, organization 1400, appropriation 11900, in the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 72500, in the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 77900, in the Attorney General,

fund 0150, fiscal year 2014, organization 1500, appropriation 26000, in the Auditor's Office - Purchasing Card Administration Fund, fund 1234, fiscal year 2015, organization 1200, in the Treasurer's Office - Flood Insurance Tax Fund, fund 1343, fiscal year 2015, organization 1300, in the Attorney General - Antitrust Enforcement Fund, fund 1507, fiscal year 2015, organization 1500, and in the Secretary of State - General Administrative Fees Account, fund 1617, fiscal year 2015, organization 1600 exceeds that which is necessary for the purpose for which the accounts were established; therefore.”

Having been engrossed, the bill was then read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 387**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Morgan.

ABSENT AND NOT VOTING: Hartman.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2772) passed.

On motion of Delegate E. Nelson, the title of the bill was amended to read as follows:

**Com. Sub. for H. B. 2772** – “A Bill expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2015, in the amount of \$339,000 from the Department of Agriculture, fund 0131, fiscal year 2012, organization 1400, appropriation 11900, and in the amount of \$411,000 from the Department of Agriculture, fund 0131, fiscal year 2013, organization 1400, appropriation 11900, and in the amount of \$315,496.80 from the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 72500, and in the amount of \$210,268 from the Attorney General, fund 0150, fiscal year 2013, organization

1500, appropriation 77900, and in the amount of \$774,644.65 from the Attorney General, fund 0150, fiscal year 2014, organization 1500, appropriation 26000, and in the amount of \$1,000,000 from the Auditor's Office - Purchasing Card Administration Fund, fund 1234, fiscal year 2015, organization 1200, and in the amount of \$3,410,629 from the Treasurer's Office - Flood Insurance Tax Fund, fund 1343, fiscal year 2015, organization 1300, and in the amount of \$700,000 from the Attorney General - Antitrust Enforcement Fund, fund 1507, fiscal year 2015, organization 1500, and in the amount of \$750,000 from the Secretary of State - General Administrative Fees Account, fund 1617, fiscal year 2015, organization 1600."

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

On this question, the yeas and nays were taken (**Roll No. 388**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hartman.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2772) takes effect from its passage.

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

**MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR**

**H. B. 3020**, Making a supplementary appropriation to the Department of Military Affairs and Public Safety, Division of Corrections; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 389**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:



ABSENT AND NOT VOTING: Hartman.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3020) passed.

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

On this question, the yeas and nays were taken (**Roll No. 390**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hartman.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3020) takes effect from its passage.

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

**H. B. 3021**, Making a supplementary appropriation to the Department of Health and Human Resources; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 391**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Folk and McGeehan.

ABSENT AND NOT VOTING: Hartman.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3021) passed.

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

On this question, the yeas and nays were taken (**Roll No. 392**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Folk and McGeehan.

ABSENT AND NOT VOTING: Hartman.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3021) takes effect from its passage.

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

**H. B. 3022**, Making a supplementary appropriation to the Treasurer's Office, to the State Board of Education, to Mountwest Community and Technical College, to the West Virginia School of Osteopathic Medicine, and to West Virginia State University; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 393**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: McGeehan.

ABSENT AND NOT VOTING: Hartman.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3022) passed.

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

On this question, the yeas and nays were taken (**Roll No. 394**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: McGeehan and Moffatt.

ABSENT AND NOT VOTING: Hartman.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3022) takes effect from its passage.

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

#### SECOND READING

**Com. Sub. for S. B. 30**, Permitting shared animal ownership agreement to consume raw milk; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Health and Human Resources, was reported by the Clerk and adopted, amending the bill on page two, by striking out everything after the enacting section and inserting in lieu thereof the following:

#### **“ARTICLE 1. DEPARTMENT OF AGRICULTURE.**

#### **§19-1-7. Shared animal ownership agreement to consume raw milk.**

(a) Notwithstanding any other provision of the law to the contrary, a responsible party may enter into a written shared animal ownership agreement to consume raw milk in which he or she:

(1) Acquires a percentage ownership interest in a milk-producing animal;

(2) Agrees to pay another for the percentage ownership interest for the care and boarding of the milk-producing animal at the dairy farm;

(3) Is entitled to receive a fair share of the animal’s raw milk production as a condition of the contractual agreement;

(4) Agrees to sign a written document acknowledging the inherent dangers of consuming raw milk that may contain bacteria, such as Brucella, Campylobacter, Listeria, Salmonella and E. Coli, that has not been pasturized to remove bacteria and that is particularly dangerous to children, pregnant women and those with compromised immunity. The responsible party then agrees to release of the herd seller of liability for the inherent dangers of consuming raw milk; and

(5) Agrees not to distribute raw milk. Sale or resale of raw milk obtained from a share is strictly prohibited.

(b) ~~The agreement provided in subsection (a) of this section is required to be reported by one or both of the parties to the agreement the herd seller to both the Commissioner of Agriculture, or his or her designee, as set forth in this article and the Commissioner of the Bureau for Public Health, or his or her designee, as set forth in article one, chapter sixteen of this code.~~

(c) The agreement provided in subsection (a) of this section shall contain the following:

(1) The name of the farmer, farm or dairy;

(2) A valid, current address of the farmer, farm or dairy; and

(3) A statement that raw milk is being produced at the farm or dairy

~~(e)~~ (d) The herd seller shall meet the animal health requirements for milk-producing animals established by the state veterinarian, in accordance with state and national standards, including the following:

(1) Raw milk from milk-producing animals intended for consumption shall be from a herd that tested negative within the previous twelve months for brucellosis, tuberculosis and other diseases as required by the state veterinarian. Additions to the herd shall test

negative for the diseases within the previous thirty days before introduction into the herd; and

(2) Milk-producing animals producing bloody, stringy or abnormal milk, but with only slight inflammation of the udder, shall be excluded from the milking herd until reexamination shows that the milk has become normal. Milk-producing animals showing chronic mastitis, whether producing abnormal milk or not, shall be permanently excluded from the milking herd.

~~(d)~~ (e) Any physician licensed by either the provisions of article three, chapter thirty of this code or article fourteen of said chapter who makes a diagnosis that can be directly attributed to the consumption of raw milk is required to report nonidentifying information related to the diagnosis or treatment to the local health officer of the county in which the individual lives. ~~The Secretary of the Department of Health and Human Resources shall,~~ The Commissioner of the Department of Agriculture shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the contents of the report required pursuant to this subsection: and impose an administrative penalty not to exceed \$100 for a person who violates the provisions of this section.”

The bill was then ordered to third reading.

**Com. Sub. for S. B. 37**, Creating Revised Uniform Arbitration Act; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Cowles, and by unanimous consent, the bill was advanced to third reading with a amendments pending, and the rule was suspended to permit the consideration of the amendments on that reading.

**S. B. 89**, Providing Prosecuting Attorneys Institute’s council establish Executive Director’s salary; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Cowles, and by unanimous consent, the bill was advanced to third reading with amendments pending, and the rule was suspended to permit the consideration of the amendments on that reading.

**Com. Sub. for S. B. 249**, Prohibiting straight party voting; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Cowles, and by unanimous consent, the bill was advanced to third reading with an amendment pending, and the rule was suspended to permit the consideration of the amendment on that reading.

**S. B. 283**, Relating to branch banking; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 292**, Relating to licenses for business of currency exchange, transportation or transmission; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 322**, Eliminating mandatory electronic recount of ballots in recounts; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 332**, Relating to administrative fees for Tax Division, Department of Revenue; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 344**, Relating to limitations on back and front pay and punitive damages; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 366**, Creating Patient Protection and Transparency Act; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 411**, Creating Asbestos Bankruptcy Trust Claims Transparency Act and Asbestos and Silica Claims Priorities Act; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page two, after the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

“That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §55-7E-1, §55-7E-2, §55-7E-3, §55-7E-4, §55-7E-5, §55-7E-6, §55-7E-7, §55-7E-8, §55-7E-9, §55-7E-10 and §55-7E-11; and that said code be amended by adding thereto a new article, designated §55-7F-1, §55-7F-2, §55-7F-3, §55-7F-4, §55-7F-5, §55-7F-6, §55-7F-7, §55-7F-8, §55-7F-9 and §55-7F-10, all to read as follows:

**ARTICLE 7E. ASBESTOS BANKRUPTCY TRUST CLAIMS TRANSPARENCY ACT.**

**§55-7E-1. Short title.**

This article shall be known and may be cited as the Asbestos Bankruptcy Trust Claims Transparency Act.

**§55-7E-2. Findings and purpose.**

(a) The West Virginia Legislature finds that:

(1) The United States Supreme Court in *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 598 (1997) described the asbestos litigation as a crisis;

(2) Approximately one hundred employers have declared bankruptcy at least partially due to asbestos-related liability;

(3) These bankruptcies have resulted in a search for more solvent companies, resulting in over eight thousand five hundred companies

being named as asbestos defendants, including many small- and medium-sized companies, in industries that cover eighty-five percent of the United States economy;

(4) Scores of trusts have been established in asbestos-related bankruptcy proceedings to form a multi-billion dollar asbestos bankruptcy trust compensation system outside of the tort system, and new asbestos trusts continue to be formed;

(5) Asbestos claimants often seek compensation for alleged asbestos-related conditions from solvent defendants in civil actions and from trusts or claims facilities formed in asbestos bankruptcy proceedings;

(6) There is limited coordination and transparency between these two paths to recovery;

(7) An absence of transparency between the asbestos bankruptcy trust claim system and the civil court systems has resulted in the suppression of evidence in asbestos actions and potential fraud;

(8) West Virginia's Mass Litigation Panel has previously entered cases management orders that apply substantive transparency provisions requiring plaintiffs to disclose, among other things, any claims that may exist against asbestos bankruptcy trusts; and

(9) It is in the interest of justice that there be transparency for claims made in the asbestos bankruptcy trust claim system and for claims made in civil asbestos litigation.

(b) It is the purpose of this article to:

(1) Provide transparency for claims made in the asbestos bankruptcy trust claim system and for claims made in civil asbestos litigation; and

(2) Reduce the opportunity for fraud or suppression of evidence in asbestos actions.



**§55-7E-3. Definitions.**

For the purpose of this article:

(1) ‘Asbestos action’ means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on or related to the health effects of exposure to asbestos, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance and any other derivative claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent, child or other relative of that person. The term does not include a claim for compensatory benefits pursuant to workers’ compensation law or for veterans’ benefits, ~~or the Federal Employees Liability Act, 45 U. S. C. §51 et seq.~~ as defined by article seven-f of this chapter.

(2) ‘Asbestos trust’ means a government-approved or court-approved trust, qualified settlement fund, compensation fund or claims facility created as a result of an administrative or legal action, a court-approved bankruptcy, or pursuant to 11 U. S. C. §524(g) or 11 U. S. C. §1121(a) or other applicable provision of law, that is intended to provide compensation to claimants arising out of, based on or related to the health effects of exposure to asbestos.

(3) ‘Plaintiff’ means a person asserting an asbestos action, a decedent if the action is brought through or on behalf of an estate, or a parent or guardian if the action is brought through or on behalf of a minor or incompetent.

(4) ‘Trust claims materials’ means a final executed proof of claim and all other documents and information related to a claim against an asbestos trust, including claims forms and supplementary materials, affidavits, depositions and trial testimony, work history ~~and~~ medical and health records, documents reflecting the status of a claim against an asbestos trust, and if the asbestos trust claim has settled, all documents relating to the settlement of the asbestos trust claim.

(5) ‘Trust governance documents’ means all documents that relate to eligibility and payment levels, including claims payment matrices, trust distribution procedures, or plans for reorganization, for an asbestos trust.

**§55-7E-4. Required disclosures by plaintiff.**

(a) For each asbestos action filed in this state, the plaintiff shall provide all parties with a sworn statement identifying all asbestos trust claims that have been filed by the plaintiff or by anyone on the plaintiff’s behalf, including claims with respect to asbestos-related conditions other than those that are the basis for the asbestos action or that potentially could be filed by the plaintiff against an asbestos trust. The sworn statement shall be provided no later than one hundred twenty days prior to the date set for trial for the asbestos ~~claim~~action. For each asbestos trust claim or potential asbestos trust claim identified in the sworn statement, the statement shall include the name, address and contact information for the asbestos trust, the amount claimed or to be claimed by the plaintiff, the date the plaintiff filed the claim, the disposition of the claim and whether there has been a request to defer, delay, suspend, or toll the claim. The sworn statement shall include an attestation from the plaintiff, under penalties of perjury, that the sworn statement is complete and is based on a good faith investigation of all potential claims against asbestos trusts.

(b) The plaintiff shall make available to all parties all trust claims materials for each asbestos trust claim that has been filed by the plaintiff or by anyone on the plaintiff’s behalf against an asbestos trust, including any asbestos-related disease.

(c) The plaintiff shall supplement the information and materials provided pursuant to this section within ninety days after the plaintiff files an additional asbestos trust claim, supplements an existing asbestos trust claim or receives additional information or materials related to any claim or potential claim against an asbestos trust.

(d) Failure by the plaintiff to make available to all parties all trust claims materials as required by this article shall constitute grounds for the court to ~~decline~~ to extend the trial date in an asbestos action.

**§55-7E-5. Discovery; use of materials.**

(a) Trust claims materials and trust governance documents are presumed to be relevant and authentic and are admissible in evidence. No claims of privilege apply to any trust claims materials or trust governance documents.

(b) A defendant in an asbestos action may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar discovery and shall provide consent or other expression of permission that may be required by the asbestos trust to release information and materials sought by a defendant.

**§55-7E-6. Scheduling trial; stay of action.**

(a) A court shall stay an asbestos action if the court finds that the plaintiff has failed to make the disclosures required under section four of this article within one hundred twenty days prior to the trial date.

(b) If, in the disclosures required by section four of this article, a plaintiff identifies a potential asbestos trust claim, the judge shall have the discretion to stay the asbestos action until the plaintiff files the asbestos trust claim and provides all parties with all trust claims materials for the claim. The plaintiff shall also state whether there has been a request to defer, delay, suspend, or toll the claim against the asbestos trust.

**§55-7E-7. Identification of additional or alternative asbestos trusts by defendant.**

(a) Not less than ninety days before trial, if a defendant identifies an asbestos trust claim not previously identified by the plaintiff that the defendant reasonably believes the plaintiff can file, the defendant shall

meet and confer with plaintiff to discuss why defendant believes plaintiff has an additional asbestos trust claim, and thereafter the defendant may move the court for an order to require the plaintiff to file the asbestos trust claim. The defendant shall produce or describe the documentation it possesses or is aware of in support of the motion.

(b) Within ten days of receiving the defendant's motion under subsection (a) of this section, the plaintiff shall, for each asbestos trust claim identified by the defendant, make one of the following responses:

(1) File the asbestos trust claim;

(2) File a written response with the court setting forth the reasons why there is insufficient evidence for the plaintiff to file the asbestos trust claim; or

(3) File a written response with the court requesting a determination that the plaintiff's expenses or attorney's fees and expenses to prepare and file the asbestos trust claim identified in the defendant's motion exceed the plaintiff's reasonably anticipated recovery from the trust.

(c) (1) If the court determines that there is a sufficient basis for the plaintiff to file the asbestos trust claim identified by a defendant, the court shall order the plaintiff to file the asbestos trust claim and shall stay the asbestos action until the plaintiff files the asbestos trust claim and provides all parties with all trust claims materials no later than thirty days before trial.

(2) If the court determines that the plaintiff's expenses or attorney's fees and expenses to prepare and file the asbestos trust claim identified in the defendant's motion exceed the plaintiff's reasonably anticipated recovery from the asbestos trust, the court shall stay the asbestos action until the plaintiff files with the court and provides all parties with a verified statement of the plaintiff's history of exposure, usage, or other connection to asbestos covered by the asbestos trust.

(d) Not less than thirty days prior to trial in an asbestos action, the court shall enter into the record a trust claims document that identifies each claim the plaintiff has made against an asbestos trust.

**§55-7E-8. Valuation of asbestos trust claims; judicial notice.**

(a) If a plaintiff proceeds to trial in an asbestos action before an asbestos trust claim is resolved, the filing of the asbestos trust claim may be considered as relevant and admissible evidence.

(b) Trust claim materials that are sufficient to entitle a claim to consideration for payment under the applicable trust governance documents may be sufficient to support a jury finding that the plaintiff may have been exposed to products for which the asbestos trust was established to provide compensation and that such exposure may be a substantial factor in causing the plaintiff's injury that is at issue in the asbestos action.

**§55-7E-9. Setoff; credit.**

In any asbestos action in which damages are awarded, a defendant is entitled to a setoff or credit in the amount of the valuation established under the applicable trust governance documents, including payment percentages for asbestos trust claims pending at trial and any amount the plaintiff has been awarded from an asbestos trust claim that has been identified at the time of trial. If multiple defendants are found liable for damages, the court shall distribute the amount of setoff or credit proportionally between the defendants, according to the liability of each defendant.

**§55-7E-10. Failure to provide information; sanctions.**

A plaintiff who fails to provide all of the information required under this article is subject to sanctions as provided in the West Virginia Rules of Civil Procedure and any other relief for the defendants that the court considers just and proper.

**§55-7E-11. Application.**

The provisions of this article apply to all asbestos actions filed on or after the effective date of this article.

**ARTICLE 7F. ASBESTOS AND SILICA CLAIMS PRIORITIES ACT.****§55-7F-1. Short title.**

This article shall be known and may be cited as the Asbestos and Silica Claims Priorities Act.

**§55-7F-2. Findings and purpose.**

(a) The West Virginia Legislature finds that:

(1) Asbestos is a mineral that was widely used prior to the 1980s for insulation, fireproofing and other purposes;

(2) Millions of American workers and others were exposed to asbestos, especially during and after World War II and prior to the promulgation of regulations by the Occupational Safety and Health Administration in the early 1970s;

(3) Exposure to asbestos has been associated with various types of cancer, including mesothelioma and lung cancer, as well as nonmalignant conditions such as asbestosis and diffuse pleural thickening;

(4) Diseases caused by asbestos often have long latency periods;

(5) Although the use of asbestos has dramatically declined since the 1970s and workplace exposures have been regulated since 1971 by the Occupational Safety and Health Administration, past exposures will continue to result in significant claims of death and disability as a result of such exposure;

(6) Over the years, West Virginia courts have been deluged with asbestos lawsuits.

(7) The United States Supreme Court in *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 598 (1997), described the asbestos litigation as a crisis;

(8) Lawyer-sponsored x-ray screenings have been used to amass large numbers of claims by unimpaired plaintiffs;

(9) One of the country's most prolific B-readers was a doctor from West Virginia;

(10) Approximately one hundred employers have declared bankruptcy at least partially due to asbestos-related liability;

(11) These bankruptcies have resulted in a search for more solvent companies, resulting in over eight thousand five hundred companies being named as asbestos defendants nationally and many in West Virginia, including many small- and medium-sized companies, in industries that cover eighty-five percent of the United States economy;

(12) Silica is a naturally occurring mineral as the earth's crust is over ninety percent silica, and crystalline silica dust is the basic component of sand, quartz and granite;

(13) Silica-related illness, including silicosis, can develop from the prolonged inhalation of respirable silica particles;

(14) Silica claims, like asbestos claims, have involved individuals with no demonstrable physical impairment, and plaintiffs have been identified through the use of for-profit, screening companies;

(15) Silica screening processes have been found subject to substantial abuse and potential fraud;

(16) The cost of compensating plaintiffs who have no present asbestos-related or silica-related physical impairment, and the cost of litigating their claims, jeopardizes the ability of defendants to compensate people with cancer and other serious asbestos-related diseases and adversely affects defendant companies;

(17) Concerns about statutes of limitations and available funds can prompt unimpaired asbestos and silica claimants to bring lawsuits in order to protect against losing their rights to future compensation should they become impaired;

(18) Trial consolidations, joinders and similar trial procedures used by some courts to handle asbestos and silica cases can undermine the appropriate functioning of the courts, deny due process to plaintiffs and defendants and encourage the filing of cases by unimpaired asbestos and silica plaintiffs; and

(19) The public interest requires giving priority to the claims of exposed individuals who are sick in order to help preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related diseases, as well as silica-related injuries, and to safeguard the jobs, benefits and savings of workers in West Virginia and the well-being of the West Virginia economy.

(b) It is the purpose of this article to:

(1) Give priority to asbestos and silica claimants who can demonstrate actual physical impairment caused by exposure to asbestos or silica;

(2) Toll the running of the statutes of limitations for persons who have been exposed to asbestos or to silica but who have no present physical impairment caused by such exposure;

(3) Enhance the ability of the courts to supervise and manage asbestos and silica cases;

(4) Reduce the opportunity for fraud in asbestos and silica litigation; and

(5) Conserve the defendants' resources to allow compensation to present and future claimants with physical impairment caused by exposure to asbestos or silica.



**§55-7F-3. Definitions.**

For the purpose of this article:

(1) ‘AMA Guides to the Evaluation of Permanent Impairment’ means the American Medical Association’s Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of any examination or test on the exposed person required under this article.

(2) ‘Asbestos’ means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform amphibole minerals and any of these minerals that have been chemically treated or altered, including all minerals defined as asbestos in 29 CFR §1910 at the time an asbestos action is filed.

(3) ‘Asbestos action’ means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on or related to the health effects of exposure to asbestos, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance and any other derivative claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent, child or other relative of that person. The term does not include a claim for compensatory benefits pursuant to workers’ compensation law or for veterans’ benefits or claims brought by a person as a subrogee by virtue of the ~~payment of benefits under a workers’ compensation law.~~

(4) ‘Asbestosis’ means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers.

(5) ‘Board-certified in internal medicine’ means a physician who is certified by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this article.

(6) ‘Board-certified in occupational medicine’ means a physician who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this article.

(7) ‘Board-certified in pathology’ means a physician who holds primary certification in anatomic pathology or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Pathology, whose certification was current at the time of the performance of any examination and rendition of any report required by this Act, and whose professional practice is principally in the field of pathology and involves regular evaluation of pathology materials obtained from surgical or postmortem specimens.

(8) ‘Board-certified in pulmonary medicine’ means a physician who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this article.

(9) ‘Certified B-reader’ means an individual who has qualified as a National Institute for Occupational Safety and Health (NIOSH) ‘final’ or ‘B-reader’ of x-rays under 42 CFR § 37.51(b), whose certification was current at the time of any readings required under this article, and whose B-reads comply with the NIOSH B-Reader’s Code of Ethics, Issues in Classification of Chest Radiographs and Classification of Chest Radiographs in Contested Proceedings.

(10) ‘Chest x-ray’ means chest films taken in accordance with all applicable state and federal regulatory standards and taken in the posterior-anterior view.

(11) 'DLCO' means diffusing capacity of the lung for carbon monoxide, which is the measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood.

(12) 'Exposed person' means a person whose exposure to asbestos or silica or to asbestos-containing or silica-containing products is the basis for an asbestos or silica action.

(13) 'FEV1' means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests.

(14) 'FEV1/FVC' means the ratio between the actual values for FEV1 over FVC.

(15) 'FVC' means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration.

(16) 'ILO' system and 'ILO scale' mean the radiological ratings and system for the classification of chest x-rays of the International Labor Office provided in Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses in effect on the day any x-rays of the exposed person were reviewed by a certified B-reader.

(17) 'Nonmalignant condition' means any condition that can be caused by asbestos or silica other than a diagnosed cancer.

(18) 'Official statements of the American Thoracic Society' means lung function testing standards set forth in statements from the American Thoracic Society including standardizations of spirometry, standardizations of lung volume testing, standardizations of diffusion capacity testing or single-breath determination of carbon monoxide uptake in the lung and interpretive strategies for lung function tests, which are in effect on the day of the pulmonary function testing of the exposed person.

(19) 'Pathological evidence of asbestosis' means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos bodies graded 1(B) or higher under the criteria published in *Asbestos-Associated Diseases*, 106 *Archive of Pathology and Laboratory Medicine* 11, Appendix 3 (October 8, 1982), or grade one or higher in *Pathology of Asbestosis*, 134 *Archive of Pathology and Laboratory Medicine* 462-80 (March 2010) (Tables 2 and 3), or as amended at the time of the exam, and there is no other more likely explanation for the presence of the fibrosis.

(20) 'Pathological evidence of silicosis' means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates complicated silicosis with characteristic confluent silicotic nodules or lesions equal to or greater than one centimeter and birefringent crystals or other demonstration of crystal structures consistent with silica (well-organized concentric whorls of collagen surrounded by inflammatory cells) in the lung parenchyma and no other more likely explanation for the presence of the fibrosis exists, or acute silicosis with characteristic pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant.

(21) 'Plaintiff' means a person asserting an asbestos or silica action, a decedent if the action is brought through or on behalf of an estate, and a parent or guardian if the action is brought through or on behalf of a minor or incompetent.

(22) 'Plethysmography or body (BOX) plethysmography' means the test for determining lung volume in which the exposed person is enclosed in a chamber equipped to measure pressure, flow, or volume change.

(23) 'Predicted lower limit of normal' means any test value is the calculated standard convention lying at the fifth percentile, below the upper ninety-five percent of the reference population, based on age, height and gender, according to the recommendations by the American Thoracic Society and as referenced in the applicable AMA Guides to the Evaluation of Permanent Impairment, primarily National Health and Nutrition Examination Survey (NHANES) predicted values, or as amended.

(24) 'Pulmonary function test' means spirometry, lung volume testing and diffusion capacity testing, including appropriate measurements, quality control data and graphs, performed in accordance with the methods of calibration and techniques provided in the applicable AMA Guides to the Evaluation of Permanent Impairment and all standards provided in the Official Statements of the American Thoracic Society in effect on the day pulmonary function testing of the exposed person was conducted.

(25) 'Qualified physician' means a board-certified internist, pathologist, pulmonary specialist or specialist in occupational and environmental medicine, as may be appropriate to the actual diagnostic specialty in question, that meets all of the following requirements:

(A) The physician has conducted a physical examination of the exposed person and has taken or has directed to be taken under his or her supervision, direction and control, a detailed occupational, exposure, medical, smoking and social history from the exposed person, or the physician has reviewed the pathology material and has taken or has directed to be taken under his or her supervision, direction and control, a detailed history from the person most knowledgeable about the information forming the basis of the asbestos or silica action;

(B) The physician has treated or is treating the exposed person, and has or had a doctor-patient relationship with the exposed person at the time of the physical examination or, in the case of a board-certified

pathologist, examined tissue samples or pathological slides of the exposed person;

(C) The physician prepared or directly supervised the preparation and final review of any medical report under this article; and

(D) The physician has not relied on any examinations, tests, radiographs, reports or opinions of any doctor, clinic, laboratory or testing company that performed an examination, test, radiograph or screening of the exposed person in violation of any law, regulation, licensing requirement or medical code of practice of the state in which the examination, test or screening.

(26) 'Radiological evidence of asbestosis' means a quality 1 or 2 chest x-ray under the ILO system, showing bilateral small, irregular opacities (s, t<sub>2</sub> or u) occurring primarily in the lower lung zones graded by a certified B-reader as at least 1/0 on the ILO scale.

(27) 'Radiological evidence of diffuse bilateral pleural thickening' means a quality 1 or 2 chest x-ray under the ILO system, showing diffuse bilateral pleural thickening of at least b2 on the ILO scale and blunting of at least one costophrenic angle as classified by a certified B-reader.

(28) 'Radiological evidence of silicosis' means a quality 1 or 2 chest x-ray under the ILO system, showing bilateral predominantly nodular or rounded opacities (p, q or r) occurring in the lung fields graded by a certified B-reader as at least 1/0 on the ILO scale or A, B or C sized opacities representing complicated silicosis or acute silicosis with characteristic pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant.

(29) 'Silica' means a respirable crystalline form of silicon dioxide, including quartz, cristobalite and tridymite.

(30) 'Silica action' means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on or

related to the health effects of exposure to silica, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance and any other derivative claim made by or on behalf of a person exposed to silica or a representative, spouse, parent, child or other relative of that person. The term does not include a claim for compensatory benefits pursuant to workers' compensation law ~~or~~ veterans' benefits, or claims brought by a person as a subrogee by virtue of the payment of benefits under a workers' compensation law. The term does not include any administrative claim or civil action related to coal workers' pneumoconiosis.

(31) 'Silicosis' means simple silicosis, acute silicosis, accelerated silicosis or chronic silicosis caused by the inhalation of respirable silica. 'Silicosis' does not mean coal workers' pneumoconiosis.

(32) 'Spirometry' means a test of air capacity of the lung through a spirometer to measure the volume of air inspired and expired.

~~(33) 'Substantial occupational exposure to asbestos' means employment in an industry and occupation in which, for a substantial portion of a normal work year for that industry and occupation, the exposed person did any of the following:~~

~~(A) Handled raw asbestos fibers;~~

~~(B) Fabricated asbestos-containing products so that the person was exposed to asbestos in the fabrication process;~~

~~(C) Altered, repaired, or otherwise worked with an asbestos-containing product in a manner that exposed the person on a regular basis to asbestos; or~~

~~(D) Worked in close proximity to other workers engaged in any of the activities described in paragraph (A), (B) or (C) of this subdivision in a manner that exposed the person on a regular basis to asbestos.~~

~~(34) ‘Substantial occupational exposure to silica’ means employment in an industry and occupation in which, for a substantial portion of a normal work year for that industry and occupation, the exposed person did any of the following:~~

~~(A) Handled silica;~~

~~(B) Fabricated silica-containing products so that the person was exposed to silica in the fabrication process;~~

~~(C) Altered, repaired, or otherwise worked with a silica-containing product in a manner that exposed the person on a regular basis to silica; or~~

~~(D) Worked in close proximity to other workers engaged in any of the activities described in paragraph (A), (B) or (C) of this subdivision in a manner that exposed the person on a regular basis to silica.~~

(353) ‘Supporting test results’ means copies of the following documents and images:

(A) Pulmonary function tests, including printouts of the flow volume loops, volume time curves, DLCO graphs, lung volume tests and graphs, quality control data and other pertinent data for all trials and all other elements required to demonstrate compliance with the equipment, quality, interpretation and reporting standards set forth herein;

(B) B-reading and B-reader reports;

(C) Reports of x-ray examinations;

(D) Diagnostic imaging of the chest;

(E) Pathology reports; and

(F) All other tests reviewed by the diagnosing physician or a qualified physician in reaching the physician’s conclusions.



(364) ‘Timed gas dilution’ means a method for measuring total lung capacity in which the subject breathes into a spirometer containing a known concentration of an inert and insoluble gas for a specific time, and the concentration of that inert and insoluble gas in the lung is compared to the concentration of that type of gas in the spirometer.

(375) ‘Total lung capacity’ means the volume of gas contained in the lungs at the end of a maximal inspiration.

(386) ‘Veterans’ benefits ~~program~~’ means a program for benefits in connection with military service administered by the Veterans’ Administration under Title 38 of the United States Code.

(397) ‘Workers’ compensation law’ means a law relating to a program administered by the United States or a state to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries. The term includes the Longshore and Harbor Workers’ Compensation Act, 33 U. S. C. §§901 *et seq.*, and the Federal Employees’ Compensation Act, Chapter 81 of Title 5 of the United States Code, but does not include the Federal Employers’ Liability Act of April 22, 1908, 45 U. S. C. §§51 *et seq.*

**§55-7F-4. Filing claims, establishment of a prima facie case, additional required information for new nonmalignant claims, individual actions to be filed.**

(a) A plaintiff in an asbestos or silica action alleging a nonmalignant condition shall file within ninety days of filing the complaint or other initial pleading a detailed narrative medical report and diagnosis, signed by a qualified physician and accompanied by supporting test results, constituting prima facie evidence that the exposed person meets the requirements of this article. The report shall not be prepared by a lawyer or person working for or on behalf of a lawyer or law firm.

(b) A defendant in an asbestos or silica action shall be afforded a reasonable opportunity before trial to challenge the adequacy of the prima facie evidence that the exposed person meets the requirements of this article. An asbestos or silica action shall be dismissed without prejudice upon a finding that the exposed person has failed to make the prima facie showing required by this article.

(c) A plaintiff in an asbestos or silica action filed on or after the effective date of this article shall also include an information form with the complaint for nonmalignant conditions containing all of the following ~~with the~~:

(1) The name, address, date of birth, social security number, marital status, occupation and employer of the exposed person and any person through which the exposed person alleges exposure;

(2) The plaintiff's relationship to the exposed person or the person through which the exposure is alleged;

(3) To the best of the plaintiff's ability, the location and manner of each alleged exposure, including the specific location and manner of exposure for any person through which the exposed person alleges exposure, the beginning and ending dates of each alleged exposure, and the identity of the manufacturer of the specific asbestos or silica product for each exposure when this information is reasonably available;

(4) The identity of the defendant or defendants against whom the plaintiff asserts a claim;

(5) The specific asbestos-related or silica-related disease claimed to exist; and

(6) Any supporting documentation relating to subdivisions (3), (4) and (5) of this subsection.

(d) Asbestos and silica actions must be individually filed. No asbestos or silica action filed on or after the effective date of this article shall be permitted on behalf of a group or class of plaintiffs.

**§55-7F-5. Elements of proof for asbestos actions alleging a nonmalignant asbestos-related condition.**

(a) No asbestos action related to an alleged nonmalignant asbestos-related condition may be brought or maintained in the absence of prima facie evidence that the exposed person has a physical impairment for which asbestos exposure was a substantial contributing factor. The plaintiff shall make a prima facie showing of claim for each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following:

(1) Radiological or pathological evidence of asbestosis or radiological evidence of diffuse bilateral pleural thickening or a high-resolution computed tomography scan showing evidence of asbestosis or diffuse pleural thickening;

(2) A detailed occupational and exposure history from the exposed person or, if that person is deceased, from the person most knowledgeable about the exposures that form the basis of the action, including identification of all of the exposed person's principal places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including asbestos fibers or other disease causing dusts or fumes, that may cause pulmonary impairment and the nature, duration, and level of any exposure;

(3) A detailed medical, social and smoking history from the exposed person or, if that person is deceased, from the person most knowledgeable, including a thorough review of the past and present medical problems of the exposed person and their most probable cause;

(4) Evidence verifying that at least fifteen years have elapsed between the exposed person's date of first exposure to asbestos and the date of diagnosis;

(5) Evidence from a personal medical examination and pulmonary function testing of the exposed person or, if the exposed person is deceased, from the person's medical records, that the exposed person has or the deceased person had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment or reported significant changes year to year in lung function for FVC, FEV1 or DLCO as defined by the American Thoracic Society's Interpretative Strategies for Lung Function Tests, 26 *European Respiratory Journal* 948-68, 961-62, Table 12 (2005) and as updated;

(6) Evidence that asbestosis or diffuse bilateral pleural thickening, rather than chronic obstructive pulmonary disease, is a substantial factor to the exposed person's physical impairment, based on a determination the exposed person has:

(A) Forced vital capacity below the predicted lower limit of normal and FEV1/FVC ratio (using actual values) at or above the predicted lower limit of normal;

(B) Total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal; or

(C) A chest x-ray showing bilateral small, irregular opacities (s, t or u) graded by a certified B-reader as at least 2/1 on the ILO scale; and

(7) The specific conclusion of the qualified physician signing the report that exposure to asbestos was a substantial contributing factor to the exposed person's physical impairment and not more probably the result of other causes. An opinion that the medical findings and impairment are consistent with or compatible with exposure to asbestos, or words to that effect, do not satisfy the requirements of this subdivision.

(b) If the alleged nonmalignant asbestos-related condition is a result of an exposed person living with or having extended contact with another exposed person who, if the asbestos action had been filed by the other exposed person would have met the requirements of subdivision (2), subsection (a) of this section, and the exposed person alleges extended contact with the other exposed person during the relevant time period, the detailed narrative medical report and diagnosis shall include all of the information required by subsection (a) of this section, except that the exposure history required under subdivision (2), subsection (a) of this section shall describe the exposed person's history of exposure to the other exposed person.

**§55-7F-6. Elements of proof for silica actions alleging silicosis.**

No silica action related to alleged silicosis may be brought or maintained in the absence of prima facie evidence that the exposed person has a physical impairment as a result of silicosis. The plaintiff shall make a prima facie showing of claim for each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following:

(1) Radiological or pathological evidence of silicosis or a high-resolution computed tomography scan showing evidence of silicosis;

(2) A detailed occupational and exposure history from the exposed person or, if that person is deceased, from the person most knowledgeable about the exposures that form the basis of the action, including identification of all principal places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including silica or other disease causing dusts or fumes, that may cause pulmonary impairment and the nature, duration and level of any exposure;

(3) A detailed medical, social and smoking history from the exposed person or, if that person is deceased, from the person most

knowledgeable, including a thorough review of the past and present medical problems and their most probable cause;

(4) Evidence that a sufficient latency period has elapsed between the exposed person's date of first exposure to silica and the day of diagnosis;

(5) Evidence based upon a personal medical examination and pulmonary function testing of the exposed person or, if the exposed person is deceased, based upon the person's medical records, demonstrating that the exposed person has or the deceased person had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment or reported significant changes year to year in lung function for FVC, FEV1 or DLCO as defined by the American Thoracic Society's Interpretative Strategies for Lung Function Tests, 26 European Respiratory Journal 948-68, 961-62, Table 12 (2005) and as updated; and

(6) The specific conclusion of the qualified physician signing the report that exposure to silica was a substantial contributing factor to the exposed person's physical impairment and not more probably the result of other causes. An opinion stating that the medical findings and impairment are consistent with or compatible with exposure to silica, or words to that effect, do not satisfy the requirements of this subdivision.

**§55-7F-7. Evidence of physical impairment.**

Evidence relating to physical impairment, including pulmonary function testing and diffusing studies, offered in any action governed by this article or article seven-e of this chapter, shall:

(1) Comply with the quality controls, equipment requirements, methods of calibration and techniques set forth in the AMA's Guides to the Evaluation of Permanent Impairment and all standards set forth

in the Official Statements of the American Thoracic Society which are in effect on the date of any examination or pulmonary function testing of the exposed person required by this article;

(2) Not be obtained and may not be based on testing or examinations that violate any law, regulation, licensing requirement, or medical code of practice of the state in which the examination, test, or screening was conducted, or of this state; and

(3) Not be obtained under the condition that the plaintiff or exposed person retains the legal services of the attorney or law firm sponsoring the examination, test or screening.

**§55-7F-8. Procedures.**

(a) Evidence relating to the prima facie showings required under this article shall not create any presumption that the exposed person has an asbestos-related or silica-related injury or impairment and shall not be conclusive as to the liability of any defendant.

(b) No evidence shall be offered at trial, and the jury shall not be informed of:

(1) The grant or denial of a motion to dismiss an asbestos or silica action under the provisions of this article; or

(2) The provisions of this article with respect to what constitutes a prima facie showing of asbestos or silica-related impairment.

(c) Until a court enters an order determining that the exposed person has established prima facie evidence of impairment, no asbestos or silica action shall be subject to discovery, except discovery related to establishing or challenging the prima facie evidence or by order of the trial court upon motion of one of the parties and for good cause shown.

(d) *Consolidation of cases.* —

(1) A court may consolidate for trial any number and type of nonmalignant asbestos or silica actions with the consent of all the parties. In the absence of such consent, the court may consolidate for trial only asbestos or silica actions relating to the exposed person and members of that person's household.

(2) No class action or any other form of mass aggregation relating to more than one exposed person and members of that person's household shall be permitted.

(3) The provisions of this subsection do not preclude consolidation of cases by court order for pretrial or discovery purposes.

**§55-7F-9. Statute of limitations; two-disease rule.**

(a) With respect to an asbestos or silica action not barred by limitations as of this article's effective date, an exposed person's cause of action shall not accrue, nor shall the running of limitations commence, prior to the earlier of the date:

(1) The exposed person received a medical diagnosis of an asbestos-related impairment or silica-related impairment;

(2) The exposed person discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to the existence of an asbestos-related impairment or silica-related impairment; or

(3) The date of death of the exposed person having an asbestos-related or silica-related impairment.

(b) Nothing in this section shall be construed to revive or extend limitations with respect to any claim for asbestos-related impairment or silica-related impairment that was otherwise time-barred on the effective date of this article.

(c) Nothing in this section shall be construed so as to adversely affect, impair, limit, modify, or nullify any settlement or other



agreements with respect to an asbestos or silica action entered into prior to the effective date of this article.

(d) An asbestos or silica action arising out of a nonmalignant condition shall be a distinct cause of action from an action for an asbestos-related or silica-related cancer. Where otherwise permitted under state law, no damages shall be awarded for fear or increased risk of future disease in an asbestos or silica action.

**§55-7F-10. Application.**

This article shall apply to all asbestos actions and silica actions filed on or after the effective date of this article.”

The bill was then ordered to third reading.

**Com. Sub. for S. B. 436**, Relating to State Athletic Commission; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Government Organization, was reported by the Clerk and adopted, amending the bill on page one, after the enacting clause, by striking out the enacting section and the remainder of the bill in its entirety and inserting in lieu thereof the following:

“That §29-5A-12 of the Code of West Virginia, 1931, as amended, be repealed; that §29-5A-1, §29-5A-2, §29-5A-3, §29-5A-3a, §29-5A-5, §29-5A-6, §29-5A-8, §29-5A-17, §29-5A-19, §29-5A-20 and §29-5A-24 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §29-5A-1a and §29-5A-3b, all to read as follows:

**ARTICLE 5A. STATE ATHLETIC COMMISSION.**

**§29-5A-1. Creation of commission; members; officers; seal and rules.**

The State Boxing Commission, heretofore created, is hereby continued and renamed the State Athletic Commission. The commis-

sion shall consist of five persons appointed by the Governor, by and with the consent of the Senate, no more than three of whom shall belong to the same political party and no two of whom shall be residents of the same county at the same time. One member shall have at least three years of experience in the sport of boxing. One member shall have at least three years of experience in the sport of mixed martial arts. One member shall have at least three years of experience in the health care industry as a licensed physician, registered nurse, nurse practitioner or physicians assistant. Two members shall be citizen members who are not licensed under the provisions of this article and who do not perform any services related to the persons regulated under this article. The members shall serve without pay. ~~The present members and terms of the members of the State Boxing Commission shall continue as the State Athletic Commission.~~ At the expiration of the term of each member, his or her successor shall be appointed by the Governor for a term of four years. ~~In the event of~~ If there is a vacancy in said the board, said the vacancy shall likewise be filled by appointment by the Governor and the Governor shall likewise have the power to remove any commissioner at his or her pleasure. Any three members of the commission shall constitute a quorum for the exercise of the power or authority conferred upon it. The members of the commission shall at the first meeting after their appointment elect one of their number chairman of the commission, and another of their number secretary of the commission, shall adopt a seal for the commission, and shall make such rules for the administration of their office, not inconsistent herewith, as they may ~~deem~~ consider expedient; and they may hereafter amend or abrogate such rules. The concurrence of at least three commissioners ~~shall be~~ is necessary to render a choice or decision of the commission.

**§29-5A-1a. Commission office; administrative support provided by Lottery Commission.**

The office of the commission shall be located on the same premises as the office of the Lottery Commission and the Lottery Commission shall provide the commission with any necessary administrative support or management, including but not limited to:

(1) Administrative recordkeeping;

(2) Maintaining an accurate and published registry of names, addresses and relevant information of all licensees; and

(3) Management of finances and budgetary oversight.

**§29-5A-2. Powers and duties of secretary; penalty for false swearing, etc.; biennial reports of commission.**

~~The office of the commission may be changed at pleasure by the said commission. The commission may designate as its official headquarters the residence or place of business of any one of its members.~~ It shall be the duty of the secretary to keep a full and true record of all proceedings of said commission, to preserve all its books, documents and papers, to prepare for service such notices and other papers as may be required of him or her by the commission, and to perform such other duties as the commission may prescribe; and he or she may at the direction of the commission issue subpoenas for the attendance of witnesses before the commission with the same effect as if they were issued in an action in any circuit court of the state, and may administer oaths in all matters pertaining to the duties of his or her office or connected with the administration of the affairs of the commission. The subpoenas shall be on forms prescribed by the commission and served by the sheriff's department of the county in which the individual being subpoenaed resides. Such subpoenas shall be signed by at least two members. Disobedience of such subpoena and false swearing before such secretary shall be attended by the same consequences and be subject to the same penalties as if such disobedience or false swearing occurred in an action in any circuit court of the state. The commission shall make to the Legislature biennial reports of their proceedings for the two years ending with the last day of the preceding December, and may submit with such report such recommendations pertaining to its affairs, as to it shall seem advisable.

**§29-5A-3. Commission to have sole control of boxing, etc., matches; licenses; municipality not to tax boxing, etc., club.**

(a) The commission has sole direction, management and control of the jurisdiction over all amateur, professional and semiprofessional boxing, sparring matches and exhibitions, or any form thereof, to be conducted, held or given within the state by any club, individual, corporation or association. As used in this article, the term 'boxing' includes any fighting event that includes or permits the striking of an opponent with a closed fist, even if wrestling moves, elements of martial arts, or striking an opponent with the feet are also permitted. No boxing, sparring or exhibition may be conducted, held or given within the state except pursuant to the commission's authority and held in accordance with this article. The commission may, ~~in its discretion,~~ issue and, ~~at its pleasure,~~ revoke the license to conduct, hold or give boxing or sparring matches or exhibitions to any club, corporation, association or individual. Every license is subject to rules the commission may prescribe. Every application for a license shall be on a blank form provided by the commission. No promoter's license may be granted to any club, corporation, association or individual, unless the signer of the application is a bona fide resident of the state of West Virginia. Upon application of the promoter's license, the promoter shall pay a state license fee of \$125 for one year. The fee is nonrefundable and shall be paid in the form of a certified check or money order ~~and shall be~~ issued to the treasurer of the state of West Virginia to be deposited in the ~~general fund~~ fund set forth in section three-b of this article. ~~If the license is not granted, the treasurer shall refund the full amount.~~ Nonprofit chartered and charitable organizations are exempt from this license fee for all amateur events. No municipal corporation may impose any license tax on boxing, sparring or exhibition clubs, notwithstanding the provisions of any section of the code respecting municipal taxes and licenses. The granting of a license to a club by the commission, or the holding of a license by a club, individual, corporation or association, does not

prevent the commission from canceling or revoking the license to conduct an event, as provided in this section.

(b) In exercising its jurisdiction over professional; and semiprofessional and amateur boxing, sparring matches and exhibitions, the commission shall follow the current ~~United States boxing authority rules and requirements~~ unified rules of boxing adopted by the Association of Boxing Commissions and requirements to enable the proper sanctioning of all participants, referees, judges and matches or exhibitions conducted under the rules described in subdivision (1), subsection (c), section twenty-four of this article and shall cooperate fully with the ~~boxing authority~~ Association of Boxing Commissions in order that the sanctioning be extended to state boxers. The commission shall supervise all amateur boxing conducted in this state and any such contest shall follow the amateur rules for boxing as adopted by the United States Amateur Boxing Authority. For full contact boxing events and other boxing events that follow nontraditional rules, the commission may impose any limitations or restrictions reasonably necessary to guarantee the safety of the participants and the fair and honest conducting of the matches or exhibitions and may refuse to license any event that poses an unreasonable degree of risk to the participants.

**§29-5A-3a. Power to regulate mixed martial arts.**

(a) The commission has sole power, direction, management and control over all professional and amateur mixed martial arts contests, matches and exhibitions, or any form thereof, to be promoted, conducted, held or given within the state.

(b) As used in this article, the term ‘mixed martial arts’ means a combative sporting contest, the rules of which allow two competitors to attempt to achieve dominance over one another by utilizing a variety of techniques including, but not limited to, striking, grappling and the application of submission holds.

(c) A mixed martial arts contest, match or exhibition promoted, conducted, held or given within the state shall be under the commission's authority and be in accordance with the provision of this section. The provisions of this article that apply to boxing shall also apply to mixed martial arts as appropriate.

(d) In exercising its jurisdiction over professional and amateur mixed martial arts contests matches and exhibitions, the commission shall follow the current unified rules of mixed martial arts as adopted by the Association of Boxing Commissions, to enable the proper equipment, fighting area and weight classes to ensure the safety of contestants and ensure the licensing of all participants, referees and judges, and the approval of contests, matches or exhibitions conducted under the provisions of this section.

(e) The commission may issue and revoke a license to promote, conduct, hold or give mixed martial arts contests, matches or exhibitions and may issue and revoke a license to be a contestant. Each license is subject to the provisions of this section and article, and the rules of the commission.

(f) The commission shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this section, including:

(1) Procedures and requirements for the issuance and renewal of licenses: *Provided*, That the procedures and requirements ~~shall~~ may not:

(A) Limit or prohibit mixed martial arts contests, matches or exhibitions; nor

(B) Include a provision that a licensee be a West Virginia resident;

(2) Exemptions from licensure;

(3) Procedures for revoking licenses;

(4) Adopting the unified rules of mixed martial arts;

(5) A fee schedule;

(6) Limitations or restrictions necessary to guarantee the safety of the participants;

(7) The requirements for fair and honest conducting of the contests, matches or exhibitions; and

(8) Any other rules necessary to effectuate the provisions of this section.

(g) Notwithstanding the provisions of this code to the contrary, a municipality may not impose a municipal license tax under section four, article thirteen, chapter eight of this code on mixed martial arts clubs. The granting of a license to a club by the commission, or the holding of a license by a club, individual, corporation or association, does not prevent the commission from revoking the license to conduct an event, as provided in this section: *Provided*, That nothing in this subsection limits the authority of a municipality to impose any other taxes or fees on mixed martial arts contests, matches or exhibitions pursuant to article thirteen, chapter eight of this code.

**§29-5A-3b. State Athletic Commission Fund.**

(a) All moneys collected shall be deposited in a special account in the State Treasury to be known as the ‘State Athletic Commission Fund’. 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 article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending the thirtieth day of June, 2016 expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

(b) A supplemental appropriation may be authorized by the legislature for administrative expenditures that exceed collections in the fiscal years ending June 30, 2016, June 30, 2017, and June 30, 2018 or until such time as the Commission collections are sufficient to fully fund its operations.

(c) All money collected and deposited in the State Athletic Commission Fund that remains after the Commission satisfies its administrative operating obligations shall be surplus revenue funds available for appropriation: *Provided*, That the Commission may retain surplus revenue funds as long as it allocates the surplus for a specific purpose and approves such funds be carried-forward for use in the following fiscal year prior to the end of the fiscal year in which the revenues were collected.

**§29-5A-5. Expense of commission.**

On or before December thirty-one of each year, the secretary of the commission shall present to the governor projected expenses for the following year. Such projections shall include all expenses of the commission and its official headquarters. Necessary expenses incurred by the commission shall be submitted on a standard expense form to the treasurer of the state of West Virginia to be paid from the ~~general fund~~ State Athletic Commission Fund except in such circumstances referred to in subdivision (b), section 3b of this article designating such expenses be paid from the general fund. ~~Such expenses shall not exceed five thousand five hundred dollars per year.~~

**§29-5A-6. Payment of official in charge.**

The deputy, inspector or other officials designated by the commission to be in charge of a boxing or mixed martial arts event shall be paid by the promoter at a minimum rate of ~~seventy-five dollars~~ for each weigh-in ceremony and ~~seventy-five dollars~~ for each day of ~~bouts~~ \$75 per day for services performed prior to any event at a weigh-in and each day of an event. *Provided*, That not more than one official



designated by the commission to be in charge of a boxing or mixed martial arts event may receive compensation for services performed. If a weigh-in occurs within three hours before the boxing bouts are scheduled to begin, the deputy, inspector or other officials will be paid only ~~seventy-five dollars~~ \$75 ~~once~~ for that particular night or day's events. Judges, timekeepers and inspectors shall be paid by the promoter at a minimum rate of ~~fifty dollars~~ \$50 per day for services performed prior to any event and each day of an event. Referees shall be paid by the promoter at a minimum rate of ~~seventy-five dollars~~ \$75 per day of bouts. Payments to the officials in charge, judges, timekeepers, inspectors or referees exceeding the amounts under this section are prohibited without prior written consent of the promoter: *Provided, That the commission may revise any fees paid to officials through legislative rule making process beginning June 30, 2018, and every three years thereafter. The commission may not revoke an event permit or license for refusal to pay a fee greater than the fees in this section; *Provided, That approved officials are available, willing, and able to work the event for the proscribed fees. Deputies, inspectors, judges, referees, timekeepers or any other officials designated by the commission to be in charge of an event shall not accept, other than the fees proscribed herein, any gift, pass, or other thing of value in connection with any event.**

**§29-5A-8. Issuance of license; qualification for licenses; application of other provisions of chapter; hearings.**

The commission, ~~at its discretion,~~ may issue a license to promote, conduct or hold professional boxing, professional or amateur mixed martial arts sparring matches and exhibitions to any person, corporation, association, club or organization eligible for a license under this chapter.

Before being granted a license, or the renewal of ~~such~~ the license, the applicant must establish to the satisfaction of the commission that he or she:

(a) Is skilled, or has knowledge, in the profession of boxing or mixed martial arts;

(b) Is of good moral character;

(c) Is physically fit and mentally sound;

(d) Will conduct his or her business in the best interest and welfare of the public, preserving the safety and health of participants and the best interests of professional boxing or professional or amateur mixed martial arts generally;

(e) Will adhere to and comply with all the rules and regulations of the commission pertaining to ~~such~~ the license.

In the case of a corporate applicant, these factors shall pertain to its officers, directors, principal stockholders and employees.

Every license and licensee ~~shall be~~ is subject to such rules ~~and regulations~~, and amendments thereof, as the commission may prescribe.

**§29-5A-17. Referee and judges; appointment by commission; powers, payment.**

(a) The chief official of the boxing match or exhibition shall be the referee. The referee and judges shall be appointed by the commission and shall receive from the commission a card authorizing them to act as such, and no club ~~shall~~ may employ or permit anyone to act as referee except one holding ~~such~~ a card of authorization from the commission. The referee ~~shall have~~ has general supervision and control over the match or exhibition and shall be paid by the promoter a minimum of \$25 for each day or night's services. The referee ~~shall be~~ is limited to refereeing a maximum of thirty rounds per day or night unless special consent is given by the commission.

(b) Once appointed by the commission, the promoter bears the responsibility for ensuring the attendance of referee and judges at

events. The commission shall provide promoters with advance notice of the person(s) appointed as referee and judges. A promoter, at his or her own expense, may request alternate referee(s) and judge(s) be appointed by the commission to serve in the event a first appointed referee or judge is unable to satisfy the role. Under no circumstances may a member of the commission or any employee of the commission serve as a referee or judge for a boxing or mixed martial arts contest conducted in this state.

**§29-5A-19. Weight of boxers.**

No boxer shall be permitted to contest against an opponent ten pounds heavier than himself or herself when the weight of either contestant is less than one hundred fifty pounds. Weight classes as adopted by the Association of Boxing Commissions shall be utilized for all boxing and mixed martial arts contests conducted in this state.

**§29-5A-20. Licenses for contestants, referees and managers.**

No professional contestant, trainer, inspector, referee or professional manager ~~is permitted to~~ may take part in any boxing contest or exhibition unless holding a license from the state ~~said license to be~~ that is issued by the commission upon payment of ~~\$10 a year of~~ the following annual license fee schedule: Professional contestant \$25; Trainer \$20; Inspector \$30; Referee \$30 and Professional Manager \$50. Semiprofessional contestants shall pay a license fee of \$10 for each event. Such fees shall accompany the application and shall be in the form of a certified check or money order and shall be issued to the Treasurer of the state of West Virginia to be deposited in the ~~General Fund~~ State Athletic Commission Fund. ~~Should such~~ If a license is not be granted, the Treasurer shall refund the full amount.

**§29-5A-24. Rules and regulations governing contestants and matches.**

(a) The commission shall ~~promulgate its rules in compliance~~ propose rules for legislative approval in accordance with the provisions of article three of chapter twenty-nine-a of this code.

(b) The commission shall ~~promulgate~~ propose such rules ~~as it determines to be necessary~~ to regulate professional and semiprofessional boxers, professional or amateur mixed martial artists, and professional and semiprofessional boxing matches and exhibitions and professional or amateur mixed martial arts matches and exhibitions: *Provided,* That for professional boxers and boxing matches and exhibitions, the commission rules shall comply with the current unified rules of boxing as adopted by the Association of Boxing Commissions; for professional mixed martial artists and mixed martial arts matches and exhibitions, the commission rules shall comply with the current unified rules of mixed martial arts as adopted by the Association of Boxing Commissions; for amateur boxers and boxing matches or exhibitions, the commission rules shall comply with the amateur rules for boxing as adopted by the United States Amateur Boxing Authority; and for amateur mixed martial artists and mixed martial arts matches or exhibitions, the commission rules shall follow the current rules for the International Sport Karate Association, the World Kickboxing Association, or the International Sport Combat Federation at any given match or exhibition. For full contact boxing and other boxing events that follow nontraditional rules, rules guaranteeing the safety of the participants and the fair and honest conducting of the matches or exhibitions are authorized.

(c) The commission shall ~~promulgate~~ propose separate rules for amateur boxers and amateur boxing, sparring matches and exhibitions as follows:

(1) Rules which comply with the requirements of the rules of the current United States Amateur Boxing Authority to the extent that any boxer complying with them will be eligible to participate in any state, national or international boxing match sanctioned by the current United States Amateur Boxing Authority or the International Amateur Boxing Association.

(2) ~~Rules which may differ from the rules of the current United States Amateur Boxing Authority but which adequately guarantee the~~

~~safety of the participants and the fair and honest conducting of the matches or exhibitions. As a part of these rules, the commission shall include a requirement that all boxers participating in matches or exhibitions conducted under these rules be informed prior to such participation that such participation will disqualify them from participating in state, national or international matches and exhibitions sanctioned by the current United States Amateur Boxing Authority or the International Amateur Boxing Association.”~~

The bill was then ordered to third reading.

**S. B. 445**, Relating to investment of RJCFA excess funds; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 454**, Criminalizing trademark counterfeiting; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 489**, Imposing statute of limitations on civil actions derived from surveying of real property; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 545**, Removing certain prior bank overdraft approval by director or executive officer; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 574**, Relating to liquor sales by distilleries and mini-distilleries; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 576**, Prohibiting PSC jurisdiction of internet protocol-enabled service or voice over internet protocol-enabled service and certain telephone company transactions; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 578**, Relating to occupational disease claims; on second reading, coming up in regular order, was read a second time and ordered to third reading.

#### FIRST READING

**Com. Sub. for S. B. 336**, Eliminating Health Care Authority's power to apply certain penalties to future rate applications; on first reading, coming up in regular order, was read a first time and ordered to second reading.

#### LEAVES OF ABSENCE

At the request of Delegate Cowles, and by unanimous consent, leave of absence for the day was granted Delegate Hartman.

At 12:10 P.M., on motion of Delegate Cowles, the House of Delegates recessed until 5:00 P.M.

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#### EVENING SESSION

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At the request of Delegate Cowles and by unanimous consent, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

#### COMMITTEE REPORTS

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 415**, Relating to circuit judges,

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

The Speaker announced that S. B. 415 had been incorrectly reported earlier in today's proceedings and that the corrected report indicated that the bill be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (S. B. 415) was referred to the Committee on Finance.

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**S. B. 481**, Relating to municipal policemen's and firemen's pension and relief funds' investment,

**S. B. 483**, Clarifying continuing election of municipal policemen's and firemen's pension and relief funds' trustees,

**S. B. 514**, Relating to investments of local policemen's and firemen's pension and relief funds,

**S. B. 515**, Allowing Municipal Pensions Oversight Board invest funds with Investment Management Board or Board of Treasury Investments,

**S. B. 518**, Permitting county and municipal economic development authorities invest certain funds,

**S. B. 549**, Establishing classifications and salary schedules for State Police forensic lab civilian employees,

**S. B. 581**, Relating to Tourism Promotion Fund and Courtesy Patrol Fund,

And,

**S. B. 583**, Increasing tax rate on providers of certain nursing facility services,

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

Delegate Pasdon, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**Com. Sub. for S. B. 19**, Specifying minimum early childhood education program instruction days,

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

Delegate Pasdon, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**Com. Sub. for S. B. 243**, Relating to school nutrition standards during state of emergency or preparedness,

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

Mr. Speaker, Mr. Armstead, Chair of the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

**H. C. R. 7**, The Kenneth A. Chapman Sr. Memorial Bridge,

**Com. Sub. for H. C. R. 24**, The U.S. Army SP5 Johnnie Marvin Ayers Memorial Bridge,



**H. C. R. 31**, Declaring the Northern Red Salamander to be the official state amphibian,

**Com. Sub. for H. C. R. 42**, The Boyhood Home of Booker T. Washington Bridge,

**Com. Sub. for H. C. R. 45**, The U.S. Army COL William L. Glover Memorial Bridge,

**Com. Sub. for H. C. R. 55**, The William C. Campbell Memorial Highway,

**H. C. R. 58**, The U.S. Army PV2 William Frederick Kump Memorial Bridge,

**Com. Sub. for H. C. R. 60**, The U.S. Army SFC Jesse Muncy Memorial Bridge,

**Com. Sub. for H. C. R. 65**, The U.S. Army PFC Willie Paul Wilson Bridge,

**Com. Sub. for H. C. R. 68**, The U.S. Army Air Force SSG Harold "Dean" Baker Memorial Bridge,

**Com. Sub. for H. C. R. 98**, Jack Furst Drive,

**H. C. R. 113**, Mineral County Sesquicentennial, 1866-2016,

**Com. Sub. for S. C. R. 18**, The U.S. Army COL William L. Glover Memorial Bridge,

**Com. Sub. for S. C. R. 19**, The Darrell W. Sanders Memorial Highway,

**S. C. R. 31**, Authorizing the Joint Select Committee on Tax Reform,

**S. C. R. 47**, Amending the Joint Rules of the Senate and House relating to printing of enrolled bills,

And,

**H. R. 6**, Proclaiming August 28, 2015 and every August 28<sup>th</sup> as Teachers' Day in Hardy, Grant and Hampshire Counties,

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

Delegate Gearheart, Chair of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

**Com. Sub. for S. B. 17**, Permitting all-terrain vehicle operation on roadway under certain conditions; defining off-road motorcycle,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 17) was referred to the Committee on the Judiciary.

Delegate Gearheart, Chair of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

**Com. Sub. for S. B. 407**, Implementing state safety oversight program,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 407) was referred to the Committee on Finance.

Delegate Gearheart, Chair of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

**H. C. R. 77**, Designating the second Friday in July as West Virginia Collector Car Appreciation Day,

**H. C. R. 79**, The U. S. Army PFC Junior David Starkey Memorial Bridge,

**Com. Sub. for S. C. R. 20**, Requesting DOH name stretch of road in McDowell County “U. S. Army 1SG Joe C. Alderman Memorial Road”,

**S. C. R. 22**, Requesting DOH name portion of U. S. Rt. 119 in Boone County “U. S. Army SGT Mark Andrew Messer Memorial Road”,

**S. C. R. 25**, Requesting DOH name bridge in Harrison County “U. S. Army PFC Nick A. Cavallaro Memorial Bridge” and “U. S. Army SSG Benjamin T. Portaro Memorial Bridge”,

**Com. Sub. for S. C. R. 34**, Requesting DOH name bridge in Greenbrier County “U. S. Army Air Corps LT William H. Corkrean, Jr., Memorial Bridge”,

**Com. Sub. for S. C. R. 35**, Requesting DOH name bridge in McDowell County “U. S. Army CPL Zane Joseph Gero and U. S. Marine Corps CPL John Anthony ‘Tony’ Gero Memorial Bridge”,

And,

**S. C. R. 41**, Requesting DOH name bridge in Berkeley County “W. C. Honaker and Clyde Spies Memorial Bridge”,

And reports the same back with the recommendation that they each be adopted, but that they first be referred to the Committee on Rules.

In accordance with the former direction of the Speaker, the resolutions (H. C. R. 77, H. C. R. 79, Com. Sub. for S. C. R. 20, S. C. R. 22, S. C. R. 25, Com. Sub. for S. C. R. 34, Com. Sub. for S. C. R. 35 and S. C. R. 41) were each referred to the Committee on Rules.

Delegate Gearheart, Chairman of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

**H. C. R. 23**, The US Marine Corps PFC Clayton Andrew Craft Memorial Bridge,

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

**Com. Sub. for H. C. R. 23** – “Requesting the Division of Highways to name bridge numbers 20-79-15.46, northbound and southbound (20A510 and 20A511), latitude 38.50136, longitude -81.41475, locally known as I-79 Wills Creek Overpass 2674 Bridges Northbound and Southbound, carrying Interstate 79 over County Route 53 and Wills Creek in Kanawha County, as the ‘U.S. Marine Corps PFC Clayton Andrew Craft Memorial Bridge’,”

**H. C. R. 50**, Historic Dingess Tunnel, 100 Years Old, 1914,

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

**Com. Sub. for H. C. R. 50** – “Requesting the West Virginia Division of Highways to install signs at each end of the Dingess Tunnel, located on County Route 3/05, past Laurel Lake at mile post 9.32, in Mingo County, West Virginia, that boldly state ‘Historic Dingess Tunnel, Constructed 1892’ commemorating the more than 100 years of history associated with the tunnel,”

**H. C. R. 53**, The U. S. Army SSG Styish R. Morris Memorial Road,

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

**Com. Sub. for H. C. R. 53** – “Requesting the Division of Highways to name the portion of Route 119/19, beginning at a point where it intersects with Route 17 and ending at a point where it intersects with Route 28/2, in Logan County as the ‘U.S. Army SSG Styish R. Morris Memorial Road’,”

**H. C. R. 80**, The Army SSG Landon Clair Ray and Army SPC4 Garry Dwight Haynes Memorial Bridge,

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

**Com. Sub. for H. C. R. 80** – “Requesting the Division of Highways to name bridge number 18-21-0.31 (18A249), locally known as the Fisher Chapel Bridge, crossing Pocatalico Creek near Sissonville in Jackson County, West Virginia the ‘U.S. Army SSG Landon Clair Ray and U.S. Army SPC4 Garry Dwight Haynes Memorial Bridge’,”

And,

**H. C. R. 90**, The U. S. Army CPL Wilson B. Lambert, Jr., Memorial Road,

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

**Com. Sub. for H. C. R. 90** – “Requesting the Division of Highways to name the road from the beginning of Sand Creek Road on County Route 10/15 at the bend of the Guyandotte River and State Route 10 running one-half mile on Sand Creek Road in Lincoln

County, the ‘U. S. Army CPL Wilson B. Lambert, Jr. Memorial Road’,”

With the recommendation that the committee substitutes each be adopted, but that they first be referred to the Committee on Rules.

In accordance with the former direction of the Speaker, the resolutions (Com. Sub. for H. C. R. 23, Com. Sub. for H. C. R. 50, Com. Sub. for H. C. R. 53. Com. Sub. for H. C. R. 80 and Com. Sub. for H. C. R. 90) were each referred to the Committee on Rules.

Delegate Gearheart, Chair of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

**H. C. R. 63**, The Harry Ripley Memorial Bridge,

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

**Com. Sub. for H. C. R. 63** – “Requesting the Division of Highways to name bridge number 18-25-1.03 (18A-108), locally known as Harpold Bridge, carrying County Route 25 over Mill Creek in Jackson County, the ‘Harry Ripley Memorial Bridge’,”

**H. C. R. 93**, The CSA LTG Thomas J. “Stonewall” Jackson Bridge,

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

**Com. Sub. for H. C. R. 93** – “Requesting the Division of Highways to name the bridge on U. S. Route 50, crossing the North Fork of the Cacapon River near Augusta, Hampshire County, West Virginia, map coordinates 39.31518 - 78.65962, milepost 14.95, the ‘CSA LTG Thomas J. “Stonewall” Jackson Bridge’,”

And,

**H. C. R. 102**, The U. S. Army Air Corps CPT Kenneth R. Winters, Sr. Memorial Bridge,

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

**Com. Sub. for H. C. R. 102** – “Requesting the Division of Highways to name the twin bridges on Interstate 79, over County Route 24 in Harrison County, bridge number 17-79-121.32 NB-SB (17A316 and 17A317), latitude 39.30697, longitude -80.27468, locally known as the Meadowbrook Road Overpass, the ‘U.S. Army Air Corps CPT Kenneth R. Winters, Sr. Memorial Bridge’,”

With the recommendation that the committee substitutes each be adopted, but that they first be referred to the Committee on Rules.

In accordance with the former direction of the Speaker, the resolutions (Com. Sub. for H. C. R. 63, Com. Sub. for H. C. R. 93 and Com. Sub. for H. C. R. 102) were each referred to the Committee on Rules.

Delegate Pasdon, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. C. R. 105**, Recognizing West Virginia University Institute of Technology as a vital part of higher education in West Virginia,

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

In accordance with the former direction of the Speaker, the resolution (H. C. R. 105) was referred to the Committee on Rules.

Delegate McCuskey, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 9<sup>th</sup> day of March, 2015, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**(Com. Sub. for H. B. 2099)**, Extending the time of meetings of local levying bodies when meetings are delayed,

**(Com. Sub. for H. B. 2157)**, Relating to absentee ballot fraud,

**(Enr. H. B. 2201)**, Requiring the Public Service Commission to adopt certain net metering and interconnection rules and standards,

**(Com. Sub. for H. B. 2457)**, Prohibiting the use of the name or likeness of elected or appointed officials on publicly-owned vehicles,

**(H. B. 2523)**, Creating a special revenue account to offset costs for the West Virginia State Police 100<sup>th</sup> Anniversary in 2019,

**(H. B. 2760)**, Making a supplementary appropriation to the Bureau of Senior Services - Lottery Senior Citizens Fund,

**(H. B. 2764)**, Making a supplementary appropriation to the State Department of Education - School Building Authority,

**(H. B. 2770)**, Making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, to the Division of Human Services,

**(H. B. 2879)**, Relating to certain limitations on amount of state funds on deposit in any depository,

And,

**(H. B. 2933)**, Making a supplementary appropriation to the Department of Administration, Public Defender Services.



Delegate McCuskey, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 9<sup>th</sup> day of March, 2015, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**(S. B. 389)**, Relating to Board of Registration for Professional Engineers license renewals and reinstatements,

**(Com. Sub. for S. B. 435)**, Creating WV Sheriffs' Bureau of Professional Standards,

**(S. B. 466)**, Making supplementary appropriation of federal funds to Department of Commerce,

**(S. B. 467)**, Making supplementary appropriation of federal funds to Department of Agriculture, State Conservation Committee,

**(S. B. 469)**, Making supplementary appropriation of federal funds to DEP, Division of Environmental Protection,

**(S. B. 471)**, Making supplementary appropriation of federal funds to DHHR, Human Rights Commission, and DHHR, DHS,

**(S. B. 473)**, Making supplementary appropriation of federal funds to DMAPS, WV State Police,

**(S. B. 476)**, Making supplementary appropriation to Department of Administration, Division of Purchasing, Purchasing Improvement Fund,

And,

**(S. B. 477)**, Supplementing, amending, decreasing and increasing appropriation from State Road Fund to DOH.

On motion for leave, resolutions were introduced (Originating in the Committee on Education and reported with the recommendation that they be adopted, but that they each be referred to the Committee on Rules), which were read by their titles, as follow:

**By Delegates Pasdon, Duke, Ambler, Campbell, Cooper, Ellington, Espinosa, D. Evans, Hamrick, Hornbuckle, Kelly, Kurcaba, Moye, Perdue, Perry, Pushkin, Reynolds, Rodighiero, Rohrbach, Romine, Rowan, Statler, Trecost, Upson and Wagner:**

**H. C. R. 114** -“Requesting that the Joint Committee on Government and Finance study the circumstances where West Virginia home schooled students who have completed their course work should be authorized to take the GED test, the TASC test or other approved high school equivalency assessments and earn a West Virginia High School Equivalency Diploma,”

WHEREAS, Home schooled students may wish to take an approved high school equivalency assessment as a means of demonstrating their academic achievements and as a means of earning a West Virginia High School Equivalency Diploma; and

WHEREAS, Home schooled students sometimes complete their high school course work before they turn eighteen; and

WHEREAS, The State Board of Education has promulgated rules (W. Va. C. S .R. §126-32-1 *et seq.*) that address the circumstances where students sixteen, seventeen and eighteen years of age may sit for an approved high school equivalency assessment; and

WHEREAS, The State Board of Education’s rules do not appear to contemplate a circumstance where a home schooled student has completed his or her course work before the age of eighteen; and

WHEREAS, The State Board of Education’s rules refer, rather, to home schooled students being “withdrawn from a regular high school”; and

WHEREAS, The State Board of Education's rules do not appear to allow a home schooled student, under any circumstances, to sit for an approved high school equivalency assessment at sixteen years of age; and

WHEREAS, Other states may have different policies regarding these matters; and

WHEREAS, The Legislature finds that it would be helpful to study other states' policies regarding these matters and to weigh the considerations that informed those policies and the policies that are presently reflected in the State Board of Education's rules; and

WHEREAS, It is necessary to investigate and weigh the considerations that informed the State Board of Education's policies in this matter; and

WHEREAS, It is necessary to study other states' policies regarding when home schooled students who have completed their course work may sit for an approved high school equivalency assessment; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the circumstances where West Virginia home schooled students who have completed their course work should be authorized to take the GED test, the TASC test or other approved high school equivalency assessments and earn a West Virginia High School Equivalency Diploma; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session, 2016, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

*Further Resolved*, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

**By Delegates Pasdon, Duke, Ambler, Campbell, Cooper, Ellington, Espinosa, D. Evans, Hamrick, Hornbuckle, Kelly, Kurcaba, Moye, Perdue, Perry, Pushkin, Reynolds, Rodighiero, Rohrbach, Romine, Rowan, Statler, Trecost, Upson and Wagner:**

**H. C. R. 115** - “ Requesting the Joint Committee on Government and Finance to conduct a study on state funding for school bus replacement,”

WHEREAS, The Public School Support Plan allocates funding to county boards of education that may be used only for the replacement of school buses and the amount of this funding is determined by the replacement value of the bus fleet based on a twelve year replacement cycle and individual buses driven 180,000 miles regardless of model year; and

WHEREAS, Objective information on the serviceable life of school buses is needed to appropriately consider proposals for changing this cycle and mileage to ensure the safe transport of students and adequate funding for bus replacement; and

WHEREAS, Differences in terrain, weather conditions, population density and other conditions may affect the frequency of needed bus replacement differently among the county boards; and

WHEREAS, Alternative methods for providing state funding to county boards for school bus replacement may be considered; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to conduct a study on state funding for school bus replacement; and be it

*Further Resolved*, That the said Joint Committee on Government and Finance is requested to report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and be it

*Further Resolved*, That the expenses necessary to conduct this study, to prepare a report and draft necessary legislation are requested to be paid from legislative appropriations to the Joint Committee on Government and Finance.

And,

**By Delegates Pasdon, Duke, Ambler, Campbell, Cooper, Ellington, Espinosa, D. Evans, Hamrick, Hornbuckle, Kelly, Kurcaba, Moye, Perdue, Perry, Pushkin, Reynolds, Rodighiero, Rohrbach, Romine, Rowan, Statler, Trecost, Upson and Wagner:**

**H. C. R. 116** - "Requesting the Joint Committee on Government and Finance to conduct a study on appropriate limits on the number, time and uses of state summative assessments."

WHEREAS, State summative assessments have been used for many years for the important purposes of accountability and determining areas of needed instructional improvement, but an over use and emphasis on these assessments is a growing concern of teachers, parents and students as evidenced by frequent reports that the administration consumes too much instructional time, the data is not provided to schools and teachers quickly enough to allow planning for instructional improvement, many students do not take them seriously or are frustrated by them, and parental frustration is leading to a growing movement of opting-out of the assessments entirely; and

WHEREAS, The value of the state summative assessment for improving instruction is significantly undermined if an over use and emphasis results in any of the aforementioned problems and the assessment data that do not accurately reflect student learning; and

WHEREAS, Appropriate limits on the number, time and uses of state summative assessments are important to ensure that the resources in time, effort and dollars consumed by the assessment do not exceed their worth for improving instruction; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to conduct a study on appropriate limits on the number, time and uses of state summative assessments; and be it

*Further Resolved,* That the said Joint Committee on Government and Finance is requested to report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and draft necessary legislation are requested to be paid from legislative appropriations to the Joint Committee on Government and Finance.

The Speaker referred the resolutions to the Committee on Rules.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 140,** Amending State Administrative Procedures Act,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 170**, Authorizing Bureau of Commerce promulgate legislative rules,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 192**, Authorizing Department of Transportation promulgate legislative rules,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 199**, Authorizing miscellaneous agencies and boards promulgate legislative rules,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 284**, Relating to chief law-enforcement officer's requirement to certify transfer or making of certain firearms,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 360**, Repealing code sections relating to book indexes and claims reports required by court clerks,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 403**, Increasing period during which motor vehicle lien is valid,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 409**, Establishing Fair and Open Competition in Governmental Construction Act,



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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 412**, Relating to Real Estate Commission complaint filings,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 580**, Relating to statute of limitations on health care injury claims for minors,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 479**, Adding additional family court judges,

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

In accordance with the former direction of the Speaker, the bill (S. B. 479) was referred to the Committee on Finance.

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2016**, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution,

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

**Com. Sub. for H. B. 2016** - “A Bill making appropriations of public money out of the Treasury in accordance with section fifty-one, article VI of the Constitution,”

With the recommendation that the committee substitute do pass.

Delegate Pasdon, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**Com. Sub. for S. B. 439**, Relating to higher education personnel,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 439) was referred to the Committee on Finance.

On motions for leave, resolutions were introduced (Originating in the Committee on Government Organization and reported with the recommendation that they each be adopted, but that they first be referred to the Committee on Rules), which were read by their titles, as follows:

**By Delegates Howell, Arvon, Border, Cadle, Caputo, Eldridge, Ferro, Hamrick, Ihle, Kessinger, Marcum, McGeehan, Moffatt, Morgan, J. Nelson, R. Phillips, P. Smith, R. Smith, Sponaule, Stansbury and Zatezalo:**

**H. C. R. 117** - “Requesting the Joint Committee on Government and Finance conduct a study of the various county requirements to obtain a food handlers permit or card, the necessity for statewide minimum standards, including the option to obtain a statewide food handlers permit, and the benefit to workers and businesses of recognizing a company’s training and testing in lieu of a county test,”

WHEREAS, The Legislature has established that it is in the public interest that the health of its citizens be protected when food is cooked and served to the general public; and

WHEREAS, The Legislature has heretofore authorized municipal, county or regional boards of health to develop policies and procedures for issuing a food handlers card or permit; and

WHEREAS, The county tests and fees for a food handlers card or permit are not uniform and not recognized statewide making it cumbersome and expensive for employees to work and businesses to operate in more than one county or statewide if desired; and

WHEREAS, Established chain restaurants may have food handlers training and testing that already meets or exceeds the minimum proficiency required by any county test; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the various county requirements to obtain a food handlers permit or card, the necessity for statewide minimum standards, including the option to obtain a statewide food handlers permit, and the benefit to workers and businesses of recognizing a company’s training and testing in lieu of a county test ; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved*, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

**By Delegates Howell, Arvon, Border, Cadle, Caputo, Eldridge, Faircloth, Ferro, Hamrick, Hill, Ihle, Kessinger, Marcum, McGeehan, Moffatt, Morgan, J. Nelson, R. Phillips, P. Smith, R. Smith, Sponaugle, Stansbury and Zatezalo:**

**H. C. R. 118** - “Requesting the Joint Committee on Government and Finance conduct a study of agencies that are exempt from article three, chapter five-a and their policies and procedures for procurement, if any,”

WHEREAS, The Legislature has determined that some agencies should be exempt from article three, chapter five-a, the Purchasing Division procurement law; and

WHEREAS, there may still be a need for guidance to be given to exempt agencies relating to procurement, especially with contracts of a high dollar value of public funds; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study agencies that are exempt from article three, chapter five-a and their policies and procedures for procurement, if any; and be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its

findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved*, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

**By Delegates Howell, Arvon, Border, Cadle, Caputo, Eldridge, Ferro, Hamrick, Ihle, Kessinger, Marcum, McGeehan, Moffatt, Morgan, J. Nelson, R. Phillips, P. Smith, R. Smith, Stansbury and Zatezalo:**

**H. C. R. 119** - "Requesting the Joint Committee on Government and Finance conduct a study of creating a Statewide Interoperable Radio Network by statute,"

WHEREAS, The Legislature has determined that it is in the public interest to ensure the most effective communication in the provision of emergency services, to assure an immediate and coordinated response to disasters and emergencies, and to ensure the maintenance and operation of the equipment comprising the Statewide Interoperable Radio Network; and

WHEREAS, The Statewide Interoperable Radio Network was created by Executive Order 2-11; and

WHEREAS, in order to ensure a long term effective, coordinated and maintained communications program is available, it may be appropriate to establish a Statewide Interoperable Radio Network by statute; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study creating a Statewide Interoperable Radio Network by statute.

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved*, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

**By Delegates Howell, Arvon, Border, Cadle, Caputo, Eldridge, Ferro, Hamrick, Ihle, Kessinger, Marcum, McGeehan, Moffatt, Morgan, J. Nelson, R. Phillips, P. Smith, R. Smith, Sponaugle, Stansbury and Zatezalo:**

**H. C. R. 120** - “Requesting the Joint Committee on Government and Finance authorize a study on the James “Tiger” Morton catastrophic illness fund,”

WHEREAS, The James “Tiger” Morton catastrophic illness fund provides a source of economic assistance to West Virginia citizens dealing with catastrophic illnesses; and

WHEREAS, The James “Tiger” Morton catastrophic illness fund has assisted numerous West Virginia citizens avoid financial hardship by providing economic assistance during times of need; and

WHEREAS, Budget appropriations have been drastically reduced over the last several years; and

WHEREAS, In order to offset potential reductions in appropriations for the James “Tiger” Morton catastrophic illness fund, it has become necessary to research alternative funding sources; and

WHEREAS, Tax and other incentives may encourage charitable giving by individuals and corporations; and

WHEREAS, The Legislature is committed to evaluating appropriate incentives and alternative funding sources for the James “Tiger” Morton catastrophic illness fund; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the James “Tiger” Morton catastrophic illness fund; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study and to prepare and draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

**By Delegates Howell, Arvon, Border, Cadle, Caputo, Eldridge, Faircloth, Ferro, Hamrick, Hill, Ihle, Kessinger, Marcum, McGeehan, Moffatt, J. Nelson, R. Phillips, P. Smith, R. Smith, Sponaule, Stansbury and Zatezalo:**

**H. C. R. 121** - “Requesting the Joint Committee on Government and Finance authorize a study on the current West Virginia Department of Health and Human Resources Managed Care contracting strategy,”

WHEREAS, The Legislature is committed to promoting efficiency in government; and

WHEREAS, It is necessary to evaluate additional contracting strategies to ensure efficient allocation of state resources; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the current West Virginia Department of Health and Human Resources Managed Care contracting strategy; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved*, That the expenses necessary to conduct this study and to prepare and draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

**By Delegates Howell, Arvon, Border, Cadle, Caputo, Eldridge, Faircloth, Ferro, Hamrick, Hill, Ihle, Kessinger, Marcum, McGeehan, Moffatt, Morgan, J. Nelson, R. Phillips, P. Smith, R. Smith, Sponaugle, Stansbury and Zatezalo:**

**H. C. R. 122** - "Requesting the Joint Committee on Government and Finance authorize a study on increasing state government budget and spending transparency,"

WHEREAS, Taxpaying citizens need readily available information detailing how and where their tax dollars are being spent; and

WHEREAS, The Legislature is committed to coordinating efforts among state government agencies to provide efficient access to accurate reporting of government activities; and

WHEREAS, Transparency and accountability of government spending is in the best interest of the citizens of West Virginia and may be facilitated by creating a single web-based portal to provide access to detailed tax spending information; and

WHEREAS, State agencies do provide public information using a variety of government websites and with advances in technology those



reporting activities can be coordinated through a single web-based portal; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study increasing state government budget and spending transparency; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study and to prepare and draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

**By Delegates Howell, Arvon, Border, Cadle, Caputo, Eldridge, Ferro, Hamrick, Ihle, Kessinger, Marcum, McGeehan, Moffatt, Morgan, J. Nelson, R. Phillips, P. Smith, R. Smith, Sponaule, Stansbury and Zatezalo:**

**H. C. R. 123** - “Requesting the Joint Committee on Government and Finance conduct a study of the impact of admitting all Class I, II, III, and IV municipalities to the Municipal Home Rule Pilot Program on the Home Rule Board in processing and reviewing plans, on the Tax Commissioner in administering, enforcing and collecting a municipal sales tax, and on businesses who must remit a municipal sales tax enacted by a municipality,”

WHEREAS, The initial Municipal Home Rule Pilot Program brought innovative results, including novel municipal ideas that became municipal ordinances which later resulted in new statewide statutes; and

WHEREAS, The Municipal Home Rule Board is an essential part of the Program but may need additional resources and administrative support if all municipalities are permitted to participate; and

WHEREAS, Under the current Municipal Home Rule Pilot Program, the Tax Commissioner must administer, enforce and collect the municipal sales tax which could be enacted by any municipality in the state if all municipalities are permitted to participate; and

WHEREAS, Some mail order and other businesses outside the borders of a municipality with a sales tax who provide goods within the municipality and who use zip codes to ship or deliver goods may encounter difficulties in knowing when to collect the tax; and

WHEREAS, Including all municipalities in the state in the Municipal Home Rule Pilot Program may require additional resources, staff and technology to properly implement; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the impact of admitting all Class I, II, III, and IV municipalities to the Municipal Home Rule Pilot Program on the Home Rule Board in processing and reviewing plans, on the Tax Commissioner in administering, enforcing and collecting a municipal sales tax, and on businesses who must remit a municipal sales tax enacted by a municipality; and be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

**By Delegates Howell, Arvon, Border, Cadle, Caputo, Eldridge, Faircloth, Ferro, Hamrick, Hill, Ihle, Kessinger, Marcum, McGeehan, Moffatt, Morgan, J. Nelson, R. Phillips, P. Smith, R. Smith, Sponaugle, Stansbury, and Zatezalo:**

**H. C. R. 124** - “Requesting that the Joint Committee on Government and Finance authorize a study on the regulation of public utilities by political subdivisions of the State of West Virginia,”

WHEREAS, Municipalities and county commissions possess certain powers to enact, administer, and enforce ordinances; and

WHEREAS, Such powers of municipalities and county commissions are intended to be used in order to serve the public interest and welfare of their respective citizens and respond to their citizens; and

WHEREAS, Public utilities provide vital services and products to the public as a whole, not constrained by the boundaries of political subdivisions of the State; and

WHEREAS, The nature of public utility services and products are to serve the general welfare, need, and public good of the State; and

WHEREAS, Public utilities in West Virginia are governed by various Federal and State agencies, including, but not limited to, the United States Environmental Protection Agency, the Federal Energy Regulatory Commission, the West Virginia Department of Environmental Protection, and the West Virginia Public Service Commission; and

WHEREAS, Regulation of public utilities at the local level can conflict with and, indeed, frustrate, confuse, and confound the operations, service, and products provided to the public by such public utilities; and

WHEREAS, The cost of regulatory compliance at any level is ultimately borne by the ratepayers and customers of the public utilities; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the issue of regulation of public utilities by political subdivisions of the State of West Virginia; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study and to prepare and draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

And,

**By Delegates Howell, Arvon, Border, Cadle, Caputo, Eldridge, Faircloth, Ferro, Hamrick, Ihle, Kessinger, Marcum, McGeehan, Moffatt, Morgan, J. Nelson, R. Phillips, P. Smith, R. Smith, Sponaugle, Stansbury and Zatezalo:**

**H. C. R. 125** – “Requesting the Joint Committee on Government and Finance conduct a study of public access and availability in one location to all ordinances, rules and regulations adopted by a county commission or municipality in this state.”

WHEREAS, The Legislature has determined that access in one location to all laws of county commissions and municipalities is in the public interest; and

WHEREAS, In order to provide the public with one place to view all laws of a given municipality or county commission, there may be a need to provide minimum standards for the record keeping of all ordinances, rules and regulations; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study public access and availability in one location to all ordinances, rules and regulations adopted by a county commission or municipality in this state; and be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved*, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

The Speaker referred the resolutions to the Committee on Rules.

#### MESSAGES FROM THE SENATE

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with a title amendment, a bill of the House of Delegates, as follows:

**H. B. 2272**, Relating to the authority of the Board of Pharmacy.

On motion of Delegate Cowles, the bill was taken up for immediate consideration.

The following Senate title amendment was reported by the Clerk:

**H. B. 2272** - "A Bill to repeal §16-5W-1, § 16-5W-2, §16-5W-3, §16-5W-4, §16-5W-5, §16-5W-6, §16-5W-7 and §16-5W-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-5-7 of said code, all relating generally to the rule-making authority of the Board of Pharmacy; repealing the current statutory official prescription paper program and allowing the Board of Pharmacy to

develop and maintain an official prescription paper program through rulemaking; and clarifying rule-making authority of the Board of Pharmacy to include the ability of pharmacy interns to administer certain immunizations.”

On motion of Delegate Cowles, the House of Delegates concurred in the Senate amendment.

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 395**), and there were—yeas 93, nays none, absent and not voting 7, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Boggs, Eldridge, Marcum, Moore, Morgan, Reynolds and Romine.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2272) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, bills of the House of Delegates as follows:

**Com. Sub. for H. B. 2432**, Relating to the licensure requirements to practice pharmacist care,

**Com. Sub. for H. B. 2462**, Relating to certain deposits of tax proceeds,

**Com. Sub. for H. B. 2505**, Relating to retirement system participation and concurrent employment provisions,

**Com. Sub. for H. B. 2507**, Relating to membership provisions in the West Virginia Municipal Police and Firefighters Retirement System,

**H. B. 2626**, Relating to use of the Abandoned Land Reclamation Fund,

**H. B. 2645**, Expanding the availability of the Underwood-Smith Teacher Loan Assistance Program,

And,

**H. B. 2657**, Allowing members of the Livestock Care Standards Board to be reimbursed for expenses consistent with the West Virginia Department of Agriculture Travel Policy and Procedure.

A message from the Senate, by

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

**Com. Sub. for H. B. 2702**, Redefining service personnel class titles of early childhood classroom assistant teacher,

And,

**Com. Sub. for H. B. 2755**, Relating to service and professional employee positions at jointly established schools.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with a title amendment, a bill of the House of Delegates, as follows:

**H. B. 2776**, Relating to prescribing hydrocodone combination drugs for a duration of no more than three days.

On motion of Delegate Cowles, the bill was taken up for immediate consideration.

The following Senate title amendment was reported by the Clerk:

**H. B. 2776** - “A Bill to amend and reenact §30-3E-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §30-7-15a of said code; and to amend and reenact §30-8-9 of said code, all relating to allowing physician assistants, advance practice registered nurses and optometrists to prescribe hydrocodone combination drugs for a duration of no more than three days in a thirty-day period.”

On motion of Delegate Cowles, the House of Delegates concurred in the Senate amendment.

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 396**), and there were—yeas 92, nays 1, absent and not voting 7, with the nays and absent and not voting being as follows:

NAYS: Pushkin.

ABSENT AND NOT VOTING: Boggs, Eldridge, Marcum, Moore, Morgan, Reynolds and Romine.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2776) passed.

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

A message from the Senate, by

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

**Com. Sub. for H. B. 2778**, State Infrastructure Fund Program,

And,



**H. B. 2876**, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 2999**, Relating to neonatal abstinence centers.

On motion of Delegate Cowles, the bill was taken up for immediate consideration.

On motion of Delegate Cowles, the House of Delegates concurred in the following Senate amendments:

On page fifteen, section one, line one, by striking out “(a)”.

On page sixteen, section one, lines fifteen and sixteen by striking out all of subsection (c).

On pages sixteen and seventeen, section two, by striking out all of section two and inserting in lieu thereof a new section to read as follows:

**“§16-2M-2. Rules; minimum standards for neonatal abstinence centers.**

(a) The secretary shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-two of this code to carry out the purpose of this article. These rules shall include at a minimum:

(1) Licensing procedures for neonatal abstinence centers. These procedures shall be in place by July 1, 2015;

(2) The minimum standards of operation for neonatal abstinence facilities including the following:

(A) Minimum numbers of administrators, medical directors, nurses, aides and other personnel according to the occupancy of the facility;

(B) Qualifications of facility's administrators, medical directors, nurses, aides and other personnel;

(C) Safety requirements;

(D) Sanitation requirements;

(E) Therapeutic services to be provided;

(F) Medical records;

(G) Pharmacy services;

(H) Nursing services;

(I) Medical services;

(J) Physical facility;

(K) Visitation privileges; and

(L) Admission, transfer and discharge policies.

(b) The provisions of the rules promulgated pursuant to this section shall apply only to those facilities regulated pursuant to section five, article two-d of this chapter and shall not apply to a hospital-based acute care unit."

On page seventeen, section three, line one, by striking out "(a)".

And,

By amending the title of the bill to read as follows:

**Com. Sub. for H. B. 2999** - "A Bill to amend and reenact §16-2D-5 of the Code of West Virginia, 1931, as amended; to amend

said code by adding thereto a new section, designated §16-2D-5f; to amend said code by adding thereto a new article, designated §16-2M-1, §16-2M-2 and §16-2M-3, all relating to neonatal abstinence centers; authorizing neonatal abstinence centers; requiring the secretary to promulgate and emergency rules; requiring the rules to set out a licensing procedure by July 1, 2015; requiring the rules to set minimum standards of operation for neonatal abstinence centers; clarifying that the provision of the rules on relate to specified facilities; requiring the state agency to consider neonatal abstinence care as a unique service in conducting certificate of need review; exempting neonatal abstinence centers from moratoriums on certain nursing facilities; prohibiting the Health Care Authority from ordering a moratorium on skilled nursing facilities providing services for children under one year of age suffering from Neonatal Abstinence Syndrome; and exempting such facilities from current moratoriums.”

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 397**), and there were—yeas 93, nays none, absent and not voting 7, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Boggs, Eldridge, Marcum, Moore, Morgan, Reynolds and Romine.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2999) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

**S. B. 559**, Relating to social work licensing exemptions.

#### MESSAGES FROM THE SENATE

A message from the Senate, by

The Clerk of the Senate, announced that, upon reconsideration, the Senate had amended and again passed, in an effort to meet the objection of the Governor, and requested the concurrence of the House of Delegate in the same, as to

**Enr. Com. Sub. for S. B. 6**, Relating to medical professional liability.

#### MESSAGES FROM THE EXECUTIVE

The Speaker laid before the House of Delegates a communication from His Excellency, the Governor, setting forth his disapproval of a bill heretofore passed by both houses, as follows:

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON

March 5, 2015

#### Veto Message

The Honorable Tim Armstead  
Speaker, West Virginia House of Delegates  
Room 229M, Building 1  
State Capitol  
Charleston, West Virginia 25305

Re: Enrolled Senate Bill No. 6

Dear Speaker Armstead:

Pursuant to the provisions of section fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return the Enrolled Committee Substitute for Senate Bill No. 6.

The bill's enacting clause on page 2 contains two fatal errors. First the enacting clause provides that the bill *repeals* W. Va. Code § 55-7B-1, which it does not. Rather, the bill *amends* § 55-7B-1. Second, the enacting clause fails to reference the bill's amendment of § 55-B-10.

If the Legislature chooses to repair the enacting clause, it also may consider revising some aspects of the bill's title on page 1. For instance, the phrase "providing rebuttable presumptions and evidentiary requirements related to admission of certain government, health care provider or healthcare facility information" arguably is vague. Greater clarity could be provided by revising the phrase to read, "providing rebuttable presumptions and evidentiary requirements relating to state and federal reports, disciplinary actions, accreditation reports, assessments, and staffing." *See, e.g.*, § 55-7B-7a, page 11.

The title's description of the bill's amendment to § 55-7B-8(d) also may be inadequate. The phrase "clarifying amounts of medical professional liability insurance coverage that must exist to receive noneconomic damages limitations" could be added to the title to better explain the "aggregate" amendments to § 55-7B-8(d). *See, e.g.*, 55-7B-8(d), pages 12-13.

Finally, the title's reference to "providing definitions" may not sufficiently describe the many revisions reflected in § 55-7B-2 of the bill, which significantly expand the scope of the Medical Professional Liability Act. *See* § 55-5B-2, pages 5-9.

Sincerely,

EARL RAY TOMBLIN,  
*Governor.*

On motion of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates proceeded to reconsider the bill, as amended by the Senate, in an effort to meet the objections of the Governor.

On motion of Delegate Cowles, the House of Delegates concurred in the following Senate amendment:

On page one, by striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

“That §55-7B-1, §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c, §55-7B-10 and §55-7B-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §55-7B-7a and §55-7B-9d, all to read as follows” and a colon.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 398**), and there were—yeas 77, nays 16, absent and not voting 7, with the nays and absent and not voting being as follows:

YEAS: Ambler, Anderson, Arvon, Ashley, Azinger, Bates, Blair, Border, Butler, Cadle, Campbell, Canterbury, Cooper, Cowles, Deem, Duke, Ellington, Espinosa, A. Evans, D. Evans, Faircloth, Fast, Folk, Foster, Frich, Gearheart, Hamilton, Hamrick, Hanshaw, Hartman,, Hill, Hornbuckle, Householder, Howell, Ihle, Ireland, Kelly, Kessinger, Kurcaba, Lane, McCuskey, McGeehan, Miller, Moffatt, Moye, E. Nelson, J. Nelson, O’Neal, Overington, Pasdon, Perry, Pethtel, R. Phillips, Pushkin, Rodighiero, Rohrbach, Rowan, Rowe, Shott, P. Smith, R. Smith, Sobonya, Sponaugle, Stansbury, Statler, Storch, Summers, Upson, Wagner, Waxman, Weld, Westfall, B. White, H. White, Williams, Zatezalo and Mr. Speaker (Mr. Armstead).

NAYS: Byrd, Caputo, Ferro, Fleischauer, Fluharty, Guthrie, Hicks, Longstreth, Lynch, Manchin, Miley, Perdue, L. Phillips, Skinner, Trecost and Walters.

ABSENT AND NOT VOTING: Boggs, Eldridge, Marcum, Moore, Morgan, Reynolds and Romine.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 6) passed, as a result of the objections of the Governor.

On motion of Delegate Shott, the title of the bill was amended to read as follows:

**Enr. Com. Sub. for S. B. 6** - “AN ACT to amend and reenact §55-7B-1, §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c, §55-7B-10 and §55-7B-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §55-7B-7a and §55-7B-9d, all relating to medical professional liability generally; providing additional legislative findings and purposes related to medical professional liability; amending existing definitions of ‘collateral source’, ‘health care’, ‘health care facility’, ‘health care provider’ and ‘medical professional liability’ and creating a new definition for ‘related entity’ all of which expand the scope of the Medical Professional Liability Act; modifying the qualifications for the competency of experts who testify in medical professional liability actions; providing rebuttable presumptions and evidentiary requirements relating to state and federal reports, disciplinary actions, accreditation reports, assessments and staffing; modifying the maximum amount of recovery for, and availability of, noneconomic damages; clarifying amounts of medical professional liability insurance coverage that must exist to receive noneconomic damages limitations; clarifying that a health care provider is not vicariously liable unless the alleged agent does not maintain certain insurance; clarifying eligibility for, and application of, emergency medical services caps; providing a methodology for determining the amount of trauma care caps to account for inflation; providing certain limitations of verdicts for past medical expenses of the plaintiff; establishing effective date; and providing for severability.”

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

On this question, the yeas and nays were taken (**Roll No. 399**), and there were—yeas 76, nays 17, absent and not voting 7, with the nays and absent and not voting being as follows:

**NAYS:** Byrd, Caputo, Ferro, Fleischauer, Guthrie, Hornbuckle, Longstreth, Lynch, Manchin, Miley, L. Phillips, Pushkin, Rowe, Skinner, Sponaugle, Trecost and Walters.

**ABSENT AND NOT VOTING:** Boggs, Eldridge, Marcum, Moore, Morgan, Reynolds and Romine.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 6) takes effect from its passage.

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

#### **MESSAGES FROM THE EXECUTIVE**

The Speaker laid before the House of Delegates a communication from His Excellency, the Governor, setting forth his disapproval of a bill heretofore passed by both houses, as follows:

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON

March 6, 2015

#### **Veto Message**

The Honorable Tim Armstead  
Speaker, West Virginia House of Delegates  
State Capitol  
Charleston, West Virginia

Dear Speaker Armstead:



Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill No. 2010 on technical grounds.

First, §3-1-17(b) appears to be missing the words, “There shall be elected” at the beginning of the subsection. Without this phrase, this subsection is incomplete. Likewise, §3-4A-11a(b)(3) is ambiguous and appears to be missing language. As a result, the provisions of this section are unclear, leaving the reader to make assumptions about the instructions provided in this section.

Next, §3-10-3(c) addressing appointment of a magistrate when a vacancy occurs, contains an incorrect reference to section one, article six, chapter fifty, related to enforcement of judgments.

Moreover, the bill’s title may be inadequate. The title does not provide notice of the changes to the West Virginia Supreme Court of Appeals Public Campaign Financing Program in article twelve, chapter three. Specifically, the title simply provides for the “continuing applicability” of the program; however, the title does not give notice of the revision in the amount of financing available to a candidate running in a contested election or the removal of funding available to a candidate running in an uncontested election. Additionally, the title contains the following duplicative provisions, “providing for the commencement of terms of office” and “providing the timing of commencement of terms of office for justices of the Supreme Court of Appeals, circuit judge, family court judge and magistrate.”

Further, §3-5-13a, page 19, line 11, contains an extra comma after “Attorney General” and line 12 contains an extra comma after “House of Delegates.” Likewise, §6-5-1, page 36, line 11, contains an extra comma after “clerks of the circuit.”

Additionally, §3-5-13(5) contains references to the Board of Education that are inconsistently and incorrectly capitalized. Page 18, lines 131-132, state “board of Education” and line 136 states “board of education”; these references should be capitalized. Similarly, §6-5-1

contains inconsistent capitalization on page 36, lines 3-5, referring to the state superintendent of free schools, treasurer, and commissioner of agriculture; all these titles should be capitalized. Finally, §3-12-14(a)(6), page 33, line 26, contains reference to the auditor; Auditor should be capitalized. These titles are correctly capitalized throughout the remainder of the bill, consistent with established legislative bill drafting guidelines.

Lastly, §6-5-1, page 36, line 9, states “judges of the Supreme Court of Appeals”; this should state “justices” instead of “judges.”

Sincerely,

EARL RAY TOMBLIN,  
*Governor.*

On motion of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates proceeded to reconsider the bill, in an effort to met the objections of the Governor.

On motion of Delegate Shott, the bill was amended on page one, by striking out everything after the enacting section and inserting in lieu thereof the following:

*“Be it enacted by the Legislature of West Virginia:*

That §3-1-16 and §3-1-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §3-4A-11a of said code be amended and reenacted; that §3-5-4 of said code be amended and reenacted; that said code be amended by adding thereto four new sections, designated §3-5-6a, §3-5-6b, §3-5-6c and §3-5-6d; that §3-5-7, §3-5-13 and §3-5-13a of said code be amended and reenacted; that §3-10-3 of said code be amended and reenacted; that §3-12-3, §3-12-6, §3-12-10, §3-12-11, §3-12-12 and §3-12-14 of said code be amended and reenacted; that §6-5-1 of said code be amended and reenacted; that §50-1-1 and §50-1-6 of said code be amended and reenacted; that §51-1-1 of said code be amended and reenacted; and that §51-2A-5 of said code be amended and reenacted, all to read as follows:

**CHAPTER 3. ELECTIONS.****ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.****§3-1-16. Election of state officers.**

(a) At the general election to be held in 1968, and every fourth year thereafter, there shall be elected a Governor, Secretary of State, Treasurer, Auditor, Attorney General and Commissioner of Agriculture. At the general election in 1968, and every second year thereafter, there shall be elected a member of the State Senate for each senatorial district, and a member or members of the House of Delegates of the state from each county or each delegate district.

(b) At the time of the primary election to be held in the year 2016, and every twelfth year thereafter, there shall be elected one justice of the Supreme Court of Appeals, and at the time of the primary election to be held in 2020, and every twelfth year thereafter, two justices of the Supreme Court of Appeals and at the time of the primary election to be held in 2024, and every twelfth year thereafter, two justices of the Supreme Court of Appeals. Effective with the primary election held in the year 2016, the election of justices of the Supreme Court of Appeals shall be on a nonpartisan basis and by division as set forth more fully in article five of this chapter.

**§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.

#### ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

##### **§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.**

(a) The board of ballot commissioners in counties using ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil and which marks are tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the electronic voting system for use in elections.

(b) (1) For the primary election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and arrangement of candidates within each office are to conform as nearly as possible to sections thirteen and thirteen-a, article five of this chapter.

(2) For the general election, the heading of the ballot, the straight ticket positions, the instructions to straight ticket voters, the type faces, the names and arrangement of offices and the printing of names and the arrangement of candidates within each office are to conform as nearly as possible to section two, article six of this chapter, except as otherwise provided in this article.

(3) Effective with the primary election held in 2016, and thereafter, the following nonpartisan elections are to be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election and constituting a separate ballot wherever a separate ballot is required under this chapter:

(A) Nonpartisan elections for judicial offices, by division, of:

(i) Justice of the Supreme Court of Appeals;

(ii) Judge of the circuit court;

(iii) Family court judge; and

(iv) Magistrate;

(B) Nonpartisan elections for Board of Education; and

(C) Any question to be voted upon;

(4) Both the face and the reverse side of the ballot may contain the names of candidates only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

(5) The arrangement of candidates within each office is to be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes are to be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words 'WRITE-IN, IF ANY' are to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a position to mark the vote.

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are to be printed in the color of ink specified by the Secretary of State for the various political parties, and the general election ballot is to be printed in black ink. For electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary ballots and the general election ballot are to be printed in black ink. All ballots are to be printed, where applicable, on white paper suitable for automatic tabulation and are to contain a perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the same manner as provided in section thirteen, article five of this chapter, or are to be displayed on the screens of the electronic voting system upon which votes are recorded by means of a stylus or touch. The number of ballots printed and the packaging of ballots for the precincts are to conform to the requirements for paper ballots provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.

#### **ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

##### **§3-5-4. Nomination of candidates in primary elections.**

(a) At each primary election, the candidate or candidates of each political party for all offices to be filled at the ensuing general election by the voters of the entire state, of each congressional district, of each state senatorial district, of each delegate district, and of each county in the state shall be nominated by the voters of the different political parties, except that no presidential elector shall be nominated at a primary election.

(b) In primary elections a plurality of the votes cast shall be sufficient for the nomination of candidates for office. Where only one candidate of a political party for any office in a political division, including party committeemen and delegates to national conventions,

is to be chosen the candidate receiving the highest number of votes therefor in the primary election shall be declared the party nominee for such office. Where two or more such candidates are to be chosen in the primary election, the candidates constituting the proper number to be so chosen who shall receive the highest number of votes cast in the political division in which they are candidates shall be declared the party nominees and choices for such offices, except that:

(1) Candidates for the office of commissioner of the county commission shall be nominated and elected in accordance with the provisions of section ten, article nine of the Constitution of the State of West Virginia and the requirements of section one-b, article one, chapter seven of this code;

(2) Members of county boards of education shall be elected at primary elections in accordance with the provisions of sections five and six of this article;

(3) Candidates for the House of Delegates shall be nominated and elected in accordance with the residence restrictions provided in section two, article two, chapter one of this code.

(c) In case of tie votes between candidates for party nominations or elections in primary elections, the choice of the political party shall be determined by the executive committee of the party for the political division in which such persons are candidates.

### **§3-5-6a. Election of justices of the Supreme Court of Appeals.**

(a) An election for the purpose of electing a justice or justices of the Supreme Court of Appeals shall be held on the same date as the primary election, as provided by law, upon a nonpartisan ballot by division printed for this purpose. For election purposes, in each election at which shall be elected more than one justice of the Supreme Court of Appeals, the election shall be by numbered division

corresponding to the number of justices being elected. Each justice shall be elected at large from the entire state.

(b) In each nonpartisan election by division for a justice of the Supreme Court of Appeals, the candidates for election in each numbered division shall be tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms.

(c) In case of a tie vote under this section, section twelve, article six of this chapter controls in breaking the tie vote.

**§3-5-6b. Election of circuit judges.**

(a) An election for the purpose of electing a circuit court judge or judges shall be held on the same date as the primary election in their respective circuits, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

(b) In each nonpartisan election by division for a circuit court judge, the candidates for election in each numbered division shall be tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms.

(c) In case of a tie vote under this section, section twelve, article six of this chapter controls in breaking the tie vote.

**§3-5-6c. Election of family court judges.**

(a) An election for the purpose of electing a family court judge or judges shall be held on the same date as the primary election in their respective circuits, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

(b) In each nonpartisan election by division for a family court judge, the candidates for election in each numbered division shall be



tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms.

(c) In case of a tie vote under this section, section twelve, article six of this chapter controls in breaking the tie vote.

**§3-5-6d. Election of magistrates.**

(a) An election for the purpose of electing a magistrate or magistrates by division shall be held on the same date as the primary election in their respective circuits, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

(b) In each nonpartisan election by division for a magistrate, the candidates for election in each numbered division shall be tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms.

(c) In case of a tie vote under this section, section twelve, article six of this chapter controls in breaking the tie vote.

**§3-5-7. Filing announcements of candidacies; requirements; withdrawal of candidates when section applicable.**

(a) Any person who is eligible and seeks to hold an office or political party position to be filled by election in any primary or general election held under the provisions of this chapter shall file a certificate of announcement declaring his or her candidacy for the nomination or election to the office.

(b) The certificate of announcement shall be filed as follows:

(1) Candidates for the House of Delegates, the State Senate, circuit judge, family court judge, and any other office or political position to be filled by the voters of more than one county shall file a certificate of announcement with the Secretary of State.

(2) Candidates for an office or political position to be filled by the voters of a single county or a subdivision of a county, except for candidates for the House of Delegates, State Senate, circuit judge or family court judge, shall file a certificate of announcement with the clerk of the county commission.

(3) Candidates for an office to be filled by the voters of a municipality shall file a certificate of announcement with the recorder or city clerk.

(c) The certificate of announcement shall be filed with the proper officer not earlier than the second Monday in January before the primary election day and not later than the last Saturday in January before the primary election day and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked by the United States Postal Service before that hour. This includes the offices of justice of the Supreme Court of Appeals, circuit court judge, family court judge and magistrate, which are to be filled on a nonpartisan and division basis at the primary election.

(d) The certificate of announcement shall be on a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or other officer authorized to administer oaths, containing the following information:

(1) The date of the election in which the candidate seeks to appear on the ballot;

(2) The name of the office sought; the district, if any; and the division, if any;

(3) The legal name of the candidate and the exact name the candidate desires to appear on the ballot, subject to limitations prescribed in section thirteen, article five of this chapter;

(4) The county of residence and a statement that the candidate is a legally qualified voter of that county; and the magisterial district of

residence for candidates elected from magisterial districts or under magisterial district limitations;

(5) The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number and city, state and zip code;

(6) For partisan elections, the name of the candidate's political party and a statement that the candidate: (A) Is a member of and affiliated with that political party as evidenced by the candidate's current registration as a voter affiliated with that party; and (B) has not been registered as a voter affiliated with any other political party for a period of sixty days before the date of filing the announcement;

(7) For candidates for delegate to national convention, the name of the presidential candidate to be listed on the ballot as the preference of the candidate on the first convention ballot; or a statement that the candidate prefers to remain 'uncommitted';

(8) A statement that the person filing the certificate of announcement is a candidate for the office in good faith;

(9) The words 'subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_' and a space for the signature of the officer giving the oath.

(e) The Secretary of State or the board of ballot commissioners, as the case may be, may refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a certified copy of the voter's registration record of the candidate showing that the candidate was registered as a voter in a party other than the one named in the certificate of announcement during the sixty days immediately preceding the filing of the certificate: *Provided*, That unless a signed formal complaint of violation of this section and the certified copy of the voter's registration record of the candidate are filed with the officer receiving that candidate's certificate of announcement no later than ten

days following the close of the filing period, the candidate may not be refused certification for this reason.

(f) The certificate of announcement shall be subscribed and sworn to by the candidate before some officer qualified to administer oaths, who shall certify the same. Any person who knowingly provides false information on the certificate is guilty of false swearing and shall be punished in accordance with section three, article nine of this chapter.

(g) Any candidate for delegate to a national convention may change his or her statement of presidential preference by notifying the Secretary of State by letter received by the Secretary of State no later than the third Tuesday following the close of candidate filing. When the rules of the political party allow each presidential candidate to approve or reject candidates for delegate to convention who may appear on the ballot as committed to that presidential candidate, the presidential candidate or the candidate's committee on his or her behalf may file a list of approved or rejected candidates for delegate and the Secretary of State shall list as 'uncommitted' any candidate for delegate who is disapproved by the presidential candidate.

(h) A person may not be a candidate for more than one office or office division at any election: *Provided*, That a candidate for an office may also be a candidate for President of the United States, for membership on political party executive committees or for delegate to a political party national convention: *Provided, however*, That an unsuccessful candidate for a nonpartisan office in an election held concurrently with the primary election may be appointed under the provisions of section nineteen of this article to fill a vacancy on the general ballot.

(i) A candidate who files a certificate of announcement for more than one office or division and does not withdraw, as provided by section eleven, article five of this chapter, from all but one office prior to the close of the filing period may not be certified by the Secretary

of State or placed on the ballot for any office by the board of ballot commissioners.

**§3-5-13. Form and contents of ballots.**

The following provisions apply to the form and contents of election ballots:

(1) The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

(2) The heading of every ballot is to be printed in display type. The heading is to contain a ballot title, the name of the county, the state, the words 'Primary Election' and the month, day and year of the election. The ballot title of the political party ballots is to contain the words 'Official Ballot of the (Name) Party' and the official symbol of the political party may be included in the heading.

(A) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all judicial officer shall commence with the words 'Nonpartisan Ballot of Election of Judicial Officers' and each such office shall be listed in the following order:

(i) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all justices of the Supreme Court of Appeals shall contain the words 'Nonpartisan Ballot of Election of Justice(s) of the Supreme Court of Appeals of West Virginia'. The names of the candidates for the Supreme Court of Appeals shall be printed by division without references to political party affiliation or registration.

(ii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all circuit court judges in the respective circuits shall contain the words 'Nonpartisan Ballot of Election of Circuit Court Judge(s)'. The names of the candidates for the respective circuit court judge office shall be printed by division without references to political party affiliation or registration.

(iii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all family court judges in the respective circuits shall contain the words ‘Nonpartisan Ballot of Election of Family Court Judge(s)’. The names of the candidates for the respective family court judge office shall be printed by division without references to political party affiliation or registration.

(iv) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all magistrates in the respective circuits shall contain the words ‘Nonpartisan Ballot of Election of Magistrate(s)’. The names of the candidates for the respective magistrate office shall be printed by division without references to political party affiliation or registration.

(B) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for the Board of Education is to contain the words ‘Nonpartisan Ballot of Election of Members of the \_\_\_\_\_ County Board of Education’. The districts for which less than two candidates may be elected and the number of available seats are to be specified and the names of the candidates are to be printed without reference to political party affiliation and without designation as to a particular term of office.

(C) Any other ballot or portion of a ballot on a question is to have a heading which clearly states the purpose of the election according to the statutory requirements for that question.

(3) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the ballot by heavy lines and the offices shall be arranged in columns with the following headings, from left to right across the ballot: ‘National Ticket’, ‘State Ticket’, ‘County Ticket’ and, in a presidential election year, ‘National Convention’ or, in a nonpresidential election year, ‘District Ticket’. The columns are to be separated by heavy lines. Within the columns, the offices are to be arranged in the order prescribed in section thirteen-a of this article.

(B) For voting machines, electronic voting devices and any ballot tabulated by electronic means, the offices are to appear in the same sequence as prescribed in section thirteen-a of this article and under the same headings as prescribed in paragraph (A) of this subdivision. The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements subject to approval by the Secretary of State.

(C) The title of each office is to be separated from preceding offices or candidates by a line and is to be printed in bold type no smaller than eight point. Below the office is to be printed the number of the district, if any, the number of the division, if any, and the words 'Vote for \_\_\_\_\_' with the number to be nominated or elected or 'Vote For Not More Than \_\_\_\_\_' in multicandidate elections. For offices in which there are limitations relating to the number of candidates which may be nominated, elected or appointed to or hold office at one time from a political subdivision within the district or county in which they are elected, there is to be a clear explanation of the limitation, as prescribed by the Secretary of State, printed in bold type immediately preceding the names of the candidates for those offices on the ballot in every voting system. For counties in which the number of county commissioners exceeds three and the total number of members of the county commission is equal to the number of magisterial districts within the county, the office of county commission is to be listed separately for each district to be filled with the name of the magisterial district and the words 'Vote for One' printed below the name of the office: *Provided*, That the office title and applicable instructions may span the width of the ballot so as it is centered among the respective columns.

(D) The location for indicating the voter's choices on the ballot is to be clearly shown. For paper ballots, other than those tabulated electronically, the official primary ballot is to contain a square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular column of squares before each column of names.

(4) (A) The name of every candidate certified by the Secretary of State or the board of ballot commissioners is to be printed in capital letters in no smaller than eight point type on the ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State, the name of each candidate is to appear in the form set out by the candidate on the certificate of announcement, but in no case may the name misrepresent the identity of the candidate nor may the name include any title, position, rank, degree or nickname implying or inferring any status as a member of a class or group or affiliation with any system of belief.

(B) The city of residence of every candidate, the state of residence of every candidate residing outside the state, the county of residence of every candidate for an office on the ballot in more than one county and the magisterial district of residence of every candidate for an office subject to magisterial district limitations are to be printed in lower case letters beneath the names of the candidates.

(C) The arrangement of names within each office must be determined as prescribed in section thirteen-a of this article.

(D) If the number of candidates for an office exceeds the space available on a column or ballot page and requires that candidates for a single office be separated, to the extent possible, the number of candidates for the office on separate columns or pages are to be nearly equal and clear instructions given the voter that the candidates for the office are continued on the following column or page.

(5) When an insufficient number of candidates has filed for a party to make the number of nominations allowed for the office or for the voters to elect sufficient members to the Board of Education or to executive committees, the vacant positions on the ballot shall be filled with the words 'No Candidate Filed': *Provided*, That in paper ballot systems which allow for write-ins to be made directly on the ballot, a blank line shall be placed in any vacant position in the office of Board of Education or for election to any party executive committee. A line



shall separate each candidate from every other candidate for the same office. Notwithstanding any other provision of this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be filled with the words 'No Candidate Filed' may be replaced with a brief detailed description, approved by the Secretary of State, indicating that there are no candidates listed for the vacant positions.

(6) In presidential election years, the words 'For election in accordance with the plan adopted by the party and filed with the Secretary of State' is to be printed following the names of all candidates for delegate to national convention.

(7) All paper ballots are to be printed in black ink on paper sufficiently thick so that the printing or marking cannot be discernible from the back: *Provided*, That no paper ballot voted pursuant to the provisions of 42 U. S. C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, or federal write-in absentee ballot may be rejected due to paper type, envelope type, or notarization requirement. Ballot cards and paper for printing ballots using electronically sensible ink are to meet minimum requirements of the tabulating systems and are to conform in size and weight to ensure ease in tabulation.

(8) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with unique sequential numbers from one to the highest number representing the total number of ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth of an inch wide and the ballot is to be trimmed to within one-half inch of that border.

(9) On the back of every official ballot or ballot card the words 'Official Ballot' with the name of the county and the date of the election are to be printed. Beneath the date of the election there are to be two blank lines followed by the words 'Poll Clerks'.

(10) The face of sample paper ballots and sample ballot labels are to be like other official ballots or ballot labels except that the word ‘sample’ is to be prominently printed across the front of the ballot in a manner that ensures the names of candidates are not obscured and the word ‘sample’ may be printed in red ink. No printing may be placed on the back of the sample.

**§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.**

(a) The order of offices for state and county elections on all ballots within the state shall be as prescribed herein. When the office does not appear on the ballot in an election, then it shall be omitted from the sequence. When an unexpired term for an office appears on the ballot along with a full term, the unexpired term shall appear immediately below the full term.

NATIONAL TICKET: President (and Vice President in the general election), United States Senator, member of the United States House of Representatives.

STATE TICKET: Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture, Attorney General, State Senator, member of the House of Delegates, any other multicounty office, state executive committee.

COUNTY TICKET: Clerk of the circuit court, county commissioner, clerk of the county commission, prosecuting attorney, sheriff, assessor, surveyor, congressional district executive committee, senatorial district executive committee in multicounty districts, delegate district executive committee in multicounty districts.

NATIONAL CONVENTION: Delegate to the national convention — at-large, delegate to the national convention — congressional district.

DISTRICT TICKET: County executive committee.

(b) Except for office divisions in which no more than one person has filed a certificate of announcement, the arrangement of names for all offices shall be determined by lot according to the following provisions:

(1) On the fourth Tuesday following the close of the candidate filing, beginning at nine o'clock a. m., a drawing by lot shall be conducted in the office of the clerk of the county commission in each county. Notice of the drawing shall be given on the form for the certificate of announcement and no further notice shall be required. The clerk of the county commission shall superintend and conduct the drawing and the method of conducting the drawing shall be prescribed by the Secretary of State.

(2) Except as provided herein, the position of each candidate within each office division shall be determined by the position drawn for that candidate individually: *Provided*, That if fewer candidates file for an office division than the total number to be nominated or elected, the vacant positions shall appear following the names of all candidates for the office.

(3) Candidates for delegate to national convention who have filed a commitment to a candidate for president shall be listed alphabetically within the group of candidates committed to the same candidate for president and uncommitted candidates shall be listed alphabetically in an uncommitted category. The position of each group of committed candidates and uncommitted candidates shall be determined by lot by drawing the names of the presidential candidates and for an uncommitted category.

(4) A candidate or the candidate's representative may attend the drawings.

#### **ARTICLE 10. FILLING VACANCIES.**

##### **§3-10-3. Vacancies in offices of state officials, United States Senators and judges.**

(a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, or in any office created or made elective to be filled by the voters of the entire state, is filled by the Governor of the state by appointment and subsequent election to fill the remainder of the term, if required by section one of this article.

(b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge of a circuit court or judge of a family court is filled by the Governor of the state by appointment and subsequent election to fill the remainder of the term, as required by subsection (d) of this section. If an election is required under subsection (d) of this section, the Governor, circuit court or the chief judge thereof in vacation, is responsible for the proper proclamation by order and notice required by section one of this article.

(c) Any vacancy in the office of magistrate is appointed according to the provisions of section six, article one, chapter fifty of this code, and subsequent election to fill the remainder of the term, as required by subsection (d) of this section.

(d) (1) When the vacancy in Justice of the Supreme Court of Appeals, judge of the circuit court, judge of a family court or magistrate occurs after the eighty-fourth day before a general election, and the affected term of office ends on the thirty-first day of December following the next election, the person appointed to fill the vacancy shall continue in office until the completion of the term.

(2) When the vacancy occurs before the close of the candidate filing period for the primary election, the vacancy shall be filled by election in the nonpartisan judicial election held concurrently with the primary election, and the appointment shall continue until a successor is elected and certified.

(3) When the vacancy occurs after the close of candidate filing for the primary election and not later than eighty-four days before the general election, the vacancy shall be filled by election in a nonpartisan

judicial election held concurrently with the general election, and the appointment shall continue until a successor is elected and certified.

(e) When an election to fill a vacancy is required to be held at the general election according to the provisions of subsection (d) of this section, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for Justice of the Supreme Court of Appeals, judge of a circuit court, judge of the family court or magistrate shall file a certificate of announcement and pay the filing fee no earlier than the first Monday in August and no later than seventy-seven days before the general election.

**ARTICLE 12. WEST VIRGINIA SUPREME COURT OF APPEALS PUBLIC  
CAMPAIGN FINANCING PILOT PROGRAM.**

**§3-12-3. Definitions.**

As used in this article, the following terms and phrases have the following meanings:

(1) ‘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.

(2) ‘Certified candidate’ means an individual seeking election to the West Virginia Supreme Court of Appeals who has been certified in accordance with section ten of this article as having met all of the requirements for receiving public campaign financing from the fund.

(3) ‘Contribution’ means a gift subscription, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance or 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. 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.

(4) ‘Exploratory contribution’ means a contribution of no more than \$1,000 made by an individual adult, including a participating candidate and members of his or her immediate family, during the exploratory period but prior to filing the declaration of intent. Exploratory contributions may not exceed \$20,000 in the aggregate.

(5) ‘Exploratory period’ means the period during which a participating candidate may raise and spend exploratory contributions to examine his or her chances of election and to qualify for public campaign financing under this article. The exploratory period begins on January 1 the year before the election in which the candidate may run for Justice of the Supreme Court of Appeals and ends on the last Saturday in January of the election year.

(6) ‘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.

(7) ‘Fund’ means the Supreme Court of Appeals Public Campaign Financing Fund created by section five of this article.

(8) ‘Immediate family’ or ‘immediate family members’ means the spouse, parents, step-parents, siblings and children of the participating candidate.

(9) ‘Nonparticipating candidate’ means a candidate who is:

(A) Seeking election to the Supreme Court of Appeals;

(B) Is neither certified nor attempting to be certified to receive public campaign financing from the fund; and

(C) Has an opponent who is a participating or certified candidate.

(10) ‘Nonpartisan judicial election campaign period’ means the period beginning on the first day of the primary election filing period, as determined under section seven, article five of this chapter, and ending on the day of the nonpartisan judicial election.

(11) ‘Participating candidate’ means a candidate who is seeking election to the Supreme Court of Appeals and is attempting to be certified in accordance with section ten of this article to receive public campaign financing from the fund.

(12) ‘Person’ means an individual, partnership, committee, association and any other organization or group of individuals.

(13) ‘Qualifying contribution’ means a contribution received from a West Virginia registered voter of not less than \$1 nor more than \$100 in the form of cash, check or money order, made payable to a participating candidate or the candidate’s committee, or in the form of an electronic payment or debit or credit card payment, received during the qualifying period.

(14) ‘Qualifying period’ means the period during which participating candidates may raise and spend qualifying contributions in order to qualify to receive public campaign financing.

For candidates seeking to be placed on the nonpartisan judicial election ballot, the qualifying period begins on September 1 preceding the election year and ends on the last Saturday in January of the election year.

**§3-12-6. Sources of revenue for the fund.**

Revenue from the following sources shall be deposited in the fund:

(1) All exploratory and qualifying contributions in excess of the established maximums;

(2) Money returned by participating or certified candidates who fail to comply with this article;

(3) Unspent or unobligated moneys allotted to certified candidates and remaining unspent or unobligated on the date of the nonpartisan judicial election for which the money was distributed;

(4) If a certified candidate loses, all remaining unspent or unobligated moneys;

(5) Civil penalties levied by the State Election Commission against candidates for violations of this article;

(6) Civil penalties levied by the Secretary of State pursuant to section seven, article eight of this chapter;

(7) Voluntary donations made directly to the fund;

(8) Any interest income or other return earned on the money's investment;

(9) On or before July 1, 2010, and for two successive years thereafter, the State Auditor shall authorize the transfer of the amount of \$1 million from the Purchasing Card Administration Fund established in section ten-d, article three, chapter twelve of this code to the fund created by this article;

(10) On or before July 1, 2015, the state Auditor shall authorize the transfer of the amount of \$400,000 from the Purchasing Card Administration Fund established in section ten-d, article three, chapter twelve of this code to the fund created by this article; and



(11) Money appropriated to the fund.

**§3-12-10. Certification of candidates.**

(a) To be certified, a participating candidate shall apply to the State Election Commission for public campaign financing from the fund and file a sworn statement that he or she has complied and will comply with all requirements of this article throughout the applicable campaign.

(b) Upon receipt of a notice from the Secretary of State that a participating candidate has received the required number and amount of qualifying contributions, the State Election Commission shall determine whether the candidate or candidate's committee:

(1) Has signed and filed a declaration of intent as required by section seven of this article;

(2) Has obtained the required number and amount of qualifying contributions as required by section nine of this article;

(3) Has complied with the contribution restrictions of this article;

(4) Is eligible, as provided in section nine, article five of this chapter, to appear on the nonpartisan judicial election ballot; and

(5) Has met all other requirements of this article.

(c) The State Election Commission shall process applications in the order they are received and shall verify a participating candidate's compliance with the requirements of subsection (b) of this section by using the verification and sampling techniques approved by the State Election Commission.

(d) The State Election Commission shall determine whether to certify a participating candidate as eligible to receive public campaign financing no later than three business days after the candidate or the candidate's committee makes his or her final report of qualifying contributions or, if a challenge is filed under subsection (g) of this

section, no later than six business days after the candidate or the candidate's committee makes his or her final report of qualifying contributions. A certified candidate shall comply with this article through the nonpartisan judicial election campaign period.

(e) No later than two business days after the State Election Commission certifies that a participating candidate is eligible to receive public campaign financing under this section, the State Election Commission, acting in concert with the State Auditor's office and the State Treasurer's office, shall cause a check to be issued to the candidate's campaign depository account an amount equal to the public campaign financing benefit for which the candidate qualifies under section eleven of this article, minus the candidate's qualifying contributions, and shall notify all other candidates for the same office of its determination.

(f) If the candidate desires to receive public financing benefits by electronic transfer, the candidate shall include in his or her application sufficient information and authorization for the State Treasurer to transfer payments to his or her campaign depository account.

(g) Any person may challenge the validity of any contribution listed by a participating candidate by filing a written challenge with the State Election Commission setting forth any reason why the contribution should not be accepted as a qualifying contribution. If a contribution is challenged under this subsection, the State Election Commission shall decide the validity of the challenge no later than the end of the next business day after the day that the challenge is filed, unless the State Election Commission determines that the candidate whose contribution is challenged has both a sufficient qualifying number and amount of qualifying contributions to be certified as a candidate under this section without considering the challenge. Within five business days of a challenge, the candidate or candidate's committee who listed any contribution that is the subject of a challenge may file a report with the State Election Commission of an additional contribution collected pursuant to section nine of this article for consideration as a qualifying contribution.

(h) A candidate's certification and receipt of public campaign financing may be revoked by the State Election Commission, if the candidate violates this article. A certified candidate who violates this article shall repay all moneys received from the fund to the State Election Commission.

(i) The determination of any issue before the State Election Commission is the final administrative determination. Any meetings conducted by the State Elections Commission to certify a candidate's eligibility to receive funds under this article shall not be subject the public notice and open meeting requirements of article nine-a, chapter six of this code, but the commission shall concurrently provide public notice of any decision and determination it makes which impacts the candidate's eligibility to receive funds pursuant to this article. Any person adversely affected by a decision of the State Election Commission under this article may appeal that decision to the circuit court of Kanawha County.

(j) A candidate may withdraw from being a certified candidate and become a nonparticipating candidate at any time with the approval of the State Election Commission. Any candidate seeking to withdraw shall file a written request with the State Election Commission, which shall consider requests on a case-by-case basis. No certified candidate may withdraw until he or she has repaid all moneys received from the fund: *Provided*, That the State Election Commission may, in exceptional circumstances, waive the repayment requirement. The State Election Commission may assess a penalty not to exceed \$10,000 against any candidate who withdraws without approval.

### **§3-12-11. Schedule and amount of Supreme Court of Appeals Public Campaign Financing Fund payments.**

(a) The State Election Commission, acting in concert with the State Auditor's office and the State Treasurer's office, shall have a check issued within two business days after the date on which the candidate is certified, to make payments from the fund for the nonpartisan judicial election campaign period available to a certified candidate.

In a contested nonpartisan judicial election, a certified candidate shall receive \$525,000 in campaign financing from the fund, minus the certified candidate's qualifying contributions.

(b) The State Election Commission shall authorize the distribution of campaign financing moneys to certified candidates in equal amounts. The commission shall propose a legislative rule on distribution of funds.

(c) The State Election Commission may not authorize or direct the distribution of moneys to certified candidates in excess of the total amount of money deposited in the fund pursuant to section six of this article. If the commission determines that the money in the fund is insufficient to totally fund all certified candidates, the commission shall authorize the distribution of the remaining money proportionally, according to each candidate's eligibility for funding. Each candidate may raise additional money in the same manner as a nonparticipating candidate for the same office up to the unfunded amount of the candidate's eligible funding.

### **§3-12-12. Restrictions on contributions and expenditures.**

(a) A certified candidate or his or her committee may not accept loans or contributions from any private source, including the personal funds of the candidate and the candidate's immediate family, during the nonpartisan judicial election campaign period except as permitted by this article.

(b) After filing the declaration of intent and during the qualifying period, a participating candidate may not spend or obligate more than he or she has collected in exploratory and qualifying contributions. After the qualifying period and through the nonpartisan judicial election campaign period, a certified candidate may spend or obligate any unspent exploratory or qualifying contributions and the moneys he or she receives from the fund under the provisions of section eleven of this article.

(c) A participating or certified candidate may expend exploratory and qualifying contributions and funds received from the fund only for lawful election expenses as provided in section nine, article eight of this chapter. Moneys distributed to a certified candidate from the fund may be expended only during the nonpartisan judicial election campaign period for which funds were dispersed. Money from the fund may not be used:

(1) In violation of the law;

(2) To repay any personal, family or business loans, expenditures or debts; or

(3) To help any other candidate.

(d) A certified candidate or his or her committee shall return to the fund any unspent and unobligated exploratory contributions, qualifying contributions or moneys received from the fund within forty-eight hours after the date on which the candidate ceases to be certified.

(e) A certified candidate or his or her committee shall return to the fund any unspent or unobligated public campaign financing funds no later than five business days after the nonpartisan judicial election.

(f) A contribution from one person may not be made in the name of another person.

(g) A participating or certified candidate or his or her committee receiving qualifying contributions or exploratory contributions from a person not listed on the receipt required by sections eight and nine of this article is liable to the State Election Commission for the entire amount of that contribution and any applicable penalties.

(h) A certified candidate accepting any benefits under the provisions of this article shall continue to comply with all of its provisions throughout the nonpartisan judicial election campaign period.

(i) A participating or certified candidate or his or her financial agent shall provide the Secretary of State with all requested campaign records, including all records of exploratory and qualifying contributions received and campaign expenditures and obligations, and shall fully cooperate with any audit of campaign finances requested or authorized by the State Election Commission.

**§3-12-14. Duties of the State Election Commission; Secretary of State.**

(a) In addition to its other duties, the State Election Commission shall carry out the duties of this article and complete the following as applicable:

(1) Prescribe forms for reports, statements, notices and other documents required by this article;

(2) Make an annual report to the Legislature accounting for moneys in the fund, describing the State Election Commission's activities and listing any recommendations for changes of law, administration or funding amounts;

(3) Propose emergency and legislative rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code, as may be necessary for the proper administration of this article;

(4) Enforce this article to ensure that moneys from the fund are placed in candidate campaign accounts and spent as specified in this article;

(5) Monitor reports filed pursuant to this article and the financial records of candidates to ensure that qualified candidates receive funds promptly and to ensure that moneys required by this article to be paid to the fund are deposited in the fund;

(6) Cause an audit of the fund to be conducted by independent certified public accountants ninety days after a nonpartisan judicial election. The State Election Commission shall cooperate with the audit,

provide all necessary documentation and financial records to those persons conducting the audit and shall maintain a record of all information supplied by the audit;

(7) In consultation with the State Treasurer and the State Auditor, develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the commission shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability and safeguards the integrity of the fund;

(8) Regularly monitor the receipts, disbursements, obligations and balance in the fund to determine whether the fund will have sufficient moneys to meet its obligations and sufficient moneys available for disbursement during the nonpartisan judicial election campaign period; and

(9) Transfer a portion of moneys maintained in the fund to the West Virginia Investment Management Board for their supervised investment, after consultation with the State Treasurer, the State Auditor and the West Virginia Investment Management Board.

(b) In addition to his or her other duties, the Secretary of State shall carry out the duties of this article and complete the following as applicable:

(1) Prescribe forms for reports, statements, notices and other documents required by this article;

(2) Prepare and publish information about this article and provide it to potential candidates and citizens of this state;

(3) Prepare and publish instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with this article and to explain the duties of candidates and others participating in elections under this article;

(4) Propose emergency and legislative rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code as may be necessary for the proper administration of this article;

(5) Enforce this article to ensure that moneys from the fund are placed in candidate campaign accounts and spent as specified in this article;

(6) Monitor reports filed pursuant to this article and the financial records of candidates to ensure that qualified candidates receive funds promptly and to ensure that moneys required by this article to be paid to the fund are deposited in the fund;

(7) Ensure public access to the campaign finance reports required pursuant to this article, and whenever possible, use electronic means for the reporting, storing and display of the information; and

(8) Prepare a voters' guide for the general public listing the names of each candidate seeking election to the Supreme Court of Appeals. Both certified and nonparticipating candidates shall be invited by the State Election Commission to submit a statement, not to exceed five hundred words in length, for inclusion in the guide. The guide shall identify the candidates that are certified candidates and the candidates that are nonparticipating candidates. Copies of the guide shall be posted on the website of the Secretary of State, as soon as may be practical.

(c) To fulfill their responsibilities under this article, the State Election Commission and the Secretary of State may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require, by subpoena, the production of any books, papers, records or other items material to the performance of their duties or the exercise of their powers.

(d) The State Election Commission may also propose and adopt procedural rules to carry out the purposes and provisions of this article and to govern procedures of the State Election Commission as it relates to the requirements of this article.



**CHAPTER 6. GENERAL PROVISIONS  
RESPECTING OFFICERS.**

**ARTICLE 5. TERMS OF OFFICE; MATTERS AFFECTING THE RIGHT TO  
HOLD OFFICE.**

**§6-5-1. When terms of office to begin.**

The terms of officers, except when elected or appointed to fill vacancies, shall begin respectively as follows: That of Governor, Secretary of State, State Superintendent of Free Schools, Treasurer, Auditor, Attorney General and Commissioner of Agriculture, on the first Monday after the second Wednesday of January next after their election; that of a member of the Legislature, on December 1, next after his or her election; and that of the justices of the Supreme Court of Appeals, the judges of the several circuit courts, the judges of the family and other inferior courts, the county commissioners, prosecuting attorneys, surveyors of land, assessors, sheriffs, clerks of the circuit, or other inferior courts, clerks of the county commissions, magistrates, on January 1, next after their election.

Whenever a person is elected or appointed to fill a vacancy, his or her term shall be as prescribed by chapter three of this code.

**CHAPTER 50. MAGISTRATE COURTS.**

**ARTICLE 1. COURTS AND OFFICERS.**

**§50-1-1. Magistrate court created.**

There is hereby created in each county of this state a magistrate court with such numbers of magistrates for each court as are hereafter provided. There shall be elected by the voters of each county, at the general election to be held in 1976, and in every fourth year thereafter, such number of magistrates as is provided in section two of this article. The filing fee for the office of magistrate shall be one percent of the annual salary. The term of magistrates shall be for four years and shall begin on January 1, of the year following the year of election.

Effective with the primary election of 2016, all elections for magistrates will be on a nonpartisan basis by division. Beginning in 2016, there will no longer be primary elections held for magistrates and all elections for magistrates are to be held in the nonpartisan judicial election as set forth in article five, chapter three of this code. All indications of party identification on election ballots for magistrate shall be omitted.

#### **§50-1-6. Vacancy in office of magistrate.**

Subject to the provisions of section one, article ten, chapter three of this code, when a vacancy occurs in the office of magistrate, the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, shall fill the same by appointment.

At a nonpartisan judicial election in which a magistrate is elected for an unexpired term, the circuit judge, or the chief judge thereof if there is more than one judge of the circuit court, shall cause a notice of such election to be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved.

### **CHAPTER 51. COURTS AND THEIR OFFICERS.**

#### **ARTICLE 1. SUPREME COURT OF APPEALS.**

##### **§51-1-1. Justices.**

The Supreme Court of Appeals shall consist of five justices, elected and qualified according to the Constitution and the laws of this state, any three of whom shall constitute a quorum. Effective with the primary election of 2016, all elections for justices will be on a nonpartisan basis by division. Beginning in 2016, there will no longer be primary elections held for the office of justice and all elections for justice are to be held in the nonpartisan judicial election as set forth in

article five, chapter three of this code. All indications of party identification on election ballots for that office shall be omitted.

**ARTICLE 2A. FAMILY COURTS.**

**§51-2A-5. Term of office of family court judge; initial appointment; elections.**

(a) Beginning with the election to be conducted in the year 2016, family court judges shall be elected. In family court circuits having two or more family court judges there shall be, for election purposes, numbered divisions corresponding to the number of family court judges in each area. Each family court judge shall be elected at large by the entire family court circuit. In each numbered division of a family court circuit, the candidates for nomination or 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 family court circuit. The candidate or candidates receiving the highest number of the votes cast within a numbered division shall be nominated or elected, as the case may be. Effective with the primary election of 2016, all elections for family court judges in the respective circuits will be on a nonpartisan basis by division. Beginning in 2016, there will no longer be primary elections held for family court judges and all elections for family court judges are to be held in the nonpartisan judicial election as set forth in article five, chapter three of this code. All indications of party identification on election ballots for family court judge shall be omitted.

(b) The term of office for all family court judges elected in 2002 shall be for six years, commencing on January 1, 2003, and ending on December 31, 2008. Subsequent terms of office for family court judges elected thereafter shall be for eight years.”

On motion of Delegate Cowles, the House of Delegates proceeded to reconsider the bill (Enr. Com. Sub. for H. B. 2010), notwithstanding the objections of the Governor.

The Speaker propounded, "Shall the bill pass, as a result of the objections of the Governor?"

On this question, the yeas and nays were taken (**Roll No. 400**), and there were—yeas 81, nays 12, absent and not voting 7, with the nays and absent and not voting being as follows:

YEAS: Ambler, Anderson, Arvon, Ashley, Azinger, Bates, Blair, Border, Butler, Byrd, Cadle, Campbell, Canterbury, Cooper, Cowles, Deem, Duke, Ellington, Espinosa, A. Evans, D. Evans, Faircloth, Fast, Fluharty, Folk, Foster, Frich, Gearheart, Hamilton, Hamrick, Hanshaw, Hartman, Hicks, Hill, Householder, Howell, Ihle, Ireland, Kelly, Kessinger, Kurcaba, Lane, McCuskey, McGeehan, Miley, Miller, Moffatt, Moye, E. Nelson, J. Nelson, O'Neal, Overington, Pasdon, Pethtel, L. Phillips, R. Phillips, Rodighiero, Rohrbach, Rowan, Rowe, Shott, Skinner, P. Smith, R. Smith, Sobonya, Sponaugle, Stansbury, Statler, Storch, Summers, Trecost, Upson, Wagner, Walters, Waxman, Weld, Westfall, B. White, Williams, Zatezalo and Mr. Speaker (Mr. Armstead).

NAYS: Caputo, Ferro, Fleischauer, Guthrie, Hornbuckle, Longstreth, Lynch, Manchin, Perdue, Perry, Pushkin and H. White.

ABSENT AND NOT VOTING: Boggs, Eldridge, Marcum, Moore, Morgan, Reynolds and Romine.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Enr. Com. Sub. for H. B. 2010) passed, as a result of the objections of the Governor.

On motion of Delegate Cowles, the title of the bill was amended to to read as follows:

**Com. Sub. for H. B. 2010** - "AN ACT to amend and reenact §3-1-16 and §3-1-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-4A-11a of said code; to amend and reenact §3-5-4 of said code; to amend said code by adding thereto four new sections,

designated §3-5-6a, §3-5-6b, §3-5-6c and §3-5-6d; to amend and reenact §3-5-7, §3-5-13 and §3-5-13a of said code; to amend and reenact §3-10-3 of said code; to amend and reenact §3-12-3, §3-12-6, §3-12-10, §3-12-11, §3-12-12 and §3-12-14 of said code; to amend and reenact §6-5-1 of said code; to amend and reenact §50-1-1 and §50-1-6 of said code; to amend and reenact §51-1-1 of said code; and to amend and reenact §51-2A-5 of said code, all relating to electoral reforms of the West Virginia judiciary generally; requiring the election of justices of the Supreme Court of Appeals, circuit court judges, family court judges and magistrates be on a nonpartisan basis; requiring that elections to certain offices be on a division basis when more than one justice of the Supreme Court of Appeals, circuit judge, family court judge or magistrate is to be elected; providing for the timing and frequency of election; providing for the commencement of terms of office; establishing ballot design and printing; providing that elections for justice of the Supreme Court of Appeals, circuit judge, family court judge or magistrate are to be held on the same date as the primary election; requiring nonpartisan ballots be used; establishing filing announcement of candidacies, including the timing, location and information necessary thereto; providing for the order of appearance of offices on the ballot; establishing ballot content; providing the procedures for the filling of vacancies in the offices of justices of the Supreme Court of Appeals, circuit judge, family court judge or magistrate; providing occasions for special elections to be held to fill vacancies; providing that unsuccessful nonpartisan candidates can be selected to fill ballot vacancies in a general election; providing for the continuing applicability of the West Virginia Supreme Court of Appeals Public Campaign Financing Program; modifying the amount of public campaign financing available to qualifying candidates in a contested election; and removing public campaign financing from qualifying candidates in an uncontested election.”

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

At 6:02 P.M., the House of Delegates adjourned until 11:00 A.M., Tuesday, March 10, 2015.



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TUESDAY, MARCH 10, 2015

**FIFTY-SIXTH DAY**

[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

The House of Delegates met at 11:00 A.M., and was called to order by the Honorable Tim Armstead, Speaker.

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

The Clerk proceeded to read the Journal of Monday, March 9, 2015, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**COMMITTEE REPORTS**

Delegate Gearheart, Chair of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

**H. C. R. 70**, The Army SPC 4 Everette R. Johnson Memorial Bridge,

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

**Com. Sub. for H. C. R. 70** - "Requesting the Division of Highways to name the Indian Creek Bridge #3, bridge number 32-122-8.95 (32A056), latitude 37.52981, longitude -80.65837, carrying West Virginia Route 122 over Indian Creek, in Fayette

County, the 'U.S. Army SPC 4 Everette R. Johnson Memorial Bridge',”

With the recommendation that the committee substitute be adopted, but that it first be referred to the Committee on Rules.

In accordance with the former direction of the Speaker, the resolution (Com. Sub. for H. C. R. 70) was referred to the Committee on Rules.

Delegate Gearheart, Chair of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

**Com. Sub. for S. B. 486**, Authorizing special license plates for Civil Air Patrol vehicles,

And reports the same back with the recommendation that it do pass, and with the recommendation that second reference of the bill to the Committee on the Judiciary be dispensed with.

In the absence of objection, reference of the bill (Com. Sub. for S. B. 486) to the Committee on the Judiciary was abrogated.

Delegate Gearheart, Chair of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

**S. C. R. 29**, Requesting DOH name bridge in Kanawha County “Rosie the Riveter Memorial Bridge”,

**H. C. R. 44**, The North River Mills Historic Trace,

And,



**H. C. R. 112**, The Howard M. “Toddy” Loudin Memorial Highway,

And reports the same back with the recommendation that they each be adopted, but that they first be referred to the Committee on Rules.

In accordance with the former direction of the Speaker, the resolutions (S. C. R. 29, H. C. R. 44 and H. C. R. 112) were each referred to the Committee on Rules.

Delegate Gearheart, Chair of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

**Com. Sub. for S. B. 353**, Designating State Police Superintendent administrator and enforcer of motor vehicle inspection program,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 353) was referred to the Committee on the Judiciary.

#### MESSAGES FROM THE EXECUTIVE

Mr. Speaker, Mr. Armstead, presented a communication from His Excellency, the Governor, advising that on March 9, 2015, he approved **Com. Sub. for S. B. 335**.

#### MESSAGES FROM THE SENATE

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 2053**, Relating to the form of trust deeds.

On motion of Delegate Cowles, the bill was taken up for immediate consideration.

On motion of Delegate Cowles, the House of Delegates concurred in the following Senate amendments:

On page one, by striking out everything after the enacting section and inserting in lieu thereof the following:

**“CHAPTER 38. LIENS.**

**ARTICLE 1. VENDOR’S AND TRUST DEED LIENS.**

**§38-1-2. Form of deed of trust; memorandum of deed of trust may be recorded.**

A ~~trust deed~~ deed of trust to secure debts or indemnify sureties may be in the following form or to the same effect: ‘This deed made the ..... day of ....., in the year ....., between ..... (the grantor) of the one part, and ..... (the trustee) of the other part, witnesseth: That the said ..... (the grantor) doth (or do) grant unto the said ..... (the trustee) the following property (here describe it). In trust to secure (here describe the debts to be secured or the sureties to be indemnified, and insert covenants, or any other provisions the parties may agree upon). Witness the following signature.’

In lieu of the recording of a deed of trust, there may be recorded with like effect a memorandum of the deed of trust, executed by all persons who are grantors under the deed of trust and acknowledged in the manner to entitle a conveyance to be recorded. A memorandum of deed of trust entitled to be recorded shall contain at least the following information with respect to the deed of trust: (1) The name and the address of each grantor, the name and the address of each trustee and the name and the address of each beneficiary as set forth in the deed of trust; (2) a reference to the indebtedness secured by the deed of trust including the amount of the indebtedness and the date the indebtedness

was incurred or if the indebtedness is evidenced by a note or contract, the date the instrument was executed; (3) the date of execution of the deed of trust if different than the date the evidence of indebtedness was executed; (4) the date of maturity of the indebtedness; (5) the description of the real estate against which a lien is claimed to secure the indebtedness; (6) a title in compliance with subsection (b), section fourteen, article one, chapter thirty-eight of this code if the indebtedness is a line of credit; (7) a statement of whether advances are obligatory if the indebtedness is a line of credit; (8) provisions of the deed of trust regarding substitution of a trustee; (9) a summary of the applicable notice and publication requirements if there is a default; (10) whether the loan was originated or serviced pursuant to a program of the following agencies or organizations, and if so, any form number actually used: (a) Federal Housing Administration; (b) Veterans Administration; (c) Federal National Mortgage Association; (d) Federal Home Loan Administration; (e) United States Department of Agriculture; or (f) West Virginia Housing Development Fund; and (11) the name of the person from whom, upon written request from any interested party, the original deed of trust, or a copy thereof, may be obtained. The memorandum shall constitute notice of only the information contained therein but, as against creditors and purchasers, it is as valid as if the complete deed of trust were recorded on the date the memorandum is admitted to record. Prior to the commencement of any foreclosure or other execution of the deed of trust, the original deed of trust shall be recorded.

## **CHAPTER 40. ACTS VOID AS TO CREDITORS AND PURCHASERS.**

### **ARTICLE 1. ACTS GENERALLY VOID AS TO CREDITORS AND PURCHASERS.**

#### **§40-1-9. Contracts, deeds and mortgages invalid as to creditors and purchasers until recorded.**

Every such contract, every deed conveying any such estate or term, and every deed of gift, or ~~trust deed~~ deed of trust or memorandum of deed of trust pursuant to section two, article one, chapter thirty-eight

of this code, or mortgage, conveying real estate shall be void, as to creditors, and subsequent purchasers for valuable consideration without notice, until and except from the time that it is duly admitted to record in the county wherein the property embraced in such contract, deed, ~~trust deed~~ deed of trust or memorandum of deed of trust or mortgage may be.”

And,

By amending the title of the bill to read as follows:

**Com. Sub. for H. B. 2053** - “A Bill to amend and reenact §38-1-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact and §40-1-9 of said code, all relating to deeds of trust; permitting the recording of a memorandum of deed of trust in lieu of the deed of trust; settings requirements for content of memorandum of deed of trust; and requiring recording of original deed of trust prior to commencement of foreclosure action or other execution thereof.”

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 401**), and there were—yeas 95, nays 2, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Hicks and Marcum.

ABSENT AND NOT VOTING: Blair, Moffatt and Walters.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2053) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 2100**, Caregiver Advise, Record and Enable Act.

On motion of Delegate Cowles, the bill was taken up for immediate consideration.

On motion of Delegate Cowles, the House of Delegates concurred in the following Senate amendments:

On page eight, section five, lines five through nine, by striking out all of subsection (b) and inserting in lieu thereof two new subsections, designated subsections (b) and (c), to read as follows:

“(b) Nothing in this act shall be construed to create a private right of action against a hospital, hospital employee, a duly authorized agent of the hospital or any consultants or contractors with whom the hospital has a contractual relationship.

(c) A hospital, a hospital employee or any consultants or contractors with whom a hospital has a contractual relationship shall not be held liable in any way for services rendered or not rendered by the lay caregiver.”

And,

By amending the title of the bill to read as follows:

**H. B. 2100** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-5X-1, §16-5X-2, §16-5X-3, §16-5X-4, §16-5X-5 and §16-5X-6, all relating to permitting hospital patients to designate a lay caregiver; providing definitions; requiring patient consent; requiring certain notation in medical records; permitting modifications to the lay caregiver designations; requiring certain notices to a lay caregiver; requiring hospital to consult with a lay caregiver to prepare for aftercare and to issue discharge plan; providing for circumstances in which hospital is unable to contact a lay caregiver; providing immunity; and prohibiting use of state or federal funds for payment of a lay caregiver.”

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 402**), and there were—yeas 94, nays 6, absent and not voting none, with the nays being as follows:

NAYS: Eldridge, Fast, Lynch, Manchin, Perdue and Rowe.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2100) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 2535**, Relating generally to suicide prevention training, “Jamie’s Law”.

On motion of Delegate Cowles, the bill was taken up for immediate consideration.

On motion of Delegate Cowles, the House of Delegates concurred in the following Senate amendments:

The following Senate amendments were reported by the Clerk:

On page three, section forty, after the section caption, by inserting a new subsection, designated subsection (a), to read as follows:

“(a) This section, section seven, article one-b, chapter eighteen-b of this code and section one, article six, chapter twenty-seven of this code shall be known as ‘Jamie’s Law’.”

And,

On page three, section forty, line one, before the word “On”, by inserting “(b)”.

And,

By amending the title of the bill to read as follows:

**H. B. 2535** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-40; to amend said code by adding thereto a new section, designated §18B-1B-7; and to amend said code by adding thereto a new article, designated §27-6-1, all relating to creating ‘Jamie’s Law’; requiring a public middle and high school administrator to disseminate and provide opportunities to discuss suicide prevention awareness information to all middle and high school students; requiring each public and private institution of higher education to develop and implement a policy to advise students and staff on suicide prevention programs available on and off campus; requiring each public and private institution of higher education to provide all incoming students with information about depression and suicide prevention resources available to students; requiring the posting of certain information on the website of the public and private institutions of higher education, the Higher Education Policy Commission, and the Council for Community and Technical College Education; and requiring the Bureau for Behavioral Health and Health Facilities to post on its website suicide prevention awareness information.”

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 403**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2535) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 2880**, Creating an addiction treatment pilot program.

On motion of Delegate Cowles, the bill was taken up for immediate consideration.

On motion of Delegate Cowles, the House of Delegates concurred in the following Senate amendment:

On page two, by striking out all of section one and inserting in lieu thereof a new section, designated section one, to read as follows:

**“§62-15A-1. Definitions.**

As used in this article:

(1) ‘Addiction service provider’ means a person licensed by this state to provide addiction and substance abuse services to persons addicted to opioids, alcohol or both.

(2) ‘Adult drug court judge’ means a circuit court judge operating a drug court as defined in subsection (a), section one of this article.

(3) ‘Adult Drug Court Program’ means an adult treatment court established by the Supreme Court of Appeals of West Virginia pursuant to this article.

(4) ‘Circuit court’ means those courts set forth in article two, chapter fifty-one of this code.

(5) ‘Court’ means the Supreme Court of Appeals of West Virginia.



(6) ‘Division’ means the Division of Corrections.

(7) ‘LS/CMI assessment criteria’ means the level of service/case management inventory which is an assessment tool that measures the risk and need factors of adult offenders.

(8) ‘Medication-assisted treatment’ means the use of medications, in combination with counseling and behavioral therapies, to provide a whole-patient approach to the treatment of substance use disorders.

(9) ‘Parole’ means the release of a prisoner by the Division of Corrections temporarily or permanently before the completion of a sentence, on the promise of good behavior.

(10) ‘Prescriber’ means an individual currently licensed and authorized by this state to prescribe and administer prescription drugs in the course of their professional practice.”

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 404**), and there were—yeas 98, nays 2, absent and not voting none, with the nays being as follows:

NAYS: Pushkin and Reynolds.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2880) passed.

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

### CONFERENCE COMMITTEE REPORT

Delegate E. Nelson, from the Committee of Conference on matters of disagreement between the two houses, as to

**H. B. 2213**, Reducing the distributions to the West Virginia Infrastructure Fund,

Submitted the following report, which was received:

Your committee of conference on the disagreeing votes of the two houses as to the Senate amendment to H. B. 2213 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That House of Delegates agree to the Senate amendment.

Respectfully submitted,

ERIC NELSON,

MIKE HALL,

BILL ANDERSON,

CHRIS WALTERS,

BRENT BOGGS,

ROMAN PREZIOSO,

*Conferees on the part  
of the House of Delegates.*

*Conferees on the part  
of the Senate.*

On motion of Delegate E. Nelson, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 405**), and there were—yeas 90, nays 10, absent and not voting none, with the nays being as follows:

NAYS: Fleischauer, Fluharty, Gearheart, Hornbuckle, Ihle, Pushkin, Reynolds, Skinner, Sponaugle and Upson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2213) passed.

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

On this question, the yeas and nays were taken (**Roll No. 406**), and there were—yeas 95, nays 5, absent and not voting none, with the nays being as follows:

NAYS: Fluharty, Ihle, Reynolds, Skinner and Sponaugle.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2213) takes effect from its passage.

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

### **RESOLUTIONS INTRODUCED**

Delegates Eldridge, R. Phillips, Marcum, Rodighiero and Moffatt offered the following resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**H. C. R. 126** - “Requesting the Division of Highways to name the road from the mouth of Harts Creek on Harts Creek Road 1.2 mile to Warrens Way off SR 10 on CR 19 Lincoln County, the ‘U. S. Army CPL George Browning Memorial Road’.”

WHEREAS, George Edward Browning was born on January 28, 1949 in Harts, Lincoln County, West Virginia. Corporal George Edward Browning was an infantryman in A TRP, 3<sup>rd</sup> SQDN, 4<sup>th</sup> Cavalry, 25<sup>th</sup> INF DIV, USARV. He began his tour of duty on January 1, 1968 in Vietnam and was killed in action on March 28, 1968 in Tay Ninh Province, South Vietnam; and

WHEREAS, Naming the road from the mouth of Harts Creek on Harts Creek Road to Warrens Way 1.2 mile off SR 10 on CR 19 Lincoln County, the “U. S. Army CPL George Browning Memorial Road” is an appropriate recognition of his ultimate sacrifice to his country, state and Lincoln County; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name the road from the mouth of Harts Creek on Harts Creek Road to Warrens Way 1.2 mile off SR 10 on CR 19 Lincoln County, the “U. S. Army CPL George Browning Memorial Road”; and, be it

*Further Resolved,* That the Division of Highways is requested to have made and be placed signs identifying the road as the “U. S. Army CPL George Browning Memorial Road”; and, be it

*Further Resolved,* That the Clerk of the House of Delegates forward a certified copy of this resolution to the Secretary of the Department of Transportation and the surviving family of George Browning.

Delegates Eldridge, Rodighiero, R. Phillips and Moffatt offered the following resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**H. C. R. 127** - “Requesting the Division of Highways rename the section of U.S. Route 119 that runs through Lincoln County the ‘Deputy Sheriff Sgt. Justin Alan Thompson Memorial Highway’.”

WHEREAS, House Concurrent Resolution No. 10 passed during the 2010 Regular Session of the Legislature naming the section of U.S. Route 119 that runs through Lincoln County the “Sgt. Justin Alan Thompson Memorial Highway”. Sgt. Justin Alan Thompson was a member of the Lincoln County Sheriff’s Department when he was killed in the line of duty on June 19, 2007. It would be fitting to add to the signs identifying the section of U.S. Route 119 that runs through Lincoln County “Deputy Sheriff Sgt. Justin Alan Thompson Memorial Highway”; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature hereby requests the Division of Highways to rename the section of U.S. Route 119 that runs through Lincoln County

as “Sgt. Justin Alan Thompson Memorial Highway”, language that Sgt. Thompson was a Deputy Sheriff in Lincoln County such as “Deputy Sheriff Sgt. Justin Alan Thompson Memorial Highway”; and, be it

*Further Resolved*, That the Division of Highways is requested to have made and be placed signs identifying the section of U.S. Route 119 that runs through Lincoln County “Deputy Sheriff Sgt. Justin Alan Thompson Memorial Highway”; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a certified copy of this resolution to the Secretary of the Department of Transportation and the family of Sgt. Justin Alan Thompson.

Delegates Eldridge, Perdue, B. White, Kessinger, Folk, Rohrbach, Ellington, Rodighiero, Marcum, H. White and R. Phillips offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 128** - “Requesting the Joint Committee on Government and Finance study the need for the health insurance policies to provide adequate coverage to encourage adoption of abuse deterrent formulation technologies for opioids in order to assist in the state’s continuing efforts to eliminate prescription drug abuse.”

WHEREAS, In 2013, seventy-one percent of the 22,761 in the United States relating to pharmaceutical overdoses involved opioid analgesics; and

WHEREAS, The CDC Morbidity and Mortality Report issued in July 2014 ranked West Virginia third in the country for the number of opioids prescribed per 100 persons; and

WHEREAS, The FDA “considers the development of abuse-deterrent formulations to be a public health priority and is encouraging their development”; and

WHEREAS, The introduction of abuse-deterrent formulation technologies into the pain medication arena is of great potential significance to West Virginia as a method to ensure continued access to these important medicines and to the general interests of the state as part of a comprehensive strategy to mitigate the growing prescription drug abuse problems now; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance study the need for the health insurance policies to provide adequate coverage to encourage adoption of abuse deterrent formulation technologies for opioids in order to assist in the state's continuing efforts to eliminate prescription drug abuse; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Delegates Miley, Boggs, Byrd, Campbell, Caputo, Ferro, Fleischauer, Fluharty, Guthrie, Hartman, Hicks, Hill, Hornbuckle, Kessinger, Lynch, Manchin, Marcum, Moore, Moye, Perdue, Perry, Pethtel, R. Phillips, Pushkin, Reynolds, Rodighiero, Rowe, Skinner, P. Smith, Sponaugle, Trecost, H. White and Williams offered the following resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**H. C. R. 129** - "Requesting the Division of Highways to name bridge number 10-61/28-1.25 (10A092) locally known as the Oyler Avenue Bridge, carrying County Route 61/28 over U.S. Route 19 in Fayette County, the "John Pino Bridge".

WHEREAS, The Honorable John Pino was born on July 12, 1931, in Mount Hope, West Virginia, the son of the late Santa and Pietro Pino. He was a graduate of Mount Hope High School; and

WHEREAS, After graduation, Delegate Pino learned the art of brick laying and stone masonry. He started his own construction business and worked on projects throughout Fayette and Raleigh Counties; and

WHEREAS, Delegate Pino and his wife, Mary Edgar Hayes, of Oak Hill, had eight children: John Stephen, Mary Kathryn, Peter Joseph, Teresa Jo, Cynthia Lynn, Mark Anthony, Richard Lee and Angela Elaine, and have been blessed with 23 grandchildren and six great grandchildren; and

WHEREAS, John Pino was first elected to the House of Delegates in 1984 and honorably served for 24 years. He, at various points in his legislative service, was appointed Speaker Pro Tempore, Chairman of the Commission on Interstate Cooperation, Vice-Chairman of the Committee on Economic Development and Small Business and Vice-Chairman of the Committee on the Judiciary; and

WHEREAS, Delegate Pino is a committed and respected public servant. He served with distinction in the West Virginia House of Delegates and continues to be active in his community. It is fitting that an enduring memorial be established in his community to recognize his service to his community and state; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways name bridge number 10-61/28-1.25 (10A092) locally known as the Oyler Avenue Bridge, carrying County Route 61/28 over U.S. Route 19 in Fayette County, the “John Pino Bridge”; and, be it

*Further Resolved,* That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge the “John Pino Bridge”; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a certified copy of this resolution to the Commissioner of the Division of Highways and to the Honorable John Pino and his family.

Delegates Romine, Hamilton, Azinger, Kelly, A. Evans and Lynch offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. R. 16** - "Proclaiming the second Saturday of September, to be designated as 'Heroes Day' in West Virginia in tribute to Firefighters, Law-Enforcement Officers and Emergency Medical Services Workers who are dedicated to helping those in need and protecting the public."

WHEREAS, Firefighters, Law-Enforcement Officers and Emergency Medical Services Workers are on call twenty-four hours a day, seven days a week; and

WHEREAS, These volunteers and professionals make numerous sacrifices and give up valuable time and energy to make sure that they are properly trained and knowledgeable within their volunteer and professional lives; and

WHEREAS, The Firefighters, Law-Enforcement Officers and Emergency Medical Services Workers must frequently leave family, friends and the safety of their surroundings to save a life, protect property and to prevent disasters from spreading; and

WHEREAS, To honor those men and women who bravely answered the call on September 11, 2001, we recognize the men and women who serve today throughout the great State of West Virginia by proclaiming the second Saturday of September "Heroes Day"; therefore, be it

*Resolved by the House of Delegates:*

That the second Saturday of September is hereby designated as "Heroes Day".



## UNFINISHED BUSINESS

The following resolutions, coming up in regular order, as unfinished business, were reported by the Clerk and adopted:

**H. R. 6**, Proclaiming August 28, 2015, and every August 28 thereafter to be designated as Teachers' Day in Hardy, Grant and Hampshire counties of West Virginia,

**H. C. R. 7**, The Kenneth A. Chapman, Sr. Memorial Bridge,

**Com. Sub. for S. C. R. 18**, Requesting DOH name bridge in Wetzell County "U. S. Army COL William L. Glover Memorial Bridge",

**Com. Sub. for S. C. R. 19**, Requesting DOH name stretch of road in Wayne County "Darrell W. Sanders Memorial Highway",

**Com. Sub. for H. C. R. 24**, The US Army SP5 Johnnie Marvin Ayers Memorial Bridge,

**H. C. R. 31**, Declaring the Northern Red Salamander to be the official state amphibian,

**S. C. R. 31**, Authorizing meeting of Joint Select Committee on Tax Reform,

**Com. Sub. for H. C. R. 42**, The Boyhood Home of Booker T. Washington,

**Com. Sub. for H. C. R. 45**, The US Army COL William L. Glover Memorial Bridge,

**S. C. R. 47**, Amending Joint Rules of Senate and House relating to printing enrolled bills,

**Com. Sub. for H. C. R. 55**, The William C. Campbell Memorial Highway,

**H. C. R. 58**, The U. S. Army PV2 William Frederick Kump Memorial Bridge,

**Com. Sub. for H. C. R. 60**, The U. S. Army SFC Jesse Muncy Memorial Bridge,

**Com. Sub. for H. C. R. 65**, The U. S. Army PFC Willie Paul Wilson Bridge,

**Com. Sub. for H. C. R. 68**, The Army SSG Harold ‘Dean’ Baker Memorial Bridge,

**Com. Sub. for H. C. R. 98**, Jack Furst Drive,

And,

**H. C. R. 113**, Mineral County, Celebrating the Sesquicentennial, 1866-2016.

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

#### THIRD READING

**Com. Sub. for S. B. 30**, Permitting shared animal ownership agreement to consume raw milk; on third reading, coming up in regular order, was read a third time.

Delegate Summers requested to be excused from voting on the passage of Com. Sub. for S. B. 30 under the provisions of House Rule 49.

The Speaker replied that any impact on Delegate Summers would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Lady from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 407**), and there were—yeas 81, nays 19, absent and not voting none, with the nays being as follows:

NAYS: Caputo, Deem, Eldridge, Ferro, Fleischauer, Guthrie, Hornbuckle, Longstreth, Manchin, Moore, Morgan, Perdue, Pethtel, L. Phillips, Pushkin, Rodighiero, Rowe, Skinner and Westfall.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 30) passed.

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

**Com. Sub. for S. B. 37**, Creating Revised Uniform Arbitration Act; on third reading, coming up in regular order, with amendments pending, was reported by the Clerk.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page five, line five, following the word, “well-established”, by striking out the words “and emphatic”.

On page five, following line sixteen by striking out all of subsection (b).

On page twenty-eight, following line sixteen, by inserting the following: “(c) This section does not apply to an arbitration conducted or administered by a self-regulatory organization as defined by the Securities Exchange Act of 1934 (15 U.S.C. § 78C), the Commodity Exchange Act (7 U.S.C. §1, *et seq.*) or regulations adopted under those acts.”

And,

Section thirty, page thirty-seven, line two, following the word “order”, by inserting the words “granting or”.

Delegate Manchin moved to amend the bill on page eleven, section eight, line twenty, following the period, by inserting a new subsection (e) to read as follows:

“(e) A person or entity may not require any consumer or party in this state for any transaction governed by article six, chapter forty-six-a of this code, to prospectively assent to a waiver of any liability imposed by said act or require any controversy arising thereunder to be referred to a person other than the duly constituted courts of this state, or the United States District Courts of the Northern or Southern Districts of West Virginia. Nothing in this prevents the consumer or party, after a civil action is filed, from entering into any agreement of settlement, arbitration, assignment or waiver of a trial by jury.”

On the adoption of the amendment, Delegate Manchin demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 408**), and there were—yeas 43, nays 57, absent and not voting none, with the yeas being as follows:

YEAS: Bates, Boggs, Byrd, Campbell, Caputo, Cowles, Eldridge, Faircloth, Fast, Ferro, Fleischauer, Fluharty, Folk, Frich, Guthrie, Hamilton, Hartman, Hicks, Hornbuckle, Lane, Longstreth, Lynch, Manchin, Marcum, Miley, Moffatt, Moye, J. Nelson, Perdue, Perry, Pethtel, L. Phillips, Pushkin, Reynolds, Rodighiero, Rowe, Skinner, P. Smith, Sponaule, Trecost, Walters, H. White and Williams.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 409**), and there were—yeas 74, nays 26, absent and not voting none, with the nays being as follows:

NAYS: Boggs, Byrd, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Guthrie, Hicks, Hornbuckle, Longstreth, Lynch, Manchin, Miley, Moore, Perdue, Pethtel, Pushkin, Reynolds, Rodighiero, Rowe, Skinner, Sponaule, Walters, H. White and Williams.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 37) passed.

Delegate Cowles moved that the bill take effect July 1, 2015.

On this question, the yeas and nays were taken (**Roll No. 410**), and there were—yeas 77, nays 22, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Boggs, Caputo, Ferro, Fleischauer, Fluharty, Guthrie, Hicks, Hornbuckle, Longstreth, Lynch, Manchin, Miley, Moore, Perdue, Pethel, Reynolds, Rodighiero, Rowe, Skinner, Sponaule, Walters and Williams.

ABSENT AND NOT VOTING: McCuskey.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 37) takes effect July 1, 2015.

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

**S. B. 89**, Providing Prosecuting Attorneys Institute’s council establish Executive Director’s salary; on third reading, coming up in regular order, was reported by the Clerk.

An amendment, recommended by the Committee on Finance, was reported by the Clerk, on page four, section two-a, line seven, following the words “Resources, \$95,000”, by striking out the semicolon and inserting a colon and the words “Provided, That effective July 1, 2013, the Secretary of the Department of Health and Human Resources shall be paid an annual salary not to exceed \$175,000”, followed by a semicolon.

And,

On page ten, section six, line one, following the words “executive director’s”, by striking out the words “salary shall be \$70,000 per year or greater, subject to annual appropriation by the Legislature of amounts contained within the fund” and inserting in lieu thereof the words “annual salary may not be less than \$70,000 and may not exceed \$80,000”.

Delegate Marcum requested to be excused from voting on S. B. 89 under the provisions of House Rule 49.

The Speaker replied that any impact on Delegate Marcum would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Member from voting.

An amendment to the amendment, recommended by Delegates Gearheart and Anderson, was reported by the Clerk.

Whereupon,

Delegate Gearheart asked and obtained unanimous consent that the amendment be withdrawn.

Delegate Gearheart then asked and obtained unanimous consent to offer another amendment on this reading.

On motion of Delegates Gearheart, Anderson and E. Nelson, the amendment was amended on page one, line four of the amendment, following the words “followed by a semicolon” and the semicolon, by striking out the remainder of the amendment and inserting in lieu thereof the following:

“On page five, section two-a, line thirteen, following the words ‘Survey, \$75,000’ and the semicolon, by inserting the words “Executive Director, Prosecuting Attorneys Institute, \$80,000”, followed by a semicolon;

On page eight, section two-a, line three, following the words ‘affected spending unit’ and the period, by striking out the remainder of the bill.

And,

On page one, following the enacting clause, by striking out the enacting section and inserting in lieu thereof the following:

“That §6-7-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows” followed by a colon.

Delegates Campbell and Weld requested to be excused from voting on the passage of S. B. 89 under the provisions of House Rule 49.

The Speaker replied that any impact on the Delegates would be as members of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Members from voting.

The Finance Committee amendment, as amended, was then adopted.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 411**), and there were—yeas 88, nays 11, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Folk, Frich, Hill, Howell, Lane, Marcum, McGeehan, Moffatt, J. Nelson, Reynolds and Wagner.

ABSENT AND NOT VOTING: Azinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 89) passed.

On motion of Delegate E. Nelson, the title of the bill was amended to read as follows:

**S. B. 89** - “A Bill to amend and reenact §6-7-2a of the Code of West Virginia, 1931, as amended; relating to compensation for public officials generally; increasing the annual salary of the salary of the executive director of the West Virginia prosecuting attorneys institute; and clarifying and restoring language accurately stating the compensation range for the secretary of the department of health and human services that was omitted by inadvertent clerical error in previous legislation.”

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

**Com. Sub. for S. B. 249**, Prohibiting straight party voting; on third reading, coming up in regular order, with an amendment pending, was reported by the Clerk.

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

“That §3-4A-9, §3-4A-11a and §3-4A-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §3-6-2, §3-6-3, §3-6-5 and §3-6-6 of said code be amended and reenacted, all to read as follows:

#### **ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

##### **§3-4A-9. Minimum requirements of electronic voting systems.**

An electronic voting system of particular make and design may not be approved by the State Election Commission or be purchased, leased or used by any county commission unless it meets the following requirements:

(1) It secures or ensures the voter absolute secrecy in the act of voting or, at the voter’s election, provides for open voting;



(2) It is constructed to ensure that, except in instances of open voting as provided in this section, the contents of a marked ballot may not be seen or known by anyone other than the voter who has voted or is voting;

(3) It permits each voter to vote at any election for all persons and offices for whom and which he or she is lawfully entitled to vote, whether or not the name of any person appears on a ballot as a candidate; and it permits each voter to vote for as many persons for an office as he or she is lawfully entitled to vote for; and to vote for or against any question upon which he or she is lawfully entitled to vote. The automatic tabulating equipment used in electronic voting systems is to reject choices recorded on any ballot if the number of choices exceeds the number to which a voter is entitled;

(4) It permits each voter to write in the names of persons for whom he or she desires to vote whose names do not appear upon the ballots;

(5) It permits each voter to change his or her vote for any candidate and upon any question appearing upon the ballots or ballot labels up to the time when his or her ballot is deposited in the ballot box or his or her ballot is cast by electronic means;

(6) It contains programming media containing sequentially numbered program instructions and coded or otherwise protected from tampering or substitution of the media or program instructions by unauthorized persons and capable of tabulating all votes cast in each election;

(7) It contains two standard validation test decks approved as to form and testing capabilities by the State Election Commission;

(8) It correctly records and counts accurately all votes cast for each candidate and for and against each question appearing upon the ballots;

~~(9) It permits each voter at any election, other than a primary election, to vote a straight party ticket, as provided in section five, article six of this chapter by one mark or punch;~~

~~(10)~~ (9) It permits a voter in a primary election to: (A) Vote only for the candidates of the party for which the voter is legally permitted to vote; (B) vote for the candidates, if any, for nonpartisan nominations or election; and (C) vote on public questions; and precludes the voter from voting for any candidate seeking nomination by any other political party unless that political party has determined that the voter may participate in its primary election;

~~(11)~~ (10) It, where applicable, is provided with means for sealing or electronically securing the vote recording device to prevent its use and to prevent tampering with the device, both before the polls are open or before the operation of the vote recording device for an election is begun and immediately after the polls are closed or after the operation of the vote recording device for an election is completed;

~~(12)~~ (11) It has the capacity to contain the names of candidates constituting the tickets of at least nine political parties and accommodates the wording of at least fifteen questions;

~~(13)~~ (12) (A) Direct recording electronic voting machines must generate a paper copy of each voter's vote that will be automatically kept within a storage container that is locked, closely attached to the direct recording electronic voting machine and inaccessible to all but authorized voting officials, who will handle such storage containers and such paper copies contained therein in accordance with section nineteen of this article.

(B) The paper copy of the voter's vote shall be generated at the time the voter is at the voting station using the direct recording electronic voting machine.

(C) The voter may examine the paper copy visually or through headphone readout, and may accept or reject the printed copy.

(D) The voter may not touch, handle or manipulate the printed copy manually in any way.

(E) Once the printed copy of the voter's votes is accepted by the voter as correctly reflecting the voter's intent, but not before, it will automatically be stored for recounts or random checks and the electronic vote will be cast within the computer mechanism of the direct recording electronic voting machine.

(F) Direct recording electronic voting machines with a mandatory paper copy shall be approved by the Secretary of State. The Secretary of State may promulgate rules and emergency rules to implement or enforce this subsection pursuant to the provisions of section five, article three, chapter twenty-nine-a of this code.

~~(14)~~ (13) Where vote recording devices are used, they shall:

(A) Be durably constructed of material of good quality and in a workmanlike manner and in a form which makes it safely transportable;

(B) Bear a number that will identify it or distinguish it from any other machine;

(C) Be constructed to ensure that a voter may easily learn the method of operating it and may expeditiously cast his or her vote for all candidates of his or her choice and upon any public question; and

(D) Be accompanied by a mechanically or electronically operated instruction model which shows the arrangement of the ballot, party columns or rows and questions;

~~(15)~~ (14) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, they shall:

(A) Be constructed to provide for the direct electronic recording and tabulating of votes cast in a system specifically designed and engineered for the election application;

(B) Be constructed to prevent any voter from voting for more than the allowable number of candidates for any office, to include an audible or visual signal, or both, warning any voter who attempts to vote for more than the allowable number of candidates for any office or who attempts to cast his or her ballot prior to its completion and are constructed to include a visual or audible confirmation, or both, to the voter upon completion and casting of the ballot;

(C) Be constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot;

(D) Be constructed to allow election commissioners to spoil a ballot where a voter fails to properly cast his or her ballot, has departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot;

(E) Be constructed to allow election commissioners, poll clerks or both to designate, mark or otherwise record provisional ballots;

(F) Consist of devices which are independent, nonnetworked voting systems in which each vote is recorded and retained within each device's internal nonvolatile electronic memory and contain an internal security, the absence of which prevents substitution of any other device;

(G) Store each vote in no fewer than three separate, independent, nonvolatile electronic memory components and that each device contains comprehensive diagnostics to ensure that failures do not go undetected;

(H) Contain a unique, embedded internal serial number for auditing purposes for each device used to activate, retain and record votes;

(I) Be constructed to record all preelection, election and post-election activities, including all ballot images and system anomalies, in each device's internal electronic memory and are to be accessible in electronic or printed form;

(J) Be constructed with a battery backup system in each device to, at a minimum, prevent the loss of any votes, as well as all preelection, election and post-election activities, including all ballot images and system anomalies, stored in the device's internal electronic memory and to allow voting to continue for two hours of uninterrupted operation in case of an electrical power failure; and

(K) Be constructed to prevent the loss of any votes, as well as all preelection, election and post-election activities, including all ballot images and system anomalies, stored in each device's internal electronic memory even in case of an electrical and battery power failure.

**§3-4A-11a. Ballots tabulated electronically; arrangement; quantity to be printed; ballot stub numbers.**

(a) The board of ballot commissioners in counties using ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil and which marks are tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the electronic voting system for use in elections.

(b) (1) For the primary election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and arrangement of candidates within each office are to conform as nearly as possible to the provisions of sections thirteen and thirteen-a, article five of this chapter.

(2) For the general election, the heading of the ballot, ~~the straight ticket positions, the instructions to straight ticket voters,~~ the type faces, the names and arrangement of offices and the printing of names and the

arrangement of candidates within each office are to conform as nearly as possible to the provisions of section two, article six of this chapter, except as otherwise provided in this article.

(3) Nonpartisan elections for board of education and any question to be voted upon are to be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election and constituting a separate ballot wherever a separate ballot is required under the provisions of this chapter.

(4) Both the face and the reverse side of the ballot may contain the names of candidates only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

(5) The arrangement of candidates within each office is to be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes are to be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words 'WRITE-IN, IF ANY' are to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a position to mark the vote.

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are to be printed in the color of ink specified by the Secretary of State for the various political parties, and the general election ballot is to be printed in black ink. For electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary ballots and the

general election ballot are to be printed in black ink. All ballots are to be printed, where applicable, on white paper suitable for automatic tabulation and are to contain a perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the same manner as provided in section thirteen, article five of this chapter, or are to be displayed on the screens of the electronic voting system upon which votes are recorded by means of a stylus or touch. The number of ballots printed and the packaging of ballots for the precincts are to conform to the requirements for paper ballots provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.

**§3-4A-27. Proceedings at the central counting center.**

(a) All proceedings at the central counting center are to be under the supervision of the clerk of the county commission and are to be conducted under circumstances which allow observation from a designated area by all persons entitled to be present. The proceedings shall take place in a room of sufficient size and satisfactory arrangement to permit observation. Those persons entitled to be present include all candidates whose names appear on the ballots being counted or, if a candidate is absent, a representative of the candidate who presents a written authorization signed by the candidate for the purpose and two representatives of each political party on the ballot who are chosen by the county executive committee chairperson. A reasonable number of the general public is also freely admitted to the room. In the event all members of the general public desiring admission to the room cannot be admitted at one time, the county commission shall provide for a periodic and convenient rotation of admission to the room for observation, to the end that each member of the general public desiring admission, during the proceedings at the central counting center, is to be granted admission for reasonable periods of time for observation: *Provided*, That no person except those

authorized for the purpose may touch any ballot or other official records and papers utilized in the election during observation.

(b) All persons who are engaged in processing and counting the ballots are to work in teams consisting of two persons of opposite political parties, and are to be deputized in writing and take an oath that they will faithfully perform their assigned duties. These deputies are to be issued an official badge or identification card which is assigned an identity control number and the deputies are to prominently wear on his or her outer garments the issued badge or identification card. Upon completion of the deputies' duties, the badges or identification cards are to be returned to the county clerk.

(c) Ballots are to be handled and tabulated and the write-in votes tallied according to procedures established by the Secretary of State, subject to the following requirements:

(1) In systems using ballots marked with electronically sensible ink, ballots are to be removed from the ballot boxes and stacked for the tabulator which separates ballots containing marks for a write-in position. Immediately after tabulation, the valid write-in votes are to be tallied. No write-in vote may be counted for an office unless the voter has entered the name of an official write-in candidate for that office on the line provided, either by writing, affixing a sticker or placing an ink-stamped impression thereon;

(2) In systems using ballots in which votes are recorded upon screens with a stylus or by means of touch, the ballots are to be tabulated according to the processes of the system. Systems using ballots in which votes are recorded upon screens with a stylus or by means of touch are to tally write-in ballots simultaneously with the other ballots;

(3) When more than one person is to be elected to an office and the voter desires to cast write-in votes for more than one official write-in candidate for that office, the voter shall mark the location appropriate



for the voting system, in the write-in location for that office. When there are multiple write-in votes for the same office and the combination of choices for candidates on the ballot and write-in choices for the same office exceed the number of candidates to be elected, the ballot is to be duplicated or hand counted, with all votes for that office rejected;

(4) Write-in votes for nomination for any office and write-in votes for any person other than an official write-in candidate are to be disregarded; and

~~(5) When a voter casts a straight ticket vote and also marks the location for a write-in vote for an office, the straight ticket vote for that office is to be rejected, whether or not a vote can be counted for a write-in candidate; and~~

~~(6)~~ (5) Official write-in candidates are those who have filed a write-in candidate's certificate of announcement and have been certified according to the provisions of section four-a, article six of this chapter.

(d) If any ballot is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy is to be made of the damaged ballot in the presence of representatives of each political party on the ballot and substituted for the damaged ballot. All duplicate ballots are to be clearly labeled 'duplicate' and are to bear a serial number which is recorded on the damaged or defective ballot and on the replacement ballot.

(e) The returns printed by the automatic tabulating equipment at the central counting center, to which have been added write-in and other valid votes, are, when certified by the clerk of the county commission, to constitute the unofficial preliminary returns of the county. Upon completion of the count, the returns are to be open to the public by posting a summary of the returns as have been tabulated at the central counting center. Upon completion of the canvass, the returns are to be posted as tabulated precinct by precinct.

(f) If for any reason it becomes impracticable to count all or a part of the ballots with tabulating equipment, the county commission may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

(g) As soon as possible after the completion of the count, the clerk of the county commission shall have the vote recording devices properly boxed or securely covered and removed to a proper and secure place of storage.

#### **ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.**

##### **§3-6-2. Preparation and form of general election ballots.**

(a) All ballots prepared under the provisions of this section are to contain:

(1) The name and ticket of each party which is a political party under the provisions of section eight, article one of this chapter;

(2) The name chosen as the party name by each group of citizens which has secured nomination for two or more candidates by petition under the provisions of section twenty-three, ~~of this article~~ five of this chapter; and

(3) The names of every candidate for any office to be voted for at the election whose nomination in the primary election, nomination by petition or nomination by appointment to fill a vacancy on the ballot has been certified and filed according to law and no others.

(b) The provisions of paragraphs (C) and (D), subdivision (2), section thirteen, article five of this chapter; subdivision (3) of said section; paragraphs (A) and (B), subdivision (4) of said section; and subdivisions (6), (7), (8) and (9) of said section pertaining to the preparation and form of primary election ballots shall likewise apply to general election ballots.

(c) (1) For all ballot systems, the ballot heading is to be in display type and contain the words 'Official Ballot, General Election' and the name of the county and the month, day and year of the election.

(2) After the heading, each ballot is to contain, laid out in parallel columns, rows or pages as required by the particular voting system, the party emblem ~~the position for straight party voting for each party and~~ the name of each party as prescribed in subsection (a) of this section. ~~On paper ballots, the position for straight party voting is to be a heavy circle, three-fourths inch in diameter, surrounded by the words 'For a straight ticket mark within this circle' printed in bold six-point type. On all other ballots or ballot labels, the positions for straight party voting is to be marked 'Straight Party Ticket'.~~

(3) The party whose candidate for president received the highest number of votes at the last preceding presidential election is to be placed in the left, or first column, row or page, as is appropriate to the voting system. The party which received the second highest vote is to be next and so on. Any groups or third parties which did not have a candidate for president on the ballot in the previous presidential election are to be placed in the sequence in which the final certificates of nomination by petition were filed.

~~(4)(A) The following general instructions for straight party voters are to be printed in no smaller than eight point bold type: 'IF YOU MARKED A STRAIGHT TICKET: When you mark any individual candidate in a different party, that vote will override your straight party vote for that office. When you mark any individual candidate in a different party for an office where more than one will be elected, YOU MUST MARK EACH OF YOUR CHOICES FOR THAT OFFICE because your straight ticket vote will not be counted for that office'. The last sentence of the instructions may not be included on any ballot which does not contain any office or division where more than one candidate will be elected.~~

~~On paper ballots, the general instructions are to be placed below the party name and across the top of all columns, followed by a heavy~~

~~line separating them from the rest of the ballot: *Provided*, That the instructions may be centered among the columns running the full width of the ballot. On ballots marked with electronically sensible ink, the general instructions are to be placed after the position for straight voting and before any office.~~

~~(B) The following specific instructions are to be printed on the ballot for any partisan election for an office or division to which more than one candidate is to be elected: 'If you marked a straight ticket and you mark any candidate in a different party for this office, you must mark all your choices for this office because your straight ticket vote will not be counted for this office'.~~

~~On paper ballots, the specific instructions are to be placed below the office name of any partisan office where more than one is to be elected and across the top of all columns for that office or centered among the columns before the names of any candidates. On all other ballots and ballot labels, the specific instructions are to be placed above or to the side of the names of the candidates as the voting system requires.~~

~~(5) (4) For all ballots, any columns, rows or sections in which the ticket of one party appears are to be clearly separated from the other columns, rows or sections by a heavy line or other clear division. For each party, the offices are to be arranged in the order prescribed in section thirteen-a, article five of this chapter under the appropriate tickets, which are to be headed 'National Ticket', 'State Ticket' and 'County Ticket'. The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements, subject to approval by the Secretary of State.~~

(d) The arrangement of names within each office for all ballot systems is to be as follows:

(1) In elections for presidential electors, the names of the candidates for president and vice president of each party are to be

placed beside a brace with a single voting position, so that a vote for any presidential candidate is a vote for the electors of the party for which the candidates were named.

(2) The order of names of candidates for any office or division for which more than one is to be elected is determined as prescribed in section thirteen-a, article five of this chapter: *Provided*, That the drawing by lot is to be conducted on the seventieth day next preceding the date of the general election, beginning at 9:00 a.m.

(3) In any office where more than one person is to be elected, the names of the candidates for the office are to be staggered so that no two candidates for that office appear directly opposite any other candidate, as shown in the example below: *Provided*, That if the voting system cannot accurately tabulate any ballot due to this requirement, the ballot may be adjusted so that it is accurately tabulated. However, each candidate shall be separated by a thin line to distinguish between each candidate.

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For House of Delegates

First Delegate District  
(Vote For Not More Than Two)

SUSAN B. ANTHONY  
City (County)

ABRAHAM LINCOLN  
City (County)

For House of Delegates

First Delegate District  
(Vote For Not More Than Two)

JOHN ADAMS  
City (County)

JAMES MONROE  
City (County)

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(4) Each voting system is to provide a means for voters to vote for any person whose name does not appear on the ticket by writing it with pen or pencil or by using stamps, stickers, tapes, labels or other means of writing in the name of a candidate which does not interfere with the tabulation of the ballot.

(A) In paper ballot systems which allow for write-ins to be made directly on the ballot, a blank square and a blank line equal to the space which would be occupied by the name of the candidate is to be placed under the proper office for each vacancy in nomination and for an office for which more than one is to be elected, any vacancy is to appear after any other candidates for the office. If no write-in lines are included on the ballot, specific instructions are to be added to the top of the ballot notifying the voter that a write-in vote may be cast by writing the name and office on any location on the front of the ballot.

(B) In machine and electronically tabulated ballot systems in which write-in votes must be made in a place other than on the ballot, if there is a vacancy in nomination leaving fewer candidates in any party than can be elected to that office, the words 'No Candidate Nominated' is are to be printed in the space that would be occupied by the name of the candidate and for an office for which more than one is to be elected, any vacancy is to appear after any other candidates for the office. Notwithstanding any other provision of this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be filled with the words 'No Candidate Filed' may be replaced with a brief detailed description, approved by the Secretary of State, indicating that there are no candidates listed for the vacant positions.

(5) In a general election in any county in which unexpired terms of the board of education are to be filled by election, a separate section or page of the ballot is to be set off by means clearly separating the nonpartisan ballot from the ballot for the political party candidates and is to be headed 'Nonpartisan Board of Education'.

(e) Any constitutional amendment is to be placed following all offices, followed by any other issue upon which the voters are to cast a vote. The heading for each amendment or issue is to be printed in large, bold type according to the requirements of the resolution authorizing the election.

(f) The board of ballot commissioners may not place any issue on the ballot for election which is not specifically authorized under the West Virginia Constitution or statutes or which has not been properly ordered by the appropriate governmental body charged with calling the election.

(g) A ballot may not offer a voter the option of voting a straight party ticket by one mark or punch.

### **§3-6-3. Publication of sample ballots and lists of candidates.**

(a) The ballot commissioners of each county shall prepare a sample official general election ballot for all political party or ~~independent~~ nominees with no party affiliation unless those persons have actually been nominated by an independent party, nonpartisan candidates for election, if any, and all ballot issues to be voted for at the general election, according to the provisions of ~~this article and articles four and four-a of this chapter, as appropriate to the voting system~~; and for any ballot issue, according to the provisions of law authorizing the election.

(b) The facsimile sample general election ballot shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, not more than twenty-six nor less than twenty days preceding the general election, the ballot commissioners shall publish the sample official general election ballot as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, not more than twenty-six nor less than twenty days preceding the primary election, the ballot commissioners shall publish the sample official general election ballot as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code; and

(3) Each facsimile sample ballot shall be a photographic reproduction of the official sample ballot or ballot pages and shall be printed in a size no less than sixty-five percent of the actual size of the ballot, at the discretion of the ballot commissioners: *Provided*, That when the ballots for the precincts within the county contain different senatorial, delegate, magisterial or executive committee districts or when the ballots for precincts within a city contain different municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the ballot commissioners for approval prior to publication.

(c) The ballot commissioners of each county shall prepare, in the form and manner prescribed by the Secretary of State, an official list of offices and nominees for each office which will appear on the general election ballot for each political party or as independent nominees with no party affiliation unless those persons have actually been nominated by an independent party and, as the case may be, for the nonpartisan candidates to be voted for at the general election:

(1) All information which appears on the ballot, including ~~the names of parties for which a straight ticket may be cast, instructions relating to straight ticket voting,~~ instructions as to the number of candidates for whom votes may be cast for the office, any additional



language which will appear on the ballot below the name of the office, any identifying information relating to the candidates, such as his or her residence and magisterial district or presidential preference. Following the names of all candidates, the list shall include the full title, text and voting positions of any issue to appear on the ballot.

(2) The order of the ~~straight ticket positions~~, offices and candidates for each office and the manner of designating the parties shall be as follows:

~~(A) The straight ticket positions shall be designated 'straight (party name) ticket', with the parties listed in the order in which they appear on the ballot, from left to right or from top to bottom, as the case may be;~~

~~(B)~~ (A) The offices shall be listed in the same order in which they appear on the ballot;

~~(C)~~ (B) The candidates within each office for which one is to be elected shall be listed in the order they appear on the ballot, from left to right or from top to bottom, as the case may be, and the candidate's political party affiliation or independent status shall be indicated by the one- or two-letter initial specifying the affiliation, placed in parenthesis to the right of the candidate's name; and

~~(D)~~ (C) The candidates within each office for which more than one is to be elected shall be arranged by political party groups in the order they appear on the ballot and the candidate's affiliation shall be indicated as provided in paragraph ~~(C)~~ (B) of this subdivision.

(d) The official list of candidates and issues as provided in subsection (c) of this section shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, on the last day on which a newspaper is published immediately preceding the general election, the ballot commissioners shall publish the official list of nominees and issues as

a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily paper, or having only one or more qualified newspapers which publish weekly, on the last day on which a newspaper is published immediately preceding the general election, the ballot commissioners shall publish the sample official list of nominees and issues as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(3) The publication of the official list of nominees for each party and for nonpartisan candidates shall be in single or double columns, as required to accommodate the type size requirements as follows:

(A) The words 'official list of nominees and issues', the name of the county, the words 'General Election' and the date of the election shall be printed in all capital letters and in bold type no smaller than fourteen point;

~~(B) The designation of the straight ticket party positions shall be printed in all capital letters in bold type no smaller than twelve point and the title of the office shall be printed in bold type no smaller than twelve point and any voting instructions or other language printed below the title shall be printed in bold type no smaller than ten point; and~~

~~(C)~~ (B) The names of the candidates and the initial within parenthesis designating the candidate's affiliation shall be printed in all capital letters in bold type no smaller than ten point and the residence information shall be printed in type no smaller than ten point; and

(4) When any ballot issue is to appear on the ballot, the title of that ballot shall be printed in all capital letters in bold type no smaller than

twelve point. The text of the ballot issue shall appear in no smaller than eight point type. The ballot commissioners may require the publication of the ballot issue under this subsection in the facsimile sample ballot format in lieu of the alternate format.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section, ~~beginning with the general election to be held in the year two thousand,~~ the ballot commissioners of any county may choose to publish a facsimile sample general election ballot, instead of the official list of candidates and issues, for purposes of the last publication required before any general election.

### **§3-6-5. Rules and procedures in election other than primaries.**

The provisions of article one of this chapter relating to elections generally shall govern and control arrangements and election officials for the conduct of elections under this article. The following rules and procedures shall govern the voting for candidates in general and special elections:

(a) If the voter desires to vote a straight ticket for an official write-in candidate, ~~or in other words, for each and every candidate for one party for whatever office nominated;~~ the voter shall either:

(1) ~~Mark the position designated for a straight ticket in the manner appropriate to the voting system; or~~

(2) ~~Mark the voting position for each and every candidate of the chosen party in the manner appropriate to the voting system.~~

(b) If the voter desires to vote a mixed ticket, or in other words, for candidates of different parties; the voter shall either:

(1) ~~Omit marking any straight ticket voting position and mark, in the manner appropriate to the voting system, the name of each candidate for whom he or she desires to vote on whatever ticket the name may be; or~~

~~(2) Mark the position designated for a straight ticket for the party for some of whose candidates he or she desires to vote and then mark the name of any candidate of any other party for whom he or she may desire to vote, in which case the cross mark in the circular space above the name of the party straight ticket mark will cast his or her vote for every candidate on the ticket of the party except for offices for which candidates are marked on other party tickets and the marks for the candidates will cast a vote for them; or~~

~~(3) Write write with ink or other means or affix a sticker or label or place an ink-stamped impression of the name of an official write-in candidate for an office for whom he or she desires to vote in the space designated for write-in votes for the particular voting system or for paper ballot systems, write or place the name and office designation in any position on the face of the ballot which makes the intention of the voter clear as to both the office and the candidate chosen.~~

~~(c) If in marking either a straight or mixed ticket as above defined, a straight ticket voting position is marked, and also one or more marks are made for candidates on the same ticket for offices for which candidates on other party tickets are not individually marked, the marks before the name of candidate on the ticket so marked shall be treated as surplusage and ignored.~~

~~(d) When a voter casts a straight ticket vote and also writes in any name for an office, the straight ticket vote for that office shall be rejected, whether or not a vote can be counted for a write-in candidate.~~

~~(e) The secretary of state may proscribe devices for casting write-in votes which would cause mechanical difficulty with voting machines or electronic devices or which would obliterate or deface a paper ballot or any portion thereof, but the secretary of state shall preserve the right to vote by a write-in vote for those candidates who have filed and have been certified as official write-in candidates under the provisions of section four-a of this article.~~

(f) (b) If the voter marks more names than there are persons to be elected to an office or if, for any reason, it is impossible to determine the voter's choice for an office to be filled, the ballot shall not be counted for the office. The intention of the voter shall be deemed to be clear if the write-in vote cast for an office contains both the first and last name of an official write-in candidate for that office; and if no two official write-in candidates for that office share a first or last name, either the first name or last name alone shall be deemed to express the clear intention of the voter.

(g) (c) Except as otherwise specifically provided in this chapter, no ballot shall be rejected for any technical error which does not make it impossible to determine the voter's choice.

### **§3-6-6. Ballot counting procedures in paper ballot systems.**

When the polls are closed in an election precinct where only a single election board has served, the receiving board shall perform all of the duties prescribed in this section. When the polls are closed in an election precinct where two election boards have served, both the receiving and counting boards shall together conclude the counting of the votes cast, the tabulating and summarizing of the number of the votes cast, unite in certifying and attesting to the returns of the election and join in making out the certificates of the result of the election provided for in this article. They ~~shall~~ may not adjourn until the work is completed.

In all election precincts, as soon as the polls are closed and the last voter has voted, the receiving board shall proceed to ascertain the result of the election in the following manner:

(a) In counties in which the clerk of the county commission has determined that the absentee ballots should be counted at the precincts in which the absent voters are registered, the receiving board must first process the absentee ballots and deposit the ballots to be counted in the ballot box. The receiving board shall then proceed as provided in

subsections (b) and (c) of this section. In counties in which the absentee ballots are counted at the central counting center, the receiving board shall proceed as provided in subsections (b) and (c) of this section.

(b) The receiving board shall ascertain from the pollbooks and record on the proper form the total number of voters who have voted. The number of ballots challenged shall be counted and subtracted from the total and the result should equal the number of ballots deposited in the ballot box. The commissioners and clerks shall also report, over their signatures, the number of ballots spoiled and the number of ballots not voted.

(c) The procedure for counting ballots, whether performed throughout the day by the counting board as provided in section thirty-three, article one of this chapter or after the close of the polls by the receiving board or by the two boards together, shall be as follows:

(1) The ballot box shall be opened and all votes shall be tallied in the presence of the entire election board;

(2) One of the commissioners shall take one ballot from the box at a time and shall determine if the ballot is properly signed by the two poll clerks of the receiving board. If not properly signed, the ballot shall be placed in an envelope for the purpose, without unfolding it. Any ballot which does not contain the proper signatures shall be challenged. If an accurate accounting is made for all ballots in the precinct in which the ballot was voted and no other challenge exists against the voter, the ballot shall be counted at the canvass. If properly signed, the commissioner shall hand the ballot to a team of commissioners of opposite politics, who shall together read the votes marked on the ballot for each office. Write-in votes for election for any person other than an official write-in candidate shall be disregarded. ~~When a voter casts a straight ticket vote and also casts a write-in vote for an office, the straight ticket vote for that office shall be rejected whether or not a vote can be counted for a write-in candidate;~~

(3) The commissioner responsible for removing the ballots from the box shall keep a tally of the number of ballots as they are removed and whenever the number shall equal the number of voters entered on the pollbook minus the number of provisional ballots, as determined according to subsection (a) of this section, any other ballot found in the ballot box shall be placed in the same envelope with unsigned ballots not counted, without unfolding the same or allowing anyone to examine or know the contents thereof, and the number of excess ballots shall be recorded on the envelope;

(4) Each poll clerk shall keep an accurate tally of the votes cast by marking in ink on tally sheets, which shall be provided for the purpose, so as to show the number of votes received by each candidate for each office and for and against each issue on the ballot; and

(5) When the reading of the votes is completed, the ballot shall be immediately strung on a thread.”

On motion of Delegate Shott, the amendment was amended on page five, section eleven-a, line ten, by striking out section eleven-a and inserting in lieu thereof the following:

**“§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.**

(a) The board of ballot commissioners in counties using ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil and which marks are tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the electronic voting system for use in elections.

(b) (1) For the primary election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and arrangement of candidates within each office are to conform as nearly as possible to sections thirteen and thirteen-a, article five of this chapter.

(2) For the general election, the heading of the ballot, ~~the straight ticket positions, the instructions to straight ticket voters,~~ the type faces, the names and arrangement of offices and the printing of names and the arrangement of candidates within each office are to conform as nearly as possible to section two, article six of this chapter, except as otherwise provided in this article.

(3) Effective with the primary election held in 2016, and thereafter, the following nonpartisan elections are to be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election and constituting a separate ballot wherever a separate ballot is required under this chapter:

(A) Nonpartisan elections for judicial offices, by division, of:

(i) Justice of the Supreme Court of Appeals;

(ii) Judge of the circuit court;

(iii) Family court judge; and

(iv) Magistrate;

(B) Nonpartisan elections for Board of Education; and

(C) Any question to be voted upon;

(4) Both the face and the reverse side of the ballot may contain the names of candidates only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

(5) The arrangement of candidates within each office is to be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for



entering write-in votes are to be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words “WRITE-IN, IF ANY” are to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a position to mark the vote.

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are to be printed in the color of ink specified by the Secretary of State for the various political parties, and the general election ballot is to be printed in black ink. For electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary ballots and the general election ballot are to be printed in black ink. All ballots are to be printed, where applicable, on white paper suitable for automatic tabulation and are to contain a perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the same manner as provided in section thirteen, article five of this chapter, or are to be displayed on the screens of the electronic voting system upon which votes are recorded by means of a stylus or touch. The number of ballots printed and the packaging of ballots for the precincts are to conform to the requirements for paper ballots provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.”

The Judiciary Committee amendment, as amended, was then adopted.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 412**), and there were—yeas 87, nays 13, absent and not voting none, with the nays being as follows:

NAYS: Caputo, Eldridge, Ferro, Fleischauer, Guthrie, Hornbuckle, Kelly, Lynch, Manchin, Moore, Perdue, Perry and Pushkin.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 249) passed.

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

At 1:26 P.M., on motion of Delegate Cowles, the House of Delegates recessed until 2:00 P.M.

**S. B. 283**, Relating to branch banking; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 413**), and there were—yeas 76, nays none, absent and not voting 24, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Byrd, Campbell, Cooper, Deem, Eldridge, Foster, Guthrie, Hicks, Hornbuckle, Kessinger, Longstreth, Lynch, McCuskey, McGeehan, Moffatt, E. Nelson, Pethtel, L. Phillips, R. Phillips, Reynolds, Rohrbach, Skinner, R. Smith and Sponaule.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 283) passed.

An amendment to the title of the bill, recommended by the Committee on Banking and Insurance, was reported by the Clerk and adopted, amending the title to read as follows:

**S. B. 283** - “A Bill to amend and reenact §31A-4-40 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31A-8-12d of said code, all relating to state banking institutions; removing restrictions on closure of banks on weekdays; removing requirement of a board resolution and legal advertisement for any change in days or hours a bank office is open for business; establishing certain requirements to be met prior to changing the days or hours a bank office is open for business; and reducing time for consideration

of expedited branch applications from thirty-five days to twenty-one days.”

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

**S. B. 292**, Relating to licenses for business of currency exchange, transportation or transmission; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 414**), and there were—yeas 87, nays none, absent and not voting 13, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Cooper, Deem, Eldridge, Foster, Guthrie, Longstreth, Moffatt, L. Phillips, R. Phillips, Reynolds, Rohrbach, Skinner and R. Smith.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 292) passed.

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

**S. B. 322**, Eliminating mandatory electronic recount of ballots in recounts; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 415**), and there were—yeas 90, nays 2, absent and not voting 8, with the nays and absent and not voting being as follows:

NAYS: Frich and Hornbuckle.

ABSENT AND NOT VOTING: Cooper, Deem, Foster, Guthrie, Moffatt, R. Phillips, Reynolds and Skinner.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 322) passed.

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

**S. B. 332**, Relating to administrative fees for Tax Division, Department of Revenue; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 416**), and there were—yeas 84, nays 10, absent and not voting 6, with the nays and absent and not voting being as follows:

NAYS: Folk, Frich, Gearheart, Ihle, Lynch, Marcum, McGeehan, Pushkin, Sobonya and Upson.

ABSENT AND NOT VOTING: Cooper, Foster, Guthrie, Moffatt, Reynolds and Skinner.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 332) passed.

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

**Com. Sub. for S. B. 344**, Relating to limitations on back and front pay and punitive damages; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 417**), and there were—yeas 92, nays 6, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Fleischauer, Moore, Perdue, Pushkin, Rodighiero and Trecost.

ABSENT AND NOT VOTING: Cooper and Guthrie.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 344) passed.

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

**Com. Sub. for S. B. 366**, Creating Patient Protection and Transparency Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 418**), and there were—yeas 97, nays 1, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: McGeehan.

ABSENT AND NOT VOTING: Cooper and Ferro.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 366) passed.

**Com. Sub. for S. B. 411**, Creating Asbestos Bankruptcy Trust Claims Transparency Act and Asbestos and Silica Claims Priorities Act; on third reading, coming up in regular order, was read a third time.

Delegate Boggs requested to be excused from voting on the passage of Com. Sub. for S. B. 411 under the provisions of House Rule 49.

The Speaker replied that any impact on Delegate Boggs would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Gentleman from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 419**), and there were—yeas 86, nays 12, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Boggs, Byrd, Fleischauer, Guthrie, Hicks, Miley, Moore, Perdue, Rowe, Skinner, Sponaugle and Statler.

ABSENT AND NOT VOTING: Cooper and Ferro.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 411) passed.

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

**Com. Sub. for S. B. 436**, Relating to State Athletic Commission; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 420**), and there were—yeas 95, nays 3, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Fast, Folk and Zatezalo.

ABSENT AND NOT VOTING: Cooper and Ferro.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 436) passed.

An amendment to the title of the bill, recommended by the Committee on Government Organization, was reported by the Clerk and adopted, amending the title to read as follows:

**Com. Sub. for S. B. 436** - “A Bill to repeal §29-5A-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §29-5A-1,

§29-5A-2, §29-5A-3, §29-5A-3a, §29-5A-5, §29-5A-6, §29-5A-8, §29-5A-17, §29-5A-19, §29-5A-20 and §29-5A-24 of said code; and to amend said code by adding thereto two new sections, designated §29-5A-1a and §29-5A-3b, all relating to the State Athletic Commission; changing composition of commission; requiring that office of commission be located on the premises of Lottery Commission office; requiring the Lottery Commission to provide administrative support; creating a State Athletic Commission fund; authorizing expenditures; paying expenses of the commission; setting payment schedule; requiring promoter to ensure attendance of appointed officials; requiring the commission to give advance notice of appointed officials; permitting alternates; prohibiting the commission from performing certain functions at events; requiring the commission to follow weight classes as adopted by the Association of Boxing Commissions; increasing certain fees; providing rule making authority; requiring the commission to follow certain unified rules for professional boxing events; requiring the commission to follow certain unified rules for mixed martial arts events; requiring the commission to follow certain rules for amateur boxing events; and requiring the commission to follow certain rules for amateur mixed martial arts events.”

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

**S. B. 445**, Relating to investment of RJCFA excess funds; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 421**), and there were—yeas 95, nays 3, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Lynch, Marcum and Sobonya.

ABSENT AND NOT VOTING: Cooper and Ferro.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 445) passed.

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

**S. B. 454**, Criminalizing trademark counterfeiting; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 422**), and there were—yeas 94, nays 4, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Folk, Ihle, McGeehan and Skinner.

ABSENT AND NOT VOTING: Cooper and Ferro.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 454) passed.

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

**S. B. 489**, Imposing statute of limitations on civil actions derived from surveying of real property; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 423**), and there were—yeas 81, nays 17, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Anderson, Caputo, Eldridge, Fleischauer, Fluharty, Hornbuckle, Lane, Longstreth, Lynch, Manchin, Moore, Perdue, Pushkin, Reynolds, Skinner, Sponaugle and Walters.

ABSENT AND NOT VOTING: Cooper and Ferro.



So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 489) passed.

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

**Com. Sub. for S. B. 366**, still being in possession of the Clerk, on motion of Delegate Cowles, was taken up for further consideration.

On motion of Delegate Ellington, the title of the bill was then amended to read as follows:

**Com. Sub. for S. B. 366** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-50-1, §33-50-2 and §33-50-3, all relating to the West Virginia Health Benefit Exchange; defining terms; requiring certain information be published on a website; providing online information to assist consumers in making informed decisions concerning the purchase of a qualified health plan; and authorizing rule-making.”

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

**S. B. 545**, Removing certain prior bank overdraft approval by director or executive officer; on third reading, coming up in regular order, was read a third time.

Delegates Hartman, E. Nelson, Shott and H. White requested to be excused from voting on the passage of S. B. 545 under the provisions of House Rule 49.

The Speaker replied that any impact on the Delegates would be as members of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Members from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 424**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Cooper and Ferro.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 545) passed.

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

**S. B. 574**, Relating to liquor sales by distilleries and mini-distilleries; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 425**), and there were—yeas 91, nays 8, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Arvon, Border, Fast, Ireland, Moyer, Overington and Sobonya, Speaker Armstead.

ABSENT AND NOT VOTING: Cooper.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 574) passed.

On motion of Delegate Shott, the title of the bill was amended to read as follows:

**S. B. 574** - “A Bill to amend and reenact §60-3A-17 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60-4-3 and §60-4-3a of said code, all relating to sales of liquor by distilleries and mini-distilleries; providing for fees; reducing percentage of price to be submitted to the alcohol beverage control commissioner; setting a maximum for market zone payments; and raising the production level allowable for mini-distilleries.”

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

**S. B. 576**, Prohibiting PSC jurisdiction of internet protocol-enabled service or voice over internet protocol-enabled service and certain telephone company transactions; on third reading, coming up in regular order, was read a third time.

Delegate Espinosa requested to be excused from voting on the passage of S. B. 576 under the provisions of House Rule 49.

The Speaker replied that any impact on Delegate Espinosa would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the gentleman from voting.

Delegate Sponaugle requested to be excused from voting on the passage of S. B. 576 under the provisions of House Rule 49.

The Speaker replied that Delegate Sponaugle did have direct personal and pecuniary interest in the passage of the bill and excused the gentleman from voting.

Delegate Tresost requested to be excused from voting on the passage of S. B. 576 under the provisions of House Rule 49.

The Speaker replied that any impact on Delegate Tresost would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the gentleman from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 426**), and there were—yeas 75, nays 23, excused from voting 1, absent and not voting 1, with the nays, excused from voting and absent and not voting being as follows:

NAYS: Boggs, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Guthrie, Hicks, Hornbuckle, Longstreth, Manchin, Marcum, Miley, Moore, Morgan, Perdue, Pethtel, L. Phillips, Pushkin, Reynolds, Rodighiero, Rowe and H. White.

EXCUSED FROM VOTING: Sponaugle.

ABSENT AND NOT VOTING: Cooper.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 576) passed.

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

**S. B. 578**, Relating to occupational disease claims; on third reading, coming up in regular order, was read a third time.

Delegates J. Nelson and R. Smith requested to be excused from voting on the passage of S. B. 578 under the provisions of House Rule 49.

The Speaker replied that any impact on the Delegates would be as members of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Members from voting.

Delegate Walters requested to be excused from voting on the passage of S. B. 578 under the provisions of House Rule 49.

The Speaker replied that Delegate Walters did exhibit direct personal or pecuniary interest therein and not as a member of a class of persons, and excused the Gentleman from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 427**), and there were—yeas 58, nays 39, excused from voting 1, absent and not voting 2, with the nays, excused from voting and absent and not voting being as follows:

NAYS: Bates, Boggs, Byrd, Campbell, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Guthrie, Hamilton, Hicks, Hornbuckle, Longstreth, Lynch, Manchin, Marcum, Miley, Moore, Morgan, Moye, Perdue, Perry, Pethtel, L. Phillips, R. Phillips, Pushkin, Reynolds, Rodighiero, Rohrbach, Rowe, Skinner, P. Smith, Sponaule, Storch, Trecost, B. White, H. White and Williams.

EXCUSED FROM VOTING: Walters.

ABSENT AND NOT VOTING: Cooper and Foster.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 578) passed.

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

#### SECOND READING

**Com. Sub. for S. B. 336**, Eliminating Health Care Authority's power to apply certain penalties to future rate applications; on second reading, coming up in regular order, was read a second time and ordered to third reading.

#### FIRST READING

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

**Com. Sub. for S. B. 19**, Specifying minimum early childhood education program instruction days,

**S. B. 106**, Excepting professional engineer member from sanitary board when project engineer is under contract,

**Com. Sub. for S. B. 140**, Amending State Administrative Procedures Act,

**Com. Sub. for S. B. 170**, Authorizing Bureau of Commerce promulgate legislative rules,

**Com. Sub. for S. B. 182**, Authorizing Department of Military Affairs and Public Safety promulgate legislative rules,

**Com. Sub. for S. B. 192**, Authorizing Department of Transportation promulgate legislative rules,

**Com. Sub. for S. B. 199**, Authorizing miscellaneous agencies and boards promulgate legislative rules,

**Com. Sub. for S. B. 243**, Relating to school nutrition standards during state of emergency or preparedness,

**Com. Sub. for S. B. 284**, Relating to chief law-enforcement officer's requirement to certify transfer or making of certain firearms,

**Com. Sub. for S. B. 287**, Providing posthumous high school diplomas,

**Com. Sub. for S. B. 342**, Clarifying scope, application and requirements for error corrections by CPRB,

**Com. Sub. for S. B. 347**, Creating Firearms Act of 2015,

**Com. Sub. for S. B. 352**, Expanding scope of cooperative associations to goods and services including recycling,

**S. B. 360**, Repealing code sections relating to book indexes and claims reports required by court clerks,

**Com. Sub. for S. B. 390**, Authorizing PSC approve expedited cost recovery of natural gas utility infrastructure projects,

**S. B. 403**, Increasing period during which motor vehicle lien is valid,

**Com. Sub. for S. B. 409**, Establishing Fair and Open Competition in Governmental Construction Act,

**S. B. 412**, Relating to Real Estate Commission complaint filings,

**Com. Sub. for S. B. 430**, Permitting mutual orders enjoining certain contact between parties to domestic relations actions,

**S. B. 481**, Relating to municipal policemen's and firemen's pension and relief funds' investment,

**S. B. 483**, Clarifying continuing election of municipal policemen's and firemen's pension and relief funds' trustees,

**Com. Sub. for S. B. 488**, Reestablishing and modifying Broadband Deployment Council,

**S. B. 498**, Clarifying tax map rules apply to paper and electronic documents,

**S. B. 514**, Relating to investments of local policemen's and firemen's pension and relief funds,

**S. B. 515**, Allowing Municipal Pensions Oversight Board invest funds with Investment Management Board or Board of Treasury Investments,

**S. B. 518**, Permitting county and municipal economic development authorities invest certain funds,

**S. B. 549**, Establishing classifications and salary schedules for State Police forensic lab civilian employees,

**S. B. 580**, Relating to statute of limitations on health care injury claims for minors,

**S. B. 581**, Relating to Tourism Promotion Fund and Courtesy Patrol Fund,

**S. B. 583**, Increasing tax rate on providers of certain nursing facility services,

And,

**Com. Sub. for H. B. 2016**, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution.

At 3:41 P.M., on motion of Delegate Cowles, the House of Delegates recessed until 6:00 P.M.

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**EVENING SESSION**

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**CONFERENCE COMMITTEE REPORTS**

Delegate Arvon, from the Committee of Conference on matters of disagreement between the two houses, as to

**H. B. 2576**, Creating new code sections which separate the executive departments,

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendments of the Senate to Engrossed House Bill No. 2576 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to amendments of the Senate striking out everything after the enacting section and inserting new language, and agree to the same as follows:

**ARTICLE 2. ~~TRANSFER OF AGENCIES AND BOARDS~~ ORGANIZATION OF STATE AGENCIES, BOARDS AND COMMISSIONS WITHIN DEPARTMENTS OF STATE GOVERNMENT.**

**§5F-2-1. ~~Transfer and incorporation of agencies and boards; funds~~ General provisions.**

(a) ~~The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:~~

(1) ~~Building Commission provided in article six, chapter five of this code;~~



~~(2) Public Employees Insurance Agency provided in article sixteen, chapter five of this code;~~

~~(3) Governor's Mansion Advisory Committee provided in article five, chapter five-a of this code;~~

~~(4) Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of this code;~~

~~(5) West Virginia Public Employees Grievance Board provided in article three, chapter six-c of this code;~~

~~(6) Board of Risk and Insurance Management provided in article twelve, chapter twenty-nine of this code;~~

~~(7) Boundary Commission provided in article twenty-three, chapter twenty-nine of this code;~~

~~(8) Public Defender Services provided in article twenty-one, chapter twenty-nine of this code;~~

~~(9) Division of Personnel provided in article six, chapter twenty-nine of this code;~~

~~(10) The West Virginia Ethics Commission provided in article two, chapter six-b of this code;~~

~~(11) Consolidated Public Retirement Board provided in article ten-d, chapter five of this code; and~~

~~(12) Real Estate Division provided in article ten, chapter five-a of this code.~~

~~(b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:~~

~~(1) Division of Labor provided in article one, chapter twenty-one of this code, which includes:~~

~~(A) Occupational Safety and Health Review Commission provided in article three-a, chapter twenty-one of this code; and~~

~~(B) Board of Manufactured Housing Construction and Safety provided in article nine, chapter twenty-one of this code:~~

~~(2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety and Training for purposes of administrative support and liaison with the Office of the Governor:~~

~~(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in article six, chapter twenty-two-a of this code;~~

~~(B) Board of Miner Training, Education and Certification provided in article seven, chapter twenty-two-a of this code; and~~

~~(C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this code:~~

~~(3) The West Virginia Development Office provided in article two, chapter five-b of this code;~~

~~(4) Division of Natural Resources and Natural Resources Commission provided in article one, chapter twenty of this code;~~

~~(5) Division of Forestry provided in article one-a, chapter nineteen of this code;~~

~~(6) Geological and Economic Survey provided in article two, chapter twenty-nine of this code; and~~

~~(7) Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:~~

~~(A) Division of Unemployment Compensation;~~

~~(B) Division of Employment Service;~~

~~(C) Division of Workforce Development; and~~

~~(D) Division of Research, Information and Analysis;~~

~~(8) Division of Energy provided in article two-f, chapter five-b of this code;~~

~~(9) Division of Tourism Commission provided in article two-h, chapter five-b of this code;~~

~~(c) The Economic Development Authority provided in article fifteen, chapter thirty-one of this code is continued as an independent agency within the executive branch.~~

~~(d) The Water Development Authority and the Water Development Authority Board provided in article one, chapter twenty-two-c of this code is continued as an independent agency within the executive branch.~~

~~(e) The following agencies and boards, including all of the allied, advisory and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the office of the Governor:~~

~~(1) Air Quality Board provided in article two, chapter twenty-two-b of this code;~~

~~(2) Solid Waste Management Board provided in article three, chapter twenty-two-c of this code;~~

~~(3) Environmental Quality Board, or its successor board, provided in article three, chapter twenty-two-b of this code;~~

~~(4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;~~

~~(5) Oil and Gas Inspectors' Examining Board provided in article seven, chapter twenty-two-c of this code;~~

~~(6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this code; and~~

~~(7) Oil and Gas Conservation Commission provided in article nine, chapter twenty-two-c of this code.~~

~~(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Education and the Arts:~~

~~(1) Library Commission provided in article one, chapter ten of this code;~~

~~(2) Division of Culture and History provided in article one, chapter twenty-nine of this code; and~~

~~(3) Division of Rehabilitation Services provided in article ten-a, chapter eighteen of this code.~~

~~(g) The Educational Broadcasting Authority provided in article five, chapter ten of this code is part of the Department of Education and the Arts for the purposes of administrative support and liaison with the office of the Governor.~~

~~(h) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:~~

~~(1) Human Rights Commission provided in article eleven, chapter five of this code;~~

~~(2) Division of Human Services provided in article two, chapter nine of this code;~~

~~(3) Bureau for Public Health provided in article one, chapter sixteen of this code;~~

~~(4) Office of Emergency Medical Services and the Emergency Medical Service Advisory Council provided in article four-c, chapter sixteen of this code;~~

~~(5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;~~

~~(6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine of this code;~~

~~(7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and~~

~~(8) The Child Support Enforcement Division provided in chapter forty-eight of this code:~~

~~(i) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Military Affairs and Public Safety:~~

~~(1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;~~

~~(2) Armory Board provided in article six, chapter fifteen of this code;~~

~~(3) Military Awards Board provided in article one-g, chapter fifteen of this code;~~

~~(4) West Virginia State Police provided in article two, chapter fifteen of this code;~~

~~(5) Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in article five, chapter fifteen~~

of this code and Emergency Response Commission provided in article five-a of said chapter;

~~(6) Sheriffs' Bureau provided in article eight, chapter fifteen of this code;~~

~~(7) Division of Justice and Community Services provided in article nine-a, chapter fifteen of this code;~~

~~(8) Division of Corrections provided in chapter twenty-five of this code;~~

~~(9) Fire Commission provided in article three, chapter twenty-nine of this code;~~

~~(10) Regional Jail and Correctional Facility Authority provided in article twenty, chapter thirty-one of this code; and~~

~~(11) Board of Probation and Parole provided in article twelve, chapter sixty-two of this code.~~

~~(j) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:~~

~~(1) Tax Division provided in chapter eleven of this code;~~

~~(2) Racing Commission provided in article twenty-three, chapter nineteen of this code;~~

~~(3) Lottery Commission and position of Lottery Director provided in article twenty-two, chapter twenty-nine of this code;~~

~~(4) Insurance Commissioner provided in article two, chapter thirty-three of this code;~~

~~(5) West Virginia Alcohol Beverage Control Commissioner provided in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;~~

~~(6) Board of Banking and Financial Institutions provided in article three, chapter thirty-one-a of this code;~~

~~(7) Lending and Credit Rate Board provided in chapter forty-seven-a of this code;~~

~~(8) Division of Banking provided in article two, chapter thirty-one-a of this code;~~

~~(9) The State Budget Office provided in article two of this chapter;~~

~~(10) The Municipal Bond Commission provided in article three, chapter thirteen of this code;~~

~~(11) The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and~~

~~(12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this code.~~

~~(k) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:~~

~~(1) Division of Highways provided in article two-a, chapter seventeen of this code;~~

~~(2) Parkways, Economic Development and Tourism Authority provided in article sixteen-a, chapter seventeen of this code;~~

~~(3) Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;~~

~~(4) Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this code;~~

~~(5) Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;~~

~~(6) State Rail Authority provided in article eighteen, chapter twenty-nine of this code; and~~

~~(7) Public Port Authority provided in article sixteen-b, chapter seventeen of this code.~~

~~(4) Effective July 1, 2011, the Veterans' Council provided in article one, chapter nine-a of this code, including all of the allied, advisory, affiliated or related entities and funds associated with it, is incorporated in and administered as a part of the Department of Veterans' Assistance.~~

(a) The Legislature finds that in 1989, this chapter was enacted to provide for the reorganization of the executive branch of state government pursuant to the findings set forth under section one, article one of this chapter. This section was enacted as part of that legislation to effect the transfer of agencies and board and related entities into the various departments created within the executive branch of government. Since its initial enactment, the Legislature has amended and reenacted this section on a number of occasions, in most instances to modify the initial reorganization within the executive branch of government. The Legislature further finds that the structure of this section by which it provides an extensive list of executive agencies in a single section of the Code of West Virginia renders this section unnecessarily lengthy and complicated. The designation of a separate statute for each of the agencies and entities as they are organized in subsections (a) through (l) of this section as provided pursuant to the amendment and reenactment of this section in 2015 would reduce the unnecessary length and complexity of the statute without altering the Legislature's intent in providing for the organization of the executive branch of state government pursuant to the original findings set forth under section one, article one of this chapter and the Legislature's subsequent amendments and reenactments of various sections of this chapter. The Legislature therefore finds and declares that the amendment and reenactment of this section and the further amendment of the Code of West Virginia by adding thereto twelve new sections,



designated sections one-a, one-b, one-c, one-d, one-e, one-f, one-g, one-h, one-i, one-j, one-k, and one-l of this article, are solely for the purpose of designating a separate statute for each of the agencies and entities as they are organized in subsections (a) through (l) of this section as provided pursuant to the amendment and reenactment of this section in 2015 and for the purpose of providing corrective descriptions of an agency and corrective code references and deleting references to agencies, boards or commissions that have been repealed. The Legislature further finds and declares that except as otherwise provided in this section, the amendment and reenactment of this section and the enactment of the new sections may not be construed to have altered or modified the application of any other provision of this code to the agencies and entities described in those sections, and that all other provisions of this code, to the extent applicable to those sections, as well as the remaining subsections of this section, shall apply in like manner to the agencies and entities described in those new sections.

~~(m)~~ (b) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the position of administrator and the powers, authority and duties of each administrator and agency are not affected by the enactment of this chapter.

~~(n)~~ (c) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of the boards are not affected by the enactment of this chapter. All boards that are appellate bodies or are independent decision makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

~~(o)~~ (d) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, the reference means a division

of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.

~~(p)~~ (e) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the Office of the Governor, a department secretary or a bureau. Nothing in this section extends the powers of department secretaries under section two of this article to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

**§5F-2-1a. Department of Administration.**

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

(1) Finance Division provided in article two, chapter five-a of this code;

(2) General Services Division provided in article four, chapter five-a of this code;

(3) Information Services and Communications Division and the Office of Technology provided in chapter five-a of this code;

(4) Purchasing Division, Surplus Property and Travel Management provided in article three, chapter five-a of this code;

(5) Division of Personnel provided in article six, chapter twenty-nine of this code;

(6) Real Estate Division provided in article ten, chapter five-a of this code;

(7) Public Land Corporation provided in article eleven, chapter five-a of this code;

(8) Fleet Management Office provided in article one, chapter five-a of this code;

(9) Building Commission provided in article six, chapter five of this code;

(10) Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of this code;

(11) West Virginia Public Employees Grievance Board provided in article three, chapter six-c of this code;

(12) Board of Risk and Insurance Management provided in article twelve, chapter twenty-nine of this code;

(13) Boundary Commission provided in article twenty-three, chapter twenty-nine of this code;

(14) Public Defender Services provided in article twenty-one, chapter twenty-nine of this code;

(15) Public Employees Insurance Agency provided in article sixteen, chapter five of this code;

(16) Prosecuting Attorneys Institute provided in article four, chapter seven of this code;

(17) The West Virginia Ethics Commission provided in article two, chapter six-b of this code;

(18) Consolidated Public Retirement Board provided in article ten-d, chapter five of this code; and

(19) Governor's Mansion Advisory Committee provided in article five, chapter five-a of this code; and

(20) Committee for the Purchase of Commodities and Services from the Handicapped provided in article three-a, chapter five-a of this code; and

(21) Records Management and Preservation Advisory Committee provided in article eight, chapter five-a of this code; and

(22) Design-Build Board provided in article twenty-two-a, chapter five of this code.

**§5F-2-1b. Department of Commerce.**

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:

(1) Division of Labor provided in article one, chapter twenty-one of this code, which includes:

(A) Occupational Safety and Health Review Commission provided in article three-a, chapter twenty-one of this code;

(B) Board of Manufactured Housing Construction and Safety Standards provided in article nine, chapter twenty-one of this code; and

(C) Board of West Virginia Contractor Licensing provided in article eleven, chapter twenty-one of this code.

(2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-two -a of this code, which includes:

(A) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this code; and

(B) Coal Mine Safety Board of Appeals provided in article five, chapter twenty-two-a~~A~~ of this code.

(3) Board of Coal Mine Health and Safety provided in article six, chapter twenty-two-a of this code, which includes:

(A) Board of Miner Training, Education and Certification provided in article seven, chapter twenty-two-a of this code;

(B) Coal Mine Safety and Technical Review Committee provided in article six, chapter twenty-two-a of this code;

(C) West Virginia Diesel Equipment Commission provided in article two-a, chapter twenty-two-a of this code; and

(D) Coal Mine Safety and Technology Task Force; provided in article eleven, chapter twenty-two-a of this code.

(4) The West Virginia Development Office provided in article two, chapter five-b of this code;

(5) Division of Natural Resources and Natural Resources Commission provided in article one, chapter twenty of this code, which includes:

(A) Whitewater Commission provided in article two, chapter twenty of this code; and

(B) Wildlife Endowment Fund Board of Trustees provided in article twenty-six, chapter twenty of this code.

(6) Division of Forestry provided in article one, chapter nineteen of this code;

(7) Geological and Economic Survey provided in article two, chapter twenty-nine of this code; and

(8) Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:

(A) Unemployment Compensation Board of Review;

(8) Division of Energy provided in article two-f, chapter five-b of this code; and

(9) Division of Tourism and Tourism Commission provided in article two, chapter five-b of this code.

**§5F-2-1c. Economic Development Authority.**

The Economic Development Authority provided in article fifteen, chapter thirty-one of this code is continued as an independent agency within the executive branch.

**§5F-2-1d. Water Development Authority.**

The Water Development Authority and the Water Development Authority Board provided in article one, chapter twenty-two-c of this code is continued as an independent agency within the executive branch.

**§5F-2-1e. Department of Environmental Protection.**

The following agencies and boards, including all of the allied, advisory and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the Office of the Governor:

(1) Air Quality Board provided in article two, chapter twenty-two-b of this code;

(2) Solid Waste Management Board provided in article three, chapter twenty-two-c of this code;

(3) Environmental Quality Board, or its successor board, provided in article three, chapter twenty-two-b of this code;

(4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;

(5) Office of Oil and Gas provided in article six, chapter twenty-two of this code; and

(6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this code;

**§5F-2-1f. Department of Education and the Arts.**

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Education and the Arts:

(1) Library Commission provided in article one, chapter ten of this code;

(2) Division of Culture and History provided in article one, chapter twenty-nine of this code; and

(3) Division of Rehabilitation Services provided in article ten-a, chapter eighteen of this code.

**§5F-2-1g. Educational Broadcasting Authority.**

The Educational Broadcasting Authority provided in article five, chapter ten of this code is part of the Department of Education and the Arts for the purposes of administrative support and liaison with the Office of the Governor.

**§5F-2-1h. Department of Health and Human Resources.**

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:

(1) Human Rights Commission provided in article eleven, chapter five of this code;

(2) Division of Human Services provided in article two, chapter nine of this code;

(3) Bureau for Public Health provided in article one, chapter sixteen of this code;

(4) Office of Emergency Medical Services and the Emergency Medical Service Advisory Council provided in article four-c, chapter sixteen of this code;

(5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;

(6) State Commission on Intellectual Disability provided in article fifteen, chapter twenty-nine of this code;

(7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and

(8) The Child Support Enforcement Division provided in chapter forty-eight of this code.

**§5F-2-1i. Department of Military Affairs and Public Safety.**

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Military Affairs and Public Safety:

(1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;

(2) Armory Board provided in article six, chapter fifteen of this code;

(3) Military Awards Board provided in article one-g, chapter fifteen of this code;



(4) West Virginia State Police provided in article two, chapter fifteen of this code;

(5) Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in article five, chapter fifteen of this code and Emergency Response Commission provided in article five-a of said chapter;

(6) Division of Justice and Community Services provided in article nine-a, chapter fifteen of this code;

(7) Division of Corrections provided in chapter twenty-five of this code;

(8) Fire Commission provided in article three, chapter twenty-nine of this code;

(9) Division of Juvenile Services provided in article five-e, chapter forty-nine of this code;

(10) Division of Protective Services provided in article two-d, chapter fifteen of this code;

(11) Regional Jail and Correctional Facility Authority provided in article twenty, chapter thirty-one of this code; and

(12) Board of Probation and Parole provided in article twelve, chapter sixty-two of this code.

**§5F-2-1j. Department of Revenue.**

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:

(1) The State Tax Division provided in article one, chapter eleven of this code;

(2) Racing Commission provided in article twenty-three, chapter nineteen of this code;

(3) Lottery Commission and position of Lottery Director provided in article twenty-two, chapter twenty-nine of this code;

(4) Insurance Commissioner provided in article two, chapter thirty-three of this code;

(5) West Virginia Alcohol Beverage Control Commissioner provided in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;

(6) Board of Banking and Financial Institutions provided in article three, chapter thirty-one-a of this code;

(7) Lending and Credit Rate Board provided in chapter forty-seven-a of this code;

(8) Division of Financial Institutions provided in article two, chapter thirty-one-a of this code;

(9) The State Budget Office provided in article two, chapter eleven-b of this code;

(10) The Municipal Bond Commission provided in article three, chapter thirteen of this code;

(11) The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and

(12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this code.

**§5F-2-1k. Department of Transportation.**

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any

agency or board, are incorporated in and administered as a part of the Department of Transportation:

(1) Division of Highways provided in article two-a, chapter seventeen of this code;

(2) Parkways Authority provided in article sixteen-a, chapter seventeen of this code;

(3) Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;

(4) Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this code;

(5) Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;

(6) State Rail Authority provided in article eighteen, chapter twenty-nine of this code;

(7) Public Port Authority provided in article sixteen-b, chapter seventeen of this code; and

(8) Division of Public Transit provided in article sixteen-c, chapter seventeen of this code.

**§5F-2-11. Department of Veterans' Assistance.**

The Veterans' Council provided in article one, chapter nine-a of this code, including all of the allied, advisory, affiliated or related entities and funds associated with it, is incorporated in and administered as a part of the Department of Veterans' Assistance.

Respectfully submitted,

LYNNE ARVON,

CRAIG BLAIR,

JORDAN HILL,

GREG BOSO,

RUPERT PHILLIPS, JR.,

RONALD F. MILLER,

*Conferees on the part  
of the House of Delegates.**Conferees on the part  
of the Senate.*

Delegate Arvon moved that the report of the Committee of Conference be adopted.

The bill, as amended by said report, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays, were taken (**Roll No. 428**), and there were—yeas 92, nays 1, absent and not voting 7, with the nays and absent and not voting being as follows:

NAYS: Guthrie.

ABSENT AND NOT VOTING: Deem, Foster, Marcum, McCuskey, Moore, Morgan and R. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2576) passed.

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

At the request of Delegate Cowles and by unanimous consent, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

### COMMITTEE REPORTS

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

Your Committee on Energy has had under consideration:

**H. C. R. 104**, Requesting the Congress of the United States invoke the Confessional Review Act,

And reports the same back with the recommendation that it be adopted, but that it first be referred to the Committee on Rules

In accordance with the former direction of the Speaker, the resolution (H. C. R. 104) was referred to the Committee on Rules.

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**Com. Sub. for S. B. 407**, Implementing state safety oversight program,

**S. B. 415**, Relating to circuit judges,

And,

**S. B. 479**, Adding additional family court judges,

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

On motion for leave, resolutions were introduced (Originating in the Committee on Agriculture and Natural Resources and reported with the recommendation that they each be adopted), which were read by their titles, as follows:

**By Delegates Hamilton, A. Evans, Ambler, Romine, Eldridge, L. Phillips, Border, Cadle, Campbell, Canterbury, Rodighiero, R. Smith, Wagner and Zatezalo:**

**H. C. R. 132** - "Requesting the Joint Committee on Government and Finance study the economic impact of making all hunting and fishing licenses valid for a period of one year from the date issued; and requesting the Joint Committee on Children and Families study the effect of federal laws and regulations as the same relate to the

requirement that an applicant submit his or her social security number when applying for a hunting license,”

WHEREAS, Section thirty-five, article two, chapter twenty of the Code of West Virginia provides that hunting licenses are valid through the last day of the calendar year for which they are issued unless otherwise provided by law;

WHEREAS, Legislation has been proposed which would provide that all hunting and fishing licenses are valid for a period of one year from the date they are issued; and

WHEREAS, Section one hundred and thirty-three, article eighteen, chapter forty-eight of the Code of West Virginia provides that the social security number, if any, of any applicant for a recreational license be recorded on the application for such license; therefore be it

*Resolved by the Legislature of West Virginia:*

That the Legislature hereby requests the Joint Committee on Government and Finance to study the overall economic impact of amending section thirty-five, article two, chapter twenty of the Code of West Virginia to provide that all hunting and fishing licenses are valid for a period of one year from the date they are issued; and, be it

*Further resolved,* That the Legislature hereby requests the Joint Committee on Government and Finance to study the effect of federal laws and regulations as the same relate to the requirement of section one hundred and thirty-three, article eighteen, chapter forty-eight of the Code of West Virginia, which provides that the social security number, if any, of any applicant for a recreational license be recorded on the application for such license; and, be it

*Further resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further resolved*, That the expenses necessary to conduct these studies, to prepare reports and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

And,

**By Delegates Hamilton, A. Evans, Ambler, Romine, Eldridge, L. Phillips, Border, Cadle, Campbell, Canterbury, Rodighiero, R. Smith, Wagner and Zatezalo:**

**H. C. R. 133** - “Requesting the Joint Committee on Government and Finance tudy the economic impact of reducing or eliminating the necessity for certain hunting, fishing and trapping licenses”.

WHEREAS, Residents that meet certain criteria currently do not require a license to hunt or fish, such as: a resident who is totally blind; residents who are on active duty in the armed forces of the United States of America, while on leave or furlough; resident who is a disabled veteran; resident who is certifiably developmentally disabled;

WHEREAS, Resident landowners and their resident children may hunt or fish on their own land without a permit or license during open seasons in accordance with laws and rules applying to hunting and fishing;

WHEREAS, Legislation has been proposed which would create additional exemptions from the license requirement, such as: native nonresidents, certain military personnel, and senior citizens;

WHEREAS, The State of West Virginia, Division of Natural Resources is responsible for providing a comprehensive program for the exploration, conservation, development, protection, enjoyment and use of the natural resources of the state;

WHEREAS, Revenues from the sale of hunting, fishing and trapping licenses are constitutionally dedicated for the conservation, restoration,

management, educational benefit, recreational use and scientific study of the state's fish and wildlife; and

WHEREAS, significant federal funding received by the State of West Virginia is dependent upon the sale of hunting, fishing and trapping licenses by the state; therefore be it

*Resolved by the Legislature of West Virginia:*

That the Legislature hereby requests the Joint Committee on Government and Finance to study the overall economic impact of loss of license revenues by the creation of additional exemptions from the license requirement on the Division of Natural Resources' duty to utilize license revenues for the conservation, restoration, management, educational benefit, recreational use and scientific study of the state's fish and wildlife, and its duty to seek federal funding to aid in the accomplishment those duties; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**Com. Sub. for S. B. 12,** Relating to payment of separated employee's outstanding wages,

And,



**Com. Sub. for S. B. 323**, Relating to municipal home rule,

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

Delegate McCuskey, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 10<sup>th</sup> day of March, 2015, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**(S. B. 294)**, Eliminating certain unnecessary, inactive or redundant councils, committees and boards,

**(Com. Sub. for S. B. 351)**, Relating to charitable organization contribution levels requiring independent audit reports,

**(Com. Sub. for S. B. 374)**, Permitting in absentia parole hearings in certain instances,

**(Com. Sub. for S. B. 375)**, Specifying who receives parole hearing notices via regular or certified mail,

**(S. B. 463)**, Making supplementary appropriation to DHHR, DHS, Health Care Provider Tax, Medicaid State Share Fund,

**(S. B. 472)**, Making supplementary appropriation to DOT, DMV, Motor Vehicle Fees Fund,

**(S. B. 475)**, Making supplementary appropriation to DMAPS, Division of Corrections, Parolee Supervision Fees, and WV State Police, Motor Vehicle Inspection Fund,

And,

**(S. B. 507)**, Relating to monitoring inmates' electronic communications,

On motion for leave, resolutions were introduced (Originating in the Committee on Senior Issues and reported with the recommendation that they each be adopted), which were read by their titles, as follows:

**By Delegates Rowan, Williams, Border, Campbell, Duke, Ferro, Hamilton, Kelly, Moye, Overington, Perry, Pethtel, Romine, B. White and Zatezalo:**

**H. C. R. 130** - "Requesting the Joint Committee on Government and Finance to study and review current law, procedure and public services intended to protect against senior citizen financial abuse and exploitation and to study the feasibility of developing and providing additional effective tools, resources and best practices to help protect senior citizens from financial abuse and exploitation,"

WHEREAS, Over sixteen percent of West Virginians are senior citizens sixty-five years of age or older and it has been projected that by 2035, the senior citizen population will constitute almost one fourth of the state's total population; and

WHEREAS, Many seniors are dependent on the assistance of others for the administration of their property, income and financial assets and well-being and therefore are at a heightened risk for financial exploitation; and

WHEREAS, Financial abuse and exploitation has become an increasing topic of concern by law enforcement as well as public agencies and service providers serving seniors in the state; and

WHEREAS, West Virginia already has significant laws, procedures and public services in place intended to protect seniors from financial exploitation and abuse; however, it is becoming increasingly apparent that this problem persists and is perhaps increasing and that a comprehensive review of the protections provided by current laws, procedures and public services would be beneficial to address this problem; and

WHEREAS, additional tools and resources need to be examined and explored by this state and the Legislature to better address the problem of elder financial abuse and exploitation; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is requested to study and review current law, procedure and public services intended to protect against senior citizen financial abuse and exploitation and to study the feasibility of developing and providing additional effective tools, resources and best practices to help protect senior citizens from financial abuse and exploitation.; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session, 2016, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report, and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

And,

**By Delegates Rowan, Williams, Border, Campbell, Duke, Ferro, Hamilton, Kelly, Moye, Overington, Perry, Pethtel, Romine, B. White and Zatezalo:**

**H. C. R. 131** - "Requesting the Joint Committee on Government and Finance to study the issues, needs and challenges facing senior citizens in this state and to study the feasibility of developing and providing additional effective tools, resources and best practices to address the health, safety and welfare of our senior citizens."

WHEREAS, West Virginia has the second largest percentage of senior population in the nation; over sixteen percent of West Virginians are senior citizens sixty-five years of age or older and it has been

projected that by 2035, the senior citizen population will constitute almost one fourth of the state's total population; and

WHEREAS, it is well known that many of our seniors lack adequate resources and have limited financial ability to meet their needs for increased services for the necessities of life, such as personal care, health care, housing, utilities, nutrition, transportation and mobility needs and ultimately, long term care which they need and have the decreasing ability to provide for themselves as they mature; and

WHEREAS, Findings from recent studies reveal several negative trends of seniors in this state: approximately forty-five percent of West Virginia seniors have a disability, compared to thirty-seven percent nationally; one in three elder state residents is in fair to poor health; for approximately one in three seniors, Social Security is the sole source of income; and relatively few of those seniors eligible take advantage of other supports like the SNAP program or utility assistance; and

WHEREAS, The increasing demand for current public, as well as private senior services in West Virginia already has become an increasing topic of concern by public as well as private agencies and service providers serving seniors in the state as well as various private senior advocacy groups; and

WHEREAS, There is an increase of children being raised in this state by senior grandparents who assume the responsibility to care for these children because of unstable parents; these seniors in many instances face difficulties or are denied the ability to attend to the child's educational needs and may be denied other public benefits available for the child as a result of not having proper legal guardianship or custody, thereby resulting in increased physical, emotional and financial strain on these senior grandparents; and

WHEREAS, These senior demographic trends are going to have increasing consequences for senior citizens and their families as well as on the many state and local programs that provide senior services; and

WHEREAS, The Legislature finds that these emerging complex issues facing seniors today and in the immediate future in this state need to be addressed by a comprehensive study and examination; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is requested to study the issues, needs and challenges facing senior citizens in this state and to study the feasibility of developing and providing additional effective tools, resources and best practices to address the health, safety, welfare and other concerns of our senior citizens; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session, 2016, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report, and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

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

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

**S. B. 386,** Excluding mobile e-ray services from health care provider tax,

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

In accordance with the former direction of the Speaker, the bill (S. B. 386) was referred to the Committee on Finance.

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**S. B. 434**, Relating to horse racing,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 370**, Reorganizing Governor's Committee on Crime, Delinquency and Correction and its subcommittees,

And reports the same back with amendment, with the recommendation that it do pass, as amended, and with the recommendation that second reference of the bill to the Committee on Finance be dispensed with.

In the absence of objection, reference of the bill (S. B. 370) to the Committee on Finance was abrogated.

Delegate Shott, Chair of the Committee on the Judiciary submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 393**, Reforming juvenile justice system,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, and with the recommendation that second reference of the bill to the Committee on Finance be dispensed with.

In the absence of objection, reference of the bill (Com. Sub. for S. B. 393) to the Committee on Finance was abrogated.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 423**, Amending Aboveground Storage Tank Act,

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

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**Com. Sub. for S. B. 14**, Creating Public Charter Schools Act of 2015,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 63**, Redefining facilities eligible for funding assistance from Courthouse Facilities Improvement Authority,

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

In accordance with the former direction of the Speaker, the bill (S. B. 63) was referred to the Committee on Finance.

**MISCELLANEOUS BUSINESS**

Delegate Lane noted to the Clerk that he be recorded in the Journal as having voted “NAY” on the acceptance of the report of the Committee of Conference on H. B. 2213, Reducing the distributions to the West Virginia Infrastructure Fund.

Delegate Blair noted to the Clerk that she was absent when the vote was taken on Roll No. 401, and that had she been present, she would have voted “YEA” thereon.

Delegate Guthrie announced that she was absent when the votes were taken on Roll Nos. 413-417, and that had she been present, she would have voted “YEA” thereon.

Delegate Ferro noted to the Clerk that he was absent when the vote was taken on Roll No. 411, and that had he been present, he would have voted “YEA” thereon, he also announced that he was absent on Roll Nos. 436, 445, 489 and 545 and would have voted “YEA” thereon.

Delegate Moffatt noted to the Clerk that he was absent when the votes were taken on Roll No. 401, 413, 414 and 415, and that had he been present, he would have voted “YEA” thereon. He also announced that he was absent on Roll No. 416, and would have voted “NAY” thereon.

Delegates Hicks, Lynch, McGeehan and Pethtel announced that they were absent when the vote was taken on Roll No. 413, and that had they been present, they would have voted “YEA” thereon.

Delegates Byrd, Longstreth, Moffatt, E. Nelson, L. Phillips, R. Smith and Sponaule noted to the Clerk that they were absent when the vote was taken on Roll No. 413, and that had they been present, they would have voted “YEA” thereon.

Delegates Longstreth, Moffatt, L. Phillips and R. Smith noted to the Clerk that they were absent when the votes were taken on Roll No.



414, and that had they been present, they would have voted “YEA” thereon.

Delegate Rohrbach announced that he was absent when the votes were taken on S. B. 283 and S. B. 292, and that had he been present, he would have voted “YEA” thereon.

Delegate Ferro asked and obtained unanimous consent that all the remarks regarding S. B. 578, Relating to occupational disease claims be printed in the Appendix to the Journal.

Delegate Eldridge asked and obtained unanimous consent that the remarks of Delegate Perdue regarding Com. Sub. for S. B. 30 be printed in the Appendix to the Journal.

Delegate Hartman noted to the Clerk that he was absent on yesterday when the votes were taken on Roll Nos. 380 through 394, and had he been present he would have voted “YEA” thereon.

At 6:40 P.M., the House of Delegates adjourned until 11:00 A.M., Wednesday, March 11, 2015.



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WEDNESDAY, MARCH 11, 2015

**FIFTY-SEVENTH DAY**

[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

The House of Delegates met at 11:00 A.M., and was called to order by the Honorable Tim Armstead, Speaker.

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

The Clerk proceeded to read the Journal of Tuesday, March 10, 2015, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**REORDERING OF THE CALENDAR**

Delegate Cowles announced that the Committee on Rules had transferred S. B. 502, on third reading, House Calendar, to the Special Calendar; S. B. 498, on third reading, Special Calendar, to the House Calendar; and Com. Sub. for S. B. 347 to the bottom of bills on third reading, Special Calendar.

**COMMITTEE REPORTS**

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

**By Delegates Ellington, Householder, Arvon, Cooper, Hill, Kurcaba, Pasdon, Rohrbach, Sobonya, Stansbury, Waxman,**

**Westfall, Fleischauer, Campbell, Longstreth, Moore, Pushkin and Rodighiero:**

**H. C. R. 136** - “Requesting the Joint Committee on Government and Finance study that insurers cover topical ophthalmic treatment early refills in a manner similar to or consistent with CMS guidelines for all covered individuals.”

WHEREAS, Early detection and prevention is critical to preventing serious vision loss as a result of glaucoma; and

WHEREAS, According to the World Health Organization (WHO), there are an estimated 45 million persons currently having open angle glaucoma and 16 million having angle closure glaucoma, these figures are projected to rise 59 and 21 million respectively by 2020; and

WHEREAS, The National Eye Institute estimates the prevalence of open angle glaucoma in the U.S. population aged 40 and older at 1.86%; and

WHEREAS, Risk factors for open angle glaucoma include age, family history, being of African or Latin heritage, have had serious eye injury or surgery, or are taking corticosteroid medication; and

WHEREAS, West Virginia healthcare providers and pharmacists may work together to continue to inform patients of the ability for early refill of medication and proper usage as prescribed and needed to ensure effective treatment and positive health outcomes; and

WHEREAS, The Centers for Medicare and Medicaid (CMS) have issued regulations that authorize refills, for inadvertent spillage at a rate of 70% in a thirty day time period, allowing patients to refill at day 21 - for the essential topical ophthalmic treatments; and

WHEREAS, While the Patient Protection and Accountability Act (PPACA) allows states to mandate health benefits for qualified health plans; however, effective January 1<sup>st</sup>, 2014, the PPACA will access

costs to the states for additional benefits that are mandated after December 31, 2011; therefore, be it

WHEREAS, The Legislature shall study early refills of prescription eye drops necessary to allow continued access and treatment for individuals in order to effectively treat eye disease; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is requested to study the feasibility of permitting the office of the Health Insurance Commissioner to continue to ensure that West Virginia insurers cover topical ophthalmic treatment early refills in a manner similar to or consistent with the CMS regulations for all covered individuals; and, be it

*Further Resolved,* That Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

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

**By Delegates Ellington, Householder, Arvon, Cooper, Hill, Kurcaba, Pasdon, Rohrbach, Sobonya, Stansbury, Waxman, Westfall, Fleischauer, Campbell, Longstreth, Moore, Pushkin and Rodighiero:**

**H. C. R. 137** - "Requesting the Joint Committee on Government and Finance to study access and costs associated with cancer clinical trials."

WHEREAS, Only a small percentage of patients with cancer participate in clinical trials, which is due to many issues including a lack of available clinical trials, as well as a lack of awareness that clinical trials are a treatment option, or even what a clinical trial is; and

WHEREAS, Typically, when a patient enrolls in a clinical trial, the cost of tests, procedures, drugs and any research activity directly associated with the investigation, are covered by the group sponsoring the trial, such as a pharmaceutical company or the National Cancer Institute. However, because some health plans define clinical trials as “experimental” or “investigational”, health insurance coverage may or may not include some or all of the costs of “routine patient care”, such as the doctor visits, hospital stays, tests and x-rays, that a patient would normally receive whether or not they were enrolled in a trial; and

WHEREAS, For cancer patients to access, properly designed and conducted clinical trials represents an important therapeutic option, as well as a critical means of advancing medical knowledge; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study and review access and costs associated with cancer clinical trials; and, be it

*Further Resolved,* That Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

On motion for leave, a resolution was introduced (Originating in the Committee on Health and Human Resources and reported with the

recommendation that it be adopted), which was read by its title, as follows:

**By Delegates Ellington, Householder, Arvon, Cooper, Hill, Kurcaba, Rohrbach, Sobonya, Stansbury, Waxman, Westfall, Fleischauer, Campbell, Longstreth, Moore, Pushkin and Rodighiero:**

**H. C. R. 138** - "Requesting the Joint Committee on Government and Finance to study and review the managed care system within the Bureau for Medical Services."

WHEREAS, The Bureau for Medical Services (BMS), Office of Medicaid Managed Care, initiated a risk-based managed care program for certain groups of Medicaid recipients in September 1996; and

WHEREAS, The Managed Care Organization's (MCO's) under contract with BMS are; Coventry Health Care of West Virginia, The Health Plan of the Upper Ohio, Unicare and West Virginia Family Health - - The name of the program is Mountain Health Trust; and

WHEREAS, Under this program, the Bureau contracted with three MCO's for the provision of medically necessary services currently provided by the State, with the exception, most notably, of behavioral health, long term care and non-emergency medical transportation services; and

WHEREAS, West Virginia ranks Number One in severe mental illness; and

WHEREAS, Seventy percent of citizens who have behavioral health issue also has at least one chronic condition, decreasing their quality of life, and their mental state suffers from their inability to manage their health concern; and

WHEREAS, According to a Public Works Audit commissioned by the Department of Health and Human Resources, they have

recommended that the State of West Virginia integrate behavioral health into Mountain Health Trust's Medicaid population; and

WHEREAS, Managed care rates are based on "per payer, per month" system. The state pays each MCO a set rate based on the number of Medicaid patients it serves, regardless of their individual health-care needs; and

WHEREAS, It is the intent of the legislature that West Virginia's Medicaid population is properly maintained, while also providing that the Mountain Health Trust contract and implementation is actuarially sound and responsible; therefore be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study and review the managed care contract within the Bureau for Medical Services; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance monitor, assess and provide assistance to the Bureau for Medical Services while it transitions its Medicaid population into Mountain Health Trust in insuring that it be actuarially sound and that administrative costs and medical loss ratio are consistent with national standards; and, be it

*Further Resolved,* That Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

On motion for leave, a resolution was introduced (Originating in the Committee on Health and Human Resources and reported with the



recommendation that it be adopted), which was read by its title, as follows:

**By Delegates Ellington, Householder, Arvon, Cooper, Hill, Kurcaba, Pasdon, Rohrbach, Sobonya, Stansbury, Waxman, Westfall, Fleischauer, Campbell, Longstreth, Moore, Pushkin and Rodighiero:**

**H. C. R. 134** - "Requesting the Joint Committee on Government and Finance to study the Health Care Authority and the certificate of need review process."

WHEREAS, The certificate of need review process was enacted by the West Virginia Legislature in 1977 and became a part of the Health Care Authority in 1983; and

WHEREAS, The certificate of need review process is intended to be a regulatory element designed to assist the Health Care Authority to control health care costs, improve the quality and efficiency of the state's health care system, encourage collaboration and develop a system of health care delivery available to all of West Virginia's citizens; and

WHEREAS, Unless specifically exempted, all health care providers in West Virginia must obtain a certificate of need prior to the addition or expansion of health care services, to exceed certain capital expenditures, to obtain major medical equipment or to develop or acquire a new health care facility; and

WHEREAS, The structure of certificate of need review varies widely from state to state and some states have either repealed or limited the scope of the certificate of need review process; and

WHEREAS, In some respects the certificate of need review process in West Virginia has substituted bureaucratic decision making for a free enterprise system; and

WHEREAS, Restructuring the certificate of need review process to better account for cost containment with attention paid to efficient allocation of scarce resources, the impact on effective delivery of health care services, a greater attention to balancing quality of care and service delivery with entrepreneurial insight and patient preference, and a focus on availability of services to the citizens of West Virginia through a more competitive free market may be needed; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the certificate of need review process within the Health Care Authority; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance consider an alternative framework to the certificate of need review process more centered on a free market in the delivery of medical care in health care facilities and equipment; and, be it

*Further Resolved,* That Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

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

**By Delegates Ellington, Householder, Arvon, Cooper, Hill, Kurcaba, Pasdon, Rohrbach, Sobonya, Stansbury, Waxman,**

**Westfall, Fleischauer, Campbell, Longstreth, Moore, Pushkin and Rodighiero:**

**H. C. R. 135** - “Requesting the Joint Committee on Government and Finance to study state hospitals in regards to the Hartley Case.”

WHEREAS, In 1982, the West Virginia Supreme Court found that it was contrary to West Virginia Mental Health Law for the Department of Health and Human Resources to merely “warehouse” an individual in a state mental institution; and

WHEREAS, Both parties entered into a massive consent order dealing with every aspect of the state mental health system, with a judge and court monitor to aggressively oversee the state mental health system; and

WHEREAS, In 2001, an order was issued terminating this case except for nine unresolved issues, and creating a behavioral health ombudsman within the department to replace the court monitor; and

WHEREAS, In 2005 the judge issued a series of orders addressing the forensic needs of the state; and

WHEREAS, In 2009 a hearing was held to explore the problem of overcrowding, lack of community supports and traumatic brain injuries provided by DHHR to people with mental illness; and

WHEREAS, Several terms where reached in the order requiring that the DHHR comply with the improvement of conditions; and

WHEREAS, The State of West Virginia has dedicated and is dedicating large amounts of it’s budget on attempting to comply with ongoing orders and legal fees; and

WHEREAS, It is the Legislature’s intent to review the current status of state mental hospitals and determine available options in order to maintain a financially sound yet responsible approach in meeting patient needs as it affects the Hartley case; therefore be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study and assist in the conclusion of the Hartley case as it affects the state's two psychiatric hospitals; and, be it

*Further Resolved,* That Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Delegate McCuskey, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 10<sup>th</sup> day of March, 2015, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates:

**(S. B. 508)**, Reorganizing Hatfield-McCoy Regional Recreation Authority.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 274**, Relating to TANF program sanctions,

**S. B. 318**, Relating to payment of wages by employers,

**S. B. 418**, Relating to trustee real estate sale under deed of trust,

And,

**S. B. 510**, Amending Uniform Interstate Family Support Act,

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

Delegate Pasdon, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**S. B. 447**, Allowing issuance of diploma by public, private or home school administrator,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 286**, Relating to compulsory immunizations of students; exemptions,

And,

**S. B. 585**, Relating to regulation of transportation network and taxicab companies,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub for S. B. 315**, Relating to civil actions filed under Consumer Protection Act,

**Com. Sub. for S. B. 325**, Relating to filing of candidates' financial disclosure statements,

And,

**Com. Sub. for S. B. 542**, Clarifying provisions of Consumer Credit and Protection Act relating to debt collection,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 273**, Relating to brewer, resident brewer and brewpub licensing and operations,

And,

**S. B. 312**, Relating to disqualification of general election nominees for failure to file campaign finance statements,

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

#### MESSAGES FROM THE SENATE

A message from The Clerk of the Senate announced the concurrence by that body in the reconsideration, amendment and passage as amended, by a vote of a majority of all the members elected to the Senate, as a result of the objections of the Governor, of

**Com. Sub. for H. B. 2010**, Requiring the elections of justices of the West Virginia Supreme Court of Appeals, circuit court judges, family court judges and magistrates be nonpartisan and by division.

A message from the Senate, by

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

**Com. Sub. for H. B. 2562**, Relating to sales tax increment financing.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, to take effect from passage, of

**Com. Sub. for S. B. 6**, Relating to medical professional liability.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

**Com. Sub. for S. B. 421**, Relating to punitive damages in civil actions.

## SPECIAL CALENDAR

### UNFINISHED BUSINESS

The following resolutions, coming up in regular order, as unfinished business, were reported by the Clerk and adopted:

**H. C. R. 130**, Requesting the Joint Committee on Government and Finance to study and review current law, procedure and public services intended to protect against senior citizen financial abuse and exploitation,

**H. C. R. 131**, Requesting the Joint Committee on Government and Finance to study the issues, needs and challenges facing senior citizens in this state,

**H. C. R. 132**, Requesting the Joint Committee on Government and Finance study the economic impact of making all hunting and fishing licenses valid for a period of one year from the date of issue,

And,

**H. C. R. 133**, Requesting the Joint Committee on Government and Finance study the economic impact of reducing or eliminating the necessity for certain hunting, fishing and trapping licenses.

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

#### THIRD READING

**Com. Sub. for S. B. 336**, Eliminating Health Care Authority's power to apply certain penalties to future rate applications; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 429**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 336) passed.

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

On this question, the yeas and nays were taken (**Roll No. 430**), and there were—yeas 100, nays none, absent and not voting none.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 336) takes effect from its passage.



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

**S. B. 502**, Relating to eligibility for certain reclamation or remediation tax credit; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 431**), and there were—yeas 97, nays 3, absent and not voting none, with the nays being as follows:

NAYS: Fleischauer, Manchin and Skinner.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 502) passed.

On motion of Delegate Ireland, the title of the bill was amended to read as follows:

**S. B. 502** - “A Bill to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating generally to surface mining and reclamation; bonding; special reclamation tax and funds; prohibited acts; bond liability; specifying retrospective eligibility of a mine operator to receive a tax credit for performing reclamation or remediation at a bond forfeiture site which otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special Reclamation Water Trust Fund; and specifying limitations.”

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

#### SECOND READING

**Com. Sub. for S. B. 19**, Specifying minimum early childhood education program instruction days; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Education, was reported by the Clerk and adopted, amending the bill on page one,

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

“That §18-5-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-44. Early childhood education programs.**

(a) For the purposes of this section, an ‘early childhood education program’ means ~~programs~~ a program created under this section for children who have attained the age of four prior to September 1 of the school year in which ~~the pupil enters~~ the children enter the program. ~~created in this section~~

(b) *Findings.* –

(1) Among other positive outcomes, early childhood education programs have been determined to:

(A) Improve overall readiness when children enter school;

(B) Decrease behavioral problems;

(C) Improve student attendance;

(D) Increase scores on achievement tests;

(E) Decrease the percentage of students repeating a grade; and

(F) Decrease the number of students placed in special education programs;

(2) Quality early childhood education programs improve school performance, and low-quality early childhood education programs may have negative effects, especially for at-risk children;

(3) West Virginia has the lowest percentage of its adult population twenty-five years of age or older with a bachelor’s degree, and the

education level of parents is a strong indicator of how their children will perform in school;

(4) During the 2006-2007 school year, West Virginia ranked thirty-ninth among the fifty states in the percentage of school children eligible for free and reduced lunches, and this percentage is a strong indicator of how the children will perform in school;

(5) For the school year 2008-2009, 13,135 students were enrolled in prekindergarten, a number equal to approximately sixty-three percent of the number of students enrolled in kindergarten;

(6) Excluding projected increases due to increases in enrollment in the early childhood education program, projections indicate that total student enrollment in West Virginia will decline by one percent, or by approximately 2,704 students, by the school year 2012-2013;

(7) In part, because of the dynamics of the state aid formula, county boards will continue to enroll four-year-old students to offset the declining enrollments;

(8) West Virginia has a comprehensive kindergarten program for five-year-olds, but the program was established in a manner that resulted in unequal implementation among the counties, which helped create deficit financial situations for several county boards;

(9) Expansion of current efforts to implement a comprehensive early childhood education program should avoid the problems encountered in kindergarten implementation;

(10) Because of the dynamics of the state aid formula, counties experiencing growth are at a disadvantage in implementing comprehensive early childhood education programs; and

(11) West Virginia citizens will benefit from the establishment of quality comprehensive early childhood education programs.

(c) Beginning no later than the school year 2012-2013, and continuing thereafter, county boards shall provide early childhood education programs for all children who have attained the age of four prior to September 1 of the school year in which the ~~pupil enters~~ children enter the early childhood education program. Beginning no later than the school year 2016-2017, and continuing thereafter, ~~these~~ early childhood education programs shall provide at least that are full day and five days four days of instruction per week, provide at least one thousand two hundred minutes of instruction per week and include at least one hundred forty-six instructional days per year. ~~shall be available to all children meeting the age requirement set forth in this subsection.~~

(d) The program shall meet the following criteria:

(1) It shall be voluntary, except that, upon enrollment, the provisions of section ~~one~~ one-a, article eight of this chapter apply to an enrolled student, subject to subdivision (34) of this subsection;

(2) It shall be open to All children meeting the age requirement set forth in this section; ~~shall have the opportunity to enroll in a program that is full day and five~~

(3) It shall provide at least four days of instruction per week, provide at least one thousand two hundred minutes of instruction per week and include at least one hundred forty-six instructional days per year; ~~The program may be for fewer than five days per week and may be less than full day based on family need if a sufficient number of families request such programs and the county board finds that such programs are in the best interest of the requesting families and students: *Provided*, That the ability of families to request programs that are fewer than five days a week or less than a full day does not relieve the county of the obligation to provide all resident children with the opportunity to enroll in a full-day program and~~

(34) It shall permit A a parent of a an enrolled child ~~enrolled in an early education program may~~ to withdraw a the child from that

program for good cause by notifying the district. Good cause includes, but is not limited to, enrollment of the child in another program or the immaturity of the child. A child withdrawn under this section is not subject to the attendance provisions of this chapter until that child again enrolls in a public school in this state.

(e) Enrollment of students in Head Start, or in any other program approved by the state superintendent as provided in ~~subsection (k)~~ of this section, may be counted toward satisfying the requirement of subsection (c) of this section.

(f) For the purposes of implementation financing, all counties are encouraged to make use of funds from existing sources, including:

(1) Federal funds provided under the Elementary and Secondary Education Act pursuant to 20 U. S. C. §6301, *et seq.*;

(2) Federal funds provided for Head Start pursuant to 42 U. S. C. §9831, *et seq.*;

(3) Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601, *et seq.*;

(4) Funds provided by the School Building Authority pursuant to article nine-d of this chapter;

(5) In the case of counties with declining enrollments, funds from the state aid formula above the amount indicated for the number of students actually enrolled in any school year; and

(6) Any other public or private funds.

(g) Each county board shall develop a plan for implementing the program required by this section. The plan shall include the following elements:

(1) An analysis of the demographics of the county related to early childhood education program implementation;

(2) An analysis of facility and personnel needs;

(3) Financial requirements for implementation and potential sources of funding to assist implementation;

(4) Details of how the county board will cooperate and collaborate with other early childhood education programs including, but not limited to, Head Start, to maximize federal and other sources of revenue;

(5) Specific time lines for implementation; and

(6) Any other items the state board may require by policy.

(h) A county board shall submit its plan to the Secretary of the Department of Health and Human Resources. The secretary shall approve the plan if the following conditions are met:

(1) The county board has maximized the use of federal and other available funds for early childhood programs; and

(2) The county board has provided for the maximum implementation of Head Start programs and other public and private programs approved by the state superintendent pursuant to the terms of ~~subsection (k) of this section; and~~ or

(3) ~~If the~~ The Secretary of the Department of Health and Human Resources secretary finds that, if the the county board has not met one or more of the requirements of this subsection, ~~but that~~ the county board has acted in good faith and the failure to comply was not the primary fault of the county board. ~~then the secretary shall approve the plan.~~ Any denial by the secretary may be appealed to the circuit court of the county in which the county board is located.

(i) The county board shall submit its plan for approval to the state board. The state board shall approve the plan if the county board has complied substantially with the requirements of subsection (g) of this

section and has obtained the approval required in subsection (h) of this section.

(j) Every county board shall submit its plan for reapproval by the Secretary of the Department of Health and Human Resources and by the state board at least every two years after the initial approval of the plan and until full implementation of the early childhood education program in the county. As part of the submission, the county board shall provide a detailed statement of the progress made in implementing its plan. The standards and procedures provided for the original approval of the plan apply to any reapproval.

(k) A county board may not increase the total number of students enrolled in the county in an early childhood program until its program is approved by the Secretary of the Department of Health and Human Resources and the state board.

(l) The state board annually may grant a county board a waiver for total or partial implementation if the state board finds that all of the following conditions exist:

(1) The county board is unable to comply either because:

(A) It does not have sufficient facilities available; or

(B) It does not and has not had available funds sufficient to implement the program;

(2) The county has not experienced a decline in enrollment at least equal to the total number of students to be enrolled; and

(3) Other agencies of government have not made sufficient funds or facilities available to assist in implementation.

Any county board seeking a waiver shall apply with the supporting data to meet the criteria for which they are eligible on or before March 25 for the following school year. The state superintendent shall grant or deny the requested waiver on or before April 15 of that same year.

(m) The provisions of subsections (b), (c) and (d), section eighteen of this article relating to kindergarten apply to early childhood education programs in the same manner in which they apply to kindergarten programs.

(n) Annually, the state board shall report to the Legislative Oversight Commission on Education Accountability on the progress of implementation of this section.

(o) Except as required by federal law or regulation, no county board may enroll students who will be less than four years of age prior to September 1 for the year they enter school.

(p) Neither the state board nor the state department may provide any funds to any county board for the purpose of implementing this section unless the county board has a plan approved pursuant to subsections (h), (i) and (j) of this section.

(q) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purposes of implementing the provisions of this section. The state board shall consult with the Secretary of the Department of Health and Human Resources in the preparation of the rule. The rule shall contain the following:

- (1) Standards for curriculum;
- (2) Standards for preparing students;
- (3) Attendance requirements;
- (4) Standards for personnel; and

(5) Any other terms necessary to implement the provisions of this section.

(r) The rule shall include the following elements relating to curriculum standards:



(1) A requirement that the curriculum be designed to address the developmental needs of four-year-old children, consistent with prevailing research on how children learn;

(2) A requirement that the curriculum be designed to achieve long-range goals for the social, emotional, physical and academic development of young children;

(3) A method for including a broad range of content that is relevant, engaging and meaningful to young children;

(4) A requirement that the curriculum incorporate a wide variety of learning experiences, materials and equipment, and instructional strategies to respond to differences in prior experience, maturation rates and learning styles that young children bring to the classroom;

(5) A requirement that the curriculum be designed to build on what children already know in order to consolidate their learning and foster their acquisition of new concepts and skills;

(6) A requirement that the curriculum meet the recognized standards of the relevant subject matter disciplines;

(7) A requirement that the curriculum engage children actively in the learning process and provide them with opportunities to make meaningful choices;

(8) A requirement that the curriculum emphasize the development of thinking, reasoning, decision-making and problem-solving skills;

(9) A set of clear guidelines for communicating with parents and involving them in decisions about the instructional needs of their children; and

(10) A systematic plan for evaluating program success in meeting the needs of young children and for helping them to be ready to succeed in school.

(s) The secretary and the state superintendent shall submit a report to the Legislative Oversight Commission on Education Accountability and the Joint Committee on Government and Finance which addresses, at a minimum, the following issues:

(1) A summary of the approved county plans for providing the early childhood education programs pursuant to this section;

(2) An analysis of the total cost to the state and county boards of implementing the plans;

(3) A separate analysis of the impact of the plans on counties with increasing enrollment; and

(4) An analysis of the effect of the programs on the maximization of the use of federal funds for early childhood programs.

The intent of this subsection is to enable the Legislature to proceed in a fiscally responsible manner and make any necessary program improvements based on reported information prior to implementation of the early childhood education programs.

(t) After the school year 2012-2013, on or before July 1 of each year, each county board shall report the following information to the Secretary of the Department of Health and Human Resources and the state superintendent:

(1) Documentation indicating the extent to which county boards are maximizing resources by using the existing capacity of community-based programs, including, but not limited to, Head Start and child care; and

(2) For those county boards that are including eligible children attending approved, contracted community-based programs in their net enrollment for the purposes of calculating state aid pursuant to article nine-a of this chapter, documentation that the county board is equitably distributing funding for all children regardless of setting.”

The bill was then ordered to third reading.

**S. B. 106**, Excepting professional engineer member from sanitary board when project engineer is under contract; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 140**, Amending State Administrative Procedures Act; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page five, line five, section two, immediately following the word “rule”, by striking out the comma and the words “as defined in subdivision (j) of this section” and the comma.

And,

On page eight, line ten, by following the word “numbering”, by striking out the words “or grammatical error” and inserting in lieu thereof “grammatical errors, or changes to language to standardize rules generally without affecting the content of any rule”.

On motion of Delegate Lane, the bill was amended on page four, section two, line four, by striking out the word “private” and inserting in lieu thereof the words “constitutional, statutory or common law”.

On page four, section two, line six, following the words “exercise of”, by striking out the word “private” and inserting in lieu thereof the words “constitutional, statutory or common law”.

On page five, section two, line seventeen, by striking out the word “private” and inserting in lieu thereof the words “constitutional, statutory or common law”.

And,

On page seven, section two, line twelve, by striking out the word “private” and inserting in lieu thereof the words “constitutional, statutory or common law”.

The bill was then ordered to third reading.

**Com. Sub. for S. B. 170**, Authorizing Bureau of Commerce promulgate legislative rules; on second reading, coming up in regular order, was read a second time.

The Clerk then reported an amendment offered by Delegate Gearheart, on page twelve, line six, after the word “authorized”, by striking out the period and inserting in lieu thereof a comma and the words “with the following amendment” and a colon.

On page two, subsection 3.6. ,by striking out all of subsection 3.6.;

And,

On page two, subsection 6.2., after the word “Commissioner”, by striking out the word “may” and inserting in lieu thereof the word “shall”;

And,

On page two, subdivision 6.2.3.a, by inserting a period after the word, “program” and striking out the remainder of the sentence and subdivision 6.2.3.b;

On page four, subsection 10.3., after the word “rule”, by inserting the following: “that are applicable to the duties and knowledge required by an HVAC technician for the installation, repair and maintenance of HVAC”;

And,

On page five, section 11, by striking all of subsections 11.4. and 11.5.;

And,

On page six, subsection 13.1., after the word “license”, by inserting the following:

“: *Provided*, That no fee may be charged for an HVAC technician license for a person who holds an HVAC contractor’s license pursuant to article eleven, chapter twenty-one of the W. Va. Code.”.”

Delegate Householder requested to be excused from voting on Com. Sub. for S. B. 170 under the provisions of House Rule 49.

The Speaker replied that any impact on Delegate Householder would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Gentleman from voting.

The amendment offered by Delegate Gearheart was then adopted.

The bill was then ordered to third reading.

**Com. Sub. for S. B. 182**, Authorizing Department of Military Affairs and Public Safety promulgate legislative rules; on second reading, coming up in regular order, was read a second time.

The Clerk then reported an amendment offered by Delegate Gearheart, on page four, line eleven, after the word “authorized”, by striking out the period and inserting in lieu thereof a comma and the words “with the following amendment:

‘On page six, section seven, subsection seven after the words “Code of West Virginia”, by striking out the comma and the remainder of sentence and inserting in lieu thereof the following:

“And shall pass a test developed by the state fire marshal on HVAC Fire Safety.”

Delegate Householder requested to be excused from voting on Com. Sub. for S. B. 182 under the provisions of House Rule 49.

The Speaker replied that any impact on Delegate Householder would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Gentleman from voting.

The amendment offered by Delegate Gearheart was then adopted.

The bill was then ordered to third reading.

**Com. Sub. for S. B. 192**, Authorizing Department of Transportation promulgate legislative rules; on second reading, coming up in regular order, was read a second time.

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

That article 8, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.**

**§64-8-1. Division of Motor Vehicles.**

The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section nine, article two, chapter seventeen-a of this code, modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 31, 2014, relating to the Division of Motor Vehicles (examination and issuance of driver's licenses, 91 CSR 4), is authorized with the following amendments:

On page two, subsection 3.1., lines eight and nine, by striking out “§17B-2-8(i)” and inserting in lieu thereof “§17B-2-8(i)”;

On page six, subdivision 3.11.a., line six, by striking out “§17B-2-8(i)” and inserting in lieu thereof “§17B-2-8(i)”;

On page seven, subsection 3.11, after line two, by adding a new subdivision 3.11.e to read as follows:

“3.11.e In lieu of a social security card as proof of social security number, the following documents may be used to obtain a not for federal use driver’s license or a not for federal use identification card:

(i) An original or a copy of a certified Military Discharge Form DD 214 issued by the U.S. Military, with the social security number; or

(ii) A Medicare card issued in the applicant’s full name, which contains the applicant’s social security number and the signature of the applicant as the card holder.”

On page seven, subsection 4.1, line seventeen<sup>17</sup>, after the word “Commissioner.”, by adding the following:

“The Division shall make available information for driver’s license and ID applicants that clearly delineates the requirements for a for federal use driver license or ID and a not for federal use driver’s license and ID.”;

On page ten, subsection 4.1.f, line five after the word “commissioner”, by adding the following:

“which form must require and be accompanied by a certification by a medical doctor that a sex change has been completed, otherwise the requested change shall not be approved”

On page fourteen, subsection 5.1.d, line eleven after the phrase “minimum of”, by removing the strikethrough of the word “thirty” and striking the word “fifty”.

On page seventeen, subsection 5.8.c, line nineteen after the phrase “minimum of”, by removing the strikethrough of the word “thirty” and striking the word “fifty”.

On page twenty-one, subsection 7.2, line six, after the word “record.”, by adding the following:

“The renewal form shall clearly delineate the requirements for a for federal use driver license or ID and a not for federal use driver’s license and ID.”;

On page twenty-five, line eight, by adding a new subsection 7A.1.c to read as follows:

“7A.1.c. The Division’s online renewal process shall clearly delineate the requirements for a for federal use driver license or ID and a not for federal use driver’s license and ID.”;

On page twenty-seven, subsection 8.2.c, line one after the word “commissioner”, by adding the following:

“which form must require and be accompanied by a certification by a medical doctor that a sex change has been completed”

On page thirty-one, subsection 9.5, line 17 after the word “commissioner”, by adding the following:

“which form must require and be accompanied by a certification by a medical doctor that a sex change has been completed”

On page forty-two, subsection 13.6.b, line 9 after the phrase “education or”, by removing the strikethrough of the word “thirty” and striking the word “fifty”.



On page thirty-four, subdivision 11.1.b, lines seventeen through nineteen, by striking out all of subdivision 11.1.b and inserting in lieu thereof the following:

“11.1.b. A valid photo driver’s license or identification card expired six months or less issued the Division only on a not for federal use driver’s license and a not for federal use identification card.”

And by renumbering the remaining subdivisions;

On page thirty-five, subdivision 11.1.d., line one, by striking out “§17B-2-8(i)” and inserting in lieu thereof “§17B-2-8(i), only on a not for federal use driver’s license and a not for federal use identification card”;

On page thirty-six, lines fourteen and fifteen, by striking out all of subdivision 12.2.b. and inserting in lieu thereof a new subdivision 12.2.b. to read as follows:

“12.2.b. A United States passport or passport card, currently valid or expired less than 2 years, only on a not for federal use driver’s license and a not for federal use identification card.”;

On page forty-seven, subdivision 14.7.e, line fifteen, after the word “endocrinologist”, by inserting the words “or primary care physician”;

On page fifty-two, subsection 14.14, line three, by striking out the word “two” and inserting in lieu thereof the word “three”;

And,

On page fifty-two, subsection 14.14, line six, by striking out the word “two” and inserting in lieu thereof the word “three”.

#### **§64-8-2. Office of Administrative Hearings.**

The legislative rule filed in the State Register on July 31, 2014, authorized under the authority of section four-a, article five-c, chapter

seventeen-c of this code, modified by the Office of Administrative Hearings to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 23, 2014, relating to the Office of Administrative Hearings (appeal procedures, 105 CSR 1), is authorized with the following amendment:

On page fourteen, subdivision 16.3.1., by changing the period to a colon and adding the following proviso: *Provided*, That if a party prevails in its appeal, the OAH shall refund the \$50 filing fee.

On motion of Delegate Shott, the amendment was amended on page two, section one, by striking out lines fifteen through eighteen and on page three, section one, by striking out lines ten and eleven.

The Judiciary Committee amendment, as amended, was then adopted.

The bill was then ordered to third reading.

**Com. Sub. for S. B. 199**, Authorizing miscellaneous agencies and boards promulgate legislative rules; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk on page twelve, section eight, line five, by striking out the word “six” and inserting in lieu thereof the word “five”.

And,

On page eighteen, second ten, line three, immediately following the word “authorized”, by inserting the following:

“with the following amendment:

On page four, subsection 6.3, by striking out the words ‘, and the standards in the AAEP Care Guidelines for Equine Rescue and Retirement Facilities’ ”.

On motion of Delegates Foster and Waxman the amendment was amended on page twelve, section eight, line five, by striking out the word “six” and inserting in lieu thereof the word “four”.

The Judiciary amendment, as amended, was then adopted.

On motion of Delegate Folk, the bill was amended in §64-9-10 (m) by adding:

On page two, subdivision 3.1.o., by striking out all of subdivision 3.1.o.;

On page two, subdivision 3.1.p., by striking out all of subdivision 3.1.p.;

On page two, subdivision 3.1.q., by striking out all of subdivision 3.1.q.;

On page two, subdivision 3.1.r., by striking out all of subdivision 3.1.r.;

And,

In §64-9-10 (m) by striking out:

“On page three, subdivision 3.1.u., by striking out all of paragraph 3.1.u.1 through paragraph 3.1.u.8 and renumbering the remaining paragraph” and inserting in lieu thereof:

“On page three, subdivision 3.1.u., by striking out all of subdivision 3.1.u”.

The bill was then ordered to third reading.

**Com. Sub. for S. B. 243**, Relating to school nutrition standards during state of emergency or preparedness; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Education, was reported by the Clerk and adopted, amending the bill on page

three, section six-a, line thirteen, by striking out the word “effected” and inserting in lieu thereof the word “affected”.

Delegate Campbell moved to amend the bill on page two, line eleven, after the period, by inserting the following:

“Each public school faculty senate, together with the school principal, shall adopt a plan regarding how that school will administer school or classroom celebrations on a periodic basis as determined by the school principal in compliance with provisions of this code and state board policy governing required instructional time. Subject to approval of the local school improvement council, and for the purpose of such events only, a school is authorized to waive only the nutritional and caloric content requirements of state board policies regarding standards for school nutrition.”

Delegate Pasdon arose to a point of order as to the germaneness of the amendment.

To the point of order the Speaker replied, stating that the fundamental purpose of the bill relates to the authority to suspend nutritional rules when there is a state of emergency and a state of preparedness in the State of West Virginia and it does not go into the specific rules in what constitutes nutritional rules. The Lady’s amendment would in fact go into what would go into those rules, therefore, it is the ruling of the Chair that the amendment is not germane.

Delegate Campbell arose to appeal the ruling of the Chair, which demand was sustained.

#### **SPEAKER PRO TEMPORE ANDERSON IN THE CHAIR**

Whereupon,

Delegate Campbell asked and obtained unanimous consent that the motion be withdrawn.

At 2:29 P.M., on motion of Delegate Cowles, the House of Delegates recessed for twenty minutes.

**MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR**

**SPECIAL CALENDAR**

**SECOND READING**

-Continued-

**Com. Sub. for S. B. 243**, Relating to school nutrition standards during state of emergency or preparedness; was taken up for further consideration.

There being no further amendments, the bill was then ordered to third reading.

**Com. Sub. for S. B. 284**, Relating to chief law-enforcement officer's requirement to certify transfer or making of certain firearms; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 287**, Providing posthumous high school diplomas; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Education, was reported by the Clerk and adopted, amending the bill on page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2-32, to read as follows:

**ARTICLE 2. STATE BOARD OF EDUCATION.**

**§18-2-32. Posthumous high school diplomas.**

(a) This section shall be known as ‘Todd’s Law’.

(b) Notwithstanding any provision of this code to the contrary, the state board shall provide for the awarding of a high school diploma to a deceased student, at the request of the parent, guardian or custodian, if the student:

(1) Was enrolled in a public school in this state at the time of death;

(2) Was academically eligible, or on track to complete the requirements for graduation at the time of death; and

(3) Died after the completion of the eleventh grade school year.”

The bill was then ordered to third reading.

**Com. Sub. for S. B. 342**, Clarifying scope, application and requirements for error corrections by CPRB; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 352**, Expanding scope of cooperative associations to goods and services including recycling; on second reading, coming up in regular order, was, on motion of Delegate Cowles, laid over, retaining its place on the calendar.

**S. B. 360**, Repealing code sections relating to book indexes and claims reports required by court clerks; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 390**, Authorizing PSC approve expedited cost recovery of natural gas utility infrastructure projects; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Cowles, and by unanimous consent, the bill was advanced to third reading with an amendment pending, and the rule was suspended to permit the consideration of the amendment on that reading.

**S. B. 403**, Increasing period during which motor vehicle lien is valid; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 409**, Establishing Fair and Open Competition in Governmental Construction Act; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 412**, Relating to Real Estate Commission complaint filings; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 430**, Permitting mutual orders enjoining certain contact between parties to domestic relations actions; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page two, by striking out everything after the enacting clause and inserting the following:

“That §48-27-507 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §51-2A-2a, to read as follows:

## **CHAPTER 48. DOMESTIC RELATIONS.**

### **ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.**

#### **§ 48-27-507. Mutual protective orders prohibited.**

Mutual protective orders are prohibited unless both parties have filed a petition under part 3 of this article and have proven the allegations of domestic violence by a preponderance of the evidence. This shall not prevent other persons, including the respondent, from filing a separate petition. The court may consolidate two or more petitions if he or she determines that consolidation will further the

interest of justice and judicial economy. The court shall enter a separate order for each petition filed; Provided, That nothing in this section shall preclude the court from entering an order restricting contact pursuant to section two-a, article two-a, chapter fifty-one of this code.

## CHAPTER 51. COURTS IN GENERAL.

### ARTICLE 2A. FAMILY COURTS.

#### **§51-2A-2a. Family court jurisdiction to restrict contact between parties.**

(a) A family court in its discretion may, at any time during the pendency of any action prosecuted under chapter forty-eight of this code, restrict contact between the parties thereto without a finding of domestic violence under article twenty-seven of said chapter. This order shall not be considered a protective order for purposes of section five hundred seven, article twenty-seven, chapter forty-eight of this code. A court may enter a standing order regarding the conduct expected of the parties during the proceeding. Any standing order may restrict the parties from:

(1) Entering the home, school, business or place of employment of the other for the purpose of bothering or annoying the other;

(2) Contacting the other, in person, in writing, electronically or by telephone, for purposes not clearly necessary for the prosecution of the underlying action or any obligation related thereto or resulting therefrom;

(b) Upon a finding of misconduct by a party, the Court shall enter an Order against the offending party enjoining the conduct which disturbs or interferes with the peace or liberty of the other party so long as such conduct does not rise to the level of or constitute domestic violence as defined in article twenty seven of Chapter forty-eight of this Code. The Court shall not issue orders under this section in cases



where the conduct of either party has previously risen to the level of domestic violence.

(c) Nothing in this section shall preclude the court from entering an emergency protective order, or final protective order, as provided in article twenty-seven, chapter forty-eight of this code.

(d) Notwithstanding the provisions of section five hundred five, article twenty-seven, chapter forty-eight of this code, an order entered pursuant to the provisions of this section shall remain in effect for a period of time as specified in the order.

(e) The court may enforce orders under this section against the offending party through its powers of contempt, pursuant to section nine of this article.

(f) It is the express intent of the Legislature that orders issued pursuant to this section are to restrict behavior which is not of sufficient severity to implicate the provisions of article twenty-seven, chapter forty-eight of this code and 18 U.S.C. section 922(g)(8).”

The bill was then ordered to third reading.

**S. B. 481**, Relating to municipal policemen’s and firemen’s pension and relief funds’ investment; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 483**, Clarifying continuing election of municipal policemen’s and firemen’s pension and relief funds’ trustees; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page one following the enacting section, by striking out the remainder of the bill in its entirety and inserting in lieu thereof the following:

**“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.**

**§8-22-18. Members of board of trustees; how elected; presiding officers; secretary.**

(a) The board of trustees of the policemen’s pension and relief fund shall consist of the mayor of the municipality and four members of the paid police department, to be chosen as hereinafter in this section specified. The mayor of such municipality shall give notice of an election to be held on the second Monday of the month following the adoption of the ordinance providing for the establishment and maintenance of such fund, which notice shall be served upon each member of the paid police department and which shall notify each member that between the hours of nine in the forenoon and six in the afternoon, on the day designated for such election, an election will be held for such purpose and that each member shall furnish in writing the names of four members of the paid police department voted for; and all votes so cast shall be counted and canvassed by the mayor and the governing body for the first election, and thereafter the votes shall be counted by the then existing members of such board, who after such election shall announce the results, and the four members of the paid police department receiving the highest number of votes shall, with the mayor, constitute ‘The Board of Trustees of the Policemen’s Pension and Relief Fund of (name of municipality).’ As to the first election held following the adoption of the ordinance providing for the establishment and maintenance of such fund, the member receiving the highest number of votes shall serve for a period of four years, the member receiving the second highest number of votes shall serve for a period of three years, the member receiving the third highest number of votes shall serve for a period of two years and the member receiving the fourth highest number of votes shall serve for a period of one year.

(b) After ~~such~~ the first election, the board shall hold a similar election each year to elect one member to succeed, for a term of four years, the retiring member. In the case of a tie vote being received by any two individuals for the office of trustee, such tie vote shall be decided by casting lots, or in any other way which may be agreed upon by the individuals for whom such tie vote was cast. The results of such election shall be entered in the record of the proceedings of the board and the members so elected shall, except as herein above specified with respect to the first election, serve for four years and until their successors are elected and have qualified. The election for such members of the board of trustees shall be held annually upon the second Monday of the same month during which the first election was held. In case of a vacancy by death, ~~resignation, or otherwise,~~ or resignation among the members so elected, the remaining members of the board shall choose the successor, or successors, until the next annual election at which latter time all vacancies shall be filled: Provided, That in the case of an elected member retiring during his or her term, the retired member may continue to serve the remainder of his or her term.

(c) The board of trustees of the firemen's pension and relief fund shall consist of the mayor of the municipality and four members of the paid fire department, to be chosen in the same manner and for such terms as is provided above in this section for the election of policemen to the policemen's pension and relief fund board of trustees.

(d) The presiding officer of any such board of trustees shall be the mayor of the municipality and the secretary thereof shall be appointed by the board. It shall be the duty of such secretary to keep a full and permanent record of all of the proceedings of the board and said trustees may fix the secretary's compensation for this work, which shall be paid out of the funds of said policemen's pension and relief fund or firemen's pension and relief fund, as the case may be.

(e) For all pension and relief funds closed after January 1, 2010, pursuant to subsection (e), section twenty of this article and those

closed after April 1, 2011, pursuant to subsection (f), section twenty of this article, the boards shall continue to elect four trustees until there are no more beneficiaries to be paid from the fund. Trustees are elected in the same manner and for the same terms but may be members of the paid police or fire departments or retirees from the paid police or fire departments.”

The bill was then ordered to third reading.

**Com. Sub. for S. B. 488**, Reestablishing and modifying Broadband Deployment Council; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Government Organization, was reported by the Clerk and adopted, amending the bill on page two after the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

“That §31-15C-10, §31-15C-11 and §31-15C-14 of the Code of West Virginia, 1931, as amended, be repealed; and that §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-7 and §31-15C-9 of said code be amended and reenacted, all to read as follows:

**ARTICLE 15C. BROADBAND ~~DEPLOYMENT~~ ENHANCEMENT.**

**§31-15C-2. Definitions.**

For the purposes of this article:

(1) ‘Broadband’ or ‘broadband service’ means any service providing advanced telecommunications capability with the same downstream data rate and upstream data rate as is specified by the Federal Communications Commission and that does not require the end-user to dial up a connection that has the capacity to always be on, and for which the transmission speeds are based on regular available bandwidth rates, not sporadic or burstable rates, with latency suitable for real-time applications and services such as voice-over Internet

protocol and video conferencing, and with monthly usage capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban areas: *Provided*, That as the Federal Communications Commission updates the downstream data rate and the upstream data rate the council will publish the revised data rates in the State Register within sixty days of the federal update.

(2) ‘Broadband demand promotion project’ means a statewide or regional project to undertake activities to promote demand for broadband services and broadband applications.

(3) ‘Broadband deployment project’ means a project to provide broadband services in ~~a type 2 or type 3 unserved area~~ areas as defined in section six of this article.

(4) ‘Council’ means the Broadband ~~Deployment~~ Enhancement Council.

(5) ‘Downstream data rate’ means the transmission speed from the service provider source to the end-user.

(6) ‘Upstream data rate’ means the transmission speed from the end-user to the service provider source.

(7) ‘Unserved area’ means a community that has no access to broadband service.

**§31-15C-3. Broadband ~~Deployment~~ Enhancement Council ~~reestablished~~; members of council; administrative support.**

(a) The Broadband ~~Deployment~~ Enhancement Council is ~~continued~~ hereby established. 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 is created under the

Department of Commerce for administrative, personnel and technical support services only.

(b) The council shall consist of ~~fifteen~~ thirteen voting members, designated as follows:

~~(1) The Governor or his or her designee;~~

~~(2) (1) The Secretary of Commerce or his or her designee;~~

~~(3) (2) The Secretary of Administration or his or her designee; The Department of Administration Chief Technology Officer or his or her designee; and~~

~~(4) (3) The Director of Homeland Security and Emergency Management or his or her designee The Vice Chancellor for Administration of the Higher Education Policy Commission or his or her designee;~~

~~(5) (4) The State Superintendent of Schools or his or her designee;~~  
and

~~(6) (5) Ten~~ Nine public members that serve at the will and pleasure of the Governor and are appointed by the Governor with the advice and consent of the Senate, as follows:

(i) One member representing ~~employees of communications and cable providers who is a member or representative of a union representing communications workers~~ users of large amounts of broadband services in this state;

(ii) One member from each Congressional district representing ~~the interests of the business community in this state~~ rural business users in this state;

(iii) One member from each Congressional district representing ~~incumbent local exchange carriers who provide broadband services in this state~~ rural residential users in this state;

(iv) One member representing ~~cable operators who provide broadband services in this state;~~ urban business users in this state; and

(v) One member representing ~~competitive local exchange carriers who provide broadband services in this state;~~ urban residential users in this state.

~~(vi) One member representing broadband equipment or device manufacturers;~~

~~(vii) One member representing higher education or secondary education; and~~

~~(viii) Three members representing the general public who are residents of the state, one of whom shall represent rural communities, and who may not reside in the same congressional district.~~

(7) (6) In addition to the ~~fifteen~~ thirteen voting members of the council, 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 an ex officio, nonvoting advisory member of the council.

(c) ~~The Secretary of Commerce or his or her designee shall chair the council and appoint one of the other council members to serve as vice chair. The Secretary of Commerce shall chair the first meeting at which time a chair and vice chair shall be elected from the members of the council. In the absence of the Secretary of Commerce or his or her designee~~ 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.

(d) 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.

(e) ~~Eight~~ Seven voting members of the council constitute a quorum and the affirmative vote of ~~at least the~~ a simple majority of those members present is necessary for any action taken by vote of the council.

(f) The council is part time. Public members appointed by the Governor 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 section five, article two, chapter six-b of this code and is not subject to prosecution for violation of said 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 legislative rules promulgated by the West Virginia Ethics Commission.

(g) No member of the council who serves by virtue of his or her office receives 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.

#### **§31-15C-4. Powers and duties of the council generally.**

(a) The council shall:

(1) Explore any and all ways to expand access to broadband services, including, but not limited to, middle mile, last mile and wireless applications;



(2) Gather data regarding the various speeds provided to consumers in comparison to what is advertised. The Council may request the assistance of the Legislative Auditor in gathering this data;

~~(1)~~ (3) Explore the potential for increased use of broadband service for the purposes of education, career readiness, workforce preparation and alternative career training;

~~(2)~~ (4) Explore ways for encouraging state and municipal agencies to expand the development and use of broadband services for the purpose of better serving the public, including audio and video streaming, voice-over Internet protocol, teleconferencing and wireless networking; and

~~(3)~~ (5) Cooperate and assist in the expansion of electronic instruction and distance education services, ~~by July 2014.~~

(b) In addition to the powers set forth elsewhere in this article, the council is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purpose and intent of this article. The council shall have the power and capacity to:

(1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any broadband deployment project;

(2) Promote awareness of public facilities that have community broadband access that can be used for distance education and workforce development;

(3) Advise on deployment of e-government portals such that all public bodies and political subdivisions have homepages, encourage one-stop government access and that all public entities stream audio and video of all public meetings;

(4) To make and execute contracts, commitments and other agreements necessary or convenient for the exercise of its powers,

including, but not limited to, the hiring of consultants to assist in the mapping of the state; and categorization of areas within the state ~~and~~ evaluation of project applications. ~~Provided, That the provisions of article three, chapter five-a of this code do not apply to the agreements and contracts executed under the provisions of this article;~~

(5) Acquire by gift or purchase, hold or dispose of real property and personal property in the exercise of its powers and performance of its duties as set forth in this article;

(6) Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for and receive any funds, property or services from any person, governmental agency or organization to carry out its statutory duties; and

(7) Perform any and all other activities in furtherance of its purpose.

(c) The council shall exercise its powers and authority to ~~bring~~ advise the Legislature on bringing broadband service to unserved and underserved areas. ~~The council may not duplicate or displace broadband service in areas already served or where private industry feasibly can be expected to offer services in the reasonably foreseeable future. In providing governmental funding for broadband deployment projects, the council shall give priority to funding for projects in areas without access to broadband service of any type or any speed before providing governmental funding for projects in areas with existing broadband service below the minimum speeds specified in section two of this article.~~

(d) The council shall report to the Joint Committee on Government and Finance on or before January 1 of each year. The report shall include the action that was taken by the council during the previous year in carrying out the provisions of this article. To the extent the report addresses data gathered in connection with subdivision two, subsection a, section four of this article, a copy of the report shall be

provided to the Attorney General. The council shall also make any other reports as may be required by the Legislature or the Governor.

**§31-15C-5. Creation of the Broadband ~~Deployment~~ 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 ~~Deployment~~ Enhancement Fund. The fund shall be administered by and under the control of the ~~council~~ Secretary of the Department of Commerce. 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 article two, chapter eleven-b of this code: ~~*Provided, That for the fiscal year ending the thirtieth day of June, two thousand nine,*~~ expenditures are authorized from collections rather than pursuant to appropriation by the Legislature. ~~*Provided, That any funds remaining in the fund of the former Broadband Development Council shall be transferred to the Department of Commerce by June 30, 2015.*~~

**§31-15C-7. Retention of outside expert consultant.**

In order to assist the council with the highly technical task of categorizing the areas of the state and evaluating and prioritizing projects, the council may retain an outside expert consultant or consultants qualified to map the state on the basis of broadband availability, to evaluate, categorize and prioritize projects, to assist in public outreach and education in order to stimulate demand, ~~to advise the council on the granting or denying of funding to projects, and to provide other support and assistance as necessary to accomplish the purposes of this article. The provisions of article three, chapter five-a of this code, shall not apply to the retention of an outside expert consultant pursuant to this section:~~ ~~*Provided, that the council shall select the expert or experts by a competitive selection process.*~~

**§31-15C-9. Development of guidelines and application for funding assistance; ~~emergency~~ legislative rule-making authority.**

(a) In order to implement and carry out the intent of this article in ~~type 2 and type 3 unserved areas~~, the ~~council~~ Secretary of the Department of Commerce, with the advice and recommendation of the council, shall propose rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code, ~~to develop comprehensive, uniform guidelines for use by the council in evaluating any request by a project sponsor for funding assistance to plan, acquire, construct, improve or otherwise develop and execute a broadband deployment project in a type 2 or type 3 unserved area. The council may promulgate emergency rules pending authorization of the legislative rules.~~

~~(b) The guidelines shall include the following:~~

~~(1) The cost-effectiveness of the project;~~

~~(2) The economic development benefits of the project;~~

~~(3) The availability of alternative sources of funding that could help finance the project, including, but not limited to, private grants or federal funding and the efforts undertaken to obtain such funding;~~

~~(4) If the project requires the construction of a network, the applicant's ability to operate and maintain such network;~~

~~(5) The degree to which the project advances statewide broadband access and other state broadband planning goals;~~

~~(6) If the project involves the construction of a network, the proposed technologies, bandwidths, upstream data rates and downstream data rates;~~

~~(7) The estimated dates the project would commence and be completed;~~

~~(8) How the proposed project compares to alternative proposals for the same unserved area with regard to the number of people served, the amount of financial assistance sought, and the long-term viability of the proposed project; and~~

~~(9) Any other consideration the council deems pertinent in evaluating requests for funding assistance.~~

~~(e) Under no circumstances may the council's guidelines allow for the approval of any project for broadband service involving the construction of a network that does not meet the minimum specifications for broadband service as set by the Federal Communications Commission.~~

~~(d) The council shall create an application form that shall be used by all project sponsors requesting funding assistance from the council to plan, acquire, construct, improve or otherwise develop and execute broadband deployment projects in type 2 or type 3 unserved areas or broadband demand promotion projects. The application form shall advise applicants of information required by state agencies that will issue permits and certificates regarding the project.~~

~~(e) The application form shall require the project sponsor to set forth:~~

~~(1) The proposed location of the project;~~

~~(2) If the project involves the construction of a network, the type(s) of unserved area(s) the project proposes to address;~~

~~(3) The estimated total cost of the project;~~

~~(4) The amount of funding assistance required and the specific uses of the funding;~~

~~(5) Other sources of funding available or potentially available for the project;~~

~~(6) Information demonstrating the need for the project;~~

~~(7) That the proposed funding of the project is the most economically feasible and viable alternative to completing the project; and~~

~~(8) Such other information as the council considers necessary.”~~

The bill was then ordered to third reading.

**S. B. 514**, Relating to investments of local policemen’s and firemen’s pension and relief funds; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page six, section fourteen-d, line six, following the word “period” and the comma, by adding “provided in subsection (e), section nineteen, article twenty-two, chapter eight of this code” and a comma.

The bill was then ordered to third reading.

**S. B. 515**, Allowing Municipal Pensions Oversight Board invest funds with Investment Management Board or Board of Treasury Investments; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 518**, Permitting county and municipal economic development authorities invest certain funds; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk on page five, section seven, line eleven, following the words “of the authority”, by striking out the semicolon and inserting “under an investment policy adopted and maintained by the board that is consistent with the standards of the Uniform Prudent Investor Act set forth in article six-c, chapter forty-four of this code:”

Provided, That the board of directors shall consult and invest the funds with the West Virginia Board of Treasury Investments or the West Virginia Investment Management Board”, followed by a semicolon.

And,

On page six, section seven, line two, following the words “of the authority”, by striking out the semicolon and inserting “under an investment policy adopted and maintained by the board that is consistent with the standards of the Uniform Prudent Investor Act set forth in article six-c, chapter forty-four of this code: *Provided, That the board of directors shall consult and invest the funds with the West Virginia Board of Treasury Investments or the West Virginia Investment Management Board*”, followed by a semicolon.

On page nine, section seven, following line four, by striking out the remainder of the bill.

And,

On page one, following the enacting clause, by striking out the enacting section and inserting in lieu thereof the following:

“That §7-12-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows” and a colon.

Delegate Perdue requested to be excused from voting on the passage of S. B. 518 under the provisions of House Rule 49.

The Speaker replied that any impact on Delegate Perdue would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Gentleman from voting.

The amendment by the Committee on Finance having been adopted, the bill was then ordered to third reading.

**S. B. 549**, Establishing classifications and salary schedules for State Police forensic lab civilian employees; on second reading,

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

**S. B. 580**, Relating to statute of limitations on health care injury claims for minors; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page one, after the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

“That §55-7B-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.**

**§55-7B-4. Health care injuries; limitations of actions; exceptions.**

(a) A cause of action for injury to a person alleging medical professional liability against a health care provider arises as of the date of injury, except as provided in subsection (b) of this section and must be commenced within two years of the date of such injury, or within two years of the date when such person discovers, or with the exercise of reasonable diligence, should have discovered such injury, whichever last occurs: *Provided*, That in no event shall any such action be commenced more than ten years after the date of injury.

(b) A cause of action for injury to a minor, ~~brought by or on behalf of a minor who was under the age of ten years at the time of such injury~~, shall be commenced ~~within two years of the date of such injury, or prior to the minor's twelfth birthday, whichever provides the longer period~~ in accordance with section fifteen, article two of this chapter. This subsection as enacted in 2015 is effective on passage and applies retroactively.

(c) The periods of limitation set forth in this section shall be tolled for any period during which the health care provider or its



representative has committed fraud or collusion by concealing or misrepresenting material facts about the injury.”

The bill was then ordered to third reading.

**S. B. 581**, Relating to Tourism Promotion Fund and Courtesy Patrol Fund; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page six, section three, line fifteen, following the words “visiting the state” and the period, by striking out the remainder of the section and inserting in lieu thereof the following:

“For that reason, on July 1, 2015:

(1) The administration of the courtesy patrol program shall be transferred to the division of highways and expenditures made by the division to fund the courtesy patrol program providing assistance to motorists on the state’s highways shall be made pursuant to appropriation of the Legislature from the state road fund or as otherwise provided by law; and

(2) The administration of the special revenue account in the state treasury known as the courtesy patrol fund shall be transferred to the division of highways: *Provided*, That any balances remaining in the courtesy patrol fund at the end of fiscal year 2015 shall be transferred and deposited into the tourism promotion fund. After the June 30, 2015, expenditures from the courtesy patrol fund shall be used solely to fund the courtesy patrol program providing assistance to motorists on the state’s highways. Amounts collected in the courtesy patrol fund which are found, from time to time, to exceed funds needed for the purposes set forth in this subdivision may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. Monies paid into the fund may be derived from the following sources:

(A) Any gifts, grants, bequests, transfers, appropriations or other donations which may be received from any governmental entity or unit or any person, firm, foundation, corporation or other private entity;

(B) Any appropriations by the Legislature which may be made for the purposes of this section; and,

(C) All interest or other return accruing to the fund.

Any monies remaining in the fund at the end of a fiscal year shall remain in the fund and be available for expenditure during the ensuing fiscal year.”

An amendment, offered by Delegate Moffatt, was reported by the Clerk on page six, section twelve, following line ten, by striking out the remainder of the bill.

On the adoption of the amendment, Delegate Marcum demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 432**), and there were—yeas 12, nays 87, absent and not voting 1, with the yeas and absent and not voting being as follows:

YEAS: Azinger, Butler, Cadle, Espinosa, Fast, Folk, Frich, Gearheart, Ihle, Kurcaba, McGeehan and Moffatt.

ABSENT AND NOT VOTING: Lynch.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

The bill was then ordered to third reading.

**S. B. 583**, Increasing tax rate on providers of certain nursing facility services; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page three, section eleven, line thirteen, following the words “nursing facility services”, by striking out “after June 30, 2015” and inserting in lieu thereof “on and after October 1, 2015”.

The bill was then ordered to third reading.

At 1:55 P.M., on motion of Delegate Cowles, the House of Delegates recessed until 6:00 P.M.

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### EVENING SESSION

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### SPECIAL CALENDAR

#### SECOND READING

-Continued-

**Com. Sub. for H. B. 2016**, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution; on second reading, coming up in regular order, was read a second time.

An amendment to the bill, offered by Delegates Reynolds and Hornbuckle, was reported by the Clerk.

Whereupon,

Delegate Reynolds asked and obtained unanimous consent that the amendment be withdrawn.

Delegates Boggs, Williams, Perdue moved to amend the bill, on page eight, item one, line one, by striking out “1,010,000” and inserting in lieu thereof “510,000”.

On page eight, item one, line twelve, by striking out “5,952,206” and inserting in lieu thereof “5,452,206”.

On page ten, item two, line one, by striking out “3,000,000” and inserting in lieu thereof “2,500,000”.

On page ten, item two, line seven, by striking out “8,904,031” and inserting in lieu thereof the following: “8,404,031”.

On page sixty-one, item sixty-six, line fifteen, by striking out “13,593,620” and inserting in lieu thereof the following: “14,593,620”.

And,

On page sixty-three, line forty, by striking out “920,079,832” and inserting in lieu thereof the following: “921,079,832”.

On the adoption of the amendment, Delegate Williams demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 433**), and there were—yeas 36, nays 57, absent and not voting 7, with the yeas and absent and not voting being as follows:

YEAS: Bates, Boggs, Byrd, Campbell, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Guthrie, Hartman, Hicks, Lane, Longstreth, Manchin, Marcum, Miley, Moore, Morgan, Moye, Perdue, Perry, Pethtel, R. Phillips, Pushkin, Reynolds, Rodighiero, Rohrbach, Rowe, Skinner, P. Smith, Sponaule, Trecost, Upson, H. White and Williams.

ABSENT AND NOT VOTING: Deem, Hill, Hornbuckle, Howell, Ireland, Lynch and L. Phillips.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegates Sponaule, Williams and Pushkin, moved to amend the bill on page ten, item two, line one, by striking out “3,000,000” and inserting in lieu thereof “2,700,000”.

On page ten, item two, line seven, by striking out “8,904,031” and inserting in lieu thereof the following: “8,604,031”.

On page eighteen, line twenty-two, by striking out “140,000” and inserting in lieu thereof the following: “440,000”.

On page eighteen, line twenty-four, by striking out “10,429,061” and inserting in lieu thereof the following: “10,729,061”.

And,

On page nineteen, line forty-one, after the word “hope”, by inserting “\$300,000 is for the Mountaineer Food Bank”.

Delegate Folk moved the previous question, which demand was not sustained.

On the adoption of the amendment, Delegate Sponaugle demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 434**), and there were—yeas 34, nays 58, absent and not voting 8, with the yeas and absent and not voting being as follows:

YEAS: Arvon, Bates, Boggs, Byrd, Campbell, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Guthrie, Hartman, Hicks, Longstreth, Manchin, Marcum, Miley, Moore, Morgan, Moye, Perdue, Perry, Pethtel, R. Phillips, Pushkin, Reynolds, Rodighiero, Rowe, Skinner, P. Smith, Sponaugle, Trecost, H. White and Williams.

ABSENT AND NOT VOTING: Deem, Hill, Hornbuckle, Howell, Ireland, Lynch, L. Phillips and Walters.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegates Miley, Sponaugle, Williams, Skinner and Perdue moved to amend the bill on page forty-four, line sixty-three, by inserting after

the number “2” the following “and \$100,000 is for entrepreneur education for grades k-12.”

On the adoption of the amendment, Delegate Miley demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 435**), and there were—yeas 33, nays 59, absent and not voting 8, with the yeas and absent and not voting being as follows:

YEAS: Bates, Boggs, Byrd, Campbell, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Guthrie, Hartman, Hicks, Longstreth, Manchin, Marcum, Miley, Moore, Morgan, Moye, Perdue, Perry, Pethtel, R. Phillips, Pushkin, Reynolds, Rodighiero, Rowe, Skinner, P. Smith, Sponaugle, Trecost, H. White and Williams.

ABSENT AND NOT VOTING: Deem, Hill, Hornbuckle, Howell, Ireland, Lynch, L. Phillips and Walters.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegates Folk, McGeehan, J. Nelson and Ihle moved to amend the bill as follows:

Page forty-one, line four, by striking 300,000 and inserting 0.

Page forty-three, line forty-seven, by striking 94,263,946, and inserting 93,963,946.

Page fifty-fifty, line three, by striking 717,980, and inserting 0.

Page fifty-seven, line thirty-three, by striking 71,719,527, and inserting 71,001,547.

Page seventy-six, line two, by striking 234,571, and inserting 0.

Page seventy-six, line nine, by striking 23,393,625, and inserting 23,159,054.

Page one hundred seven, line two, unclassified, by striking out 382,354 and inserting 0.

Page one hundred seven, line seven, by striking out 38,235,442, and inserting 37,853,088.

Page one hundred sixty-three, line two, by striking out 147,643, and inserting 0, and on line 10, by striking 24,134,848 and inserting 23,987,205.

Page one hundred sixty-eight, line two, by striking out 430,000 and inserting 0, and on line 8, by striking 50,000,000 and inserting 49,570,000.

Page one hundred ninety-nine, line two unclassified, by striking 51,050, and inserting 0, and on line seven, by striking out 9,130,052, and inserting 9,079,002.

Page two hundred two, line two, unclassified, by striking out 106,795, and inserting 0, and on line six, by striking out 10,679,500 and inserting 10,572,705.

Page two hundred three, under 335 State Board of Education Fund 8712, line two, by striking out 2,000,000 and inserting 0, and on line eight, by striking out 220,026,675 and inserting 218,026,675.

Page two hundred four, under Fund 8713 line two, by striking out 1,150,500 and inserting 0, and on line seven, by striking out 116,389,413 and inserting 115,283,913, and under 8714 line two, by striking out 155,000 and inserting 0, and on line seven, by striking out 15,525,053, and inserting 15,370,053.

Page two hundred eight, under Fund 8802 line two, by striking out 910,028 and inserting 0, and on page two hundred nine, by striking out line 8, 94,944,605, and inserting 94,034,577.

Page two hundred ten, under Fund 8722, line two, by striking out 22,855,833, and inserting 6,855,833, and on line nine, by striking out 3,190,872,651, and inserting 3,174,872,651.

Total of all funds reduced from unclassified accounts being \$22,585,921, to be applied to preclude funds being drawn from the “Rainy Day Fund”.

On the adoption of the amendment, Delegate Folk demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 436**), and there were—yeas 14, nays 77, absent and not voting 9, with the yeas and absent and not voting being as follows:

YEAS: Azinger, Faircloth, Folk, Hicks, Ihle, Kurcaba, Lane, Marcum, McGeehan, Moffatt, J. Nelson, Reynolds, Sponaugle and H. White.

ABSENT AND NOT VOTING: Deem, Hill, Hornbuckle, Howell, Ireland, Longstreth, Lynch, L. Phillips and Walters.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegate Fast moved to amend the bill on page eighty-eight, line one, by striking out “100,639,838” and inserting in lieu thereof the figure “99,639,838”.

And,

On line three, by striking out “8,281,570” and inserting in lieu thereof the figure “9,281,570”.

The Speaker put the question on the adoption of the foregoing amendment, and the same did not prevail.



Delegates Sponaugle, Perdue, R. Phillips, Reynolds, Hicks, Marcum, Rodighiero, Caputo and Hornbuckle moves to amend the bill on page thirty-three, item thirty-five, line three, by striking out “128,379” and inserting in lieu thereof “3,128,379”.

On page thirty-five, line twenty-nine, by striking out “12,921,206” and inserting in lieu thereof “15,921,206”.

On page thirty-six, line forty-nine, after the period, by inserting the following:

“The above Unclassified appropriation includes \$3,000,000 for the Emergency Response Entities Special Projects Grant.”

On page sixty-one, item 66, line 6, by striking out “469,219,741” and inserting in lieu thereof “466,219,741”.

On page sixty-three, line forty, by striking out “920,079,832” and inserting in lieu thereof the “917,079,832”.

And,

On page one hundred forty-seven, line one, by striking out “21,859,518” and inserting in lieu thereof the “24,859,518”.

Delegate J. Nelson requested to be excused from voting on the adoption of the amendments to Com. Sub. for H. B. 2016 under the provisions of House Rule 49.

The Speaker replied that any impact on Delegate J. Nelson would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Gentleman from voting.

On the adoption of the amendment, Delegate Sponaugle demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 437**), and there were—yeas 40, nays 52, absent and not voting 8, with the yeas and absent and not voting being as follows:

YEAS: Arvon, Bates, Boggs, Byrd, Campbell, Caputo, Eldridge, Faircloth, Ferro, Fleischauer, Fluharty, Folk, Guthrie, Hartman, Hicks, Lane, Longstreth, Manchin, Marcum, McGeehan, Miley, Moore, Morgan, Moye, J. Nelson, Perdue, Perry, Pethel, R. Phillips, Pushkin, Reynolds, Rodighiero, Rohrbach, Rowe, Skinner, P. Smith, Sponaule, Trecoast, H. White and Williams.

ABSENT AND NOT VOTING: Deem, Hill, Hornbuckle, Howell, Ireland, Lynch, L. Phillips and Walters.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

The bill was then ordered to engrossment and third reading.

At the request of Delegate Cowles and by unanimous consent, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

### COMMITTEE REPORTS

On motion for leave, a resolution was introduced (Originating in the Committee on Education and reported with the recommendation that it be adopted), which was read by its title, as follows:

**By Delegates Trecoast and Ihle:**

**H. C. R. 141** - "Requesting that the Joint Committee on Government and Finance study the appropriate process for removing county, school district and municipal officers with fixed terms of office by voter petition, the circumstances, if any, when county, school district and municipal officers with fixed terms of office should be removed for failure to attend meetings and whether counties, school districts and municipalities should be authorized to establish local standards for removing their officers for lack of attendance."

WHEREAS, The Code of West Virginia, 1931, as amended, authorizes voters to file petitions to remove from office county, school district and municipal officers with fixed terms of office; and

WHEREAS, A bill was introduced during the Legislature's regular session, 2015, to clarify the petition process and increase the number of signatures necessary to file such petitions; and

WHEREAS, The petition process is a vital means of holding county, school district and municipal officers accountable for their conduct in office; and

WHEREAS, The petition process may also be used to harass and intimidate county, school district and municipal officers who are faithfully discharging their offices; and

WHEREAS, The Legislature believes that the public is best served when these considerations are carefully weighed and balanced; and

WHEREAS, The Legislature believes that appropriate local attendance standards should be set for county, school district and municipal officers; and

WHEREAS, The Legislature recognizes that counties, school districts and municipalities schedule different numbers of meetings to conduct their business; and

WHEREAS, The Legislature recognizes that counties, school districts and municipalities may be best equipped to establish appropriate attendance standards for their officers; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the appropriate process for removing county, school district and municipal officers with fixed terms of office by voter petition, the circumstances, if any, when county, school district and municipal officers with fixed terms of office should be removed for failure to attend meetings and whether counties, school districts and municipalities should be authorized to establish local standards for removing their officers for lack of attendance; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session, 2016, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

*Further Resolved*, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

On motion for leave, resolutions were introduced (Originating in the Committee on Education and reported with the recommendation that they be adopted), which were read by their titles, as follows:

**By Delegates Pasdon, Espinosa, Rodighiero, Statler, Trecoast and Upson:**

**H. C. R. 139** - "Requesting the Joint Committee on Government and Finance study the policies regarding sexual violence, domestic violence, dating violence, and stalking at public colleges in the state."

WHEREAS, It is important to the health and welfare of students to provide a safe environment on college campuses; and

WHEREAS, Public colleges in the state have a responsibility to provide a safe environment for their students; and

WHEREAS, When a violent act occurs on a college campus it is necessary to direct victims to necessary and appropriate resources and assistance; and

WHEREAS, Federal law requires institutions of higher education to have policies regarding sexual assault, domestic violence, and stalking in compliance with Title IX of the Education Amendments of 1972; and

WHEREAS, Title IX outlines expectations for education, reporting, response, investigation and remedies associated with such offenses; and

WHEREAS, It is vital that colleges comply with the requirements for protecting students from such offenses and providing safe campuses; and

WHEREAS, In the unfortunate event of an occurrence, colleges must provide victims with the necessary resources, aide and support to ensure that they aren't further victimized by the system and the aftereffects; and

WHEREAS, It is necessary to evaluate the compliance of the public colleges in the state with the requirements for maintaining campuses that are free of sexual violence, domestic violence, dating violence and stalking, and for providing appropriate and necessary resources, aide and support to victims; and

WHEREAS, It is necessary to examine whether a need exists for additional campus policies regarding sexual violence, domestic violence, dating violence, and stalking; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the policies regarding sexual violence, domestic violence, dating violence, and stalking at public colleges in the state; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

**By Delegates Pasdon, Duke, Espinosa, Hamrick, Kelly, Kurcaba, Moye and Pushkin:**

**H. C. R. 140** - “Requesting the Joint Committee on Government and Finance to conduct a study on public school finance.”

WHEREAS, The Public School Support Plan as set forth in Article 9A, Chapter 18 of the Code of West Virginia is intended to provide a reasonable and reliable estimate of the funding necessary to provide the basic foundation for a thorough and efficient education using actual enrollment-based costs for personnel, benefits, transportation expenses, current expense and instructional programs; and

WHEREAS, The public School Support Plan has been amended from time to time with the addition of non-formula allowances to address particular needs for funding, to compensate for differences in economies of scale for staffing based on student population density, and to recognize the added financial stress from rapidly growing enrollment; and

WHEREAS, A review by the House Education Subcommittee on Public School Finance has identified areas of the overall system of public school finance that merit further consideration, including, but not limited to:

(A) Whether the differences in staffing ratios for school systems with different student population density, including the adjustment for school systems with less than 1,400 students, adequately compensate for differences in economies of scale;

(B) Whether the allowance for the replacement of school buses accurately reflects bus replacement needs based on the expected useful life of buses and bus safety;

(C) A statutorily fixed dollar amount for the allowance for professional student support personnel that does not provide for needed increases in nurses and counselors as enrollment increases and further

reduces nurse and counselor employment when the dollars are required for state salary increases;

(D) The absence of state funded positions for technology system specialists to adequately service and maintain the growing number of instructional technology devices in use in the schools;

(E) The lack of a rational basis between salary costs that are currently used for determining the allowance for current expense and the actual costs of school systems for funding general operations and maintenance;

(F) The current non-formula allowances in areas including special education, high acuity/high cost special needs students, high cost nursing services, limited English proficient students, alternative education, tuition reimbursement, and beginning teacher induction and support programs that are fixed appropriations and do not reflect changing school system needs;

(G) The salary equity provisions limiting the allowable difference in salary potential for school employees in different counties and attributable to differences in local salary supplements, date back to the equal inputs model of educational equity in place in 1984 and may not reflect the current market conditions; and

WHEREAS, The appropriate consideration, analysis and development of alternatives if needed to address these issues requires study and fiscal analysis that can not reasonably be accomplished within the time frame of the regular legislative session; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to conduct a study on public school finance; and be it

*Further Resolved,* That the said Joint Committee on Government and Finance is requested to report to the regular session of the

Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and be it

*Further Resolved*, That the expenses necessary to conduct this study, to prepare a report and draft necessary legislation are requested to be paid from legislative appropriations to the Joint Committee on Government and Finance.

Delegate Pasdon, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. C. R. 110**, Requesting the Joint Committee on Government and Finance to study reducing the State Department of Education budget and redirecting those funds toward increasing teacher salaries,

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

In accordance with the former direction of the Speaker, the resolution (H. C. R. 110) was referred to the Committee on Rules.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 267**, Repealing code relating to Governor's Office of Health Enhancement and Lifestyle Planning,

**Com. Sub. for S. B. 373**, Allowing wireless communication image serve as proof of motor vehicle insurance,

And,



**Com. Sub. for S. B. 242**, Creating criminal penalties for certain automated telephone calls during state of emergency or preparedness,

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

Delegate Pasdon, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**Com. Sub. for S. B. 537**, Changing mandatory school instructional time from days to minutes,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 261**, Clarifying definition of “owner” of dam,

And,

**Com. Sub. for S. B. 541**, Relating to regulation and control of elections,

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

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**S. B. 310**, Exempting nonprofit public utility companies from B&O tax,

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

Mr. Speaker, Mr. Armstead, Chair of the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

**H. R. 15**, Honoring Booker T. Washington on the 100<sup>th</sup> anniversary of his death,

**H. R. 16**, Proclaiming the 2<sup>nd</sup> Saturday of September as “Heroes Day” in West Virginia in tribute to Firefighters, Law-Enforcement Officers and Emergency Medical Services Workers,

**Com. Sub. for H. C. R. 23**, The U.S. Marine Corps PFC Clayton Andrew Craft Memorial Bridge,

**H. C. R. 44**, The North River Mills Historic Trace,

**Com. Sub. for H. C. R. 70**, The U.S. Army SPC 4 Everette R. Johnson Memorial Bridge,

**Com. Sub. for H. C. R. 50**, Historic Dingess Tunnel, Constructed 1892,

**Com. Sub. for H. C. R. 53**, The U.S. Army SSG Styish R. Morris Memorial Road,

**Com. Sub. for H. C. R 63**, The Harry Ripley Memorial Bridge,

**H. C. R. 77**, Designating the second Friday in July as West Virginia Collector Car Appreciation Day,

**H. C. R. 79**, The U.S. Army PFC Junior David Starkey Memorial Bridge,

**Com. Sub. for H. C. R. 80**, The U.S. Army SSG Landon Clair Ray and U.S. Army SPC4 Garry Dwight Haynes Memorial Bridge,

**Com. Sub. for H. C. R. 90**, The U.S. Army CPL Wilson B. Lambert, Jr. Memorial Road,

**Com. Sub. for H. C. R. 93**, The CSA LTG Thomas J. “Stonewall” Jackson Bridge,

**Com. Sub. for H. C. R. 102**, The U.S. Army Air Corps CPT Kenneth R. Winters, Sr. Memorial Bridge,

**H. C. R. 105**, Recognizing West Virginia University Institute of Technology as a vital part of higher education in West Virginia,

**H. C. R. 112**, The Howard M. “Toddy” Loudin Memorial Highway,

**H. C. R. 114**, Requesting the Joint Committee on Government and Finance study the circumstances where West Virginia home schooled students who have completed their course work should be authorized to take the GED test, the TASC test or other approved high school equivalency assessments and earn a West Virginia High School Equivalency Diploma,

**H. C. R. 115**, Requesting the Joint Committee on Government and Finance to conduct a study on state funding for school bus replacement,

**H. C. R. 116**, Requesting the Joint Committee on Government and Finance to conduct a study on appropriate limits on the number, time and uses of state summative assessments,

**H. C. R. 118**, Requesting the Joint Committee on Government and Finance conduct a study of agencies that are exempt from article three, chapter five-a and their policies and procedures for procurement,

**H. C. R. 119**, Requesting the Joint Committee on Government and Finance conduct a study of creating a Statewide Interoperable Radio Network by statute,

**H. C. R. 120**, Requesting the Joint Committee on Government and Finance authorize a study on the James “Tiger” Morton catastrophic illness fund,

**H. C. R. 122**, Requesting the Joint Committee on Government and Finance authorize a study on increasing state government budget and spending transparency,

**H. C. R. 123**, Requesting the Joint Committee on Government and Finance conduct a study of the impact of admitting all Class I, II, III, and IV municipalities to the Municipal Home Rule Pilot Program,

**H. C. R. 124**, Requesting that the Joint Committee on Government and Finance authorize a study on the regulation of public utilities,

**H. C. R. 125**, Requesting the Joint Committee on Government and Finance conduct a study of public access and availability in one location to all ordinances, rules and regulations adopted by a county commission,

**S. C. R. 3**, The U.S. Army Sgt. James Lawrence Taylor Memorial Road,

**S. C. R. 20**, The U.S. Army 1SG Joe C. Alderman Memorial Road,

**S. C. R. 22**, The U.S. Army SGT Mark Andrew Messer Memorial Road,

**S. C. R. 23**, The U.S. Army SFC Anthony Barton Memorial Bridge,

**S. C. R. 25**, The U.S. Army SSG Benjamin T. Portaro Memorial Bridge,

**S. C. R. 29**, The Rosie the Riveter Memorial Bridge,

**Com. Sub. for S. C. R. 34**, The U.S. Army Air Corps LT William H. Corkrean, Jr., Memorial Bridge,

**Com. Sub. for S. C. R. 35**, The U.S. Army CPL Zane Joseph Gero and U.S. Marine Corps CPL John Anthony “Tony” Gero Memorial Bridge,

**S. C. R. 41**, The W.C. Honaker and Clyde Spies Memorial Bridge,

**S. C. R. 42**, The Tygrett Brothers Seven Veterans Bridge,

**S. C. R. 43**, The U.S. Army SPC Richard Nesselrotte Bridge,

**S. C. R. 44**, The U.S. Navy PO2 Robert Paul Laderach Memorial Bridge,

And,

**S. C. R. 45**, The James P. Spano, Jr. Memorial Bridge,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 88**, Creating WV Clearance for Access: Registry and Employment Screening Act,

**Com. Sub. for S. B. 453**, Relating to motor vehicle dealers, distributors, wholesalers and manufacturers,

And,

**Com. Sub. for S. B. 548**, Changing procedure for filling U. S. Senator vacancies,

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

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**S. B. 425**, Providing WVU, MU and WVSOM more authority to invest assets,

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

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**S. B. 304**, Relating to farmers markets,

**Com. Sub. for S. B. 439**, Relating to higher education personnel,

**Com. Sub. for S. B. 455**, Relating to public higher education procurement and payment of expenses,

**Com. Sub. for S. B. 529**, Relating to PERS, SPRS and TRS benefits and costs,

**S. B. 577**, Allowing higher education governing boards invest certain funds with nonprofit foundations,

And,

**S. B. 584**, Transferring Cedar Lakes Camp and Conference Center to private, nonstock, not-for-profit corporation,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 363**, Establishing maximum rates and service limitations for reimbursement of health care services by Court of Claims,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 582**, Relating to Herbert Henderson Office of Minority Affairs,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 234**, Exempting certain water and sewer utilities owned by political subdivisions from PSC jurisdiction,

**S. B. 295**, Establishing appeal process for DHHR Board of Review and Bureau for Medical Services decisions,

**Com Sub. for S. B. 248**, Requiring certain insurance and owner information be provided following car accident,

And,

**Com Sub. for S. B. 523**, Creating Alcohol and Drug Overdose Prevention and Clemency Act,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 142**, Authorizing Department of Administration promulgate legislative rules,

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

## **SPECIAL CALENDAR**

### **SECOND READING**

-Continued-

**Com. Sub. for S. B. 347**, Creating Firearms Act of 2015; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk on page two, immediately following the enacting section, by striking out the remainder of the bill and inserting in lieu thereof the following:

### **“CHAPTER 20. NATURAL RESOURCES.**

#### **ARTICLE 2. WILDLIFE RESOURCES.**

**§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.**



Except as authorized by the director, it is unlawful at any time for any person to:

(1) Shoot at or to shoot any wild bird or animal unless it is plainly visible to him or her;

(2) Dig out, cut out or smoke out, or in any manner take or attempt to take, any live wild animal or wild bird out of its den or place of refuge except as may be authorized by rules promulgated by the director or by law;

(3) Make use of, or take advantage of, any artificial light in hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal, or to attempt to do so, while having in his or her possession or subject to his or her control, or for any person accompanying him or her to have in his or her possession or subject to his or her control, any firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or animal: *Provided*, That it is lawful to hunt or take coyote, fox, raccoon, opossum or skunk by the use of artificial light subject to the restrictions set forth in this subdivision. No person is guilty of a violation of this subdivision merely because he or she looks for, looks at, attracts or makes motionless a wild bird or wild animal with or by the use of an artificial light, unless at the time he or she has in his or her possession a firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or wild animal, or unless the artificial light (other than the head lamps of an automobile or other land conveyance) is attached to, a part of or used from within or upon an automobile or other land conveyance.

Any person violating the provisions of this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than \$100 nor more than \$500 and shall be confined in jail for not less than ten days nor more than one hundred days;

(4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as authorized by rules promulgated by the director;

(5) Take any beaver or muskrat by any means other than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind any wild turkey, ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or willfully the nest or eggs of any wild bird or have in his or her possession the nest or eggs unless authorized to do so under rules promulgated by or under a permit issued by the director;

(8) Except as provided in section six of this article, carry an uncased or loaded gun in any of the woods of this state except during the open firearms hunting season for wild animals and nonmigratory wild birds within any county of the state unless he or she has in his or her possession a permit in writing issued to him or her by the director: *Provided*, That this section does not prohibit hunting or taking of unprotected species of wild animals and wild birds and migratory wild birds, during the open season, in the open fields, open water and open marshes of the state nor does it prohibit a person who is not prohibited from possessing firearms by section four, article seven, chapter sixty-one of this code from carrying a deadly weapon for purposes of self-defense while in the woods of this state;

(9) Have in his or her possession a crossbow with a nocked bolt, ~~a loaded firearm or a firearm~~ rifle or shotgun ~~from the magazine of which all shells and cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the state, except as may otherwise be provided by law or regulation.~~ For the purposes of this section, a rifle or shotgun whose magazine readily detaches is considered unloaded if the magazine is detached, and no cartridges remain in the rifle or shotgun itself. Except as hereinafter provided,

between five o'clock postmeridian of one day and seven o'clock antemeridian, eastern standard time of the day following, any unloaded firearm or crossbow, being lawfully carried in accordance with the foregoing provisions, may be so carried only when in a case or taken apart and securely wrapped. During the period from July 1 to September 30, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms are permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern standard time: *Provided*, That the time periods for carrying unloaded and uncased firearms are extended for one hour after the postmeridian times and one hour before the antemeridian times established above if a hunter is preparing to or in the process of transporting or transferring the firearms to or from a hunting site, campsite, home or other place of abode;

(10) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o'clock antemeridian on Sunday on private land without the written consent of the landowner any wild animals or wild birds except when a big game season opens on a Monday, the Sunday prior to that opening day will be closed for any taking of wild animals or birds after five o'clock antemeridian on that Sunday: *Provided*, That traps previously and legally set may be tended after the hour of five o'clock antemeridian on Sunday and the person so doing may carry only a twenty-two caliber firearm for the purpose of humanely dispatching trapped animals. Any person violating the provisions of this subdivision is guilty of a misdemeanor and, upon conviction thereof, in addition to any fines that may be imposed by this or other sections of this code, is subject to a \$100 fine;

(11) Hunt, catch, take, kill, injure or pursue a wild animal or bird with the use of a ferret;

(12) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

(13) Catch, take, kill or attempt to catch, take or kill any fish at any time by any means other than by rod, line and hooks with natural or artificial lures unless otherwise authorized by law or rules issued by the Director: *Provided*, That snaring of any species of suckers, carp, fallfish and creek chubs shall at all times be lawful;

(14) Employ or hire, or induce or persuade, by the use of money or other things of value, or by any means, any person to hunt, take, catch or kill any wild animal or wild bird except those species on which there is no closed season, or to fish for, catch, take or kill any fish, amphibian or aquatic life which is protected by the provisions of this chapter or rules of the director or the sale of which is prohibited;

(15) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States for the protection of migratory birds and wild mammals concluded, respectively, August 16, 1916, and February 7, 1936, except during the time and in the manner and numbers prescribed by the federal Migratory Bird Treaty Act, 16 U.S.C. §U.S.C. §703, et seq., and regulations made thereunder;

(16) Kill, take, catch or have in his or her possession, living or dead, any wild bird other than a game bird; or expose for sale or transport within or without the state any bird except as aforesaid. No part of the plumage, skin or body of any protected bird may be sold or had in possession for sale except mounted or stuffed plumage, skin, bodies or heads of the birds legally taken and stuffed or mounted, irrespective of whether the bird was captured within or without this state, except the English or European sparrow (*passer domesticus*), starling (*sturnus vulgaris*) and cowbird (*molothrus ater*), which may not be protected and the killing thereof at any time is lawful;

(17) Use dynamite or any like explosive or poisonous mixture placed in any waters of the state for the purpose of killing or taking fish. Any person violating the provisions of this subdivision is guilty

of a felony and, upon conviction thereof, shall be fined not more than \$500 or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

(18) Have a bow and gun, or have a gun and any arrow or arrows, in the fields or woods at the same time;

(19) Have a crossbow in the woods or fields or use a crossbow to hunt for, take or attempt to take any wildlife except as otherwise provided in section 42w of this article;

(20) Take or attempt to take turkey, bear, elk or deer with any arrow unless the arrow is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

(21) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

(22) Shoot an arrow across any public highway or from aircraft, motor-driven watercraft, motor vehicle or other land conveyance;

(23) Permit any dog owned by him or her or under his or her control to chase, pursue or follow upon the track of any wild animal or wild bird, either day or night, between May 1 and the August 15 next following: *Provided*, That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner or by his or her bona fide tenant or tenants or upon the grounds or lands of another person with his or her written permission or on public lands at any time: *Provided, however*, That nonresidents may not train dogs in this state at any time except during the legal small game hunting season: *Provided further*, That the person training said dogs does not have firearms or other implements in his or her possession during the closed

season on wild animals and wild birds, whereby wild animals or wild birds could be taken or killed;

(24) Conduct or participate in a field trial, shoot-to-retrieve field trial, water race or wild hunt hereafter referred to as trial: *Provided*, That any person, group of persons, club or organization may hold the trial at any time of the year upon obtaining a permit as is provided in section fifty-six of this article. The person responsible for obtaining the permit shall prepare and keep an accurate record of the names and addresses of all persons participating in said trial and make same readily available for inspection by any natural resources police officer upon request;

(25) Except as provided in section four of this article, hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during the open season established by rule of the director as authorized by subdivision (6), section seven, article one of this chapter;

(26) Hunting on public lands on Sunday after five o'clock antemeridian is prohibited;

(27) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement which wildlife can be taken, on private lands on Sunday after the hour of five o'clock antemeridian: *Provided*, That the provisions of this subdivision do not apply in any county until the county commission of the county holds an election on the question of whether the provisions of this subdivision prohibiting hunting on Sunday shall apply within the county and the voters approve the allowance of hunting on Sunday in the county. The election is determined by a vote of the resident voters of the county in which the hunting on Sunday is proposed to be authorized. The county commission of the county in which Sunday hunting is proposed shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for

the publication is the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.

On the local option election ballot shall be printed the following:

Shall hunting on Sunday be authorized in \_\_\_\_\_ County?

Yes       No

(Place a cross mark in the square opposite your choice.)

Any local option election to approve or disapprove of the proposed authorization of Sunday hunting within a county shall be in accordance with procedures adopted by the commission. The local option election may be held in conjunction with a primary or general election or at a special election. Approval shall be by a majority of the voters casting votes on the question of approval or disapproval of Sunday hunting at the election.

If a majority votes against allowing Sunday hunting, no election on the issue may be held for a period of one hundred four weeks. If a majority votes 'yes', no election reconsidering the action may be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county in which Sunday hunting is authorized. The petition may be in any number of counterparts. The election shall take place at the next primary or general election scheduled more than ninety days following receipt by the county commission of the petition required by this subsection: *Provided*, That the issue may not be placed on the ballot until all statutory notice requirements have been met. No local law or regulation providing any penalty, disability, restriction, regulation or prohibition of Sunday hunting may be enacted and the provisions of this article preempt all

regulations, rules, ordinances and laws of any county or municipality in conflict with this subdivision; and

(28) Hunt or conduct hunts for a fee where the hunter is not physically present in the same location as the wildlife being hunted within West Virginia.

**§20-2-6a. Carrying a ~~concealed~~ handgun while afield.**

(a) Notwithstanding any provision of this code to the contrary, a person ~~licensed to carry a concealed weapon pursuant to the provisions of section four, article seven, chapter sixty-one of this code~~ who is not prohibited at the time from possessing a firearm pursuant to the provisions of section seven, article seven, chapter sixty-one of this code or by any applicable federal law may carry a handgun ~~in a concealed manner~~ for self defense purposes while afield hunting, hiking, camping or in or on a motor vehicle.

(b) The provisions of this section shall not exempt any person from obtaining any hunting or fishing license or stamp required by the Division of Natural Resources.

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

**ARTICLE 7. DANGEROUS WEAPONS.**

**§61-7-3. Carrying deadly weapon without license or other authorization by persons under 21; penalties.**

(a) Any person under 21 years of age who carries a concealed deadly weapon, without a state license or other lawful authorization established under the provisions of this code, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars and may be imprisoned in the county jail for not more than twelve months for the first offense; but upon conviction of a second or subsequent offense, he or she shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than five



years and fined not less than one thousand dollars nor more than five thousand dollars.

(b) It shall be the duty of the prosecuting attorney in all cases to ascertain whether or not the charge made by the grand jury is a first offense or is a second or subsequent offense and, if it shall be a second or subsequent offense, it shall be so stated in the indictment returned, and the prosecuting attorney shall introduce the record evidence before the trial court of such second or subsequent offense and shall not be permitted to use discretion in introducing evidence to prove the same on the trial.

#### **§61-7-4. License to carry deadly weapons; how obtained.**

(a) Except as provided in subsection (h) of this section, any person desiring to obtain a state license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for the license, and pay to the sheriff, at the time of application, a fee of \$75, of which \$15 of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code. Concealed weapons permits may only be issued for pistols or revolvers. Each applicant shall file with the sheriff a complete application, as prepared by the Superintendent of the West Virginia State Police, in writing, duly verified, which sets forth only the following licensing requirements:

(1) The applicant's full name, date of birth, Social Security number, a description of the applicant's physical features, the applicant's place of birth, the applicant's country of citizenship and, if the applicant is not a United States citizen, any alien or admission number issued by the United States Bureau of Immigration and Customs Enforcement, and any basis, if applicable, for an exception to the prohibitions of 18 U. S. C. § 922(g)(5)(B);

(2) That, on the date the application is made, the applicant is a bona fide resident of this state and of the county in which the

application is made and has a valid driver's license or other state-issued photo identification showing the residence;

(3) That the applicant is twenty-one years of age or older: *Provided*, That any individual who is less than twenty-one years of age and possesses a properly issued concealed weapons license as of the effective date of this article shall be licensed to maintain his or her concealed weapons license notwithstanding the provisions of this section requiring new applicants to be at least twenty-one years of age: *Provided, however*, That upon a showing of any applicant who is eighteen years of age or older that he or she is required to carry a concealed weapon as a condition for employment, and presents satisfactory proof to the sheriff thereof, then he or she shall be issued a license upon meeting all other conditions of this section. Upon discontinuance of employment that requires the concealed weapons license, if the individual issued the license is not yet twenty-one years of age, then the individual issued the license is no longer eligible and must return his or her license to the issuing sheriff;

(4) That the applicant is not addicted to alcohol, a controlled substance or a drug and is not an unlawful user thereof as evidenced by either of the following within the three years immediately prior to the application:

(A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug treatment; or

(B) Two or more convictions for driving while under the influence or driving while impaired;

(5) That the applicant has not been convicted of a felony unless the conviction has been expunged or set aside or the applicant's civil rights have been restored or the applicant has been unconditionally pardoned for the offense;

(6) That the applicant has not been convicted of a misdemeanor crime of violence other than an offense set forth in subsection (7) of this section in the five years immediately preceding the application;

(7) That the applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U. S. C. § 921(a)(33), or a misdemeanor offense of assault or battery either under the provisions of section twenty-eight, article two of this chapter or the provisions of subsection (b) or (c), section nine, article two of this chapter in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense, or a misdemeanor offense with similar essential elements in a jurisdiction other than this state;

(8) That the applicant is not under indictment for a felony offense or is not currently serving a sentence of confinement, parole, probation or other court-ordered supervision imposed by a court of any jurisdiction or is the subject of an emergency or temporary domestic violence protective order or is the subject of a final domestic violence protective order entered by a court of any jurisdiction;

(9) That the applicant has not been adjudicated to be mentally incompetent or involuntarily committed to a mental institution. If the applicant has been adjudicated mentally incompetent or involuntarily committed the applicant must provide a court order reflecting that the applicant is no longer under such disability and the applicant's right to possess or receive a firearm has been restored;

(10) That the applicant is not prohibited under the provisions of section seven of this article or federal law, including 18 U.S.C. § 922(q) or (n), from receiving, possessing or transporting a firearm;

(11) That the applicant has qualified under the minimum requirements set forth in subsection (d) of this section for handling and

firing the weapon: *Provided*, That this requirement shall be waived in the case of a renewal applicant who has previously qualified; and

(12) That the applicant authorizes the sheriff of the county, or his or her designee, to conduct an investigation relative to the information contained in the application.

(b) For both initial and renewal applications, the sheriff shall conduct an investigation including a nationwide criminal background check consisting of inquiries of the National Instant Criminal Background Check System, the West Virginia criminal history record responses and the National Interstate Identification Index and shall review the information received in order to verify that the information required in subsection (a) of this section is true and correct. A license may not be issued unless the issuing sheriff has verified through the National Instant Criminal Background Check System that the information available to him or her does not indicate that receipt or possession of a firearm by the applicant would be in violation of the provisions of section seven of this article or federal law, including 18 U.S.C. § 922(g) or (n).

(c) Sixty dollars of the application fee and any fees for replacement of lost or stolen licenses received by the sheriff shall be deposited by the sheriff into a concealed weapons license administration fund. The fund shall be administered by the sheriff and shall take the form of an interest-bearing account with any interest earned to be compounded to the fund. Any funds deposited in this concealed weapon license administration fund are to be expended by the sheriff to pay the costs associated with issuing concealed weapons licenses. Any surplus in the fund on hand at the end of each fiscal year may be expended for other law-enforcement purposes or operating needs of the sheriff's office, as the sheriff considers appropriate.

(d) All persons applying for a license must complete a training course in handling and firing a handgun. The successful completion of any of the following courses fulfills this training requirement:

(1) Any official National Rifle Association handgun safety or training course;

(2) Any handgun safety or training course or class available to the general public offered by an official law-enforcement organization, community college, junior college, college or private or public institution or organization or handgun training school utilizing instructors certified by the institution;

(3) Any handgun training or safety course or class conducted by a handgun instructor certified as such by the state or by the National Rifle Association;

(4) Any handgun training or safety course or class conducted by any branch of the United States Military, Reserve or National Guard or proof of other handgun qualification received while serving in any branch of the United States Military, Reserve or National Guard.

A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization or group that conducted or taught the course or class attesting to the successful completion of the course or class by the applicant or a copy of any document which shows successful completion of the course or class is evidence of qualification under this section.

(e) All concealed weapons license applications must be notarized by a notary public duly licensed under article four, chapter twenty-nine of this code. Falsification of any portion of the application constitutes false swearing and is punishable under the provisions of section two, article five, chapter sixty-one of this code.

(f) The sheriff shall issue a license unless he or she determines that the application is incomplete, that it contains statements that are materially false or incorrect or that applicant otherwise does not meet the requirements set forth in this section. The sheriff shall issue, reissue or deny the license within forty-five days after the application

is filed if all required background checks authorized by this section are completed.

(g) Before any approved license is issued or is effective, the applicant shall pay to the sheriff a fee in the amount of \$25 which the sheriff shall forward to the Superintendent of the West Virginia State Police within thirty days of receipt. The license is valid for five years throughout the state, unless sooner revoked.

(h) Each license shall contain the full name and address of the licensee and a space upon which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign and attach his or her seal to all license cards. The sheriff shall provide to each new licensee a duplicate license card, in size similar to other state identification cards and licenses, suitable for carrying in a wallet, and the license card is considered a license for the purposes of this section.

(i) The Superintendent of the West Virginia State Police shall prepare uniform applications for licenses and license cards showing that the license has been granted and shall do any other act required to be done to protect the state and see to the enforcement of this section.

(j) If an application is denied, the specific reasons for the denial shall be stated by the sheriff denying the application. Any person denied a license may file, in the circuit court of the county in which the application was made, a petition seeking review of the denial. The petition shall be filed within thirty days of the denial. The court shall then determine whether the applicant is entitled to the issuance of a license under the criteria set forth in this section. The applicant may be represented by counsel, but in no case is the court required to appoint counsel for an applicant. The final order of the court shall include the court's findings of fact and conclusions of law. If the final order upholds the denial, the applicant may file an appeal in accordance with the Rules of Appellate Procedure of the Supreme Court of Appeals. If the findings of fact and conclusions of law of the court fail to uphold the denial, the applicant is may be entitled to

reasonable costs and attorney's fees, payable by the sheriff's office which issued the denial.

(k) If a license is lost or destroyed, the person to whom the license was issued may obtain a duplicate or substitute license for a fee of \$5 by filing a notarized statement with the sheriff indicating that the license has been lost or destroyed.

(l) Whenever any person after applying for and receiving a concealed handgun license moves from the address named in the application to another county within the state, the license remains valid for the remainder of the five years unless the sheriff of the new county has determined that the person is no longer eligible for a concealed deadly weapon license under this article, and the sheriff shall issue a new license bearing the person's new address and the original expiration date for a fee not to exceed \$5: Provided, That the licensee within twenty days thereafter notifies the sheriff in the new county of residence in writing of the old and new addresses.

(m) The sheriff shall, immediately after the license is granted as aforesaid, furnish the Superintendent of the West Virginia State Police a certified copy of the approved application. The sheriff shall furnish to the Superintendent of the West Virginia State Police at any time so requested a certified list of all licenses issued in the county. The Superintendent of the West Virginia State Police shall maintain a registry of all persons who have been issued concealed weapons licenses.

~~(n) Except when subject to an exception under section six, article seven of this chapter, all licensees shall carry with them a state-issued photo identification card with the concealed weapons license whenever the licensee is carrying a concealed weapon. Any licensee who, in violation of this subsection, fails to have in his or her possession a state-issued photo identification card and a current concealed weapons license while carrying a concealed weapon is guilty of a misdemeanor~~

~~and, upon conviction thereof, shall be fined not less than \$50 or more than \$200 for each offense.~~

(~~o~~) (n) The sheriff shall deny any application or revoke any existing license upon determination that any of the licensing application requirements established in this section have been violated by the licensee.

(~~p~~) (o) A person who is engaged in the receipt, review or in the issuance or revocation of a concealed weapon license does not incur any civil liability as the result of the lawful performance of his or her duties under this article.

(~~q~~) (p) Notwithstanding the provisions of subsection (a) of this section, with respect to application by a former law-enforcement officer honorably retired from agencies governed by article fourteen, chapter seven of this code; article fourteen, chapter eight of this code; article two, chapter fifteen of this code; and article seven, chapter twenty of this code, an honorably retired officer is exempt from payment of fees and costs as otherwise required by this section. All other application and background check requirements set forth in this shall be applicable to these applicants.

(~~r~~) (q) Except as restricted or prohibited by the provisions of this article or as otherwise prohibited by law, the issuance of a concealed weapon permit issued in accordance with the provisions of this section authorizes the holder of the permit to carry a concealed pistol or revolver on the lands or waters of this state.

**§61-7-6. Exceptions as to prohibitions against carrying concealed handguns; exemptions from licensing fees.**

(a) The ~~license~~ provisions set forth in section three of this article do not apply to:

(1) Any person:



(A) Carrying a deadly weapon upon his or her own premises;

(B) Carrying a firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business; or

(C) Possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site and returning to his or her home, residence or place of business;

(2) Any person who is a member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from this state or from the United States for the purpose of target practice from carrying any pistol, as defined in this article, unloaded, from his or her home, residence or place of business to a place of target practice and from any place of target practice back to his or her home, residence or place of business, for using any such weapon at a place of target practice in training and improving his or her skill in the use of the weapons;

(3) Any law-enforcement officer or law-enforcement official as defined in section one, article twenty-nine, chapter thirty of this code;

(4) Any employee of the West Virginia Division of Corrections duly appointed pursuant to the provisions of section eleven-c, article one, chapter twenty-five of this code while the employee is on duty;

~~(5) Any member of the armed forces of the United States or the militia of this state while the member is on duty;~~

~~(6)~~(5) Any resident of another state who holds a valid permit or license to possess or carry a handgun issued by a state or a political subdivision subject to the provisions and limitations set forth in section six-a of this article;

~~(7)~~(6) Any federal law-enforcement officer or federal police officer authorized to carry a weapon in the performance of the officer's duty;

~~(8)(7)~~ Any Hatfield-McCoy Regional Recreation Authority Ranger while the ranger is on duty; ~~and~~

~~(9)(8)~~ Any parole officer appointed pursuant to section fourteen, article twelve, chapter sixty-two of this code in the performance of their duties; and

(9) Any active duty member of the United States Armed Forces, or any active duty member of the National Guard or United States Armed Forces reserves.

~~(b) On and after July 1, 2013, the following judicial officers and prosecutors and staff shall be exempted from paying any application fees or licensure fees required under this article. However, on and after that same date, they shall be required to make application and satisfy all licensure and handgun safety and training requirements set forth in section four of this article before carrying a concealed handgun in this state:~~

~~(1) Any justice of the Supreme Court of Appeals of West Virginia;~~

~~(2) Any circuit judge;~~

~~(3) Any retired justice or retired circuit judge designated senior status by the Supreme Court of Appeals of West Virginia;~~

~~(4) Any family court judge;~~

~~(5) Any magistrate;~~

~~(6) Any prosecuting attorney;~~

~~(7) Any assistant prosecuting attorney; or~~

~~(8) Any duly appointed investigator employed by a prosecuting attorney.~~

**§ 61-7-7(e) Enhanced penalty for use of firearm during commission of felony.**

(a) Except to the extent that a greater minimum sentence is otherwise provided by any other provision of law, any person who uses or displays a firearm during the planning or commission of any felony shall, in addition to the punishment provided for such felony, be sentenced to an additional term of imprisonment in the custody of the Department of Corrections of five (5) years, which sentence shall not be reduced or suspended.

(b) Except to the extent that a greater minimum sentence is otherwise provided by any other provision of law, any convicted felon who uses or displays a firearm during the planning or commission of any felony shall, in addition to the punishment provided for such felony, be sentenced to an additional term of imprisonment in the custody of the Department of Corrections of ten (10) years, to run consecutively, not concurrently, which sentence shall not be reduced or suspended.

(c) Unless otherwise provided in Code, provisions of this article does not apply to a person who in good faith employs the use of a firearm, in self-defense or the defense of others, against another person who is perpetuating violence or the threat of violence.”

Delegates Skinner and Longstreth moved to amend the amendment on page nine, section three, line ten, by inserting a new subsection (a), to read as follows:

“(a) No person may carry a concealed weapon in this state without receiving training as required for a concealed carry handgun permit as authorized pursuant to section four of this article.”

On the adoption of the amendment, Delegate J. Nelson demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 438**), and there were—yeas 17, nays 74, absent and not voting 9, with the yeas and absent and not voting being as follows:

YEAS: Caputo, Duke, Ellington, A. Evans, Fleischauer, Guthrie, Hamilton, Longstreth, Manchin, Miley, Moore, Morgan, Perdue, Pushkin, Rowe, Shott and Skinner.

ABSENT AND NOT VOTING: Deem, Hicks, Hill, Hornbuckle, Howell, Ireland, Lynch, L. Phillips and Walters.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Cowles moved to amend the amendment on page nine, section three, line, eight, after the word “person”, by striking out the words “under twenty-one years of age”.

On page ten, line three, after the word “application”, by striking out the words “a fee of \$75, of which \$15”, and inserting in lieu thereof the following: “a fee of \$50, of which \$10”.

On page thirteen, line ten, after “(c)”, by striking out the word “Sixty”, and inserting in lieu thereof the following: “Thirty”.

On page fifteen, line two, after the words “amount of”, by striking out “\$25”, and inserting in lieu thereof “\$20”.

On page sixteen, line three, after the words “license”, by striking out the words “for a fee of \$5”.

And,

On page sixteen, line ten, after the words “date”, by striking out the words “for a fee not to exceed \$5”.

Whereupon,

Delegate Cowles asked and obtained unanimous consent that the amendment be withdrawn.

Delegate Cowles then moved to amend the bill on page twenty, after line eighteen by inserting a new section to read as follows:

**“§61-7-7(f). Voter Authorization.**

(a) The provisions of SB 347, shall not take effect until a general statewide election is held on the question of whether the carrying of a concealed deadly weapon is authorized without a criminal background check, and without safety training as required by the current permit process that existed on March 1, 2015.

(b) The Secretary of State shall place the question on the ballot upon the next general election.

(c) On the general election ballot shall be printed the following:

‘Shall the carry of a concealed deadly weapon be authorized without a criminal background check, and without safety training as required by the current permit process that existed on March 1, 2015?’

Yes             No

(Place a cross mark in the square opposite your choice.)’

(d) If a majority of voters vote no on the foregoing question, the provisions of SB 347 no longer continue in effect.”

On the adoption of the amendment to the amendment, Delegate J. Nelson demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 439**), and there were—yeas 23, nays 70, absent and not voting 7, with the yeas and absent and not voting being as follows:

YEAS: Ambler, Anderson, Bates, Caputo, Cooper, Cowles, A. Evans, D. Evans, Fleischauer, Guthrie, Hamilton, Longstreth, Manchin, Miley, Moore, Morgan, Pasdon, Perdue, Reynolds, Rowe, Shott, Skinner and Weld.

ABSENT AND NOT VOTING: Deem, Hill, Hornbuckle, Howell, Lynch, L. Phillips and Walters.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Guthrie moved to amend the bill on page nineteen, line seven, following the chapter heading, by inserting a new section to read as follows:

**“ARTICLE 6. CRIMES AGAINST THE PEACE**

**§61-4-19. Willful disruption of governmental processes; offenses occurring at state capitol complex; penalties.**

(a) If any person willfully interrupts or molests the orderly and peaceful process of any department, division, agency or branch of state government or of its political subdivisions, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars, or imprisoned in the county or regional jail not more than six months, or both fined and imprisoned: *Provided*, That any assembly in a peaceable, lawful and orderly manner for a redress of grievances shall not be a violation of this section.

(b) Except as permitted herein, it is unlawful for any person to bring upon the state capitol complex any weapon as defined by the provisions of section two, article seven of this chapter: *Provided, however, That this prohibition shall not apply to: (i) any law-enforcement officer acting in his or her official capacity; or (ii) any person who is not prohibited from possessing a firearm pursuant to the provisions of section seven, article seven, chapter sixty-one of this code or by any applicable federal law. Pursuant to this subsection (b)(i), officers may possess and bring firearms upon the state capitol complex and within the buildings and parking facilities located thereon, excepting the Governor’s Residence and the offices and facilities occupied by the West Virginia Supreme Court of Appeals. Pursuant to this subsection (b)(ii), any person lawfully possessing a*

firearm, including a pistol or revolver, for purposes of self-defense, may possess and bring a pistol or revolver upon the state capitol complex and within the buildings and parking facilities located thereon, excepting the Governor's Residence, the offices and other facilities occupied by the West Virginia Supreme Court of Appeals, and any office or facility within a building during times and to the extent an office or facility is closed to the public. It is unlawful for any person to willfully deface any trees, wall, floor, stairs, ceiling, column, statue, monument, structure, surface, artwork or adornment in the state capitol complex. It is unlawful for any person or persons to willfully block or otherwise willfully obstruct any public access, stair or elevator in the state capitol complex after being asked by a law-enforcement officer acting in his or her official capacity to desist: Provided, That in order to preserve the constitutional right of the people to assemble, it is not willful blocking or willful obstruction for persons gathered in a group or crowd, if the persons move to the side or part to allow other persons to pass by the group or crowd to gain ingress or egress: *Provided, however,* That this subsection shall not apply to a law enforcement officer acting in his or her official capacity.

Any person who violates any provision of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars or confined in the county or regional jail not more than six months, or both.”

On the adoption of the amendment to the amendment, Delegate Guthrie demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 440**), and there were—yeas 7, nays 86, absent and not voting 7, with the yeas and absent and not voting being as follows:

YEAS: Ambler, Cooper, A. Evans, D. Evans, Hamilton, Morgan and Pushkin.

ABSENT AND NOT VOTING: Deem, Hill, Hornbuckle, Howell, Lynch, L. Phillips and Walters.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Canterbury moved to amend the bill, on page nine, section three, line fifteen, after the word “dollars” and the period, by inserting the following:

*“Provided, That in addition to any penalty hereunder, any person prohibited from carrying a firearm pursuant to section seven, article seven, chapter sixty-one, who carries a firearm in a concealed manner, shall be guilty of a separate and distinct felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than five years and fined not less than one thousand dollars nor more than five thousand dollars, which sentence shall run consecutively, not concurrently.”*

On the adoption of the amendment to the amendment, Delegate J. Nelson demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 441**), and there were—yeas 23, nays 70, absent and not voting 7, with the yeas and absent and not voting being as follows:

YEAS: Ambler, Bates, Canterbury, Caputo, Cooper, Cowles, Duke, A. Evans, D. Evans, Fleischauer, Guthrie, Hamilton, Hanshaw, Ireland, Moore, Perdue, Pushkin, Reynolds, Rodighiero, Romine, Rowe, Shott and Skinner.

ABSENT AND NOT VOTING: Deem, Hill, Hornbuckle, Howell, Lynch, L. Phillips and Walters.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

On the adoption of the amendment recommended by the Committee on the Judiciary, J. Nelson demanded the yeas and nays, which demand was sustained.



The yeas and nays having been ordered, they were taken (**Roll No. 442**), and there were—yeas 77, nays 17, absent and not voting 6, with the nays and absent and not voting being as follows:

**NAYS:** Azinger, Blair, Butler, Faircloth, Folk, Foster, Gearheart, Guthrie, Ihle, McCuskey, McGeehan, Moffatt, Morgan, J. Nelson, Pushkin, Rowe and Upson.

**ABSENT AND NOT VOTING:** Deem, Hill, Hornbuckle, Howell, Lynch and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

On motion of Delegate Shott the bill was amended on page one, by amending the enacting section to read as follows:

“That sections §20-2-5 and §20-2-6a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §61-7-3, §61-7-4, and §61-7-6 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §61-7-7(e), all to read as follows” followed by a colon.

The bill was then ordered to third reading.

#### **FIRST READING**

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

**Com. Sub. for S. B. 12**, Relating to payment of separated employee’s outstanding wages,

**Com. Sub. for S. B. 14**, Creating Public Charter Schools Act of 2015,

**Com. Sub. for S. B. 323**, Relating to municipal home rule,

**S. B. 370**, Reorganizing Governor's Committee on Crime, Delinquency and Correction and its subcommittees,

**Com. Sub. for S. B. 393**, Reforming juvenile justice system,

**Com. Sub. for S. B. 407**, Implementing state safety oversight program,

**S. B. 415**, Relating to circuit judges,

**Com. Sub. for S. B. 423**, Amending Aboveground Storage Tank Act,

**S. B. 434**, Relating to horse racing,

**S. B. 479**, Adding additional family court judges,

And,

**Com. Sub. for S. B. 486**, Authorizing special license plates for Civil Air Patrol vehicles.

#### MESSAGES FROM THE SENATE

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 2550**, Increasing the number of unexcused absences of a student before action may be taken against the parent.

On motion of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates concurred in the following Senate amendment:

On page one, by striking out everything after the enacting section and inserting in lieu thereof the following:

“ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

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

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

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

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

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

(A) ‘Excused absence’ shall be defined to include:

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

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

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

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

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

(vi) Death in the family;

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

(viii) Judicial obligation or court appearance involving the student;

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

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

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

(b) In the case of ~~five~~ three total unexcused absences of a student during a school year, the attendance director or assistant shall serve written notice to the parent, guardian or custodian of the student that the attendance of the student at school is required and that if the student has five unexcused absences, a conference with the principal or other designated representative will be required.

(c) In the case of five total unexcused absences, the attendance director or assistant shall serve written notice to the parent, guardian or custodian of the student that within ~~ten~~ five days of receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report in person to the school the student attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the ~~inexcusable~~

unexcused absences of the student, including the adjustment of unexcused absences based upon such meeting.

(d) In the case of ten total unexcused absences of a student during a school year, if the parent, guardian or custodian does not comply with the provisions of this article, then the attendance director or assistant shall make complaint against the parent, guardian or custodian before a magistrate of the county. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one parent, guardian or custodian may be charged in a complaint. Initial service of a summons or warrant issued pursuant to the provisions of this section shall be attempted within ten calendar days of receipt of the summons or warrant and subsequent attempts at service shall continue until the summons or warrant is executed or until the end of the school term during which the complaint is made, whichever is later.

~~(c)~~ (e) The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in section eight, article one, chapter fifty of this code, shall assign the case to a magistrate within ten days of execution of the summons or warrant. The hearing shall be held within twenty days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least ten days' advance notice of the date, time and place of the hearing.

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

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

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

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

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

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

(4) Prepare a report for submission by the county superintendent to the State Superintendent of Schools on school attendance, at such times and in such detail as may be required. The state board shall promulgate a legislative rule pursuant to article three-b, chapter twenty-nine-a of this code that sets forth student absences that are excluded for accountability purposes. The absences that are excluded by the rule include, but are not ~~be~~ limited to, excused student absences, students not in attendance due to disciplinary measures and absent students for whom the attendance director has pursued judicial remedies to compel attendance to the extent of his or her authority. The attendance director shall file with the county superintendent and

county board at the close of each month a report showing activities of the school attendance office and the status of attendance in the county at the time;

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

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

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

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

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

On motion of Delegate Cowles, the House of Delegates concurred in the Senate amendment with further amendment, on page two, line six, before the word “and”, by inserting “(x) Personal or academic circumstances approved by the principal” followed by a semicolon and renumbering the remaining subparagraph accordingly.

And,

By amending the title of the bill to read as follows:

**Com. Sub. for H. B. 2550** - “A Bill to amend and reenact §18-8-4 of the Code of West Virginia, 1931, as amended, relating to truancy intervention; defining excused and unexcused absences; providing that notice of a student’s three unexcused absences be given to parent, guardian or custodian; providing that a parent, guardian or custodian have a mandatory conference with the principal or other designated

representative of the school when the student has five unexcused absences; and increasing number of unexcused absences by a student before a complaint must be made against the parent, guardian or custodian of the student.”

The bill, as amended by the Senate and further amended by the House, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 443**), and there were—yeas 91, nays 1, absent and not voting 8, with the nays and absent and not voting being as follows:

NAYS: Reynolds.

ABSENT AND NOT VOTING: Deem, Folk, Hill, Hornbuckle, Howell, Lynch, L. Phillips and Shott.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2550) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

**Com. Sub. for H. B. 2586**, Allowing for an alternative form of service of process in actions against nonresident persons by petitioners seeking domestic violence or personal safety relief.

On motions of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates concurred in the following Senate amendment:



On page one, by striking out everything after the enacting section and inserting in lieu thereof the following:

**“CHAPTER 48. DOMESTIC RELATIONS.**

**ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.**

**§48-27-311. Service of process.**

A protective order may be served:

(1) On the respondent by means of a Class I legal advertisement published notice, with the publication area being the most current known county in which the respondent resides, published in accordance with the provisions of section two, article three, chapter fifty-nine of this code if personal service by law enforcement has been unsuccessful. Simultaneously with the publication, the respondent shall be served with the protective order and the order of publication by first class mail to the respondent’s most current known residential address.

(2) Against nonresident persons by the manner prescribed in section thirty-three-a, article three, chapter fifty-six of this code.

Any protective order issued by the court of this state which is served in compliance with the provisions of Rule 4(f) of the West Virginia Rules of Civil Procedure served outside the boundaries of this state shall carry the same force and effect as if it had been personally served within this state’s boundaries.

**CHAPTER 56. PLEADING AND PRACTICE.**

**ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.**

**§56-3-33a. Actions against nonresident persons by petitioners seeking domestic violence or personal safety relief; service of process; authorizing Secretary of State to receive process against nonresidents.**

(a) Any person who is:

(1) Not a resident of this state; or

(2) A resident of this state who has left this state; or

(3) A person whose residence is unknown shall be considered to have submitted to the jurisdiction of the courts of this state as to any action arising from the conduct specified in subsection (b) of this section, if such conduct was:

(A) Committed in this state; or

(B) If such conduct was not committed in this state if the conduct was purposely directed at a resident and has an effect within this state.

(b) Conduct compelling application of this section consists of:

(1) Any act constituting domestic violence or abuse as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code; or

(2) Any act constituting a basis for seeking personal safety relief as defined in section four, article eight, chapter fifty-three of this code; or

(3) Any act or omission violating the provisions of a duly authorized protective or restraining order, whether issued by this state or another jurisdiction, for the protection of any person within this state.

(c) Any person subject to or considered to have submitted to the jurisdiction of the courts of this state who is made a respondent in an action may be served with the petition and order initiating such action either:

(1) By law-enforcement officers, wherever the respondent may be found, whether inside or outside the boundaries of this state; or

(2) If the respondent is alleged to have committed conduct specified in subsection (b) of this section, this shall be considered equivalent to an appointment by such nonresident of the Secretary of State, or his or her successor in office, to be his or her true and lawful attorney upon whom may be served all lawful process in any action or proceeding against him or her, in any court in this state, for a cause of action arising from or growing out of such conduct, and the engaging in such conduct is a signification of such nonresident's agreement that any such process against him or her, which is served in the manner hereinafter provided, is of the same legal force and validity as though such nonresident were personally served within this state.

(A) Such service shall be made by leaving two copies of both the petition and order, with the Secretary of State, or in his or her office, and such service shall be sufficient upon such nonresident: *Provided*, That notice of such service and a copy of the petition and order shall forthwith be sent by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, by the Secretary of State to the respondent at his or her nonresident address and the respondent's return receipt signed by himself or herself or his or her duly authorized agent or the registered or certified mail so sent by the Secretary of State which is refused by the addressee and which registered or certified mail is returned to the Secretary of State, or to his or her office, showing thereon the stamp of the post-office department that delivery has been refused. After receiving verification from the United States Postal Service that acceptance of the notice, petition and order has been signed, the Secretary of State shall notify the clerk's office of the court from which the petition and order were issued by a means which may include electronic notification. If the notice, petition and order were refused or undeliverable by the United States Postal Service, the Secretary of State shall return refused or undeliverable mail to the clerk's office of the court from which the petition and order were issued. If any respondent served with a petition and order fails to appear and defend at the time and place set forth in the order, judgment

may be rendered against him or her at any time thereafter. The court may order such continuances as may be reasonable to afford the respondent an opportunity to defend the action or proceeding.

(B) As provided in section three hundred eight, article twenty-seven, chapter forty-eight of this code regarding domestic violence proceedings and in section thirteen, article eight, chapter fifty-three of this code regarding personal safety proceedings, no fees may be charged for service of petitions or orders until the matter is brought before the appropriate court for final resolution. Any fees ordinarily remitted to the Secretary of State or to a law-enforcement agency at the time of service shall be deferred and taxed in the costs of the action or proceeding.

(C) Data and records regarding service maintained by law-enforcement agencies and by the office of the Secretary of State for purposes of fulfilling the obligations of this section are not public records subject to disclosure under the provisions of article one, chapter twenty-nine-b of this code.

(d) The following words and phrases, when used in this section, shall for the purpose of this section and unless a different intent be apparent from the context, have the following meanings:

(1) ‘Duly authorized agent’ means and includes among others a person who, at the direction of or with the knowledge or acquiescence of a nonresident, engages in such act or acts and includes among others a member of the family of such nonresident or a person who, at the residence, place of business or post office of such nonresident, usually receives and receipts for mail addressed to such nonresident.

(2) ‘Nonresident’ means any person who is not a resident of this state or a resident who has moved from this state subsequent to engaging in such acts or acts covered by this section.”

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 444**), and there were—yeas 93, nays 1, absent and not voting 6, with the nays and absent and not voting being as follows:

NAYS: Sobonya.

ABSENT AND NOT VOTING: Deem, Hill, Hornbuckle, Howell, Lynch and L. Phillips.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2586) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 2632**, Exempting the procurement of certain instructional materials for use in and in support of public schools from the division of purchasing requirements.

On motions of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates concurred in the following Senate amendments:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“That §5A-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5A-3-3 of said code be amended and reenacted; that §18-2E-7 of said code be amended and reenacted; and that §18-9A-10 of said code be amended and reenacted, all to read as follows:

**CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.****ARTICLE 3. PURCHASING DIVISION.****§5A-3-1. Division created; purpose; director; applicability of article; continuation.**

(a) The Purchasing Division within the Department of Administration is continued. The underlying purposes and policies of the Purchasing Division are:

(1) To establish centralized offices to provide purchasing and travel services to the various state agencies;

(2) To simplify, clarify and modernize the law governing procurement by this state;

(3) To permit the continued development of procurement policies and practices;

(4) To make as consistent as possible the procurement rules and practices among the various spending units;

(5) To provide for increased public confidence in the procedures followed in public procurement;

(6) To ensure the fair and equitable treatment of all persons who deal with the procurement system of this state;

(7) To provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds;

(8) To foster effective broad-based competition within the free enterprise system;

(9) To provide safeguards for the maintenance of a procurement system of quality and integrity; and

(10) To obtain in a cost-effective and responsive manner the commodities and services required by spending units in order for those spending units to better serve this state's businesses and residents.

(b) The Director of the Purchasing Division shall, at the time of appointment:

(1) Be a graduate of an accredited college or university; and

(2) Have spent a minimum of ten of the fifteen years immediately preceding his or her appointment employed in an executive capacity in purchasing for any unit of government or for any business, commercial or industrial enterprise.

(c) The provisions of this article apply to all of the spending units of state government, except as otherwise provided by this article or by law.

(d) The provisions of this article do not apply to the judicial branch, the West Virginia State Police Forensics Laboratory, the West Virginia Office of Laboratory Services, the legislative branch, to purchases of stock made by the Alcohol Beverage Control Commissioner and to purchases of textbooks , for instructional materials, digital content resources, instructional technology, hardware, software, telecommunications and technical services by the State Board of Education for use in and in support of the public schools.

(e) The provisions of this article apply to every expenditure of public funds by a spending unit for commodities and services irrespective of the source of the funds.

### **§5A-3-3. Powers and duties of Director of Purchasing.**

The director, under the direction and supervision of the secretary, shall be the executive officer of the Purchasing Division and shall have the power and duty to:

- (1) Direct the activities and employees of the Purchasing Division;
- (2) Ensure that the purchase of or contract for commodities and services shall be based, whenever possible, on competitive bid;
- (3) Purchase or contract for, in the name of the state, the commodities, services and printing required by the spending units of the state government;
- (4) Apply and enforce standard specifications established in accordance with section five of this article as hereinafter provided;
- (5) Transfer to or between spending units or sell commodities that are surplus, obsolete or unused as hereinafter provided;
- (6) Have charge of central storerooms for the supply of spending units, as the director deems advisable;
- (7) Establish and maintain a laboratory for the testing of commodities and make use of existing facilities in state institutions for that purpose as hereinafter provided, as the director deems advisable;
- (8) Suspend the right and privilege of a vendor to bid on state purchases when the director has evidence that such vendor has violated any of the provisions of the purchasing law or the rules and regulations of the director;
- (9) Examine the provisions and terms of every contract entered into for and on behalf of the State of West Virginia that impose any obligation upon the state to pay any sums of money for commodities or services and approve each such contract as to such provisions and terms; and the duty of examination and approval herein set forth does not supersede the responsibility and duty of the Attorney General to approve such contracts as to form: *Provided*, That the provisions of this subdivision do not apply in any respect whatever to construction or repair contracts entered into by the Division of Highways of the Department of Transportation: *Provided, however*, That the provisions



of this subdivision do not apply in any respect whatever to contracts entered into by the University of West Virginia Board of Trustees or by the Board of Directors of the State College System, except to the extent that such boards request the facilities and services of the director under the provisions of this subdivision: Provided further, That the provisions of this subdivision do not apply to the West Virginia State Police Forensic Laboratory and the West Virginia Office of Laboratory Services;

(10) Assure that the specifications and descriptions in all solicitations are prepared so as to provide all potential suppliers-vendors who can meet the requirements of the state an opportunity to bid and to assure that the specifications and descriptions do not favor a particular brand or vendor. If the director determines that any such specifications or descriptions as written favor a particular brand or vendor or if it is decided, either before or after the bids are opened, that a commodity or service having different specifications or quality or in different quantity can be bought, the director may rewrite the solicitation and the matter shall be rebid; and

(11) Issue a notice to cease and desist to a spending unit when the director has credible evidence that a spending unit has violated competitive bidding or other requirements established by this article and the rules promulgated hereunder. Failure to abide by such notice may result in penalties set forth in section seventeen of this article.

## CHAPTER 18. EDUCATION.

### ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

#### **§18-2E-7. Providing for ~~twenty-first century~~ instruction and learning in all public schools.**

(a) The Legislature finds that:

(1) The knowledge and skills children need to succeed ~~in the twenty-first century~~ are changing dramatically and that West Virginia

students must develop proficiency in ~~twenty-first century~~ the subject matter content, technology tools and learning skills to succeed and prosper in life, in school and on the job;

(2) Students must be equipped to live in a multitasking, multifaceted, technology-driven world;

(3) The provision of ~~twenty-first century~~ technologies and software resources in grades prekindergarten through twelve is necessary to meet the goal that high school graduates will be prepared fully for college, other post-secondary education or gainful employment;

(4) This goal reflects a fundamental belief that the youth of the state exit the system equipped with the skills, competencies and attributes necessary to succeed, to continue learning throughout their lifetimes and to attain self-sufficiency;

(5) To promote ~~twenty-first century~~ learning, teachers must be competent in ~~twenty-first century~~ content and learning skills and must be equipped to fully integrate technology to transform instructional practice and to support ~~twenty-first century~~ skills acquisition;

(6) For students to learn ~~twenty-first century~~ technology skills, students and teachers must have equitable access to high quality, ~~twenty-first century~~ technology tools and resources;

(7) When aligned with standards and curriculum, technology-based assessments can be a powerful tool for teachers; and

(8) Teachers must understand how to use technology to create classroom assessments for accurate, timely measurements of student proficiency in attainment of academic content. ~~and twenty-first century skills~~

(b) The state board shall ensure that the resources to be used to provide technology services to students in grades prekindergarten through twelve are included in a West Virginia ~~21st Century Strategic~~

Technology Learning Plan to be developed by the Department of Education as an integral component of the county electronic strategic improvement plan required in section five of this article. The provision of technologies and services to students and teachers shall be based on a county technology plan developed by a team that includes school building-level professional educators and is aligned with the goals and objectives of the West Virginia ~~21st-Century~~ Strategic Technology Learning Plan. This plan shall be an integral component of the county electronic strategic improvement plan as required in section five of this article. Funds shall be allocated equitably to county school systems following peer review of the plans that includes providing necessary technical assistance prior to submission and allows timely review and approval by the West Virginia Department of Education. ~~Technology tools, including hardware, software, network cabling, network electronics and related professional development, shall be purchased pursuant to the provisions of article three, chapter five-a of this code in the amount equal to anticipated revenues being appropriated and based on the approved county plans. County allocations that support this legislation~~ Equitable allocation shall be defined by the state board and may include per school-site equity for technologies requiring a site license or other per school application. Technology tools purchased from appropriations for this section shall adhere to state contract prices: *Provided*, That contingent upon approval of the county technology plan, counties that identify, within that plan, specific software or peripheral equipment not listed on the state contract, but necessary to support implementation, ~~of twenty-first century skills~~, may request the West Virginia Department of Education to secure state purchasing prices for those identified items. Total expenditure to purchase these additional items may not exceed ten percent of the annual county allocation. To the extent practicable, the technology shall be used:

(1) To maximize student access to learning tools and resources at all times including during regular school hours, before and after school or class, in the evenings, on weekends and holidays and for public education, noninstructional days and during vacations; and

(2) For student use for homework, remedial work, personalized learning, independent learning, career planning and adult basic education.

(c) The implementation of this section should provide a technology infrastructure capable of supporting multiple technology-based learning strategies designed to enable students to achieve at higher academic levels. The technology infrastructure should facilitate student development by addressing the following areas:

(1) Mastery of rigorous core academic subjects in grades prekindergarten through eight by providing software, other technology resources or both aligned with state standards in reading, mathematics, writing, science, social studies ~~twenty-first century learning skills and twenty-first century~~ and learning tools;

(2) Mastery of rigorous core academic subjects in grades nine through twelve by providing appropriate ~~twenty-first century~~ technology tools aligned with state standards for learning skills and technology tools;

(3) Attainment of ~~twenty-first century~~ skill outcomes for all students in the use of technology tools and learning skills;

(4) Proficiency in new, emerging ~~twenty-first century~~ content;

(5) Participation in relevant, contextual instruction that uses dynamic, real-world contexts that are engaging and meaningful for students, making learning relevant to life outside of school and bridging the gap between how students live and how they learn in school;

(6) Ability to use digital and emerging technologies to manage information, communicate effectively, think critically, solve problems, work productively as an individual and collaboratively as part of a team and demonstrate personal accountability and other self-directional skills;

(7) Providing students with information on post-secondary educational opportunities, financial aid and the skills and credentials required in various occupations that will help them better prepare for a successful transition following high school;

(8) Providing greater access to advanced and other curricular offerings than could be provided efficiently through traditional on-site delivery formats, including increasing student access to quality distance learning curricula and online distance education tools;

(9) Providing resources for teachers in differentiated instructional strategies, technology integration, sample lesson plans, curriculum resources and online staff development that enhance student achievement; and

(10) Providing resources to support basic skills acquisition and improvement at the above mastery and distinguished levels.

(d) Developed with input from appropriate stakeholder groups, the West Virginia ~~21st Century~~ Strategic Technology Learning Plan shall be an integral component of the electronic strategic county improvement plan as required in section five of this article. The West Virginia ~~21st Century~~ Strategic Technology Learning Plan shall be comprehensive and shall address, but not necessarily be limited to, the following provisions:

(1) Allocation of adequate resources to provide students with equitable access to ~~twenty-first century~~ technology tools, including instructional offerings and appropriate curriculum, assessment and technology integration resources aligned to both the content and rigor of state content standards as well as to learning skills and technology tools;

(2) Providing students and staff with equitable access to a technology infrastructure that supports the acquisition of ~~twenty-first century~~ skills in the use of technology, including the ability to access information, solve problems, communicate clearly, make informed

decisions, acquire new knowledge, construct products, reports and systems and access online assessment systems;

(3) Inclusion of various technologies that enable and enhance the attainment of ~~twenty-first century~~ the skills outcomes for all students;

(4) Collaboration with various partners, including parents, community organization, higher education, schools of education in colleges and universities, employers and content providers;

(5) Seeking of applicable federal government funds, philanthropic funds, other partnership funds or any combination of those types of funds to augment state appropriations and encouraging the pursuit of funding through grants, gifts, donations or any other sources for uses related to education technology;

(6) Sufficient bandwidth to support teaching and learning and to provide satisfactorily for instructional management needs;

(7) Protection of the integrity and security of the network, as well as student and administrative workstations;

(8) Flexibility to adjust the plan based on developing technology, federal and state requirements and changing local school and county needs;

(9) Incorporation of findings based upon validation from research-based evaluation findings from previous West Virginia-based evaluation projects;

(10) Continuing study of emerging technologies for application in a ~~twenty-first century~~ learning environment and inclusion in the technology plan, as appropriate;

(11) An evaluation component to determine the effectiveness of the program and make recommendations for ongoing implementation;

(12) A program of embedded, sustained professional development for teachers that is strategically developed to support a ~~twenty-first~~

century thorough and efficient education for all students and that aligns with state standards for technology, integrates ~~twenty-first century technology~~ skills into educational practice and supports the implementation of ~~twenty-first century~~ software, technology and assessment resources in the classroom;

(13) Providing for uniformity in technological hardware and software standards and procedures;

(14) The strategy for ensuring that the capabilities and capacities of the technology infrastructure is adequate for acceptable performance of the technology being implemented in the public schools;

(15) Providing for a comprehensive, statewide uniform, integrated education management and information system for data collection and reporting to the Department of Education ~~as provided in section twenty-six, article two of this chapter and commonly referred to as the West Virginia Education Information System~~ and the public;

(16) Providing for an effective model for the distance delivery, virtual delivery or both types of delivery of instruction in subjects where there exists low student enrollment or a shortage of certified teachers or where the delivery method substantially improves the quality of an instructional program such as the West Virginia Virtual School;

(17) Providing a strategy to implement, support and maintain technology in the public schools;

(18) Providing a strategy to provide ongoing support and assistance to teachers in integrating technology into ~~twenty-first century~~ instruction such as with technology integration specialists and technology system specialists;

(19) A method of allowing public education to take advantage of appropriate bulk purchasing abilities and to purchase from competitively bid contracts initiated through the southern regional

education board educational technology cooperative and the America TelEdCommunications Alliance;

(20) Compliance with United States Department of Education regulations and Federal Communications Commission requirements for federal E-rate discounts; and

(21) Other provisions as considered appropriate, necessary or both to align with applicable guidelines, policies, rules, regulations and requirements of the West Virginia Legislature, the Board of Education and the Department of Education.

(e) Any state code and budget references to the Basic Skills/Computer Education Program and the SUCCESS Initiative will be understood to refer to the statewide technology initiative referenced in this section, commonly referred to as the 21st Century Tools for 21st Century Schools Technology Initiative.

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

##### **§18-9A-10. Foundation allowance to improve instructional programs.**

(a) The total allowance to improve instructional programs shall be the sum of the following:

(1) For instructional improvement, in accordance with county and school electronic strategic improvement plans required by section five, article two-e of this chapter, ~~an amount equal to fifteen percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year: *Provided, That effective July 1, 2014,*~~ an amount equal to ten percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article 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 distributed to the counties as follows:

(A) One hundred fifty thousand dollars shall be allocated to each county; and

(B) Distribution 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 provision of this subdivision shall be used to improve instructional programs according to the county and school strategic improvement plans required by section five, article two-e of this chapter and approved by the state board: *Provided*, That notwithstanding any other provision of this code to the contrary, moneys allocated by provision of this section also may be used in the implementation and maintenance of the uniform integrated regional computer information system.

Up to twenty-five percent of this allocation may be used to employ professional educators and service personnel in counties after all applicable provisions of sections four and five of this article have been fully utilized.

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 and the regional educational service agency for that county 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 21st Century 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 provisions relating to the use of any funds from this subdivision for personnel costs are subject to the following: (1) The funds available for personnel under this subsection may not be used to increase the total number of professional noninstructional personnel in the central office beyond four; and (2) For the school year beginning July 1, 2013, and thereafter, any funds available to a county for use for personnel under this subsection above the amount available for the 2012-2013 school year, only may be used for technology systems specialists until the state superintendent determines that the county has sufficient technology systems specialists to serve the needs of the county.

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 fifteen percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. *Provided, That effective July 1, 2014,*~~ an amount equal to twenty percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article 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 provided in section seven, article two-e of this chapter to meet the objectives of the West Virginia 21st Century Strategic Technology Learning Plan. *Provided, That*~~

~~effective July 1, 2014, the sum~~ of these amounts shall be distributed to the counties as follows:

(A) Thirty thousand dollars shall be allocated to each county; and

(B) Distribution 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.

Effective July 1, 2014, moneys allocated by provision of this subdivision shall be used to improve instructional technology programs according to the county and school strategic improvement plans; 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) An amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to January 1, 1994, and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue bonds issued prior to January 1, 1994, shall be paid into the School Building Capital Improvements Fund created by section six, article nine-d of this chapter and shall be used solely for the purposes of that article. The School Building Capital Improvements Fund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding bonds for which moneys contained within the School Building Debt Service Fund have been pledged for repayment pursuant to that section.

(b) When the school improvement bonds secured by funds from the School Building Capital Improvements Fund mature, the state Board of Education shall annually deposit an amount equal to \$24,000,000 from the funds allocated in this section into the School

Construction Fund created pursuant to the provisions of section six, article nine-d of this chapter to continue funding school facility construction and improvements.

(c) Any project funded by the School Building Authority shall be in accordance with a comprehensive educational facility plan which must be approved by the state board and the School Building Authority.”

And,

By amending the title of the bill to read as follows:

**H. B. 2632** - “A Bill to amend and reenact §5A-3-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §5A-3-3 of said code; to amend and reenact §18-2E-7 of said code; and to amend and reenact §18-9A-10 of said code, all relating to purchasing guidelines; exempting the West Virginia State Police Forensics Laboratory and the West Virginia Office of Laboratory Services from state purchasing guidelines; exempting procurement of instructional materials, digital content resources, instructional technology, hardware, software, telecommunications and technical services for use in and in support of public schools; exempting procurement of these items from division of purchasing requirements; removing outdated language and updating name of state technology plan; requiring the State Board of Education to define ‘equitable distribution’; requiring certain technology tools to adhere to state contract prices; adding personalized learning as potential student use for technology; providing for technology system specialists; and removing expired transitional funding language and references to the twenty-first century.”

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 445**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Hill, Hornbuckle, Howell, Lynch and L. Phillips.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2632) passed.

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

On this question, the yeas and nays were taken (**Roll No. 446**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Hill, Hornbuckle, Howell, Lynch and L. Phillips.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2632) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 2648**, Allowing authorized entities to maintain a stock of epinephrine auto-injectors to be used for emergency.

On motions of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates concurred in the following Senate amendments:

On page three, section two, line five, after the word “programs”, by changing the semicolon to a period.

On page four, section three, line eight, by striking out the word “an”.

On page four, section four, lines one and two, by striking out the words “An authorized health care practitioner may prescribe to an authorized entity an epinephrine injector.”, and inserting in lieu there of the following: “An authorized health care practitioner may prescribe an epinephrine injector to an authorized entity.”

And,

On page six, section five, line thirteen, after the word “administers”, by inserting the words “or provides”.

And,

By amending the title of the bill to read as follows:

**Com. Sub. for H. B. 2648** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-46-1, §16-46-2, §16-46-3, §16-46-4 and §16-46-5, all relating to availability and use of epinephrine auto-injectors; providing definitions; providing for legislative rules; providing for training; providing prescriptive authority to health care practitioners in certain circumstances; providing authority to pharmacists to dispense epinephrine auto-injectors in certain circumstances; providing for the storage and emergency use of epinephrine auto-injectors; providing that in certain circumstances the use of epinephrine auto-injectors is not the practice of medicine; providing that in certain circumstances one authorized to prescribe, possess or train regarding epinephrine auto-injectors is not liable for civil damages; and further providing that certain individuals who administer or provide an epinephrine auto-injector to a person is immune from liability for civil action unless the act or omission was grossly negligent or willful misconduct.”

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 447**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Hill, Hornbuckle, Howell, Lynch and L. Phillips.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2648) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 2914**, Providing for voluntary dissolution of resort area district.

On motions of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates concurred in the following Senate amendments:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“That §7-25-6, §7-25-11 and §7-25-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §7-25-7a and §7-25-27, all to read as follows:

**ARTICLE 25. RESORT AREA DISTRICTS.**

**§7-25-6. Notice to property owners before creation or expansion of resort area district; form of notice; affidavit of publication.**

(a) Before the adoption of an order creating a resort area district, the governing body shall cause notice to be given to the owners of real property located within the proposed resort area district that ~~such~~ the order will be considered for adoption at a public meeting of the governing body at a date, time and place named in the notice and that all persons at that meeting, or any adjournment ~~thereof~~ of the meeting, shall be given an opportunity to protest or be heard concerning the adoption or rejection of the order. At or after the meeting the governing body may amend, revise or otherwise modify the information in the petition for formation or expansion of a resort area district as it may ~~deem~~ consider appropriate after taking into account any comments received at ~~such~~ the meeting.

(b) A resort area district may not be created by a governing body if, at the public meeting required by this section, written protest is filed by at least twenty-five percent of the owners of real property proposed to be included within the district. In the event of a ~~such~~ protest, the petition for the creation of the resort area district may not be resubmitted to the governing body for a period of at least one year from the date of the original submission.

(c) At least sixty days prior to the date of the meeting the notice required by this section shall, using reasonable efforts, be mailed to each owner of real property to be included in the proposed resort area district as provided in subsection (g) of this section, posted in multiple, conspicuous public locations within ~~such~~ the proposed district and published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for ~~such~~ the publication shall be the county in which the proposed resort area district is located. The notice shall be in the form of, or substantially in the form of, the following notice:

‘NOTICE TO ALL PERSONS OWNING PROPERTY LOCATED WITHIN ..... (here describe the boundaries of the proposed resort area district) IN THE COUNTY OF ..... (name of county):



A petition has been presented to the county commission of the County of ..... (name of county) requesting establishment of a resort area district and authorization of a resort service fee under article twenty-five, chapter seven of the code of West Virginia, 1931, as amended, to ..... (describe potential projects and/or services to be provided) in the county of ..... (name of county) as the county commission may deem proper. A copy of the petition is available in the office of the clerk of the county commission of the County of ..... (name of county) for review by the public during regular office hours.

The petition to create a resort area district will be considered by the county commission at a public meeting to be held on the ..... day of ..... , ..... , at ... m. at ..... Any owner of real property whose property may be affected by the creation of the above-described resort area district, and any owner of real property whose property is not located within said resort area district but wishes his or her property to be included, will be given an opportunity, under oath, to protest or be heard at said meeting or any adjournment thereof:

..... (name of clerk)

(d) An affidavit of publication of the notice made by newspaper publisher, or a person authorized to do so on behalf of ~~such~~ the publisher, and a copy of the notice shall be made part of the minutes of the governing body and spread on its records of the meeting described in the notice. The service of ~~said~~ the notice upon all persons owning any interest in any real property located within the proposed resort area district shall conclusively be ~~deemed~~ determined to have been given upon completion of mailing as provided in subsection (g) of this section and ~~such~~ the newspaper publication.

(e) The petitioners shall bear the expense of publication of the notice, the meeting and the mailing of the proposed order, as requested by subsection (f) of this section.

(f) After the public meeting and before the governing body may adopt an order creating a resort area district, the governing body shall, using reasonable efforts, mail a true copy of the proposed order creating the resort area district to the owners of real property in the proposed district as provided in subsection (g) of this section and shall post copies of ~~such the~~ proposed order in multiple, conspicuous public locations within ~~such the~~ proposed district. Unless waived in writing, any petitioning owner of real property ~~shall have~~ has thirty days from mailing of the proposed order in which to withdraw his or her signature from the petition in writing prior to the vote of the governing body on ~~such the~~ order. If any signatures on the petition are ~~so~~ withdrawn, the governing body may adopt the proposed order only upon certification by the petitioners that the petition otherwise continues to meet the requirements of this article. If all petitioning owners of real property waive the right to withdraw their signatures from the petition, then the governing body may immediately adopt the order.

(g) For purposes of the mailing of each notice to owners of real property required by this section, reasonable efforts shall be made to mail ~~such the~~ notice to all owners of real property proposed to be included within ~~such the~~ resort area district using the real property tax records and land books of the county in which ~~such the~~ proposed district is located and any lists maintained by a resort operator or homeowners association within ~~such the~~ proposed district. ~~Such The~~ notice shall be also mailed to each president of a homeowners association, if any, located within a proposed district which has registered with a resort operator to receive ~~such the~~ information. Immaterial defects in the mailing of ~~such the~~ notices shall not affect the validity of ~~such the~~ notices: Provided, That in the case of any resort area district to be voted upon after the effective date of this amendment adopted during the 2015 regular session of the Legislature, any notice shall be mailed to the property owner's primary place of abode by certified mail, return receipt requested.

**§7-25-7a. Voluntary dissolution resort area district.**

(a) The owners of twenty-five percent or more of the real property in a resort area district may petition the board to dissolve that resort area district.

(b) Within sixty days of the submission of a petition for the dissolution of a resort area district, the board shall verify the total number of eligible petitioners to determine whether the required percentage of petitioners has been obtained. If the board determines that the petition has met the requirements of subsection (a) of this section, the board shall set a date for a special election on the question of continuing or dissolving the resort area district. The board shall, using reasonable efforts, cause a notice to be mailed by certified mail, return receipt requested, to each owner of real property located within the resort area district's of a special election to determine continuance or dissolution of the resort area district: *Provided*, That any notice shall be mailed to the property owner's primary place of abode by certified mail, return receipt requested.

The date set by the board for the special election required by this section may be no less than sixty nor more than ninety days from the date the board mails the notice, in the form described in subsection (c) of this section, to the owners of real property located within the district. The board shall make a copy of the petition available for inspection by interested persons before the special election. If the board determines that the petition has not met the requirements of subsection (a) of this section, the petition shall be returned to the petitioners with a statement of the reason why the petition was rejected.

(c) The notice mailed to real property owners regarding the special election to determine the continuance or dissolution of the resort area district shall contain the following:

- (1) The purpose, location, date and time for the special election;

(2) A proxy, in the form described in subsection (d) of this section, which may be used by owners of any class of property to grant proxies to any person to cast the owner's ballot at the special election as if the owner were present in person. The proxy may be mailed or transmitted electronically to the individual being granted the proxy; and

(3) A copy of a ballot described in subsection (e) of this section. The ballot may be used to vote for continuance or dissolution of the resort area district at the special election.

(d) The proxy form required to be included with the notice of special election mailed to real property owners, as provided in subsection (c) of this section, shall contain the following information:

(1) That the proxy is for the special election to consider the continuance or dissolution of the resort area district as covered by the notice required by subsection (b) of this section;

(2) The name of the owner having the voting right for a parcel of real property;

(3) The location of the real property;

(4) The name of the individual being given the proxy to vote for the owner unable to attend the special election;

(5) The date and signature of real property owner authorizing the proxy; and

(6) A statement that the named individual being extended the voting proxy is restricted to placing a vote for the named owner as indicated by the owner's check mark in one of the following two voting choices:

// For Continuance of the \_\_\_\_\_ (name of district) resort area district.

// For Dissolution of the \_\_\_\_\_ (name of district) resort area district.

(e) At the special election, the board shall submit the question of continuing or dissolving the resort area district to owners of qualified real property within the resort area district. For purposes of this section, the term ‘qualified real property’ includes the following classes of real property: Unimproved/developable; commercial business; resort operator; and residential improved. Each owner of qualified real property is entitled to one undivided vote in the special election for each parcel of qualified real property owned. The special election ballots shall have written or printed on them the following:

// For Continuance of the \_\_\_\_\_ (name of district) resort area district.

// For Dissolution of the \_\_\_\_\_ (name of district) resort area district.

If a simple majority of the votes is cast for dissolution, then the board shall request that the governing body dissolve the resort area district. Following the receipt of a request, the resort area district shall be dissolved by the governing body by operation of law. However, all debts or other obligations outstanding against the resort area district must be settled in full prior to the dissolution. If a simple majority of the votes is cast for continuance, the resort area district shall continue in existence until dissolved at some later date under this section. However, another election may not be held within two years of the last election.

(f) An election under this section shall be held, and conducted and the result determined, certified, returned and canvassed in the same manner and by the same persons as an election for resort area district board members pursuant to section eleven of this article.

**§7-25-11. Election procedure for initial members of resort area board; subsequent elections; elections and procedures to fill board vacancies.**

(a) Within ninety days of the adoption of the order creating the resort area district, a public meeting shall be held at which elections for the initial members of the board shall be held. ~~Such the~~ meeting shall be held at a location within the district not less than twenty days after the publication of the notice required by subsection (b) of this section.

(b) Prior to the meeting required by this section, the petitioners for the creation of the resort area district shall, using reasonable efforts, cause notice of the initial election meeting to be given to all owners of real property, including owners of commercial business property, located within the district. ~~Such the~~ notice shall be mailed to each owner of real property included in the resort area district as provided in subsection (h) of this section, posted in multiple, conspicuous public locations within ~~such the~~ district and published at least thirty days prior to the date of the meeting as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for ~~such the~~ publication ~~shall be~~ is the resort area district. The notice shall provide, at a minimum, the following information:

(1) The purpose of the meeting;

(2) Descriptions of the board positions;

(3) A statement that only owners of real property, including owners of commercial business property, located within the district are eligible to make nominations for board positions or vote in ~~such the~~ election;

(4) The location of the meeting; ~~and~~

(5) Electronic and physical addresses where nominations for board positions will be received by petitioners for the creation of the resort area district; and

~~(5)~~ (6) The date and time of the meeting.

(c) ~~At the meeting required by this section~~ Nominations shall be made for each board position by persons eligible to vote for each board position. Nominations may be made at the meeting required by this section, by mail or by electronic means. Nominations made by mail or by electronic means must be received by the petitioners prior to the meeting to be valid. Persons nominated for board positions shall meet the criteria provided for each board position as set forth in subsection (b), section ten of this article. Nominations shall be made for each board position in the following manner:

(1) Only owners of residential, improved real property located within the resort area district may nominate persons for the three board positions provided for owners of or representatives of owners of residential, improved real property located within the resort area district;

(2) Only representatives of the resort operator or resort operators may nominate persons for the two board positions provided for representatives of the resort operator or resort operators located within the resort area district;

(3) Only owners of commercial business property located within the resort area district may nominate persons for the board position provided for an owner of or a representative of owners of commercial business property located within the resort area district; and

(4) Only owners of unimproved, developable real property located within the resort area district may nominate persons for the board position provided for an owner of or a representative of owners of unimproved, developable real property located within the resort area district.

(d) Following board member nominations, a vote shall be taken by written ballot for board members to be elected, but owners of any class of property may grant proxies to any person to cast the owner's ballot

as if the owner were present in person. Voting shall occur in the following manner:

(1) Only owners of residential, improved real property located within the resort area district may vote for the three board positions provided for owners of or representatives of owners of residential, improved real property located within the resort area district. Each owner is entitled to one vote per unit or parcel of residential, improved real property he or she owns;

(2) Only a representative of each resort operator may vote for the two board positions provided for representatives of the resort operator or resort operators located within the resort area district;

(3) Only owners of commercial business property located within the resort area district may vote for the board position provided for an owner of or a representative of owners of commercial business property located within the resort area district. Each owner is entitled to one vote per unit of commercial business property he or she owns; and

(4) Only owners of unimproved, developable real property located within the resort area may vote for the board position provided for an owner of or a representative of owners of unimproved, developable real property located within the resort area district. Each owner is entitled to one vote per parcel of unimproved, developable real property that he or she owns.

(e) For purposes of voting in the initial election and in all subsequent elections for board members:

(1) The owners of each parcel or unit of real property are entitled one vote, irrespective of the number of owners of ~~such~~ the parcel or unity;

(2) Fractional voting shall not be permitted; and



(3) The vote pertaining to a parcel or unit shall be cast in accordance with the direction of the person or persons holding the majority interest in ~~such~~ the parcel or unit, and in the event there is no majority, ~~such~~ the vote shall be forfeited.

(f) Each board member shall be elected by a ~~majority~~ plurality of the votes cast for such board position.

(g) The petitioners for the creation of the resort area district shall be responsible for the costs of the initial election and meeting required by this section.

(h) For purposes of the mailing of notice to owners of real property required by this section, reasonable efforts shall be made to mail such notice to all owners of real property included within such resort area district using the real property tax records and land books of the county in which such district is located and any lists maintained by a resort operator or homeowners association within such district. Such notice shall be also mailed to each president of a homeowners association, if any, located within a district which has registered with a resort operator to receive such information. Immaterial defects in the mailing of such notices shall not affect the validity of such notice.

**§7-25-15. Authorization to implement assessments for projects; procedures for implementing assessments; by-laws to provide additional procedures for implementation of assessments; notice to property owners before implementation of assessments for projects; voting on assessments; affidavit of publication.**

(a) An assessment for a project within a resort area district shall be authorized by the adoption of a resolution by the board. The aggregate limit of assessments that may be levied against a parcel of real property within the district is five percent of the appraised value of the real property, including improvements, as shown in the property tax records and land books of the county in which the property is located. A

resolution authorizing an assessment shall only be adopted after following the procedures set forth in this section.

(b) The bylaws of a district ~~(1) Shall~~ shall provide the procedures not addressed in this section for the implementation of an assessment to pay the costs of a project: *Provided*, That ~~such~~ the procedures must be consistent with constitutional standards and all other laws and ~~regulations~~ rules of this state.

~~(2) May provide for the maximum amount of assessments which may be levied against a parcel of real property within the district.~~

(c) Fifty-one percent or more of the owners of real property to be benefitted by a project may petition the board to implement an assessment to pay the costs of ~~such~~ the project. A board may on its own initiative propose an assessment to pay the costs of a project upon approval by six sevenths of the board.

(d) Upon following the procedures provided in this section and a resort area district's bylaws for the implementation of an assessment to pay the costs of a project, the board may, after giving notice to all real property owners, ~~and~~ holding a public meeting ~~as~~ and a vote on the project if required by this section, adopt a resolution authorizing ~~such~~ the assessment to pay the costs of a project upon approval by six sevenths of the board.

(e) Before the adoption of a resolution authorizing an assessment to pay the costs of a project, the board shall cause notice to be given to the owners of real property located within the resort area district that ~~such~~ the resolution will be considered for adoption at a public meeting of the board at a date, time and place named in the notice and that all persons at that meeting, or any adjournment thereof, shall be given an opportunity to protest or be heard concerning the adoption or rejection of the resolution. If, as provided in subsection (f) of this section, a favorable vote of the property owners is required before the board authorizes the assessment, the notice of meeting shall also contain

information required to enable the owners of real property within the district that will be subject to the assessment to vote on the assessment by mail or electronic means.

(f) An assessment ~~shall~~ may not be authorized by the board if at the public meeting required by this section written protest is filed by at least twenty-five percent of the owners of the real property within the district to be benefitted by the proposed project and subject to the assessment. However, before an assessment proposed by the board on its own initiative as provided in subsection (c) of this section is authorized by the board, the proposal must also receive the favorable vote of a majority of the votes cast at the meeting for the proposal by the owners of real property in the district that will be subject to the assessment. Voting at the meeting shall be in person or by proxy at the meeting or by mailed ballot or electronic means received prior to the meeting. The voting rules set forth in subsection (e), section eleven of this article apply to all voting on assessments. In the event of such protest, the proposed assessment in the same form may not be reconsidered by a board for a period of at least one year from the date of the public meeting.

(g) At least thirty days prior to the date of the public meeting, the notice required by this section shall, using reasonable efforts, be mailed to the owners of real property to be assessed for a proposed project as provided in subsection (k) of this section, posted in multiple, conspicuous public locations within ~~such the~~ the district and published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for ~~such the~~ the publication ~~shall be~~ is the resort area district.

(h) An affidavit of publication of the notice made by newspaper publisher, or a person authorized to do so on behalf of ~~such the~~ the publisher, and a copy of the notice shall be made part of the minutes of the board and spread on its records of the meeting described in the notice. The service of ~~said the~~ the notice upon all persons owning any interest in any real property located within the resort area district shall

conclusively be ~~deemed~~ determined to have been given upon completion of mailing as provided in subsection (k) of this section and ~~such~~ the newspaper publication.

(i) After the public meeting and before the board may adopt a resolution authorizing implementation of assessments, the board shall, using reasonable efforts, mail a true copy of the proposed resolution authorizing implementation of an assessment to the owners of real property in the resort area district as provided in subsection (k) of this section.

(j) A board shall make available to the owners of real property within the district a list of all owners of real property within the district for the purposes of enabling ~~such~~ the owners of real property to solicit support for a petition proposing or a protest against an assessment.

(k) For purposes of the mailing of each notice to owners of real property required by this section, reasonable efforts shall be made to mail ~~such~~ the notice to all owners of real property required to receive notice under this section using the real property tax records and land books of the county in which ~~such~~ the district is located and any lists maintained by a resort operator or homeowners association within ~~such~~ the district. ~~Such~~ The notice shall be also mailed to each president of a homeowners association, if any, located within a district which has registered with a resort operator to receive ~~such~~ the information. Immaterial defects in the mailing of ~~such~~ the notices shall not affect the validity of ~~such~~ the notices.

#### **§7-25-27. Effect of the 2015 amendments.**

It is the intent of the Legislature that the amendments to this article passed during the 2015 regular session of the Legislature does not cause any petition for the creation of a resort area district that is currently before the governing body of the county in which the proposed resort area district is located to be voided and that those petitions may be modified to meet the current requirements of this article, put to a public meeting, and incorporated into the petition.”

And,

By amending the title of the bill to read as follows:

**H. B. 2914** - “A Bill to amend and reenact §7-25-6, §7-25-11 and §7-25-15 the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §7-25-7a and §7-25-27, all relating generally to resort area districts; providing for voluntary dissolution of a resort area district; establishing a procedure for a dissolution; permitting nominations for resort area board members be made by mail or electronic means; permitting property owners to make nominations; providing for election of board members by plurality vote instead of by a majority vote; limiting the amount of assessments that may be levied against a parcel of real property; establishing a procedure for assessments proposed by a board on its own initiative; and providing for the effect of 2015 amendments.”

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 448**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Hill, Hornbuckle, Howell, Lynch and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2914) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 91**, Designating days for the display of the Honor and Remember Flag.

On motions of Delegate Cowles, the resolution was taken up for immediate consideration and the following Senate amendment was adopted:

On page one, in the second WHEREAS clause, by striking out the word “passed” and inserting in lieu thereof the word “introduced”.

The resolution, as amended by the Senate, was then adopted.

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

#### **MISCELLANEOUS BUSINESS**

Delegate R. Phillips informed the Clerk that he was absent when the votes were taken on Roll Nos. 413, 414, 415 and 428, and that had he been present, he would have voted “YEA” thereon.

Delegate L. Phillips asked and obtained unanimous consent that the remarks of Delegate Moore regarding the amendment to S. B. 581 offered by Delegate Moffatt be printed in the Appendix to the Journal.

Delegate Caputo asked and obtained unanimous consent that all the remarks regarding the amendment to S. B. 581 be printed in the Appendix to the Journal.

Delegate Byrd asked and obtained unanimous consent that the remarks of Delegates Bates and Folk on the amendments to Com. Sub. for S. B. 199 be printed in the Appendix to the Journal.

Delegate Shott announced that he was absent when the vote was taken on Roll No. 443, and that had he been present, he would have voted “YEA” thereon.

Delegate Perdue asked and obtained unanimous consent that all remarks regarding amendments offered to Com. Sub. for S. B. 347 be printed in the Appendix to the Journal.

At 10:00 P.M., the House of Delegates adjourned until 11:00 A.M., Thursday, March 12, 2015.





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THURSDAY, MARCH 12, 2015

**FIFTY-EIGHTH DAY**

[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

The House of Delegates met at 11:00 A.M., and was called to order by the Honorable Tim Armstead, Speaker.

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

The Clerk proceeded to read the Journal of Wednesday, March 11, 2015, being the first order of business, when the further reading thereof was dispensed with and the same approved.

At the request of Delegate Cowles, and by unanimous consent, the House of Delegates proceeded to the Seventh Order of Business for the purpose of introduction and consideration of a resolution.

**RESOLUTIONS INTRODUCED**

Delegates Hamilton, P. Smith, Wagner, Lynch, Ashley and Overington, on Behalf of All Members of the House, offered the following resolution, which was read by the Clerk as follows:

**H. R. 18** - "Memorializing the life of the Honorable Charles Raymond Shaffer, husband, father, grandfather, great-grandfather, veteran, educator, and public servant."

WHEREAS, Charles Raymond Shaffer was born on March 29, 1927, in Rupert, Greenbrier County, West Virginia, a son of the late Charles Henry and Constance Laura Black Shaffer; and

WHEREAS, Charles R. Shaffer served in the U S Navy during World War II; and

WHEREAS, Charles was educated at West Virginia Wesleyan College and was a long-time math teacher for the Upshur County Board of Education. In addition, Charles served as the statistician for the sports teams at Buckhannon Upshur High School for many years; and

WHEREAS, On April 17, 1949, Charles Shaffer married the love of his life, Vivian Yvonne Rogers, who preceded him in death. Charles and Vivian were the proud parents of two sons and three daughters, Steve, Chad, Laura, Gloria, and Charlene, and the loving grandparents of fifteen grandchildren and the great-grandparents of thirteen great-grandchildren; and

WHEREAS, Charlie Shaffer was first elected to the West Virginia House of Delegates representing Barbour and Upshur counties in 1968 and was reelected for eight consecutive terms, making him the oldest member of the House of Delegates in point of continuous, uninterrupted service at the time. During his eighteen years in the Legislature, Charlie served on various committees including the Committee on the Judiciary, Agriculture and Natural Resources and Legislative Rule-Making Review; and

WHEREAS, In addition, Charles Shaffer served as a member of the Upshur County Commission from January 1993 until December 1994; and

WHEREAS, Charles Shaffer was a member of the Franklin Lodge 7 AF & AM and the Sand Run Baptist Church. He was a firm believer that with Jesus you have everything and without Him you have nothing; and

WHEREAS, Sadly, the Honorable Charles Raymond Shaffer passed away on Saturday, November 1, 2014; therefore, be it

*Resolved by the House of Delegates:*

That the House of Delegates hereby memorializes the life of the Honorable Charles Raymond Shaffer, husband, father, grandfather, great-grandfather, veteran, educator and public servant; and, be it

*Further Resolved*, That the House of Delegates hereby extends its sincere sympathy at the passing of the Honorable Charles Raymond Shaffer; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a copy of this resolution to the family of the Honorable Charles Raymond Shaffer.

At the respective requests of Delegate Cowles, and by unanimous consent, reference of the resolution (H. R. 18) to a committee was dispensed with, and it was taken up for immediate consideration.

The question now being on the adoption of the resolution, Delegate Cowles demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 449**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the resolution (H. R. 18) adopted.

### COMMITTEE REPORTS

On motions for leave, resolutions were introduced (Originating in the Committee on Finance and reported with the recommendation that they each be adopted), which were read by their titles, as follows:

**By Delegates Ashley, Anderson, Williams, A. Evans, Canterbury, Hamilton, Pethtel, Householder, Butler, Espinosa, Moye, Westfall, Frich, Bates, Storch, H. White, Gearheart and Miller:**

**H. C. R. 143** - “Requesting the Joint Committee on Government and Finance, to study the feasibility and, if indicated, develop a proposal for divestiture and privatization or development of a performance-based, public-private partnership model for the operation and maintenance of all or some of the State’s hospital and nursing facilities.

WHEREAS, The State of West Virginia owns and its Department of Health and Human Resources operates the Hopemont Hospital, Jackie Withrow Hospital, John Manchin Sr. Health Care Center, Lakin Hospital, Mildred Mitchell Bateman Hospital, Welch Community Hospital, and William R. Sharpe Jr. Hospital; and

WHEREAS, The State of West Virginia owns and its Department of Veterans Assistance operates the West Virginia Veterans’ Nursing Facility; and

WHEREAS, The Legislature’s foremost concern in entertaining these options is for the populations served by the facilities and bettering the quality and value of the care they receive; and

WHEREAS, The State’s ownership and operation of these facilities may limit the full potential of these institutions to thrive in their respective communities, to expand, and provide cutting-edge and necessary quality care; and

WHEREAS, The employees of these facilities are tethered to a pay scale and personnel policies that are not optimally competitive with the greater health care labor market, contributing to employee turnover problems and costs, insufficient compensation of facility professionals, and stagnation; and

WHEREAS, The facilities owned and operated by the State are valuable assets which may be sold to raise revenue for other important public purposes while also reducing State costs for patient care; and

WHEREAS, Private hospitals and nursing homes are better able to adapt to market needs and ever increasing standards of care, hire and fairly compensate highly qualified professionals, and drive system efficiencies and improvements without the impediments inherent to state owned and operated enterprises; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance, study the feasibility and, if indicated, develop a proposal for divestiture and privatization or development of a performance-based, public-private partnership model for the operation and maintenance of all or some of the State's hospital and nursing facilities; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance, employ such consultants and experts as may be required to assess the feasibility and planning for any indicated divestiture and privatization or performance-based, public-private partnership; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session, 2016, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report, and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

**By Delegates Ashley, Anderson, Williams, A. Evans, Canterbury, Hamilton, Pethtel, Householder, Butler, Espinosa, Moye, Westfall, Frich, Bates, Storch, H. White, Gearheart and Miller:**

**H. C. R. 146** - "Requesting the Joint Committee on Government and Finance to study the special funds of the State."

WHEREAS, Since the Wheeling Conventions of 1861 the State of West Virginia has spawned special funds in a continuous stream; and

WHEREAS, The evolution of the Mountain State has witnessed the creation of many of these special funds by law and yet many others by executive hand; and

WHEREAS, There remains no systematic works for the identification of funds and funding schemas that have outlived their usefulness and no means for their repeal, closure, de-funding, refunding, reform and other disposition; and

WHEREAS, There remains no systematic works to maintain consistency with respect to the alternative methods of appropriation and other pertinent fiscal policies; and

WHEREAS, There exists an irregular set of funds that are not governed by policies delineating their legal purposes and undermining transparency and accountability to the people; and

WHEREAS, Many funds duly created in law and designated by proper name have been bestowed improper pseudo names by custodians of the funds, thwarting oversight and undermining transparency and accountability to the people; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is requested to study the special funds of the State; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session, 2016, on its findings, conclusions and recommendations together with drafts of any legislation to repeal, reform and recodify special fund language as indicated and otherwise effectuate its recommendations; and, be it

*Further Resolved*, That the expenses necessary to conduct this study, to prepare a report, and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

**By Delegates Ashley, Anderson, Williams, A. Evans, Canterbury, Hamilton, Pethtel, Householder, Butler, Espinosa, Moye, Westfall, Frich, Bates, Storch, H.K. White, Gearheart and Miller:**

**H. C. R. 147** - “Requesting the Joint Committee on Government and Finance to study the leasing of oil and gas mineral rights on State lands.”

WHEREAS, The State of West Virginia is endowed with some of the most valuable mineral deposits in the world, located in the shale formations thousands of feet below the surface; and

WHEREAS, The government of West Virginia owns thousands of square miles of the surface and the valuable minerals appurtenant thereto; and

WHEREAS, The instruments of government in possession of these lands including but not limited to the Division of Highways, the Division of Natural Resources, the Division of Corrections, the institutions of higher education, and the state militia and others all have celebrated budget needs; and

WHEREAS, There remains many other needs for budget improvements and tax relief to balance; and

WHEREAS, The leasing of oil and gas mineral rights is a highly specialized field, requiring advanced knowledge of this market, area of law, specific geologies, extraction methods, and other pertinent information, in order to secure the best deal for the people; and

WHEREAS, The people of West Virginia expect its government to provide for mineral rights to be leased in an economically prudent manner and for lessees to get no better advantages under state contract than may be realized in the private market place; and

WHEREAS, The development of these oil and gas resources and the resources and policy to responsibly develop them, are of critical importance to the people of West Virginia; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is requested to study the leasing of all oil and gas mineral rights under State lands; and, be it

*Further Resolved,* That the study involve planning for the creation of a central governmental body to evaluate public mineral parcels to determine if mineral leasing may be productive and desirable; to advertise, auction and negotiate all State lease contracts; and to determine how the proceeds of the leases are to be disposed; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session, 2016, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report, and to draft necessary legislation be paid



from legislative appropriations to the Joint Committee on Government and Finance.

And,

**By Delegates Ashley, Anderson, Williams, A. Evans, Canterbury, Hamilton, Pethtel, Householder, Butler, Espinosa, Moye, Westfall, Frich, Bates, Storch, H. White, Gearheart and Miller:**

**H. C. R. 148** - "Requesting the Joint Committee on Government and Finance to study the collection, distribution and use of telecommunications fee revenues in support of emergency communications centers, the State Interoperable Radio Network, State Police communications and the Wireless Tower Access Assistance program and ways to maximize efficiencies and better provide for public needs."

WHEREAS, The Legislature has provided for county commissions to impose certain fees upon the consumers of local exchange and voice over internet protocol telecommunications services; and

WHEREAS, The Legislature has required all commercial mobile radio service providers to collect a wireless enhanced 911 fee; and

WHEREAS, These fees were established in recognition of public needs without the benefit of sophisticated cost modeling or cost formula development, the study of comparable systems in other states, and the exploration of options for streamlining services and improving efficiencies; and

WHEREAS, The Legislature's prior efforts to provide valuable incentives for the consolidation of E911 centers have yielded little benefit; and

WHEREAS, Consumer preferences for telecommunication services, the fee revenues, and the needs of the programs funded by

these fees have all evolved significantly since the inception of these fees; and

WHEREAS, Anecdotal accounts of largess and inadequacy are common among these stakeholder groups; and

WHEREAS, A governance structure and equipment specifications for the West Virginia State Interoperable Radio Network have yet to be codified and resources must be identified to provide for the maintenance of this critical network; and

WHEREAS, The government is accountable to the people for the imposition and use of these fee revenues and the people deserve the Legislature's zealous and perpetual efforts to excel; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is requested to study the collection, distribution and use of telecommunications fee revenues in support of emergency communications centers, the State Interoperable Radio Network, State Police communications and the Wireless Tower Access Assistance program and ways to maximize efficiencies and provide for public needs; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session, 2016, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report, and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

On motion for leave, a resolution was introduced (Originating in the Committee on Finance and reported with the recommendation that it be adopted), which was read by its title, as follows:

**By Delegates Ashley, Anderson, Williams, A. Evans, Canterbury, Hamilton, Pethtel, Householder, Butler, Espinosa, Moye, Westfall, Frich, Bates, Storch, H. White, Gearheart and Miller:**

**H. C. R. 149** - “Requesting the Joint Committee on Government and Finance to study potential improvements to pensions for retired teachers and public employees who have been retired for ten or more years, including potential one-time improvements, potential ongoing improvements, and potential improvements for specific classes of retirees categorized by length of retirement in five year increments (individuals retired for 10-15 years, individuals retired for 15-20 years, individuals retired for 20-25 years, and so forth).”

WHEREAS, Current pension programs for retired teachers and public employees, TRS (Teacher’s Retirement System) and PERS (Public Employment Retirement System), do not allow for cost of living adjustments to pension distributions over time that account for rising inflation and cost of living, causing retired teachers and public employees substantial hardship in meeting basic living expenses; and

WHEREAS, With an average national inflation rate of 3.22% per year over the past twenty years, the pensions distributed to retired teachers and public employees who have been retired for twenty years or longer have lost more than half of their value during that time; and

WHEREAS, A large percentage of retired teachers and public employees receive less than \$1,000 per month in pension income, placing many individuals that rely on pensions as a sole source of income near or below the federal poverty line; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature hereby requests the Joint Committee on Government and Finance study potential improvements to pensions for retired teachers and public employees who have been retired for ten or more years, including potential one-time improvements, potential ongoing improvements, and potential improvements for specific classes of retirees categorized by length of retirement in five year increments (individuals retired for 10-15 years, individuals retired 15-20 years, individuals retired 20-25 years, and so forth); and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Delegate Gearheart, Chair of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

**H. C. R. 8,** The U. S. Air Force Staff Sergeant William Henry “Bill” Whitman Memorial Highway,

**H. C. R. 52,** The U. S. Army SSG Delmer R. Jones Memorial Bridge,

**H. C. R. 64,** The U. S. Army PFC Ray Freeman Meade Memorial Road,

**H. C. R. 76**, The U. S. Army PFC Cornelious Wiley Memorial Bridge,

And,

**H. C. R. 107**, The U. S. Army PFC Edward Lester Memorial Bridge,

And reports the same back with the recommendation that they each be adopted, but that they first be referred to the Committee on Rules.

In accordance with the former direction of the Speaker, the resolutions (H. C. R. 8, H. C. R. 52, H. C. R. 64, H. C. R. 76 and H. C. R. 107) were each referred to the Committee on Rules.

Delegate Gearheart, Chair of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

**H. C. R. 41**, The PFC Donald Ray Cochran Memorial Bridge,

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

**Com. Sub. for H. C. R. 41** - "Requesting the Division of Highways to name the bridge from State Route 10 at State Route 10/12 to Mallory Hill Road bridge number 23-10/12-0.01 (23A316) (latitude 37.73065, longitude -81.83793), carrying County Route 10/12 over Huff Creek in Logan County, the 'U.S. Army PFC Donald Ray Cochran Memorial Bridge',"

**H. C. R. 57**, The U. S. Army PFC Lowell Roger Groves Memorial Road,

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

**Com. Sub. for H. C. R. 57** - “Requesting the Division of Highways to name a section of State Route 20 near Cleveland, West Virginia, running through Webster County, from mile marker 45 to mile marker 47, ‘U. S. Army PFC Lowell Roger Groves Memorial Road’,”

**H. C. R. 59**, The U. S. Army PFC Ernest D. Marcum Bridge,

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

**Com. Sub. for H. C. R. 59** - “Requesting the Division of Highways to name bridge number 50-52-37.47 (50A049), (latitude 38.006184, longitude -82.506839), locally known as the Lost Creek Beam Span, carrying U.S. Route 52 over Lost Creek in Wayne County, the ‘U.S. Army PFC Ernest D. Marcum Bridge’,”

**H. C. R. 78**, The Darrell W. Sanders Memorial Highway,

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

**Com. Sub. for H. C. R. 78** - “Requesting the Division of Highways to name the stretch of State Route 37 beginning at the Town of Wayne, mile post 16.0, and running to the Lincoln County line in Wayne County, mile post 38.0, the ‘Darrell W. Sanders Memorial Highway’,”

With the recommendation that the committee substitutes each be adopted, but that they first be referred to the Committee on Rules.

In accordance with the former direction of the Speaker, the resolutions (Com. Sub. for H. C. R. 41, Com. Sub. for H. C. R. 57,

Com. Sub. for H. C. R. 59 and Com. Sub. for H. C. R. 78) were each referred to the Committee on Rules.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 195**, Authorizing Conservation Committee promulgate legislative rule relating to financial assistance programs,

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

At the respective requests of Delegate Cowles, and by unanimous consent, the bill (S. B. 195) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 250**, Relating to Conservation Agency financial assistance applications from district supervisors,

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

At the respective requests of Delegate Cowles, and by unanimous consent, the bill (S. B. 250) was taken up for immediate consideration, read a first time and ordered to second reading.

#### **MESSAGES FROM THE EXECUTIVE**

Mr. Speaker, Mr. Armstead, presented a communication from His Excellency, the Governor, advising that on March 11, 2015, he

approved **Com. Sub. for S. B. 175, S. B. 463, S. B. 466, S. B. 467, S. B. 469, S. B. 294, S. B. 471, Com. Sub. for S. B. 351, S. B. 473, S. B. 472, S. B. 475, S. B. 476, S. B. 477, Com. Sub. for H. B. 2099, Com. Sub. for H. B. 2157, H. B. 2523, H. B. 2760, H. B. 2764, H. B. 2770 and H. B. 2933**; and on March 12, 2015, he approved **Com. Sub. for S. B. 361**.

#### MESSAGES FROM THE SENATE

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on, and the passage, as amended by said report, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

**H. B. 2213**, Reducing the distributions to the West Virginia Infrastructure Fund.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect July 1, 2015, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 2381**, Providing a teacher mentoring increment for classroom teachers with national board certification who teach and mentor at certain schools.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, bills of the House of Delegates as follows:

**Com. Sub. for H. B. 2502**, Possessing deadly weapons on school buses or on the premises of educational facilities,

**H. B. 2606**, Clarifying the potential sentence for disorderly conduct,



**Com. Sub. for H. B. 2790**, Relating to minimum responsibility limits of car insurance,

**H. B. 2888**, Allowing the use of rotary drum composters to destroy or dispose of the carcass of any animal to prevent the spread of disease,

And,

**Com. Sub. for H. B. 2902**, West Virginia ABLE Act.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of concurrent resolutions of the House of Delegates as follows:

**Com. Sub. for H. C. R. 9**, The U. S. Air Force Lt. Col. John Richard “Toots” Wilcox Memorial Bridge,

**Com. Sub. for H. C. R. 19**, The U. S. Army SGT Bobby Ray Adkins Memorial Highway,

**Com. Sub. for H. C. R. 28**, The USMC Cpl Marple W. Landes and US Army PV2 Margel S. Landes Memorial Bridge,

And,

**Com. Sub. for H. C. R. 35**, The Historic Blue-Gray Highway.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendments of the House of Delegates and the passage, as amended, of

**S. B. 89**, Relating to compensation for certain public officials,

**Com. Sub. for S. B. 249**, Prohibiting straight party voting in general election,

**S. B. 283**, Relating to state banking institutions,

**Com. Sub. for S. B. 366**, Creating Patient Protection and Transparency Act,

And,

**Com. Sub. for S. B. 411**, Creating Asbestos Bankruptcy Trust Claims Transparency Act and Asbestos and Silica Claims Priorities Act.

### **RESOLUTIONS INTRODUCED**

Delegates Perdue and Hicks offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 142** - "Requesting the Division of Highways to name the bridge on Route 52 over Mill Creek in Wayne County, originally named the Paddle Creek Bridge, bridge number 50-52-29.04 (50A153), latitude 38.10064, longitude -82.56704, as the 'U.S. Navy PO3 Roy Elmer "Doc" Moon Bridge'."

WHEREAS, Navy Petty Officer Moon was born on July 2, 1945, in Kiahsville in Wayne County; and

WHEREAS, Navy Petty Officer Moon joined the U.S. Navy on August 2, 1965, and was released on August 2, 1968; and

WHEREAS, Navy Petty Officer Moon was a U.S. Navy medic assigned to a Marine Corps unit. The men in his unit praised him most highly for saving most of their lives. The men in his unit presented Moon with a gold plated rifle to show their appreciation of putting his life on the line every day in combat to help save his fellow soldiers, going that extra mile without thinking about himself; and

WHEREAS, During his service during the Vietnam War Navy Petty Officer Moon was awarded the Bronze Star, the Navy Unit

Commendation Medal, the Vietnam Service Medal and the Fleet Marine Force Combat Operation Insignia; and

WHEREAS, It is fitting that an enduring testament be established to commemorate Navy Petty Officer Moon, a native son who so ably served his country and his state, by naming the bridge the “U.S. Navy PO3 Roy Elmer ‘Doc’ Moon Bridge”; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature hereby requests the Division of Highways to name the bridge on Route 52 over Mill Creek in Wayne County, originally named the Paddle Creek Bridge, bridge number 50-52-29.04 (50A153), latitude 38.10064, longitude -82.56704, as the “U.S. Navy PO3 Roy Elmer ‘Doc’ Moon Bridge”; and, be it

*Further Resolved,* That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “U.S. Navy PO3 Roy Elmer ‘Doc’ Moon Bridge”; and, be it

*Further Resolved,* That the Clerk of the House of Delegates forward a certified copy of this resolution to the Secretary of the Department of Transportation, to U.S. Navy Petty Officer Roy Elmer “Doc” Moon, Herbert Wellman, Jr., Chairman of the Fort Gay Veterans Park, the Wayne County Veterans Association and the Fort Gay Veterans Association.

Delegate Hanshaw and Mr. Speaker, Mr. Armstead, offered the following resolution, which was read by its title and referred to the Committee Rules:

**H. C. R. 144** - “Requesting the Division of Highways to name that portion of West Virginia Route 16, beginning at mile marker 37.50 and ending at mile marker 40.92, the ‘U.S. Army SGT Eugene Dawson Memorial Highway’.”

WHEREAS, Sergeant Eugene Dawson was born October 18, 1946, at Hallsburg, in Clay County, West Virginia. He was the son of Everett Dawson and Elsie Sears Dawson, and the grandson of Raymond and Alice Jarvis Dawson, and Martin and Gay Burnside Sears. Sergeant Dawson resided with his family in Bintree, Clay County, West Virginia, until he was drafted into the United States Army on December 1, 1966; and

WHEREAS, Sergeant Eugene Dawson served honorably in the United States Army ground forces in Vietnam. He was killed in action near Long An in South Vietnam on May 17, 1967. Sergeant Dawson was twenty years old. His body was recovered and is buried in the Nebo Baptist Church Cemetery in Nebo, Clay County, West Virginia; and

WHEREAS, It is only fitting that a memorial be established honoring the life of Sergeant Eugene Dawson and his outstanding service and sacrifice in protecting his country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name that portion of West Virginia Route 16, beginning at mile marker 37.50 and ending at mile marker 40.92, the "U.S. Army SGT Eugene Dawson Memorial Highway"; and, be it

*Further Resolved,* That the Division of Highways is hereby requested to have made and be placed signs identifying the designated highway as the "U.S. Army SGT Eugene Dawson Memorial Highway"; and, be it

*Further Resolved,* That the Clerk of the House of Delegates, forward a certified copy of this resolution to the Secretary of the Department of Transportation and to the family of Eugene Dawson.

Delegates Ellington, Householder, Border and Perdue offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 145** - “Requesting the Joint Committee on Government and Finance to study direct primary care.”

WHEREAS, Direct primary care is primary care offered directly to the consumer without insurance administration — incorporating various health care delivery systems that involve direct financial relationships between patients and health care providers; and

WHEREAS, Direct primary care is intended to remove many of the financial barriers of healthcare — often, there are no insurance co-pays, deductibles or co-insurance fees thus avoiding the overhead and complexity of maintaining relationships with insurers; and

WHEREAS, One of the lesser known provisions of the Patient Protection Affordable Care Act (PPACA) in Section 1301 (and amendment Section 10104) allows for direct primary care to compete with traditional health insurance options in the mandated health insurance exchange when combined with a low cost high deductible plan; and

WHEREAS, Direct primary care practices do not typically accept insurance payments, thus avoiding the overhead and complexity of maintaining relationships with insurers; and

WHEREAS, Because direct primary care payments are typically paid over time, rather than in return for specific services, the economic incentives are such that the long-term health of the patient can be a profitable option for providers while also being an affordable option to patients; and

WHEREAS, West Virginia currently does not authorize direct primary care ; therefore be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the potential benefits of authorizing direct primary care in West Virginia as an alternative for those citizens who do not qualify for Medicaid and are unable to afford health insurance; and, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance shall consult with the State Medical Board, the Insurance Commission, medical providers, health insurers and any other relevant groups or entities in gathering and reviewing information regarding direct primary care; and, be it

*Further Resolved,* That Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Delegate Walters offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. R. 17** - “Expressing concern about the erosion of Freedom of the Press in the Republic of Turkey.”

WHEREAS, The West Virginia House of Delegates is concerned by the recent arrest and detainment of members of the Turkish media and the broad effort by the Erdoğan administration to censor freedom of the press; and

WHEREAS, A strong democracy requires that all members of the society respect the freedom of expression, even when voices opposed to the government are vocal; and

WHEREAS, President Erdoğan's administration has instituted a crackdown of critical voices in the Turkish media and his administration has attracted international attention in recent months with the arrest of the editor-in-chief of *Zaman*, a widely circulated daily newspaper in Turkey, and the CEO of the Samayolu Media Group. These men were arrested December 14, 2014, and detained on questionable charges. To date, the editor-in-chief has been released, but the CEO of Samanyolu TV remains detained; and

WHEREAS, One year prior to these arrests, allegations of corruption were levied against the Erdoğan administration and, subsequently, many prominent journalists have lost their jobs for writing material critical of the Erdoğan administration. These tactics are continuing and are unacceptable in a democracy; a free press is central to full access to information for the citizens of Turkey. The attempt by the Turkish government to punish and censor the Turkish media is a matter of deep concern for the State of West Virginia; and

WHEREAS, Such a broad effort by the Turkish government to censor the media is an affront to the basic principles of democracy, free society, free enterprise, equal opportunity and the rule of law; therefore, be it

*Resolved by the West Virginia House of Delegates:*

That this body expresses its deep concern for the erosion of freedom of expression and freedom of the press in the Republic of Turkey; and, be it

*Further Resolved,* That this body strongly urges President Erdoğan and his administration to promote a peaceful and appropriate resolution to this crisis.

**PETITIONS**

Delegate Marcum presented a petition signed by himself and several other members of the House of Delegates urging consideration of H. C. R. 3, H. C. R. 10, H. C. R. 11, H. C. R. 12, H. C. R. 16, H. C. R. 18, H. C. R. 26, Com. Sub. for H. C. R. 36, H. C. R. 40, H. C. R. 49, Com. Sub. for H. C. R. 59, H. C. R. 62, H. C. R. 64, H. C. R. 71, H. C. R. 72, H. C. R. 86, H. C. R. 89, Com. Sub. for H. C. R. 90 and H. C. R. 97.

**SPECIAL CALENDAR****UNFINISHED BUSINESS**

The following resolutions, coming up in regular order, as unfinished business, were reported by the Clerk and adopted:

**H. R. 15**, Honoring Booker Taliaferro Washington, author, educator, orator and advisor to United States presidents, on the 100th anniversary of his death,

**H. R. 16**, Heroes Day,

**Com. Sub. for H. C. R. 23**, The US Marine Corps PFC Clayton Andrew Craft Memorial Bridge,

**H. C. R. 44**, The North River Mills Historic Trace,

**Com. Sub. for H. C. R. 50**, Historic Dingess Tunnel, 100 Years Old, 1914,

**Com. Sub. for H. C. R. 53**, The U. S. Army SSG Styish R. Morris Memorial Road,

**Com. Sub. for H. C. R. 63**, The Harry Ripley Memorial Bridge,

**Com. Sub. for H. C. R. 70**, The Army SPC 4 Everette R. Johnson Memorial Bridge,



**H. C. R. 77**, Designating the second Friday in July as West Virginia Collector Car Appreciation Day,

**H. C. R. 79**, The U. S. Army PFC Junior David Starkey Memorial Bridge,

**Com. Sub. for H. C. R. 80**, The Army SSG Landon Clair Ray and Army SPC4 Garry Dwight Haynes Memorial Bridge,

**Com. Sub. for H. C. R. 90**, The U. S. Army CPL Wilson B. Lambert, Jr., Memorial Road,

**Com. Sub. for H. C. R. 93**, The CSA LTG Thomas J. “Stonewall” Jackson Bridge,

**Com. Sub. for H. C. R. 102**, The U. S. Army Air Corps CPT Kenneth R. Winters, Sr. Memorial Bridge,

**H. C. R. 105**, Recognizing West Virginia University Institute of Technology as a vital part of higher education in West Virginia,

**H. C. R. 112**, The Howard M. ‘Toddy’ Loudin Memorial Highway,

**H. C. R. 114**, Requesting that the Joint Committee on Government and Finance study the circumstances where West Virginia home schooled students who have completed their course work should be authorized to take the GED test,

**H. C. R. 115**, Requesting the Joint Committee on Government and Finance to conduct a study on state funding for school bus replacement,

**H. C. R. 116**, Requesting the Joint Committee on Government and Finance to conduct a study on appropriate limits on the number, time and uses of state summative assessments,

**H. C. R. 118**, Requesting the Joint Committee on Government and Finance conduct a study of agencies that are exempt from article three, chapter five-a,

**H. C. R. 119**, Conducting a study of creating a Statewide Interoperable Radio Network,

**H. C. R. 120**, Requesting the Joint Committee on Government and Finance study the James “Tiger” Morton catastrophic illness fund,

**H. C. R. 122**, Requesting the Joint Committee on Government and Finance authorize a study on increasing state government budget and spending transparency,

**H. C. R. 123**, Requesting the Joint Committee on Government and Finance conduct a study of the impact of admitting all Class I, II, III, and IV municipalities to the Municipal Home Rule Pilot Program,

**H. C. R. 124**, Requesting that the Joint Committee on Government and Finance authorize a study on the regulation of public utilities,

**H. C. R. 125**, Requesting the Joint Committee on Government and Finance conduct a study of public access and availability in one location to all ordinances, rules and regulations adopted by a county commission,

**H. C. R. 134**, Requesting the Joint Committee on Government and Finance to study the Health Care Authority and the certificate of need review process,

**H. C. R. 135**, Requesting the Joint Committee on Government and Finance to study state hospitals in regards to the Hartley Case,

**H. C. R. 136**, Requesting the Joint Committee on Government and Finance study that insurers cover topical ophthalmic treatment early refills in a manner similar to or consistent with CMS guidelines,

**H. C. R. 137**, Requesting the Joint Committee on Government and Finance to study access and costs associated with cancer clinical trials,

**H. C. R. 138**, Requesting the Joint Committee on Government and Finance to study and review the managed care system within the Bureau for Medical Services,

**H. C. R. 139**, Requesting the Joint Committee on Government and Finance study the policies regarding sexual violence, domestic violence, dating violence, and stalking at public colleges in the state,

**H. C. R. 140**, Requesting the Joint Committee on Government and Finance to conduct a study on public school finance,

**H. C. R. 141**, Requesting that the Joint Committee on Government and Finance study the appropriate process for removing county, school district and municipal officers,

**S. C. R. 3**, Requesting DOH name portion of Rt. 25 in Kanawha County “U. S. Army Sgt. James Lawrence Taylor Memorial Road”,

**Com. Sub. for S. C. R. 20**, Requesting DOH name stretch of road in McDowell County “U. S. Army 1SG Joe C. Alderman Memorial Road”,

**S. C. R. 22**, Requesting DOH name portion of U. S. Rt. 119 in Boone County “U. S. Army SGT Mark Andrew Messer Memorial Road”,

**S. C. R. 23**, Requesting DOH name bridge in McDowell County “U. S. Army SFC Anthony Barton Memorial Bridge”,

**S. C. R. 25**, Requesting DOH name bridge in Harrison County “U. S. Army PFC Nick A. Cavallaro Memorial Bridge” and “U. S. Army SSG Benjamin T. Portaro Memorial Bridge”,

**S. C. R. 29**, Requesting DOH name bridge in Kanawha County “Rosie the Riveter Memorial Bridge”,

**Com. Sub. for S. C. R. 34**, Requesting DOH name bridge in Greenbrier County “U. S. Army Air Corps LT William H. Corkrean, Jr., Memorial Bridge”,

**Com. Sub. for S. C. R. 35**, Requesting DOH name bridge in McDowell County “U. S. Army CPL Zane Joseph Gero and U. S. Marine Corps CPL John Anthony ‘Tony’ Gero Memorial Bridge”,

**S. C. R. 41**, Requesting DOH name bridge in Berkeley County “W. C. Honaker and Clyde Spies Memorial Bridge”,

**S. C. R. 42**, Requesting DOH name bridge in Fayette County “Tygett Brothers Seven Veterans Bridge”,

**S. C. R. 43**, Requesting DOH name bridge in Nicholas County “U. S. Army SPC Richard Nesselrotte Bridge”,

**S. C. R. 44**, Requesting DOH name bridge in Randolph County “U. S. Navy PO2 Robert Paul Laderach Memorial Bridge”,

And,

**S. C. R. 45**, Requesting DOH name bridge in Jackson County “James P. Spano, Jr., Memorial Bridge”.

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

#### THIRD READING

**Com. Sub. for S. B. 19**, Specifying minimum early childhood education program instruction days; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 450**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: R. Smith.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 19) passed.

On motion of Delegate Pasdon, the title of the bill was amended to read as follows:

**Com. Sub. for S. B. 19** - “A Bill to amend and reenact §18-5-44 of the Code of West Virginia, 1931, as amended, relating to minimum periods of instruction for early childhood education programs; setting forth minimum instructional days per week, minimum instructional minutes per week and minimum instructional days per year for early childhood education programs.”

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

**S. B. 106**, Excepting professional engineer member from sanitary board when project engineer is under contract; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 451**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: R. Smith.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 106) passed.

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

On this question, the yeas and nays were taken (**Roll No. 452**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: R. Smith and Walters.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 106) takes effect from its passage.

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

**Com. Sub. for S. B. 140**, Amending State Administrative Procedures Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 453**), and there were—yeas 96, nays 2, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Fleischauer and Perdue.

ABSENT AND NOT VOTING: Hartman and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 140) passed.

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

**Com. Sub. for S. B. 170**, Authorizing Bureau of Commerce promulgate legislative rules; on third reading, coming up in regular order, was read a third time.

Delegate Householder requested to be excused from voting on the passage of Com. Sub. for S. B. 170 under the provisions of House Rule 49.

The Speaker replied that any impact on Delegate Householder would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Gentleman from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 454**), and there were—yeas 36, nays 63, absent and not voting 1, with the yeas and absent and not voting being as follows:

YEAS: Speaker Armstead, Ambler, Arvon, Azinger, Blair, Cooper, Cowles, Eldridge, Ellington, Ferro, Fleischauer, Fluharty, Gearheart, Hamrick, Hanshaw, Hartman, Ireland, Lane, Manchin, Morgan, E. Nelson, O’Neal, Overington, Pethtel, L. Phillips, Rowan, Shott, Skinner, Sobonya, Trecost, Waxman, Weld, Westfall, H. White, Williams and Zatezalo.

ABSENT AND NOT VOTING: Walters.

So, a majority of the members present and voting not having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 170) rejected.

**Com. Sub. for S. B. 182**, Authorizing Department of Military Affairs and Public Safety promulgate legislative rules; on third reading, coming up in regular order, was read a third time.

Delegate Householder requested to be excused from voting on the passage of Com. Sub. for S. B. 182 under the provisions of House Rule 49.

The Speaker replied that any impact on Delegate Householder would be as a member of a class of persons possibly to be affected by

the passage of the bill, and refused to excuse the Gentleman from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 455**), and there were—yeas 89, nays 10, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Faircloth, Frich, Householder, Ihle, Moffatt, J. Nelson, R. Smith, Statler, Storch and Upson.

ABSENT AND NOT VOTING: Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 182) passed.

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

On this question, the yeas and nays were taken (**Roll No. 456**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Walters.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 182 ) takes effect from its passage.

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

**Com. Sub. for S. B. 192**, Authorizing Department of Transportation promulgate legislative rules; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 457**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:



ABSENT AND NOT VOTING: Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 192) passed.

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

On this question, the yeas and nays were taken (**Roll No. 458**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Walters.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 192) takes effect from its passage.

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

On motion of Delegate Miley, the House reconsidered its action on the passage of Com. Sub. for S. B. 170.

On motion of Delegate Cowles the bill was then laid over.

**Com. Sub. for S. B. 199**, Authorizing miscellaneous agencies and boards promulgate legislative rules; on third reading, coming up in regular order, was reported by the Clerk.

At the request of Delegate Lane, and by unanimous consent, the rule was suspended to permit the offering and consideration of an amendment on third reading.

On motion of Delegate Folk the bill was amended on page twelve, section ten, line three, by inserting the following:

“On page two, subdivision 3.1.o, by striking out all of subdivision 3.1.o.

On page two, subdivision 3.1.p, by striking out all of subdivision 3.1.p.

On page two, subdivision 3.1.q, by striking out all of subdivision 3.1.q.

On page two, subdivision 3.1.r, by striking out all of subdivision 3.1.r.

And,

On page twelve, section ten, line four, by striking out the words “On page three, subdivision 3.1.u., by striking out all of paragraph 3.1.u.1 through paragraph 3.1.u.8 and renumbering the remaining paragraph” and inserting in lieu thereof “On page three, subdivision 3.1.u, by striking out all of subdivision 3.1.u.”

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 459**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Byrd.

ABSENT AND NOT VOTING: Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 199) passed.

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

On this question, the yeas and nays were taken (**Roll No. 460**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Walters.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 199) takes effect from its passage.

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

**Com. Sub. for S. B. 243**, Relating to school nutrition standards during state of emergency or preparedness; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 461**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 243) passed.

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

On this question, the yeas and nays were taken (**Roll No. 462**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Walters.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 243) takes effect from its passage.

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

**Com. Sub. for S. B. 284**, Relating to chief law-enforcement officer's requirement to certify transfer or making of certain firearms; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 463**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 284) passed.

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

**Com. Sub. for S. B. 287**, Providing posthumous high school diplomas; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 464**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 287) passed.

An amendment to the title of the bill, recommended by the Committee on Education, was reported by the Clerk and adopted, amending the title to read as follows:

**Com. Sub. for S. B. 287** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-34a, relating to providing for awarding posthumous high school diplomas under certain circumstances; and designating provisions as ‘Todd’s Law’.”

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

**Com. Sub. for S. B. 342**, Clarifying scope, application and requirements for error corrections by CPRB; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 465**), and there were—yeas 84, nays 15, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Folk, Hill, Ihle, Kurcaba, Lane, Lynch, McGeehan, Moffatt, Moye, J. Nelson, Perry, Reynolds, P. Smith, R. Smith and Wagner.

ABSENT AND NOT VOTING: Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 342) passed.

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

**Com. Sub. for S. B. 347**, Creating Firearms Act of 2015; on third reading, coming up in regular order, was read a third time.

At 12:54 P.M., on motion of Delegate Cowles , the House of Delegates recessed until 1:30 P.M.

\* \* \* \* \*

### AFTERNOON SESSION

\* \* \* \* \*

### SPECIAL CALENDAR

#### THIRD READING

-Continued-

**Com. Sub. for S. B. 347**, Creating Firearms Act of 2015, still being in possession of the Clerk, was taken up for further consideration.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 466**), and there were—yeas 71, nays 29, absent and not voting none, with the nays being as follows:

NAYS: Ambler, Ashley, Caputo, Cooper, Cowles, Ellington, D. Evans, Fleischauer, Guthrie, Hamilton, Hornbuckle, Ireland, Lynch, Manchin, McCuskey, Miley, Moore, Morgan, E. Nelson, Perdue, L. Phillips, Pushkin, Reynolds, Rowe, Shott, Skinner, Storch, Trecost and Westfall.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 347) passed.

On motion of Delegate Shott, the title of the bill was amended to read as follows:

**Com. Sub. for S. B. 347** - “A Bill to amend the Code of West Virginia, 1931, as amended, by amending and reenacting § 20-2-5, §20-2-6a, §61-7-3, §61-7-4, and §61-7-6 of said code; and, to amend

said code by adding thereto one new section, designated §61-7-7(e), all relating to creating the West Virginia Firearms Act of 2015; providing that one not prohibited from possessing firearms may carry a deadly weapon for self-defense while in the woods of this state; establishing that if a magazine is detached and no cartridges remain in a rifle or shotgun, that rifle or shotgun is considered unloaded; removing the requirement of a license to carry a concealed handgun afield; establishing that criminal penalties for carrying a concealed deadly weapon without state license or other lawful authorization applies to persons under twenty-one years of age; establishing that when a concealed handgun license holder moves to another county within the state, unless the sheriff of the new county determines that person is no longer eligible for a concealed deadly weapon license, the sheriff shall issue a new license, and providing for a fee to do so; removing the requirement that a concealed weapons licensee carry state-issued photo identification when carrying a concealed weapon; removing criminal penalties for failure to carry state-issued photo identification when carrying a concealed weapon; providing that active duty members of the United States Armed Forces, National Guard, or United States Armed Forces Reserves are not subject to the criminal penalties for carrying a concealed deadly weapon without license or lawful authorization; removing exemption for certain judicial officers, prosecutors and staff from deadly weapon licensing and application fees; providing enhanced penalties for use of a firearm during commission of a felony; and excepting enhanced penalties in certain circumstances when a firearm is used in defense of self or others.”

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

**S. B. 360**, Repealing code sections relating to book indexes and claims reports required by court clerks; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 467**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: McCuskey, L. Phillips and Romine.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 360) passed.

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

On this question, the yeas and nays were taken (**Roll No. 468**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: McCuskey and Romine.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 360) takes effect from its passage.

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

**Com. Sub. for S. B. 390**, Authorizing PSC approve expedited cost recovery of natural gas utility infrastructure projects; on third reading, coming up in regular order, with an amendment pending, was reported by the Clerk.

#### **SPEAKER PRO TEMPORE ANDERSON IN THE CHAIR**

Mr. Speaker, Mr. Armstead, arose from his seat and requested to be excused from voting on the amendment to S. B. 390 and the passage of said bill under the provisions of House Rule 49.

The Speaker Pro Tempore replied that any impact on Mr. Armstead would be as a member of a class of persons possibly to be



affected by the passage of the bill, and refused to excuse him from voting.

**MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR**

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill page five, section one-k, line four immediately following the word “section”, by inserting “if the proposed plans have been found to be prudent and useful”.

On page seven, section one-k, line eight immediately following the word “commission”, by striking the word “may” and inserting in lieu thereof the word “shall”.

And,

On page seven, section one-k, line nine, immediately following the word “notice”, by inserting a semicolon and “unless no opposition to the rate change is received by the Public Service Commission within one week of the proposed hearing date, in which case the hearing can be waived” and a comma.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 469**), and there were—yeas 94, nays 5, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Eldridge, Hicks, Marcum, Moye and Perdue.

ABSENT AND NOT VOTING: Romine.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 390) passed.

Delegate Cowles moved that the bill take effect from passage and subsequently withdrew his motion.

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

**S. B. 403**, Increasing period during which motor vehicle lien is valid; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 470**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Romine.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 403) passed.

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

**Com. Sub. for S. B. 409**, Establishing Fair and Open Competition in Governmental Construction Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 471**), and there were—yeas 62, nays 36, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Bates, Boggs, Byrd, Canterbury, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Guthrie, Hicks, Hornbuckle, Longstreth, Lynch, Manchin, Marcum, Miley, Moore, Morgan, Moye, Perdue, Perry, Pethel, L. Phillips, R. Phillips, Pushkin, Reynolds,

Rodighiero, Rowe, Skinner, P. Smith, Sponaugle, Storch, Trecost, H. White and Williams.

ABSENT AND NOT VOTING: Arvon and Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 409) passed.

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

**S. B. 412**, Relating to Real Estate Commission complaint filings; on third reading, coming up in regular order, was read a third time.

Delegate Sobonya requested to be excused from voting on the passage of S. B. 412 under the provisions of House Rule 49.

The Speaker replied that any impact on Delegate Sobonya would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Lady from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 472**), and there were—yeas 94, nays 3, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Marcum, L. Phillips and Trecost.

ABSENT AND NOT VOTING: Arvon, Deem and Guthrie.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 412) passed.

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

**Com. Sub. for S. B. 430**, Permitting mutual orders enjoining certain contact between parties to domestic relations actions; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 473**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon and Guthrie.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 430) passed.

On motion of Delegate Shott, the title of the bill was amended to read as follows:

**Com. Sub. for S. B. 430** - “A Bill to amend and reenact §48-27-507 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §51-2A-2a, all relating to exempting orders enjoining certain contact between parties to a domestic relations action from the prohibition against mutual protective orders; authorizing family courts of the state to enter standing orders enjoining certain contact between parties to a domestic relations action; providing for certain terms and effective length of such orders; authorizing family courts of the state to enter orders enjoining certain contact between parties to a domestic relations action when there has been a finding of misconduct by a party; authorizing family court to enforce its order through an order of contempt; and expressing intent of the Legislature.”

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

On this question, the yeas and nays were taken (**Roll No. 474**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon and Guthrie.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 430) takes effect from its passage.

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

**S. B. 481**, Relating to municipal policemen's and firemen's pension and relief funds' investment; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 475**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Fleischauer and Guthrie.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 481) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

**S. B. 481** - "A Bill to amend and reenact §8-22-22 and §8-22-22a of the Code of West Virginia, 1931, as amended, all relating to the investment authority of municipal policemen's and firemen's pension and relief funds; authorizing the delegation of investment authority;

requiring diversification of investments of municipal policemen's and firemen's pension and relief funds; and providing investment requirements."

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

**S. B. 483**, Clarifying continuing election of municipal policemen's and firemen's pension and relief funds' trustees; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 476**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon and Guthrie.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 483) passed.

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

**Com. Sub. for S. B. 488**, Reestablishing and modifying Broadband Deployment Council; on third reading, coming up in regular order, was read a third time.

Delegate Espinosa requested to be excused from voting on the passage of Com. Sub. for S. B. 488 under the provisions of House Rule 49.

The Speaker replied that any impact on Delegate Espinosa would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Gentleman from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 477**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 488) passed.

An amendment, recommended by the Committee on Government Organization, was reported by the Clerk and adopted, amending the bill as follows:

**Com. Sub. for S. B. 488** - “A Bill to repeal §31-15C-10, §31-15C-11 and §31-15C-14 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-7 and §31-15C-9 of said code, all relating to creation of Broadband Enhancement Council; modifying definitions; establishing membership; outlining powers and duties; establishing a Broadband Enhancement Fund; requiring the Secretary of the Department of Commerce to administer and control the Broadband Enhancement Fund; transferring funds from Broadband Deployment Council Fund to the Department of Commerce; modifying requirements for retention of outside expert consultant; and granting legislative rule making authority.”

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

**S. B. 514**, Relating to investments of local policemen’s and firemen’s pension and relief funds; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 478**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 514) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

**S. B. 514** - “A Bill to amend and reenact §33-3-14d of the Code of West Virginia, 1931, as amended, relating to investments by local policemen’s and firemen’s pension and relief fund boards; requiring annual review of investment performance; requiring investment with the Investment Management Board in certain circumstances; and reallocating certain tax revenue in certain circumstances.”

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

**S. B. 515**, Allowing Municipal Pensions Oversight Board invest funds with Investment Management Board or Board of Treasury Investments; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 479**), and there were—yeas 98, nays 2, absent and not voting none, with the nays being as follows:

NAYS: Folk and McGeehan.



So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 515) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

**S. B. 515** - “A Bill to amend and reenact §8-22-18a and §8-22-18b of the Code of West Virginia, 1931, as amended, all relating to Municipal Pensions Oversight Board; and retention, allocation, distribution and investment of funds.”

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

**S. B. 518**, Permitting county and municipal economic development authorities invest certain funds; on third reading, coming up in regular order, was read a third time.

Delegates Hartman, L. Phillips, Morgan, Perdue, Weld and Zatezalo requested to be excused from voting on the passage of S. B. 518 under the provisions of House Rule 49.

The Speaker replied that any impact on the Delegates would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Delegates from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 480**), and there were—yeas 98, nays 2, absent and not voting none, with the nays being as follows:

NAYS: Azinger and McGeehan.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 518) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

**S. B. 518** - “A Bill to amend and reenact §7-12-7 of the Code of West Virginia, 1931, as amended, relating generally to granting county and municipal economic development authorities the authority to invest funds received from the sale, lease or other disposition of real or personal property owned by such authority in a manner determined by the authority’s board of directors to be in the best interest of the authority under an investment policy adopted and maintained by the board that is consistent with the standards of the Uniform Prudent Investor Act; and requiring that the board consult and invest the funds with the West Virginia Board of Treasury Investments or the West Virginia Investment Management Board.”

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

**S. B. 549**, Establishing classifications and salary schedules for State Police forensic lab civilian employees; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 481**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 549) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

**S. B. 549** - “A Bill to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended, relating to certain civilian employees within the West Virginia State Police; authorizing the superintendent to appoint a director and a manager; providing for classification of laboratory employees; establishing base salaries; and requiring a manual to be provided to employees.”

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

**S. B. 580**, Relating to statute of limitations on health care injury claims for minors; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 482**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Azinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 580) passed.

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

On this question, the yeas and nays were taken (**Roll No. 483**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Azinger.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 580) takes effect from its passage.

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

**S. B. 581**, Relating to Tourism Promotion Fund and Courtesy Patrol Fund; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 484**), and there were—yeas 91, nays 8, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Azinger, Cadle, Folk, Frich, Ihle, Kurcaba, McGeehan and J. Nelson.

ABSENT AND NOT VOTING: Eldridge.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 581) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

**S. B. 581** - “A Bill to amend and reenact §5B-2-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17-1-3 of said code, all relating to transferring administration of the Courtesy Patrol Program and the Courtesy Patrol Fund from Division of Tourism to Division of Highways; authorizing expenditures to fund the courtesy patrol program to be made pursuant to appropriation of the Legislature from the state road fund; eliminating requirement that moneys be transferred from the Tourism Promotion Fund to the Courtesy Patrol Fund; providing for the disposition of balances in the fund upon transfer; providing sources of funding for the program; and providing for the uses of monies in the fund.”

Delegate Cowles moved that the bill take effect July 1, 2015.

On this question, the yeas and nays were taken (**Roll No. 485**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Frich and Ihle.

ABSENT AND NOT VOTING: Eldridge.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 583) takes effect July 1, 2015.

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

**S. B. 583**, Increasing tax rate on providers of certain nursing facility services; on third reading, coming up in regular order, was read a third time.

Delegate Campbell requested to be excused from voting on the passage of S. B. 518 under the provisions of House Rule 49.

The Speaker replied that any impact on Delegate Campbell would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Lady from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 486**), and there were—yeas 70, nays 29, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Arvon, Azinger, Cadle, Eldridge, A. Evans, Faircloth, Fast, Fluharty, Folk, Foster, Frich, Gearheart, Hill, Householder,

Howell, Ihle, Kessinger, Kurcaba, Marcum, McGeehan, Moffatt, J. Nelson, Sponaugle, Storch, Summers, Trecost, Upson, H. White and Zatezalo.

ABSENT AND NOT VOTING: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 583) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

**S. B. 583** - “A Bill to amend and reenact §11-27-11 of the Code of West Virginia, 1931, as amended, relating to increasing the tax rate on providers of certain nursing facility services; providing effective dates for the tax rate.”

Delegate Cowles moved that the bill take effect July 1, 2015.

On this question, the yeas and nays were taken (**Roll No. 487**), and there were—yeas 90, nays 9, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Cadle, Eldridge, Faircloth, Ihle, Marcum, Moffatt, Reynolds, Sponaugle and H. White.

ABSENT AND NOT VOTING: Deem.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 583) takes effect July 1, 2015.

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

At 5:05 P.M., on motion of Delegate Cowles, the House of Delegates recessed until 5:30 P.M.

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### EVENING SESSION

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### SPECIAL CALENDAR

#### THIRD READING

-Continued-

**Com. Sub. for H. B. 2016**, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution; on third reading, coming up in regular order, was read a third time.

#### **SPEAKER PRO TEMPORE ANDERSON IN THE CHAIR**

Mr. Speaker, Mr. Armstead, arose from his seat and requested to be excused from voting on the passage of Com. Sub. for H. B. 2016 under the provisions of House Rule 49.

Delegates Ambler, Ashley, Boggs, Byrd, Campbell, Duke, Eldridge, Espinosa, D. Evans, Fast, Ferro, Fleischauer, Lynch, Marcum, Moye, Perdue and P. Smith also requested to be excused from voting on the passage of Com. Sub. for H. B. 2016 under the provisions of House Rule 49.

The Speaker Pro Tempore replied that any impact on the Members would be as members of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Members from voting.

#### **MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR**

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 488**), and there were—yeas 84, nays 14, absent

and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Cadle, Faircloth, Folk, Householder, Ihle, Kurcaba, Lane, Lynch, McGeehan, Moffatt, Morgan, J. Nelson, Overington and P. Smith.

ABSENT AND NOT VOTING: Kelly and Manchin.

So, a majority of the members elected having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2016) passed.

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

On this question, the yeas and nays were taken (**Roll No. 489**), and there were—yeas 90, nays 6, absent and not voting 4, with the nays and absent and not voting being as follows:

NAYS: Cadle, Faircloth, Folk, Ihle, McGeehan and J. Nelson.

ABSENT AND NOT VOTING: Arvon, Kelly, Manchin and Moffatt.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2016) takes effect from its passage.

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

#### MESSAGES FROM THE EXECUTIVE

The Speaker laid before the House of Delegates a Proclamation from His Excellency, the Governor, which was read by the Clerk as follows:



STATE OF WEST VIRGINIA  
EXECUTIVE DEPARTMENT  
CHARLESTON

**A P R O C L A M A T I O N**

By the Governor

WHEREAS, The Constitution of West Virginia sets forth the respective powers, duties and responsibilities of the three separate branches of government; and

WHEREAS, Article VI, Section 22 of the Constitution of West Virginia provides that the current regular session of the Legislature shall not exceed sixty calendar days computed from and including the second Wednesday of January, two thousand fifteen; and

WHEREAS, Pursuant to Article VI, Section 22 of the Constitution of West Virginia, the two thousand fifteen regular session of the Legislature shall conclude on the fourteenth day of March, two thousand fifteen; and

WHEREAS, Article VI, Section 51 of the Constitution of West Virginia sets forth the legal authority of the Governor and the Legislature relating to the preparation and enactment of the Budget Bill; and

WHEREAS, Subsection D, Article VI, Section 51 of the Constitution of West Virginia requires the Governor to issue a proclamation extending the regular session of the Legislature if the Budget Bill shall not have been finally acted upon by the Legislature three days before the expiration of its regular session; and

WHEREAS, The Budget Bill has not been finally acted upon by the Legislature as of this eleventh day of March, two thousand fifteen.

NOW, THEREFORE, I, EARL RAY TOMBLIN, Governor of the State of West Virginia, do hereby issue this Proclamation, in

accordance with Subsection D Article VI, Section 51 of the Constitution of West Virginia, extending the two thousand fifteen regular session of the Legislature for consideration of the Budget Bill for an additional period not to exceed four days, through and including the eighteenth day of March, two thousand fifteen; but no matters other than the Budget Bill shall be considered during this extension of the session, except a provision for the cost thereof.

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

DONE at the Capitol in the City of Charleston, State of West Virginia, on this the eleventh day of March, in the year of our Lord, Two Thousand Fifteen, and in the One Hundred Fifty-Second year of the State.



EARL RAY TOMBLIN,  
*Governor.*

By the Governor

NATALIE E. TENNANT,  
*Secretary of State.*

At the request of Delegate Cowles and by unanimous consent, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

### COMMITTEE REPORTS

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. C. R. 149**, Requesting the Joint Committee on Government and Finance to study potential improvements to pensions for retired teachers and public employees who have been retired for ten or more years,

With the recommendation that it be adopted.

On motion for leave, a resolution was introduced (Originating in the Committee on Small Business, Entrepreneurship and Economic Development and reported with the recommendation that it be adopted) which was read by its title, as follows:

**By Delegates Miller, Espinosa, Ashley, Bates, Hanshaw, Lane, Morgan, Stansbury and Westfall:**

**H. C. R. 150** - “Requesting that the Joint Committee on Government and Finance study the distribution of unemployment rates across the state’s fifty-five counties, the availability of money and other resources to stimulate economic growth in the state’s counties and whether additional money or other resources should be made available to stimulate economic growth in counties with the highest rates of unemployment.”

WHEREAS, The state’s fifty-five counties suffer from differing rates of unemployment; and

WHEREAS, The state has created various programs to stimulate economic growth in the state’s counties; and

WHEREAS, Despite these programs, the state’s most depressed counties continue to suffer from unacceptably high rates of unemployment; and

WHEREAS, Additional money or other resources, wisely applied, might stimulate growth in the state’s most depressed counties and reduce their rates of unemployment; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the distribution of unemployment rates across the state's fifty-five counties, the availability of money and other resources to stimulate economic growth in the state's counties and whether additional money or other resources should be made available to stimulate economic growth in counties with the highest rates of unemployment; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session, 2016, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

*Further Resolved*, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**Com. Sub. for S. B. 316**, Exempting new veteran-owned business from certain fees paid to Secretary of State,

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

At the respective requests of Delegate Cowles, and by unanimous consent, the bill (Com. Sub. for S. B. 316) was taken up for immediate consideration, read a first time and ordered to second reading.

#### SECOND READING

**Com. Sub. for S. B. 12**, Relating to payment of separated employee's outstanding wages; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Cowles, and by unanimous consent, the bill was advanced to third reading with an amendment pending, and the restricted right to amend jointly by Delegates E. Nelson and Sponaugle, and the rule was suspended to permit the offering and consideration of the amendments on that reading.

**Com. Sub. for S. B. 14**, Creating Public Charter Schools Act of 2015; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Cowles, and by unanimous consent, the bill was advanced to third reading with amendments pending, and the rule was suspended to permit the consideration of the amendments on that reading.

**Com. Sub. for S. B. 323**, Relating to municipal home rule; on second reading, coming up in regular order, was read a second time.

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

**“ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.**

**§8-1-5a. Municipal Home Rule Pilot Program.**

(a) *Legislative findings.* — The Legislature finds and declares that:

(1) The initial Municipal Home Rule Pilot Program brought innovative results, including novel municipal ideas that became municipal ordinances which later resulted in new statewide statutes;

(2) The initial Municipal Home Rule Pilot Program also brought novel municipal ideas that resulted in court challenges against some of the participating municipalities;

(3) The Municipal Home Rule Board was an essential part of the initial Municipal Home Rule Pilot Program, but it lacked some needed powers and duties;

(4) Municipalities still face challenges delivering services required by federal and state law or demanded by their constituents;

(5) Municipalities are sometimes restrained by state statutes, policies and rules that challenge their ability to carry out their duties and responsibilities in a cost-effective, efficient and timely manner;

(6) Continuing the Municipal Home Rule Pilot Program is in the public interest; and

(7) Increasing the powers and duties of the Municipal Home Rule Board will enhance the Municipal Home Rule Pilot Program.

(b) *Continuance of pilot program.* — The Municipal Home Rule Pilot Program is continued until July 1, 2019. The ordinances enacted by the ~~four~~ participating municipalities pursuant to the ~~initial~~ Municipal Home Rule Pilot Program ~~are hereby authorized and may remain in effect, subject to the requirements of this section, until the ordinances are repealed, but are null and void if amended and such amendment is not approved by the Municipal Home Rule Board:~~ *Provided*, That any ordinance enacting a municipal occupation tax is hereby null and void.

(c) *Authorizing participation.* —

(1) Commencing July 1, ~~2013~~ 2015, ~~twenty~~ thirty Class I, Class II, Class III and/or Class IV municipalities that are current in payment of all state fees may participate in the Municipal Home Rule Pilot Program pursuant to the provisions of this section.

(2) The ~~four~~ municipalities participating in the pilot program on ~~July 1, 2012;~~ the effective date of the amendment and reenactment of this section are hereby authorized to continue in the pilot program,

subject to the requirements of this section, and may amend current written plans and/or submit new written plans in accordance with the provisions of this section.

~~(3) If any of the four municipalities participating in the pilot program on July 1, 2012, do not want to participate in the pilot program, then on or before June 1, 2014, the municipality must submit a written letter to the board indicating the municipality's intent not to participate and the board may choose another municipality to fill the vacancy: *Provided*, That if a municipality chooses not to participate further in the pilot program, its ordinances enacted pursuant to the Municipal Home Rule Pilot Program are hereby authorized and may remain in effect until the ordinances are repealed, but are null and void if amended: *Provided, however*, That any ordinance enacting a municipal occupation tax is null and void.~~

(d) *Municipal Home Rule Board.* — The Municipal Home Rule Board is hereby continued. ~~The board members serving on the board on July 1, 2012, may continue to serve, except that the Chair of the Senate Committee on Government Organization and the Chair of the House Committee on Government Organization shall be ex officio nonvoting members.~~ Effective July 1, ~~2013~~ 2015, the Municipal Home Rule Board shall consist of the following five voting members:

- (1) The Governor, or a designee, who shall serve as chair;
- (2) The Executive Director of the West Virginia Development Office or a designee;
- (3) One member representing the Business and Industry Council, appointed by the Governor with the advice and consent of the Senate;
- (4) One member representing the largest labor organization in the state, appointed by the Governor with the advice and consent of the Senate; and

(5) One member representing the West Virginia Chapter of the American Institute of Certified Planners, appointed by the Governor with the advice and consent of the Senate.

The Chair of the Senate Committee on Government Organization and the Chair of the House Committee on Government Organization shall continue to be ex officio nonvoting members of the Board.

(e) *Board's powers and duties.* — The Municipal Home Rule Board has the following powers and duties:

(1) Review, evaluate, make recommendations and approve or reject, by a majority vote of the board, each aspect of the written plan submitted by a municipality;

(2) By a majority vote of the board, select, based on the municipality's written plan, new Class I, Class II, Class III, and/or Class IV municipalities to participate in the Municipal Home Rule Pilot Program;

(3) Review, evaluate, make recommendations and approve or reject, by a majority vote of the Board, the amendments to the written plans submitted by municipalities;

~~(4) Approve or reject, by a majority vote of the board, each ordinance submitted by a participating municipality pursuant to its written plan or its amendments to the written plan;~~

~~(5)~~ (4) Consult with any agency affected by the written plans or the amendments to the written plans; and

~~(6)~~ (5) Perform any other powers or duties necessary to effectuate the provisions of this section.

(f) *Written plan.* — ~~On or before June 1, 2014, a~~ Any Class I, Class II, Class III or Class IV municipality desiring to participate in the



Municipal Home Rule Pilot Program shall submit a written plan to the board stating in detail the following:

(1) The specific laws, acts, resolutions, policies, rules or regulations which prevent the municipality from carrying out its duties in the most cost-efficient, effective and timely manner;

(2) The problems created by the laws, acts, resolutions, policies, rules or regulations;

(3) The proposed solutions to the problems, including all proposed changes to ordinances, acts, resolutions, rules and regulations: *Provided*, That the specific municipal ordinance instituting the solution does not have to be included in the written plan; and

(4) A written opinion, by an attorney licensed to practice in West Virginia, stating that the proposed written plan does not violate the provisions of this section.

(g) *Public hearing on written plan.* — Prior to submitting its written plan to the board, the municipality shall:

(1) Hold a public hearing on the written plan;

(2) Provide notice at least thirty days prior to the public hearing by a Class II legal-advertisement;

(3) Make a copy of the written plan available for public inspection at least thirty days prior to the public hearing; and

(4) After the public hearing, adopt an ordinance authorizing the municipality to submit a written plan to the Municipal Home Rule Board after the proposed ordinance has been read two times.

(h) *Selection of municipalities.* — On or after ~~June 1, 2014~~ June 1, 2015, by a majority vote, the Municipal Home Rule Board may select from the municipalities that submitted written plans and were approved by the board by majority vote, new Class I, Class II, Class III and/or

Class IV municipalities to participate in the Municipal Home Rule Pilot Program.

~~(1) Ordinance, act, resolution, rule or regulation. — After being selected to participate in the Municipal Home Rule Pilot Program and prior to enacting an ordinance, act, resolution, rule or regulation based on the written plan, the municipality shall:~~

~~(1) Hold a public hearing on the proposed ordinance, act, resolution, rule or regulation;~~

~~(2) Provide notice at least thirty days prior to the public hearing by a Class II legal advertisement;~~

~~(3) Make a copy of the proposed ordinance, act, resolution, rule or regulation available for public inspection at least thirty days prior to the public hearing;~~

~~(4) After the public hearing, submit the comments, either in audio or written form, to the Municipal Home Rule Board.~~

~~(5) Obtain approval, from the Municipal Home Rule Board by a majority vote, for the proposed ordinance, act, resolution, rule or regulation; and~~

~~(6) After obtaining approval from the Municipal Home Rule Board, read the proposed ordinance, act, resolution, rule or regulation at least two times.~~

~~(j)(i) Powers and duties of municipalities. — The municipalities participating in the Municipal Home Rule Pilot Program have the authority to pass an ordinance, act, resolution, rule or regulation, under the provisions of this section, that is not contrary to:~~

~~(1) Environmental law;~~

~~(2) Bidding Laws governing bidding on government construction and other contracts;~~

(3) The Freedom of Information Act;

(4) The Open Governmental Proceedings Act;

(5) ~~Wages~~ Laws governing wages for construction of public improvements;

(6) The provisions of this section;

(7) The provisions of section five-a, article twelve of this chapter;  
and

(8) The municipality's written plan;

~~(k) *Prohibited acts.* — The municipalities participating in the Municipal Home Rule Pilot Program do not have the authority to pass an ordinance, act, resolution, rule or regulation, under the provisions of this section, pertaining to:~~

~~(1)~~(9) The Constitution of the United States or the Constitution of the State of West Virginia;

~~(2)~~(10) Federal law or crimes and punishment;

~~(3)~~(11) Chapters sixty-a, sixty-one and sixty-two of this code or state crimes and punishment;

~~(4)~~(12) ~~Pensions~~ Laws governing pensions or retirement plans;

~~(5)~~(13) ~~Annexation~~ Laws governing annexation;

~~(6)~~(14) Taxation Laws governing taxation: *Provided*, That a participating municipality may enact a municipal sales tax up to one percent if it reduces or eliminates its municipal business and occupation tax: *Provided, however*, That if a municipality subsequently reinstates or raises the municipal business and occupation tax it previously reduced or eliminated under the Municipal Home Rule Pilot Program, it shall eliminate the municipal sales tax enacted under the

Municipal Home Rule Pilot Program: *Provided further*, That any municipality that imposes a municipal sales tax pursuant to this section shall use the services of the Tax Commissioner to administer, enforce and collect the tax in the same manner as the state consumers sales and service tax and use tax under the provisions of articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code and all applicable provisions of the streamlined sales and use tax agreement: *And provided further*, That such tax will not apply to the sale of motor fuel or motor vehicles;

~~(7)~~(15) Tax Laws governing tax increment financing;

~~(8)~~(16) Extraction Laws governing extraction of natural resources; and

~~(9)~~ Persons or property outside the boundaries of the municipality: *Provided*, That this prohibition under the Municipal Home Rule Pilot Program does not affect a municipality's powers outside its boundary lines under other sections of this chapter, other chapters of this code or court decisions;

~~(10)~~(17) Marriage and divorce laws; ~~and~~

~~(11) An occupation tax, fee or assessment payable by a nonresident of a municipality.~~

(j) Municipalities may not pass an ordinance, act, resolution, rule or regulation under the provisions of this section that:

(1) Affects persons or property outside the boundaries of the municipality: *Provided*, That this prohibition under the Municipal Home Rule Pilot Program does not limit a municipality's powers outside its boundary lines under other provisions of this section, other sections of this chapter, other chapters of this code or court decisions;  
or

(2) Enacts an occupation tax, fee, or assessment payable by a nonresident of a municipality.

~~(h)~~(k) *Amendments to written plans.* — A municipality ~~selected to participate~~ participating in the Municipal Home Rule Pilot Program may amend its written plan at any time.

(l) *Amendments to ordinances, acts, resolutions, rules or regulations.* - A municipality participating in the Municipal Home Rule Pilot Program may amend any ordinance, act, resolution, rule, or regulation enacted pursuant the municipality's approved written plan at any time so long as any amendment is consistent with the municipality's approved written plan, complies with the provisions of subsections (i) and (j) of this section, and the municipality complies with all applicable state law procedures for enacting municipal legislation.

(m) *Reporting requirements.* — Commencing December 1, 2015, and each year thereafter, each participating municipality shall give a progress report to the Municipal Home Rule Board and commencing January 1, 2016, and each year thereafter, the Municipal Home Rule Board shall give a summary report of all the participating municipalities to the Joint Committee on Government and Finance.

~~(n) *Performance Evaluation and Review Division review.* — Before January 1, 2019, the Performance Evaluation and Review Division of the Legislative Auditor's Office shall conduct a performance review on the pilot program and the participating municipalities. The review shall include the following:~~

~~(1) An evaluation of the effectiveness of expanded home rule on the participating municipalities;~~

~~(2) A recommendation as to whether the expanded home rule should be continued, reduced, expanded or terminated;~~

~~(3) A recommendation as to whether any legislation is necessary; and~~

~~(4) Any other issues considered relevant.~~

~~(o)(n)~~ *Termination of the pilot program.* — The Municipal Home Rule Pilot Program terminates on July 1, 2019. ~~No ordinance, act, resolution, rule or regulation may be enacted by a participating municipality after July 1, 2019, pursuant to the provisions of this section.~~ An ordinance, act, resolution, rule or regulation enacted by a participating municipality under the provisions of this section during the period of the Municipal Home Rule Pilot Program shall continue in full force and effect until repealed, ~~but is null and void if it is amended and such amendment is not approved by the Municipal Home Rule Board.~~

(o) Notwithstanding any other provision of this code to the contrary, on and after the effective date of the enactment of this provision in 2015, no distributee under the provisions of this section may seek from the Tax Division of the Department of Revenue a refund of revenues or monies collected by, or remitted to, the Tax Division of the Department of Revenue, nor seek a change in past amounts distributed, or any other retrospective adjustment relating to any amount distributed, to the extent that the monies in question have been distributed to another distributee, regardless of whether those distributions were miscalculated, mistaken, erroneous, misdirected or otherwise inaccurate or incorrect. For purposes of this section the term ‘distributee’ means any municipality that receives or is authorized to receive a specific distribution of revenues or monies collected by, or remitted to, the Tax Division of the Department of Revenue pursuant to this section.”

And amendment, offered by Delegate Sobonya, was reported by the Clerk on page one, following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

“That §8-1-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.**

**§8-1-5a. Municipal Home Rule Pilot Program.**

(a) *Legislative findings.* — The Legislature finds and declares that:

(1) The initial Municipal Home Rule Pilot Program brought innovative results, including novel municipal ideas that became municipal ordinances which later resulted in new statewide statutes;

(2) The initial Municipal Home Rule Pilot Program also brought novel municipal ideas that resulted in court challenges against some of the participating municipalities;

~~(3) The Municipal Home Rule Board was an essential part of the initial Municipal Home Rule Pilot Program, but it lacked some needed powers and duties;~~

~~(4) Municipalities still face challenges delivering services required by federal and state law or demanded by their constituents;~~

~~(5) Municipalities are sometimes restrained by state statutes, policies and rules that challenge their ability to carry out their duties and responsibilities in a cost-effective, efficient and timely manner;~~

~~(6) Continuing the Municipal Home Rule Pilot Program is in the public interest; and~~

~~(7) Increasing the powers and duties of the Municipal Home Rule Board will enhance the Municipal Home Rule Pilot Program.~~

(3) The Municipal Home Rule Pilot Program, although having produced some novel municipal ideas, has also created disparity between municipalities by allowing powers for some that are not available to others;

(4) In order to correct these disparate results, municipalities should be afforded the opportunity to adopt ordinances enacted pursuant to the Municipal Home Rule Pilot Program;

(5) The Municipal Home Rule Pilot Program should be terminated;

(6) The Municipal Home Rule Board, having served its function, should be terminated.

(b) *Continuance Termination of pilot program.* — The Municipal Home Rule Pilot Program is ~~continued until July 1, 2019~~ terminated effective July 1, 2015. The ordinances enacted by the four participating municipalities pursuant to the initial Municipal Home Rule Pilot Program are hereby authorized and may remain in effect until the ordinances are repealed. ~~but are null and void if amended and such amendment is not approved by the Municipal Home Rule Board: Provided, That any ordinance enacting a municipal occupation tax is hereby null and void.~~

(c) *Authorizing participation.* —

(1) ~~Commencing July 1, 2013, twenty Class I, Class II, Class III and/or Class IV municipalities that are current in payment of all state fees may participate in the Municipal Home Rule Pilot Program pursuant to the provisions of this section.~~

(2) ~~The four municipalities participating in the pilot program on July 1, 2012, are hereby authorized to continue in the pilot program and may amend current written plans and/or submit new written plans in accordance with the provisions of this section.~~

(3) ~~If any of the four municipalities participating in the pilot program on July 1, 2012, do not want to participate in the pilot program, then on or before June 1, 2014, the municipality must submit a written letter to the board indicating the municipality's intent not to participate and the board may choose another municipality to fill the vacancy: Provided, That if a municipality chooses not to participate further in the pilot program, its ordinances enacted pursuant to the Municipal Home Rule Pilot Program are hereby authorized and may remain in effect until the ordinances are repealed, but are null and void~~



~~if amended: *Provided, however,* That any ordinance enacting a municipal occupation tax is null and void.~~

(c) *Extension of ordinances to municipalities* - As of the date of passage of this amendment legislation during the 2015 Legislative Session, any ordinance, act, resolution, rule or regulation enacted pursuant to the Municipal Home Rule Pilot Program shall be made available for adoption by any other municipality. Each municipality wishing to adopt the ordinance, act, resolution, rule or regulation must:

(1) Hold a public hearing on the proposed ordinance, act, resolution, rule or regulation;

(2) Provide notice at least thirty days prior to the public hearing by a Class II legal advertisement;

(3) Make a copy of the proposed ordinance, act, resolution, rule or regulation available for public inspection at least thirty days prior to the public hearing;

(4) After obtaining approval from the city council, read the proposed ordinance, act, resolution, rule or regulation at least two times.

~~(d) *Municipal Home Rule Board.* — The Municipal Home Rule Board is hereby ~~continued~~ terminated. The board members serving on the board on July 1, 2012, may continue to serve, except that the Chair of the Senate Committee on Government Organization and the Chair of the House Committee on Government Organization shall be ex officio nonvoting members. Effective July 1, 2013, the Municipal Home Rule Board shall consist of the following five voting members:~~

~~(1) The Governor, or a designee, who shall serve as chair;~~

~~(2) The Executive Director of the West Virginia Development Office or a designee;~~

~~(3) One member representing the Business and Industry Council, appointed by the Governor with the advice and consent of the Senate;~~

~~(4) One member representing the largest labor organization in the state, appointed by the Governor with the advice and consent of the Senate; and~~

~~(5) One member representing the West Virginia Chapter of the American Institute of Certified Planners, appointed by the Governor with the advice and consent of the Senate.~~

~~(c) *Board's powers and duties.*— The Municipal Home Rule Board has the following powers and duties:~~

~~(1) Review, evaluate, make recommendations and approve or reject, by a majority vote of the board, each aspect of the written plan submitted by a municipality;~~

~~(2) By a majority vote of the board, select, based on the municipality's written plan, new Class I, Class II, Class III and/or Class IV municipalities to participate in the Municipal Home Rule Pilot Program;~~

~~(3) Review, evaluate, make recommendations and approve or reject, by a majority vote of the board, the amendments to the written plans submitted by municipalities;~~

~~(4) Approve or reject, by a majority vote of the board, each ordinance submitted by a participating municipality pursuant to its written plan or its amendments to the written plan;~~

~~(5) Consult with any agency affected by the written plans or the amendments to the written plans; and~~

~~(6) Perform any other powers or duties necessary to effectuate the provisions of this article.~~

~~(f) *Written plan.*—On or before June 1, 2014, a Class I, Class II, Class III or Class IV municipality desiring to participate in the Municipal Home Rule Pilot Program shall submit a written plan to the board stating in detail the following:~~

~~(1) The specific laws, acts, resolutions, policies, rules or regulations which prevent the municipality from carrying out its duties in the most cost-efficient, effective and timely manner;~~

~~(2) The problems created by the laws, acts, resolutions, policies, rules or regulations;~~

~~(3) The proposed solutions to the problems, including all proposed changes to ordinances, acts, resolutions, rules and regulations: *Provided*, That the specific municipal ordinance instituting the solution does not have to be included in the written plan; and~~

~~(4) A written opinion, by an attorney licensed to practice in West Virginia, stating that the proposed written plan does not violate the provisions of this section.~~

~~(g) *Public hearing on written plan.*—Prior to submitting its written plan to the board, the municipality shall:~~

~~(1) Hold a public hearing on the written plan;~~

~~(2) Provide notice at least thirty days prior to the public hearing by a Class II legal advertisement;~~

~~(3) Make a copy of the written plan available for public inspection at least thirty days prior to the public hearing; and~~

~~(4) After the public hearing, adopt an ordinance authorizing the municipality to submit a written plan to the Municipal Home Rule Board after the proposed ordinance has been read two times.~~

~~(h) *Selection of municipalities.*—On or after June 1, 2014, by a majority vote, the Municipal Home Rule Board may select from the~~

~~municipalities that submitted written plans and were approved by the board by majority vote, new Class I, Class II, Class III and/or Class IV municipalities to participate in the Municipal Home Rule Pilot Program:~~

~~(i) Ordinance, act, resolution, rule or regulation. — After being selected to participate in the Municipal Home Rule Pilot Program and prior to enacting an ordinance, act, resolution, rule or regulation based on the written plan, the municipality shall:~~

~~(1) Hold a public hearing on the proposed ordinance, act, resolution, rule or regulation;~~

~~(2) Provide notice at least thirty days prior to the public hearing by a Class II legal advertisement;~~

~~(3) Make a copy of the proposed ordinance, act, resolution, rule or regulation available for public inspection at least thirty days prior to the public hearing;~~

~~(4) After the public hearing, submit the comments, either in audio or written form, to the Municipal Home Rule Board;~~

~~(5) Obtain approval, from the Municipal Home Rule Board by a majority vote, for the proposed ordinance, act, resolution, rule or regulation; and~~

~~(6) After obtaining approval from the Municipal Home Rule Board, read the proposed ordinance, act, resolution, rule or regulation at least two times:~~

~~(j) (e) Powers and duties of municipalities. — The municipalities participating in under the power of the Municipal Home Rule Pilot Program have the authority to pass an ordinance, act, resolution, rule or regulation, under the provisions of this section, that is not contrary to:~~

- (1) Environmental law;
  - (2) Bidding on government construction and other contracts;
  - (3) The Freedom of Information Act;
  - (4) The Open Governmental Proceedings Act;
  - (5) Wages for construction of public improvements;
  - (6) The provisions of this section;
  - (7) The provisions of section five-a, article twelve of this chapter;
- and
- (8) The municipality's written plan.

~~(k)~~ (f) Prohibited acts. — The municipalities participating ~~in~~under the power of the Municipal Home Rule Pilot Program do not have the authority to pass an ordinance, act, resolution, rule or regulation, under the provisions of this section, pertaining to:

- (1) The Constitution of the United States or West Virginia;
- (2) Federal law or crimes and punishment;
- (3) Chapters sixty-a, sixty-one and sixty-two of this code or state crimes and punishment;
- (4) Pensions or retirement plans;
- (5) Annexation;
- (6) Taxation: *Provided*, That a participating municipality may enact a municipal sales tax up to one percent if it reduces or eliminates its municipal business and occupation tax: *Provided, however*, That if a municipality subsequently reinstates or raises the municipal business and occupation tax it previously reduced or eliminated under the

Municipal Home Rule Pilot Program, it shall eliminate the municipal sales tax enacted under the Municipal Home Rule Pilot Program: *Provided further*, That any municipality that imposes a municipal sales tax pursuant to this section shall use the services of the Tax Commissioner to administer, enforce and collect the tax in the same manner as the state consumers sales and service tax and use tax under the provisions of articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code and all applicable provisions of the streamlined sales and use tax agreement: *And provided further*, That such tax will not apply to the sale of motor fuel or motor vehicles;

(7) Tax increment financing;

(8) Extraction of natural resources;

(9) Persons or property outside the boundaries of the municipality: *Provided*, That this prohibition under the Municipal Home Rule Pilot Program does not affect a municipality's powers outside its boundary lines under other sections of this chapter, other chapters of this code or court decisions;

(10) Marriage and divorce laws; and

(11) An occupation tax, fee or assessment payable by a nonresident of a municipality.

~~(l) *Amendments to written plans.*—A municipality selected to participate in the Municipal Home Rule Pilot Program may amend its written plan at any time.~~

~~(m) *Reporting requirements.*—Commencing December 1, 2015, and each year thereafter, each participating municipality shall give a progress report to the Municipal Home Rule Board and commencing January 1, 2016, and each year thereafter, the Municipal Home Rule Board shall give a summary report of all the participating municipalities to the Joint Committee on Government and Finance.~~

~~(n) Performance Evaluation and Review Division review.— Before January 1, 2019, the Performance Evaluation and Review Division of the Legislative Auditor’s Office shall conduct a performance review on the pilot program and the participating municipalities. The review shall include the following:~~

~~(1) An evaluation of the effectiveness of expanded home rule on the participating municipalities;~~

~~(2) A recommendation as to whether the expanded home rule should be continued, reduced, expanded or terminated;~~

~~(3) A recommendation as to whether any legislation is necessary; and~~

~~(4) Any other issues considered relevant.~~

~~(o) Termination of the pilot program.— The Municipal Home Rule Pilot Program terminates on July 1, 2019. No ordinance, act, resolution, rule or regulation may be enacted by a participating municipality after July 1, 2019, pursuant to the provisions of this section. An ordinance, act, resolution, rule or regulation enacted by a participating municipality under the provisions of this section during the period of the Municipal Home Rule Pilot Program shall continue in full force and effect until repealed, but is null and void if it is amended and such amendment is not approved by the Municipal Home Rule Board.’~~

Delegate Howell requested to be excused from voting on questions regarding the passage of Com. Sub. for S. B. 323 under the provisions of House Rule 49.

The Speaker replied that the Delegate, as a member of the Home Rule Board, would be directly affected and not as a member of a class of persons possibly to be affected by the passage of the bill, and excused the Gentleman from voting.

The amendment recommended by the Committee on Finance was then adopted.

The Speaker stated that with the adoption of the strike and insert amendment offered by the Committee on Finance it precluded the offering of the strike and insert amendment offered by Delegate Sobonya.

The bill was then ordered to third reading.

**Com. Sub. for S. B. 352**, Expanding scope of cooperative associations to goods and services including recycling; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Government Organization, was reported by the Clerk on page two, section one, line sixteen by striking out the entire line.

And,

One page three, section one, line one, by striking out the entire line and the comma and inserting in lieu thereof the word "A".

On motion of Delegates Howell and Skinner, the amendment was amended on page two, section one, by striking out the words "Except in any wasteshed of the state in which one or more mixed waste resource recovery facilities has been permitted" and inserting in lieu thereof the following:

"Except within a thirty-five 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".

The amendment of the Committee on Government Organization, as amended, was then adopted.

The bill was then ordered to third reading.



**S. B. 370**, Reorganizing Governor's Committee on Crime, Delinquency and Correction and its subcommittees; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page fifty-four, section five, line ten, after the word "any", by inserting the words "proceeding, review or investigation relating to certification or".

The bill was then ordered to third reading.

**Com. Sub. for S. B. 393**, Reforming juvenile justice system; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page twenty-three, section nine hundred twelve, line twelve, by inserting two new subsections designated subsection (b) and (c), and renumbering the remaining subsections accordingly, all to read as follows:

"(b) Based upon identifiable need, the Division of Juvenile Services shall operate a total of at least fifteen youth reporting centers by July 1, 2016.

(c) Based upon identifiable need, the Division of Juvenile Services shall operate a total of at least nineteen youth reporting centers by July 1, 2018."

On page twenty-four, section nine hundred thirteen, line eight, by striking out the word "seventeen" and inserting in lieu thereof the word "eighteen".

On page twenty-four, section nine hundred thirteen, line thirteen, after the word "Delegates", by inserting a comma and the words "who shall serve as non-voting, ex-officio members".

On page twenty-four, section nine hundred thirteen, line fifteen, after the word “Senate”, by inserting a comma and the words “who shall serve as non-voting, ex-officio members”.

On page twenty-five, section nine hundred thirteen, line five, after the word “designee”, by inserting a comma and “who shall serve as non-voting, ex-officio members”.

On page twenty-five, section nine hundred thirteen, line nine, after the word “Appeals” and the hyphen, by inserting a comma and the words “who shall serve as non-voting, ex-officio members”.

On page twenty-five, section nine hundred thirteen, line nine, after the word “Commission”, by replacing the period with a semicolon, and inserting a new subdivision (15) to read as follows:

“(15) A lawyer who regularly represents juveniles, appointed by the Governor.”

On page seventy-one, section seven hundred twelve, line eight, after the word “harm”, by inserting the words “as determined by a risk and needs assessment”.

On page eighty, section seven hundred fourteen, line seven, after the word “harm”, by inserting the words “as determined by a risk and needs assessment”.

And,

On page eighty-seven, section seven hundred twenty-four, line twelve, by striking out the words “is requested to” and inserting in lieu thereof “shall”.

The bill was then ordered to third reading.

**Com. Sub. for S. B. 407**, Implementing state safety oversight program; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 415**, Relating to circuit judges; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 423**, Amending Aboveground Storage Tank Act; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Cowles, and by unanimous consent, the bill was advanced to third reading with amendments pending, and restricted right to amend jointly by Delegates Shott and Manchin, and the rule was suspended to permit the consideration of amendments on that reading.

**S. B. 434**, Relating to horse racing; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page two, section twelve-b, beginning on line nine, following the words “~~section two of this article~~”, by striking out the words “Horsemen’s Benevolent and Protective Association” and inserting in lieu thereof the words “representative of the majority of the owners and trainers who hold permits required by section two of this article”.

On page three, section twelve-b, line thirteen, following the words “*Provided, however*” and the comma, by striking out the words “That at those thoroughbred racetracks that have participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to December 31, 1999, the licensee may apply for not less than one hundred fifty-nine live racing dates during the calendar year 1997: *Provided further*” and the comma.

On page four, section twelve-b, line seven, following the words “casualty occurrences”, by inserting a comma.

On page four, section twelve-b, line fifteen, by striking out the words “Horsemen’s Benevolent and Protective Association” and

inserting in lieu thereof the words “representative of a majority of the owners and trainers”.

On page five, section twelve-b, line one, following the words “be approved” and the colon, by striking out the words “And provided” and inserting in lieu thereof the word “Provided”.

On page five, section twelve-b, line fifteen, following the word “presented at the”, by striking out the word “hearing” and inserting in lieu thereof the words “special meeting”.

And,

On page six, section twelve-b, beginning on line nine, by striking out the words “Horsemen’s Benevolent and Protective Association” and inserting in lieu thereof the words “representative of the majority of the owners and trainers who hold permits required by section two of this article”.

The bill was then ordered to third reading.

**S. B. 479**, Adding additional family court judges; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 486**, Authorizing special license plates for Civil Air Patrol vehicles; on second reading, coming up in regular order, was read a second time and ordered to third reading.

#### FIRST READING

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

**Com. Sub. for S. B. 88**, Creating WV Clearance for Access: Registry and Employment Screening Act,

**Com. Sub. for S. B. 142**, Authorizing Department of Administration promulgate legislative rules,

**Com. Sub. for S. B. 234**, Exempting certain water and sewer utilities owned by political subdivisions from PSC jurisdiction,

**Com. Sub. for S. B. 242**, Creating criminal penalties for certain automated telephone calls during state of emergency or preparedness,

**Com. Sub. for S. B. 248**, Requiring certain insurance and owner information be provided following car accident,

**Com. Sub. for S. B. 261**, Clarifying definition of “owner” of dam,

**S. B. 267**, Repealing code relating to Governor’s Office of Health Enhancement and Lifestyle Planning,

**Com. Sub. for S. B. 273**, Relating to brewer, resident brewer and brewpub licensing and operations,

**Com. Sub. for S. B. 274**, Relating to TANF program sanctions,

**Com. Sub. for S. B. 286**, Relating to compulsory immunizations of students; exemptions,

**S. B. 295**, Establishing appeal process for DHHR Board of Review and Bureau for Medical Services decisions,

**S. B. 304**, Relating to farmers markets,

**S. B. 310**, Exempting nonprofit public utility companies from B&O tax,

**S. B. 312**, Relating to disqualification of general election nominees for failure to file campaign finance statements,

**Com. Sub. for S. B. 315**, Relating to civil actions filed under Consumer Protection Act,

**S. B. 318**, Relating to payment of wages by employers,

**Com. Sub. for S. B. 325**, Relating to filing of candidates' financial disclosure statement,

**S. B. 363**, Establishing maximum rates and service limitations for reimbursement of health care services by Court of Claims,

**Com. Sub. for S. B. 373**, Allowing wireless communication image serve as proof of motor vehicle insurance,

**S. B. 418**, Relating to trustee real estate sale under deed of trust,

**S. B. 425**, Providing WVU, MU and WVSOM more authority to invest assets,

**Com. Sub. for S. B. 439**, Relating to higher education personnel,

**S. B. 447**, Allowing issuance of diploma by public, private or home school administrator,

**Com. Sub. for S. B. 453**, Relating to motor vehicle dealers, distributors, wholesalers and manufacturers,

**Com. Sub. for S. B. 455**, Relating to public higher education procurement and payment of expenses,

**S. B. 510**, Amending Uniform Interstate Family Support Act,

**Com. Sub. for S. B. 523**, Creating Alcohol and Drug Overdose Prevention and Clemency Act,

**Com. Sub. for S. B. 529**, Relating to PERS, SPRS and TRS benefits and costs,

**Com. Sub. for S. B. 537**, Changing mandatory school instructional time from days to minutes,

**Com. Sub. for S. B. 541**, Relating to regulation and control of elections,

**Com. Sub. for S. B. 542**, Clarifying provisions of Consumer Credit and Protection Act relating to debt collection,

**Com. Sub. for S. B. 548**, Changing procedure for filling U. S. Senator vacancies,

**S. B. 577**, Allowing higher education governing boards invest certain funds with nonprofit foundations,

**S. B. 582**, Relating to Herbert Henderson Office of Minority Affairs,

**S. B. 584**, Transferring Cedar Lakes Camp and Conference Center to private, nonstock, not-for-profit corporation,

And,

**S. B. 585**, Relating to regulation of transportation network and taxicab companies.

#### MESSAGES FROM THE SENATE

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with a title amendment, and the passage, as amended, of

**Com. Sub. for S. B. 30**, Permitting shared animal ownership agreement to consume raw milk.

On motion of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates concurred in the following Senate title amendment:

**Com. Sub. for S. B. 30** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-1-7, relating to shared animal ownership agreements to

consume raw milk; acquiring percentage ownership interest in a milk-producing animal's raw milk; providing for payment for a percentage ownership for care and boarding of a milk-producing animal; providing for receipt of a share of raw milk pursuant to an agreement; requiring written document acknowledging the inherent dangers of consuming raw milk; providing immunity to herd seller; agreeing not to distribute raw milk; prohibiting sale or resale of raw milk; requiring herd-sharing agreements be reported; requiring physicians to report any disease related to consumption of raw milk to local health department; setting forth required provisions for a herd sharing agreement; requiring a herd seller meet animal health requirements set by state veterinarian for milk-producing animals; setting forth required health standards for milk-producing animals; requiring a physician to report to local health department any diagnosis attributed to consumption of raw milk; providing rule-making authority; and providing administrative penalties.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 490**), and there were—yeas 78, nays 15, absent and not voting 7, with the nays and absent and not voting being as follows:

**NAYS:** Caputo, Eldridge, Fleischauer, Guthrie, Hornbuckle, Manchin, Moore, Morgan, Perdue, Pethtel, Pushkin, Rowe, Skinner, Westfall and B. White.

**ABSENT AND NOT VOTING:** Byrd, Deem, Ferro, Kurcaba, Longstreth, L. Phillips and Sponaugle.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 30) passed.

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



A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with amendment, and the passage, as amended, of

**S. B. 532**, Relating to civil liability immunity for clinical practice plans and medical and dental school personnel.

On motions of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates concurred in the following Senate amendment:

On page six, section four, after the words “\$1.5 million for each occurrence”, by inserting the words “after July 1, 2015”.

And,

On page seven, section five, by striking out the words “civil actions” and inserting in lieu thereof the words “claims that occur and are”.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 491**), and there were—yeas 92, nays 2, absent and not voting 6, with the nays and absent and not voting being as follows:

NAYS: Folk and Rodighiero.

ABSENT AND NOT VOTING: Deem, Ferro, Kurcaba, Longstreth, L. Phillips and Sponaugle.

So, a majority of the members elected to the House of Delegates voting having voted in the affirmative, the Speaker declared the bill (S. B. 532) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 2128**, Permitting those individuals who have been issued concealed weapons permits to keep loaded firearms in their motor vehicles on the State Capitol Complex grounds.

On motions of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates concurred in the following Senate amendments:

On page one, by striking out everything after the enacting section and inserting in lieu thereof the following:

**“ARTICLE 6. CRIMES AGAINST THE PEACE.**

**§61-6-19. Willful disruption of governmental processes; offenses occurring at State Capitol Complex; penalties.**

(a) If any person willfully interrupts or molests the orderly and peaceful process of any department, division, agency or branch of state government or of its political subdivisions, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100, or ~~imprisoned in the county or regional~~ confined in jail not more than six months, or both fined and ~~imprisoned~~ confined: *Provided*, That any assembly in a peaceable, lawful and orderly manner for a redress of grievances shall not be a violation of this section.

(b) It is unlawful for any person to bring upon the State Capitol Complex any weapon as defined ~~by the provisions of~~ in section two, article seven of this chapter: *Provided*, That a person who holds a valid, current concealed weapons permit issued by a sheriff of this state or the appropriate authority of another jurisdiction may keep a firearm in his or her motor vehicle upon the State Capitol Complex if the vehicle is locked and the weapon is out of normal view. It is unlawful

for any person to willfully deface any trees, wall, floor, stairs, ceiling, column, statue, monument, structure, surface, artwork or adornment in the State Capitol Complex. It is unlawful for any person or persons to willfully block or otherwise willfully obstruct any public access, stair or elevator in the State Capitol Complex after being asked by a law-enforcement officer acting in his or her official capacity to desist: *Provided*, That, in order to preserve the constitutional right of the people to assemble, it is not willful blocking or willful obstruction for persons gathered in a group or crowd if the persons move to the side or part to allow other persons to pass by the group or crowd to gain ingress or egress: *Provided, however*, That this subsection ~~shall~~ does not apply to a law-enforcement officer acting in his or her official capacity.

Any person who violates ~~any provision of~~ this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 or confined in ~~the county or regional~~ jail not more than six months, or both.”

And,

By amending the title of the bill to read as follows:

**Com. Sub. for H. B. 2128** - “A Bill to amend and reenact §61-6-19 of the Code of West Virginia, 1931, as amended, relating to permitting those individuals who hold a valid current concealed weapons permit to keep firearms in their motor vehicles on the State Capitol Complex grounds if the vehicle is locked and the weapon is out of normal view.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 492**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Ferro, Kurcaba, Longstreth, L. Phillips and Sponaugle.

So, a majority of the members elected to the House of Delegate voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2128) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with amendment, and the passage, as amended, to take effect from passage, of

**Com. Sub. for H. B. 2283**, Authorizing the Department of Environmental Protection to promulgate legislative rules.

On motion of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates concurred in the following Senate title amendment:

**Com. Sub. for H. B. 2283** - "A Bill to amend and reenact article three, chapter sixty-four of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Environmental Protection; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources for the prevention of significant deterioration of air quality; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental

Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements for operating permits; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the awarding of WV Stream Partners Program Grants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the hazardous waste management system; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing water quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the WV/NPDES rule for coal mining facilities; and, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to waste management.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 493**), and there were—yeas 85, nays 10, absent and not voting 5, with the nays and absent and not voting being as follows:

**NAYS:** Faircloth, Folk, Gearheart, Marcum, McGeehan, Moffatt, J. Nelson, Reynolds, R. Smith and Walters.

**ABSENT AND NOT VOTING:** Deem, Ferro, Kurcaba, Longstreth and L. Phillips.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2283) passed.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 2368**, Relating to child welfare.

On motions of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates refused to concur in the following Senate amendment and requested that the Senate recede therefrom.

On page one, by striking out everything after the enacting section and inserting in lieu thereof the following:

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

**ARTICLE 30. EARLY CHILDHOOD ADVISORY COUNCIL.**

**§5-30-1. Legislative findings.**

The Legislature hereby finds that:

(1) Early childhood development is of critical importance to children, families, communities, the education system, employers and the economy; and

(2) The first three years of life are the peak time for development of the brain’s architecture for vision, hearing, language and other cognitive functions. This is what sets the stage for all later learning and why nurturing relationships and environments are crucial in early childhood; and

(3) Thirty percent of West Virginia boys and girls under age six live in poverty. Research in brain development shows that social, emotional and cognitive development is shaped in early childhood and has a lifelong effect. Children who live in poverty are five times more likely to have children outside marriage, twice as likely to be arrested, and nearly three times as likely to have severe health problems.

Children who live in poverty also end up earning incomes less than half those of their counterparts; and

(4) The West Virginia prison population has tripled in the last twenty years, and our state spends more than \$23,000 on each inmate, which is roughly the cost of providing full-time quality child care to five young children. Taking care of our most vulnerable children is not only the right thing to do; it is the best way to help our state's health, welfare, and economy in the long run; and

(5) Returns on investments in human development are the highest during the first three years of life, according to Nobel-winning economist James Heckman and other researchers. Children who participate in high-quality early care and education are more likely to succeed in school and adult life. Better child outcomes lead to a host of societal benefits, including fewer costs for remedial programs, higher college-going rates and a stronger workforce; and

(6) In West Virginia, the long-term economic benefit of high-quality early childhood programs is estimated at \$5.20 for each dollar invested, according to a 2005 study by the Center for Business and Economic Research at Marshall University. The study identified four major benefits to West Virginia's families and economy: (A) Increasing the capacity of children to become more productive workers and citizens; (B) providing quality child care so that parents can work; (C) providing a major industry with a significant number of jobs; and (D) producing returns on investment to public and private money in excess of returns to other economic development programs; and

(7) The highest quality home visiting programs, over time, yield returns of up to \$5.70 per taxpayer dollar spent in reduced mental health and criminal justice costs, decreased dependence on public assistance programs, and increased employment, L. A. Karoly, M. R. Kilburn and J. S. Cannon. (2005). 'Early Childhood Interventions: Proven Results, Future Promise'. Santa Monica, CA: The RAND Corporation; and

(8) John Pepper, former Chief Executive Officer of Procter & Gamble, has stated that business leaders ‘are powerful allies in the effort to invest scarce public dollars in high-quality home visiting programs. We have seen compelling evidence that home visitation provides dramatic and cost-effective improvements in helping children enter kindergarten ready to learn. There is no better investment for our future than this.’; and

(9) Despite extensive efforts to improve childhood well-being, West Virginia was ranked thirty-seventh in the nation in the ‘2014 Kids County Data Book’, published by the Annie E. Casey foundation, based in part on risk factors related to the high rate of poverty in the state; and

(10) West Virginia is committed to evidence-based early childhood programs that promote prenatal and child health, early learning, social and emotional abilities, and family engagement and well-being; and

(11) Early childhood programs must be of sufficiently high quality to achieve positive outcomes, with qualified staff, a healthy learning environment, evidence-based services, strong parent involvement and effective collaboration among the various programs serving pregnant women, young children and their families. Quality also depends on state-level support for professional development, data for planning and evaluation, quality improvement systems and sufficient program funding; and

(12) Research has shown that prevention, early identification, effective interventions and appropriate support can help avoid or reduce adverse experiences and promote healthy development. The Strengthening Families framework, used in West Virginia and nationally, focuses on building five protective factors: Parental resilience, social connections, knowledge of parenting and child development, concrete support in times of need and social and emotional competence of children; and



(13) Improvements in wages, benefits and opportunities for advancement in the early childhood field are needed in order to recruit and retain qualified workers and provide the positive, stable relationships that help children thrive. Reimbursement rates for West Virginia child care providers serving subsidized children have not been raised since 2009 and are significantly below seventy-five percent of market rate, the minimum recommended by the federal child care and development block grant; and

(14) Health care providers play a pivotal role in early development. Beyond the health services they provide, many serve as the gateway to other child development services and are instrumental in statewide efforts to prevent and reduce substance abuse during pregnancy; and

(15) Effective governance is needed for the overall early childhood system that ensures coordination, alignment, efficiency and accountability; and

(16) West Virginia's current early childhood data systems are insufficient to provide for effective system planning, evaluation and accountability, and the creation of a system that links program-specific data systems is needed; and

(17) Recognizing the importance of the earliest years of a child's life, Governor Tomblin created the West Virginia Early Childhood Planning Task Force in May 2013 (2013 W.V. Executive Order No. 5); and

(18) The task force conducted extensive research and released a development plan for the state's early childhood system. The task force's findings confirm that West Virginia will benefit from the development and implementation of a comprehensive plan for early childhood development that clearly defines the services and programs most likely to advance the health, development and school readiness of young children. The purpose of this article is to implement recommendations from the task force report 'Building a System for

Early Success: A Development Plan for Early Childhood in West Virginia' and to fully invest in the health, development and well-being of the state's young children.

**§5-30-2. Definitions.**

(a) 'Early Childhood Advisory Council' or 'Council' means the council created by the Governor by 2010 W.V. Executive Order No. 9-10 and codified in section three of this article.

(b) 'Early childhood system' includes, but is not limited to, West Virginia Birth to Three, West Virginia Home Visitation Program, West Virginia PreK, Head Start and Early Head Start federal grantees in West Virginia, child care programs, Family Resource and Starting Points Centers, Family Resource Networks and County Collaborative Early Childhood Teams.

**§5-30-3. Continuation of West Virginia Early Childhood Advisory Council.**

(a) The Legislature hereby continues the West Virginia Early Childhood Advisory Council, created by 2010 W.V. Executive Order No. 9-10, and amended thereafter, consisting of the following current members:

(1) The Director of the Division of Early Care and Education, Bureau for Children and Families, Department of Health and Human Resources;

(2) A representative of the department of education;

(3) A representative of local educational agencies;

(4) A representative of institutions of higher education in the state;

(5) A representative of local child care providers of early childhood education and development services;

(6) A representative from Head Start agencies located in the state;

(7) The State Director of Head Start Collaboration;

(8) A representative of Early Head Start Programming;

(9) A representative of the West Virginia Department of Education Office of Special Programs, as established under Section 629 of the IDEA;

(10) The Director of West Virginia Birth to Three, Office of Maternal Child and Family Health, Bureau for Public Health, Department of Health and Human Resources, as established under Part C of the Individuals with Disabilities Education Act (IDEA);

(11) A representative of in-home family education;

(12) A representative of the early childhood advocate community;

(13) A representative of the business community;

(14) A representative of the Office of Maternal Child and Family Health, Bureau for Public Health, Department of Health and Human Resources;

(15) A representative of the Governor's Office;

(16) A representative of labor;

(17) The Director of WV Home Visitation Program, Office of Maternal Child and Family Health, Department of Health and Human Services;

(18) A representative of the pediatric community;

(19) A representative of the child welfare community;

(20) A representative of the family child care community; and

(21) The Secretary of the Department of Education and the Arts, who is the chairperson.

(b) All current representatives on the council shall remain on the council until the expiration of their terms, unless they otherwise resign or are removed.

(c) Any vacancy on the council shall be filled by appointment by the Governor and that new appointee shall serve for three years from the date of appointment. Any representative on the council may be reappointed by the Governor for additional three year terms of service.

(d) The council shall continue to have the duties and responsibilities set forth in 2010 W.V. Executive Order No. 9-10 and its bylaws.

(e) As necessary to fulfill the priorities of this article, the council may submit reports to the Governor and the Legislative Joint Committee on Government and Finance. The Joint Committee on Government and Finance shall distribute any such reports to the West Virginia Legislative Oversight Commission on Education Accountability and the West Virginia Legislative Oversight Commission on Health and Human Resources Accountability.

(f) Members of the council receive no compensation. Each state employee member of the council is entitled to be reimbursed by their employing agency for reasonable actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the travel management office of the Department of Administration.

#### **§5-30-4. Priorities of the Early Childhood Advisory Council.**

In order to provide greater guidance and focus, the Legislature concludes that the Council will be guided by the following priorities:

(1) Create an integrated data system across all early childhood programs;

- (2) Statewide expansion of West Virginia home visitation program;
- (3) Expanded eligibility definition for West Virginia birth to three;
- (4) Implementation of quality rating and improvement system, including incentive payments;
- (5) Raising family income limits for child care subsidies and increasing provider reimbursement rates for subsidized children;
- (6) Implementing a statewide full-day, high-quality early learning and child care program for three-year-olds;
- (7) Improving system planning, evaluation, development and governance;
- (8) Expanding perinatal drug abuse prevention and treatment; and
- (9) Providing quality tax credits for early childhood programs, staff and families.

## **CHAPTER 49. CHILD WELFARE.**

### **ARTICLE 7. GENERAL PROVISIONS.**

#### **§49-7-37. Annual report to Legislature.**

The Commissioner of the Bureau for Children and Families shall make a child fatality and new fatality report to the Legislative Oversight Commission on Health and Human Resources Accountability. The first report shall be due by July 1, 2015, and is due on July 1 annually thereafter. The report shall be based upon public proceedings, records, reports, case histories and other documents of the Division of Child Protective Services.”

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

**Com. Sub. for H. B. 2283**, Authorizing the Department of Environmental Protection to promulgate legislative rules; still being in possession of the Clerk, the bill was taken up for further consideration.

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

On this question, the yeas and nays were taken (**Roll No. 494**), and there were—yeas 88, nays 7, absent and not voting 5, with the nays and absent and not voting being as follows:

NAYS: Faircloth, Folk, Gearheart, McGeehan, Moffatt, J. Nelson and Walters.

ABSENT AND NOT VOTING: Deem, Ferro, Kurcaba, Longstreth and L. Phillips.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2283) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 2527**, Creating a Task Force on Prevention of Sexual Abuse of Children; “Erin Merry’s Law”.

On motion of Delegate Cowles, the following Senate amendments were reported by the Clerk:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §49-2-8 and §49-2-12a, all to read as follows:

**ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.**

**§49-2-8. Task Force on Prevention of Sexual Abuse of Children.**

(a) This section may be referred to as ‘Erin Merry’n’s Law’.

(b) The Task Force on Prevention of Sexual Abuse of Children is established. The task force consists of the following members:

(1) The Chair of the West Virginia Senate Committee on Health and Human Resources, or his or her designee;

(2) The Chair of the House of Delegates Committee on Health and Human Resources, or his or her designee;

(3) The Chair of the West Virginia Senate Committee on Education, or his or her designee;

(4) The Chair of the House of Delegates Committee on Education, or his or her designee;

(5) One citizen member appointed by the President of the Senate;

(6) One citizen member appointed by the Speaker of the House of Delegates;

(7) One citizen member, who is a survivor of child sexual abuse, appointed by the Governor;

(8) The President of the State Board of Education, or his or her designee;

(9) The State Superintendent of Schools, or his or her designee;

(10) The Secretary of the Department of Health and Human Resources, or his or her designee;

(11) The Director of the Prosecuting Attorney's Institute, or his or her designee;

(12) One representative of each statewide professional teachers' organization, each selected by the leader of his or her respective organization;

(13) One representative of the statewide school service personnel organization, selected by the leader of the organization;

(14) One representative of the statewide school principals' organization, appointed by the leader of the organization;

(15) One representative of the statewide professional social workers' organization, appointed by the leader of the organization;

(16) One representative of a teacher preparation program of a regionally accredited institution of higher education in the state, appointed by the Chancellor of the Higher Education Policy Commission;

(17) The Chief Executive Officer of the Center for Professional Development, or his or her designee;

(18) The Director of Prevent Child Abuse West Virginia, or his or her designee;

(19) The Director of the West Virginia Child Advocacy Network, or his or her designee;

(20) The Director of the West Virginia Coalition Against Domestic Violence, or his or her designee;

(21) The Director of the West Virginia Foundation for Rape Information and Services, or his or her designee;



(22) The Administrative Director of the West Virginia Supreme Court of Appeals, or his or her designee;

(23) The Executive Director of the West Virginia Sheriffs' Association, or his or her designee;

(24) One representative of an organization representing law enforcement, appointed by the Superintendent of the West Virginia State Police; and

(25) One practicing school counselor appointed by the leader of the West Virginia School Counselors Association.

(c) To the extent practicable, members of the task force shall be individuals actively involved in the fields of child abuse and neglect prevention and child welfare.

(d) At the joint call of the House of Delegates and Senate Education Committee Chairs, the task force shall convene its first meeting and by majority vote of members present elect presiding officers. Subsequent meetings shall be at the call of the presiding officer.

(e) The task force shall make recommendations for decreasing incidence of sexual abuse of children in West Virginia. In making those recommendations, the task force shall:

(1) Gather information regarding sexual abuse of children throughout the state;

(2) Receive related reports and testimony from individuals, state and local agencies, community-based organizations, and other public and private organizations;

(3) Create goals for state education policy that would prevent sexual abuse of children;

(4) Create goals for other areas of state policy that would prevent sexual abuse of children; and

(5) Submit a report with its recommendations to the Governor and the Legislature.

(f) The recommendations may include proposals for specific statutory changes and methods to foster cooperation among state agencies and between the state and local governments. The task force shall consult with employees of the Bureau for Children and Family Services, the Division of Justice and Community Services, the West Virginia State Police, the State Board of Education, and any other state agency or department as necessary to accomplish its responsibilities under this section.

(g) Task force members serve without compensation and do not receive expense reimbursement.

**§49-2-12a. Legislative findings and declaration of intent for goals for foster children.**

(a) The Legislature finds and declares that the design and delivery of child welfare services should be directed by the principle that the health and safety of children should be of paramount concern and, therefore, establishes the goals for children in foster care. A child in foster care should have:

(1) Protection by a family of his or her own, and be provided readily available services and support through care of an adoptive family or by plan, a continuing foster family;

(2) Nurturing by foster parents who have been selected to meet his or her individual needs, and who are provided services and support, including specialized education, so that the child can grow to reach his or her potential;

(3) A safe foster home free of violence, abuse, neglect and danger;

(4) The ability to communicate with the assigned social worker or case worker overseeing the child's case and have calls made to the social worker or case worker returned within a reasonable period of time;

(5) Permission to remain enrolled in the school the child attended before being placed in foster care, if at all possible;

(6) Participation in school extracurricular activities, community events, and religious practices;

(7) Communication with the biological parents. Communication is necessary if the child placed in foster care receives any immunizations and if any additional immunizations are needed, if the child will be transitioning back into a home with his or her biological parents;

(8) A bank or savings account established in accordance with state laws and federal regulations;

(9) Identification and other permanent documents, including a birth certificate, social security card and health records by the age of sixteen, to the extent allowed by federal and state law;

(10) The use of appropriate communication measures to maintain contact with siblings if the child placed in foster care is separated from his or her siblings; and

(11) Meaningful participation in a transition plan for those phasing out of foster care.

(b) A person shall not have a cause of action against the state or any of its subdivisions, agencies, contractors, subcontractors, or agents, based upon the adoption of or failure to provide adequate funding for the achievement of these goals by the Legislature. Nothing in this section requires the expenditure of funds to meet the goals established in this section, except funds specifically appropriated for that purpose.

(c) The West Virginia Department of Health and Human Resources shall propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to ensure that a child has an effective means of being heard if he or she believes the goals of this section are not being met.

(d) When a child who was previously placed into foster care, but left the custody or guardianship of the department, is again placed into foster care, the department shall notify the foster parents who most recently cared for the child of the child's availability for foster care placement to determine if the foster parents are desirous of seeking a foster care arrangement for the child. The arrangement may only be made if the foster parents are otherwise qualified or can become qualified to enter into the foster care arrangement with the department and if the arrangement is in the best interests of the child: *Provided*, That the department may petition the court to waive notification to the foster parents. This waiver may be granted, *ex parte*, upon a showing of compelling circumstances."

And,

By amending the title of the bill to read as follows:

**Com. Sub. for H. B. 2527** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §49-2-8 and §49-2-12a, all relating to the welfare of children; establishing the Task Force on Prevention of Sexual Abuse of Children; authorizing section to be called 'Erin Merry'n's Law'; specifying membership; specifying responsibilities, including report of recommendations to Legislature and Governor; precluding member compensation or expense reimbursement; relating to legislative findings and declaration of intent for goals for foster children; requiring the Department of Health and Human Resources to propose legislative rules; providing that no new cause of action against the state is created; no expenditure of funds is required; and notify former foster parents of child's availability for placement."

On motion of Delegate Cowles, the House of Delegates concurred in the Senate amendment with further amendment, on page one, lines one through three, by striking out the article and section headings and inserting in lieu thereof a new article heading and section heading to read as follows:

**“ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.**

**§49-2-814. Task Force on Prevention of Sexual Abuse of Children.”**

On page four, line eleven, by striking out the section heading and inserting in lieu thereof a new section heading to read as follows:

**“§49-2-126. Legislative findings and declaration of intent for goals for foster children.”**

And,

On page one, by amending the enacting section of the bill to read as follows:

“That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §49-2-126 and §49-2-814, all to read as follows” followed by a colon.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 495**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Ferro, Kurcaba, Longstreth and L. Phillips.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2527) passed.

On motion of Delegate Pasdon, the title of the bill was amended to read as follows:

**Com. Sub. for H. B. 2527** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §49-2-126 and §49-2-814, all relating to the welfare of children; establishing the Task Force on Prevention of Sexual Abuse of Children; authorizing section to be called ‘Erin Merryn’s Law’; specifying membership; specifying responsibilities, including report of recommendations to Legislature and Governor; precluding member compensation or expense reimbursement; relating to legislative findings and declaration of intent for goals for foster children; requiring the Department of Health and Human Resources to propose legislative rules; providing that no new cause of action against the state is created; providing that no expenditure of funds is required; and providing for notifying former foster parents of child’s availability for placement.”

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 2536**, Relating to travel insurance limited lines producers.

On motions of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates concurred in the following Senate amendment:

On page one, by striking out everything after the enacting section and inserting in lieu thereof the following:

“**ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.**

**§33-12-32b. Travel Insurance Entity Producer Limited License Act.**

(a) *Definitions.* – For purposes of this section:

(1) A 'group policy' means a policy issued to:

(A) A railroad company, steamship company, carrier by air, public bus carrier or other common carrier of passengers, which is considered the policyholder, where the policy insures its passengers; or

(B) Any other group if the commissioner has determined by rule that the members are engaged in a common enterprise or have an economic or social affinity or relationship, and that issuance of the policy would not be contrary to the best interests of the public.

(2) 'Offer and disseminate' means providing general information, including descriptions of coverage and price, processing applications, collecting premiums and performing other activities permitted in this state without a license issued by the commissioner.

(3) 'Travel insurance' means:

(A) An individual or group policy of insurance that provides coverage for personal risks incident to planned travel, including, but not limited to:

(i) Interruption or cancellation of a trip or event;

(ii) Loss of baggage or personal effects;

(iii) Damages to accommodations or rental vehicles; or

(iv) Sickness, accident, disability or death occurring during travel.

(B) 'Travel insurance' does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting six months or longer, including, but not limited to, those working overseas as expatriates or military personnel deployed overseas.

(4) 'Travel insurance entity producer' means an entity which is licensed under this section, is appointed by an insurer, and has the duties set forth in subsection (d) of this section.

(5) ‘Travel retailer’ means an entity that makes, arranges or offers travel services, which may offer and disseminate travel insurance on behalf of and under the direction of a travel insurance entity producer.

(b) *License requirements.* – Notwithstanding any other provision of law:

(1) The commissioner may issue a travel insurance entity producer license, which authorizes the sale, solicitation or negotiation of travel insurance issued by a licensed insurer, to a person meeting the requirements of this section.

(2) An entity seeking a license under this section shall apply on a form and in a manner prescribed by the commissioner.

(3) The annual fee for a travel insurance entity producer license is \$200.

(c) *Conditions for travel retailers.* – A travel retailer may offer and disseminate travel insurance policies under a license issued to a travel insurance entity producer only if all of the following conditions are met:

(1) The travel retailer agrees that it is bound by all applicable provisions of this section and that no employee or authorized representative, who is not licensed as an individual insurance producer, may:

(A) Evaluate or interpret the technical terms, benefits, and conditions of the offered travel insurance coverage;

(B) Evaluate or provide advice concerning a prospective purchaser’s existing insurance coverage; or

(C) Hold himself or herself out as a licensed insurer, licensed producer, or insurance expert.



(2) The travel retailer makes available to prospective purchasers brochures or other written materials that:

(A) State the identity and contact information of the insurer and the travel insurance entity producer;

(B) Describe the material terms, or contain the actual material terms, of the travel insurance coverage;

(C) Describe the process for filing a claim under the travel insurance policy;

(D) Describe the review and cancellation processes for the travel insurance policy;

(E) Explain that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer; and

(F) Explain that a travel retailer not licensed by the commissioner may provide general information about the travel insurance offered, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the travel insurance or to evaluate the adequacy of a prospective purchaser's existing insurance coverage.

(3) The travel retailer ensures that each employee and authorized representative of the travel retailer whose duties include offering and disseminating travel insurance successfully completed the training required by this section.

(d) *Conditions for travel insurance entity producers.* – A travel insurance entity producer may offer and disseminate travel insurance policies through a travel retailer only if all of the following conditions are met:

(1) On a form prescribed by the commissioner, the travel insurance entity producer establishes, maintains and updates annually a register

of all travel retailers that offer travel insurance on behalf of the travel insurance entity producer:

(A) The register shall include the name, address, and contact information of each travel retailer and of the person who directs or controls the travel retailer's operations, and the travel retailer's federal tax identification number;

(B) The travel insurance entity producer shall certify that the register complies with 18 U.S.C. §1033; and

(C) The travel insurance entity producer shall submit the register to the commissioner within thirty days upon request.

(2) The travel insurance entity producer designates one of its employees who is a licensed individual producer as the responsible producer for the travel insurance entity producer's compliance with this section and any rules promulgated under this section.

(3) The designated responsible producer, and the president, secretary, treasurer and any other person who directs or controls the travel insurance entity producer's insurance operations, comply with the fingerprinting requirements applicable to insurance producers in the resident state of the travel insurance entity producer.

(4) The travel insurance entity producer pays all applicable insurance producer licensing fees set forth in this chapter or rules promulgated under this chapter.

(5) The travel insurance entity producer requires each employee and authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, which the commissioner may review and approve or disapprove. The training program shall, at a minimum, contain instructions on the types of insurance offered, ethical sales practices and required disclosures to prospective customers.

(e) A licensee under this section, and those registered under its license pursuant to subdivision one, subsection (d) of this section, are exempt from examination under section five of this article and from continuing education requirements under section eight of this article.

(f) A licensee under this section is subject to the provisions of section six-b of this article as if it were an insurance agency.

(g) *License renewal.* – The commissioner shall annually renew, on the expiration date as provided in this subsection, the license of a licensee who qualifies and applies for renewal on a form prescribed by the commissioner and pays the fee set forth in subdivision three, subsection (b) of this section: *Provided*, That the commissioner may fix the dates of expiration of travel insurance entity producer licenses as he or she considers advisable for efficient distribution of the workload of his or her office:

(1) If the fixed expiration date would upon first occurrence shorten the period for which a license fee has been paid, no refund of unearned fee shall be made;

(2) If the fixed expiration date would upon first occurrence lengthen the period for which a license fee has been paid, the commissioner shall charge no additional fee for the lengthened period;

(3) If a date is not fixed by the commissioner, each license shall, unless continued as provided in this subsection, expire at midnight on June 30 following issuance; and

(4) A licensee that fails to timely renew its license may reinstate its license, retroactive to the expiration date, upon submission of the renewal application within twelve months after the expiration date and payment of a penalty in the amount of \$50.

(h) *Appointment.* – A travel insurance entity producer may not act as an agent of an insurer unless the insurer appoints the travel insurance entity producer as its agent, as follows:

(1) The insurer shall file, in a format approved by the commissioner, a notice of appointment within fifteen days from the date the agency contract is executed and shall pay a nonrefundable appointment processing fee in the amount of \$25: *Provided*, That an insurer may elect to appoint a travel insurance entity producer to all or some insurers within the insurer's holding company system or group by filing a single notice of appointment;

(2) Upon receipt of a notice of appointment, the commissioner shall verify within a reasonable time, not to exceed thirty days, that the travel insurance entity producer is eligible for appointment: *Provided*, That the commissioner shall notify the insurer within five days of a determination that the travel insurance entity producer is ineligible for appointment; and

(3) The insurer shall remit, no later than midnight on May 31 annually and in a manner prescribed by the commissioner, a renewal appointment fee for each appointed travel insurance entity producer in the amount of \$25; and

(4) The insurer shall maintain a current list of travel insurance entity producers appointed to accept applications on behalf of the insurer, and shall make the list available to the commissioner upon reasonable request for purposes of conducting investigations and enforcing the provisions of this chapter.

(i) *Effect of registration.* – Notwithstanding any other provision of law, if a travel retailer's insurance-related activities, and those of its employees and authorized representatives, are limited to offering and disseminating travel insurance on behalf of and under the direction of a licensed travel insurance entity producer, the travel retailer may perform those activities and receive related compensation, upon registration by the travel insurance entity producer pursuant to subdivision one, subsection (d) of this section.

(j) *Liability.* – As the insurer's appointed agent, the travel insurance entity producer is liable for the acts or omissions of the

travel retailer in offering and disseminating travel insurance under the travel insurance entity producer's license and shall use reasonable means to ensure compliance by the travel retailer with this section.

(k) *Enforcement.* – In enforcing the provisions of this section, the commissioner may use any enforcement mechanisms in this chapter.

(1) If the commissioner determines that a travel retailer or its employee has violated this section, the commissioner may after notice and hearing:

(A) Impose fines not to exceed \$500 per violation or \$5,000 in the aggregate for the conduct; and

(B) Impose other or additional penalties that the commissioner considers necessary and reasonable to carry out the purpose of this section, including but not limited to:

(i) Suspending or revoking the privilege of offering and disseminating travel insurance pursuant to this section by specific business retailers or at specific business retail locations where violations have occurred;

(ii) Suspending or revoking the privilege of individual employees of a travel retailer to act under this section; and

(iii) Placing the travel retailer or its employees on probation under terms and conditions prescribed by the commissioner.

(2) If the commissioner determines that a travel insurance entity producer has failed to perform its duties under this section or has otherwise violated this section, the travel insurance entity producer is subject to the provisions of section twenty-four of this article.

(l) The commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement this section.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 496**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Ferro, Kurcaba, Longstreth and L. Phillips.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2536) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 2557**, Clarifying that an insured driver of a motor vehicle is covered by the driver's auto insurance policy when renting or leasing a vehicle.

Delegate Cowles moved that the bill be taken up for immediate consideration, objection being heard.

Whereupon,

Delegate Manchin withdrew his objection.

On motions of Delegate Cowles, the bill was then taken up for immediate consideration and the House of Delegates concurred in the following Senate amendments:

On page four, section twenty-nine, line fifty-two, after the word "vehicle", by changing the period to a colon and adding the following proviso: "*Provided*, That any liability insurance purchased for

additional consideration from the rental or leasing company shall be primary to other available insurance.”

And,

By amending the title of the bill to read as follows:

**Com. Sub. for H. B. 2557** - “A Bill to amend and reenact §33-6-29 of the Code of West Virginia, 1931, as amended, relating generally to security and insurance coverage provided for rented or leased motor vehicles; providing that security maintained on any motor vehicle owned by any person, firm or corporation engaged in the business of renting or leasing the motor vehicle is secondary to coverage under certain motor vehicle liability insurance or other form of security that is available and in effect for an individual with respect to the renting, leasing, operation, maintenance or use of the motor vehicle; and providing that any liability insurance purchased for additional consideration from the rental or leasing company shall be primary to other available insurance.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 497**), and there were—yeas 87, nays 8, absent and not voting 5, with the nays and absent and not voting being as follows:

NAYS: Eldridge, Fleischauer, Fluharty, Marcum, Rodighiero, Rowe, Sponaugle and Upson.

ABSENT AND NOT VOTING: Deem, Ferro, Kurcaba, Longstreth and L. Phillips.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2557) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on, and the passage, as amended by said report, in the passage, of

**H. B. 2576**, Creating new code sections which separate the executive departments.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 2652**, Reducing the assessment paid by hospitals to the Health Care Authority.

On motions of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates concurred in the following Senate amendments:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“That§16-29B-8 of the Code of West Virginia,1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 29B. HEALTH CARE AUTHORITY.**

**§16-29B-8. Powers generally; budget expenses of the board.**

(a) In addition to the powers granted to the board elsewhere in this article, the board may:

(1) Adopt, amend and repeal necessary, appropriate and lawful policy guidelines and rules in accordance with article three, chapter twenty-nine-a of this code: *Provided*, That subsequent amendments and modifications to any rule promulgated pursuant to this article and not



exempt from the provisions of article three, chapter twenty-nine-a of this code may be implemented by emergency rule;

(2) Hold public hearings, conduct investigations and require the filing of information relating to matters affecting the costs of health care services subject to the provisions of this article and may subpoena witnesses, papers, records, documents and all other data in connection therewith. The board may administer oaths or affirmations in any hearing or investigation;

(3) Apply for, receive and accept gifts, payments and other funds and advances from the United States, the state or any other governmental body, agency or agencies or from any other private or public corporation or person (with the exception of hospitals subject to the provisions of this article, or associations representing them, doing business in the state of West Virginia, except in accordance with subsection (c) of this section), and enter into agreements with respect thereto, including the undertaking of studies, plans, demonstrations or projects. Any such gifts or payments that may be received or any such agreements that may be entered into shall be used or formulated only so as to pursue legitimate, lawful purposes of the board, and shall in no respect inure to the private benefit of a board member, staff member, donor or contracting party;

(4) Lease, rent, acquire, purchase, own, hold, construct, equip, maintain, operate, sell, encumber and assign rights or dispose of any property, real or personal, consistent with the objectives of the board as set forth in this article: *Provided*, That such acquisition or purchase of real property or construction of facilities shall be consistent with planning by the state building commissioner and subject to the approval of the Legislature;

(5) Contract and be contracted with and execute all instruments necessary or convenient in carrying out the board's functions and duties; and

(6) Exercise, subject to limitations or restrictions herein imposed, all other powers which are reasonably necessary or essential to effect the express objectives and purposes of this article.

(b) The board shall annually prepare a budget for the next fiscal year for submission to the governor and the Legislature which shall include all sums necessary to support the activities of the board and its staff.

(c) Each hospital subject to the provisions of this article shall be assessed by the board on a pro rata basis using the ~~gross revenues~~ net patient revenue, as defined under generally accepted accounting principles, of each hospital as reported under the authority of section eighteen of this article as the measure of the hospital's obligation. The amount of such fee shall be determined by the board except that in no case shall the hospital's obligation exceed one tenth of one percent of its ~~gross~~ net patient revenue. Such fees shall be paid on or before the first day of July in each year and shall be paid into the state treasury and kept as a special revolving fund designated "health care cost review fund", with the moneys in such fund being expendable after appropriation by the Legislature for purposes consistent with this article. Any balance remaining in said fund at the end of any fiscal year shall not revert to the treasury, but shall remain in said fund and such moneys shall be expendable after appropriation by the Legislature in ensuing fiscal years.

(d) Each hospital's assessment shall be treated as an allowable expense by the board.

(e) The board is empowered to withhold rate approvals, certificates of need and rural health system loans and grants if any such fees remain unpaid, unless exempted under subsection (g), section four, article two-d of this chapter."

And,

By amending the title of the bill to read as follows:

**Com. Sub. for H. B. 2652** - “A Bill to amend and reenact §16-29B-8 of the Code of West Virginia, 1931, as amended, relating to annual assessments on hospitals by the West Virginia Health Care Authority; and changing the basis for the annual assessment.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 498**), and there were—yeas 91, nays 4, absent and not voting 5, with the nays and absent and not voting being as follows:

NAYS: Guthrie, Hornbuckle, Marcum and Sponaugle.

ABSENT AND NOT VOTING: Deem, Ferro, Kurcaba, Longstreth and L. Phillips.

So, a majority of the members elected to the House having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2652 ) passed.

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

On this question, the yeas and nays were taken (**Roll No. 499**), and there were—yeas 91, nays 3, absent and not voting 6, with the nays and absent and not voting being as follows:

NAYS: Eldridge, Marcum and Sponaugle.

ABSENT AND NOT VOTING: Deem, Faircloth, Ferro, Kurcaba, Longstreth and L. Phillips.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2652) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 2658**, Relating to the inspection and slaughter of nontraditional agriculture.

On motions of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates concurred in the following Senate amendment:

On page two, section four, line five, after the word “outlets” and the period, by inserting the following:

“Except for rabbits and game birds, nontraditional agriculture shall be slaughtered in an inspected meat processing facility.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 500**), and there were—yeas 72, nays 21, absent and not voting 7, with the nays and absent and not voting being as follows:

**NAYS:** Ashley, Boggs, Cadle, Duke, Fast, Fluharty, Hicks, Marcum, Moye, Perdue, Perry, Rodighiero, Skinner, R. Smith, Sobonya, Statler, Storch, Summers, Trecost, Wagner and H. White.

**ABSENT AND NOT VOTING:** Azinger, Deem, Ferro, Kurcaba, Longstreth, L. Phillips and Shott.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2658) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 2968**, Exempting from property tax certain properties in this state owned by nonprofit youth organizations.

On motions of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates concurred in the following Senate amendment:

On page fifteen, section nine, line two hundred fifty-four, by striking out the word “One” and inserting in lieu thereof the word “Twenty-five”.

On page fifteen, section nine, line two hundred fifty-eight, by striking out the word “One” and inserting in lieu thereof the word “Twenty-five”.

On page sixteen, section nine, line two hundred seventy-one, by striking out the word “Two” and inserting in lieu thereof the word “Fifty”.

And,

On page eighteen, section nine, line three hundred seventeen, by striking out the word “or” and inserting in lieu thereof the word “of”.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 501**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Ferro, Kurcaba, Longstreth and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2968) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

**Com. Sub. for H. C. R. 4**, The US Army PFC Clarence Allen Mooney Memorial Bridge.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolutions, which were read by their titles and referred to the Committee on Rules:

**S. C. R. 51** - “Requesting the Division of Highways name the bridge locally known as Hewett Creek Box Beam 2.01, bridge number 03-9-2.01 (03A051), (37.96246, -81.85199), near Hewett, Boone County, the ‘U. S. Army PFC Samuel C. Ball Memorial Bridge’.”

WHEREAS, Samuel C. Ball was born on January 12, 1925, to Bert and Beulah Ball of Hewett, Boone County, and he was a lifelong resident of West Virginia; and

WHEREAS, Samuel C. Ball entered the United States Army in World War II in 1943 and served as a Private First Class with the 142nd Infantry, 36th Division, and after eleven months of service to his country, PFC Samuel C. Ball made the ultimate sacrifice in battle near Tendon, France, on September 30, 1944; and

WHEREAS, It is fitting that West Virginia should honor the memory and service of this young man with a lasting memorial; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name the bridge locally known as Hewett Creek Box Beam 2.01, bridge number

03-9-2.01 (03A051), (37.96246, -81.851999), near Hewett, Boone County, the “U. S. Army PFC Samuel C. Ball Memorial Bridge”; and, be it

*Further Resolved*, That the Division of Highways is requested to have made and be placed signs identifying the bridge as the “U.S. Army PFC Samuel C. Ball Memorial Bridge”; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Secretary of the Department of Transportation and the surviving relatives of PFC Samuel C. Ball.

**S. C. R. 52** - “Requesting the West Virginia Board of Education study: (1) The standards or criteria by which it approves teacher preparation programs in the state’s public and private colleges; (2) approved teacher preparation programs at the state’s public and private colleges and universities, including admission and graduation requirements; (3) the experiences and assessment of first, second and third year teachers of their in-state teacher preparation programs and teaching practices; and (4) the extent to which, and reasons why, teachers are leaving the profession in West Virginia; therefore, be it”

*Resolved by the Legislature of West Virginia:*

That the Legislature hereby requests the West Virginia Board of Education study: (1) The standards or criteria by which it approves teacher preparation programs in the state’s public and private colleges; (2) approved teacher preparation programs at the state’s public and private colleges and universities, including admission and graduation requirements; (3) the experiences and assessment of first, second and third year teachers of their in-state teacher preparation programs and teaching practices; and (4) the extent to which, and reasons why, teachers are leaving the profession in West Virginia; and, be it

*Further Resolved*, That the West Virginia Board of Education is requested to engage out-of-state, independent experts to study teacher preparation and retention; and, be it

*Further Resolved*, That the West Virginia Board of Education report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved*, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the West Virginia Board of Education.

**S. C. R. 53** - “Requesting the Division of Highways name bridge number 42-5/12-4.32 (42A014) (38.91199, -79.70571), locally known as the Bowden Bridge, carrying County Route 5/12 over Shavers Fork of Cheat River in Randolph County, the ‘U. S. Army PFC Samuel Reed Summerfield Memorial Bridge’.”

WHEREAS, Samuel Reed Summerfield was born at Harman, Randolph County, on January 9, 1949, the son of John R. and Lillian Gabbert Summerfield. He attended grade school in Bowden, West Virginia, and graduated from Elkins High School in 1957; and

WHEREAS, Samuel Summerfield came from modest and humble circumstances and entered the United States Army in 1968, where he became accomplished as a helicopter crew chief with the 68th American Helicopter Company, the “Top Tigers”, and served at the rank of Private First Class; and

WHEREAS, PFC Summerfield lost his life, at the age of nineteen years, when his helicopter was shot down in action in Bing Duong Province in the Republic of Vietnam on August 16, 1968, for which he was posthumously awarded the Purple Heart Medal; and

WHEREAS, It is fitting that the Legislature recognize his service and his sacrifice for his country and his community; therefore, be it

*Resolved by the Legislature of West Virginia:*



That the Division of Highways is hereby requested to name bridge number 42-5/12-4.32 (42A014) (38.91199, -79.70571), locally known as the Bowden Bridge, carrying County Route 5/12 over Shavers Fork of Cheat River in Randolph County, the “U. S. Army PFC Samuel Reed Summerfield Memorial Bridge”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “U. S. Army PFC Samuel Reed Summerfield Memorial Bridge”; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Secretary of the Department of Transportation and to the surviving members of PFC Summerfield’s family.

**S. C. R. 54** - “Requesting the Division of Highways name the stretch of road beginning at Route 10 and the Logan and Lincoln county lines, going one mile into Logan County, the ‘USMC LCpl Larry G. Williamson Memorial Highway’.”

WHEREAS, Larry G. Williamson was born on February 9, 1947, in Lincoln County to John B. and Georgia Napier Williamson. He had three sisters, Patty Egnor, Peggy Perry (deceased) and Robin Williamson. Larry G. Williamson attended Harts High School, played varsity basketball, was on the school newspaper and was secretary/treasurer of his senior class. He graduated in 1964 and attended Marshall University’s Logan branch for two years. On September 9, 1967, at the age of twenty, Larry G. Williamson married Wanda Brumfield and moved to Columbus, Ohio, where he became manager of car parts and tires at a Firestone Automotive Center; and

WHEREAS, In January 1969, Larry G. Williamson was drafted from West Virginia. While on a bus taking him for Army training, he was among the draftees separated and reassigned to the Marines. He received basic training at Camp Pendleton, California, and after a brief

visit home was ordered to Vietnam and assigned to the 5th Marine Division. He soon received a promotion to Lance Corporal. In Vietnam, LCpl Larry G. Williamson was assigned as a squad leader in the First Platoon of Company G. On March 11, 1970, the squad was acting as a blocking force and was located approximately two miles northeast of An Hoa Combat Base in Quang Nam Province. LCpl Larry G. Williamson was killed when a well-concealed explosive device detonated. A squad corpsman rushed to his aid but death had been instantaneous. LCpl Larry G. Williamson received a Purple Heart, Rifle Sharpshooter, National Defense, Republic of Vietnam Service, Chien Dich Vietnam Medal and Boi-Tinh 1960 Medals; and

WHEREAS, LCpl Larry G. Williamson made the ultimate sacrifice for his country and in doing so represented West Virginia and his country with the highest levels of honor and courage and his sacrifice should not go unnoticed. Naming that stretch of road in Logan County the “USMC LCpl Larry G. Williamson Memorial Highway” is an appropriate recognition of his ultimate sacrifice for state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name the stretch of road beginning at Route 10 and the Logan and Lincoln county lines, going one mile into Logan County, the “USMC LCpl Larry G. Williamson Memorial Highway”; and, be it

*Further Resolved,* That the Division of Highways is hereby requested to have made and be placed signs identifying the stretch of road as the “USMC LCpl Larry G. Williamson Memorial Highway”; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Secretary of the Department of Transportation and the family of LCpl Larry G. Williamson.

**S. C. R. 55** - “Requesting the Division of Highways name a one-mile section of Buffalo Creek Road, beginning at the intersection of Route 10 and extending through the Town of Man, West Virginia, also known as Main Street, the ‘U. S. Army SP4 Terry Robert Albright Memorial Road’.”

WHEREAS, Terry Robert Albright was born on February 1, 1950, the son of Robert and Sylvia Bailey Albright; and

WHEREAS, Terry Robert Albright attended public schools in Logan County and graduated from Man High School in 1968; and

WHEREAS, Terry Robert Albright entered the Army on September 17, 1969, and was deployed to Vietnam on April 4, 1970; and

WHEREAS, Specialist 4<sup>th</sup> Class Terry Robert Albright was serving with the 3rd Squadron, 4<sup>th</sup> Cavalry Regiment, B Troop when he was killed in Vietnam on October 11, 1970; and

WHEREAS, Specialist 4<sup>th</sup> Class Terry Robert Albright’s military awards include the Vietnam Gallantry Cross Unit Citation, Order of the Spur, Good Conduct Medal, National Defense Service Medal, Vietnam Service Medal, Vietnam Campaign Medal and expert badge with rifle and automatic rifle medallions; and

WHEREAS, Specialist 4<sup>th</sup> Class Terry Robert Albright’s name appears on the Vietnam War Memorial, Panel 07W, Line 125; and

WHEREAS, Terry Robert Albright is survived by a brother, Kerry Albright, who lived through the infamous Buffalo Creek Flood in 1972 as an infant and became known as the “miracle baby of Buffalo Creek”; and

WHEREAS, Terry Robert Albright’s mother, Sylvia, and brother, Steven, were among 125 people who perished in the Buffalo Creek Flood. His father, Robert, passed away in 2000; and

WHEREAS, It is only fitting that an appropriate memorial recognizing Specialist 4<sup>th</sup> Class Terry Robert Albright's service and sacrifice be established in the area where he lived; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name a one-mile section of Buffalo Creek Road, beginning at the intersection of Route 10 and extending through the Town of Man, West Virginia, also known as Main Street, the "U. S. Army SP4 Terry Robert Albright Memorial Road"; and, be it

*Further Resolved,* That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the designated highway containing bold and prominent letters proclaiming that section of Buffalo Creek Road the "U. S. Army SP4 Terry Robert Albright Memorial Road"; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways and to Terry Robert Albright's brother, Kerry Albright, and his cousin, Kathy Yeager.

And,

**S. C. R. 56** - "Requesting the Division of Highways name a section of County Route 3 near Chapmanville, Logan County, lying between County Route 3/1 and County Route 3/16, consisting of approximately 1.2 miles and locally known as Smoke House Fork Crawley Creek Road, the 'U. S. Army Colonel Anna M. Butcher Road'."

WHEREAS, Anna M. Butcher was born in Shively, West Virginia, attended Chapmanville High School from 1940 to 1942 and graduated from Logan General Hospital School of Nursing in 1946; and

WHEREAS, Anna M. Butcher, the daughter of Mr. and Mrs. T. E. Butcher, grew up with four sisters and three brothers; and

WHEREAS, Anna M. Butcher entered the United States Army Nurse Corps in November 1951 and completed basic training at Fort Meade, Maryland, in December 1951; and

WHEREAS, First Lieutenant Anna M. Butcher was assigned as a staff nurse to Fort Belvoir, Virginia, in December 1951; and

WHEREAS, First Lieutenant Anna M. Butcher enjoyed a long and distinguished career in the Army Nurse Corps, reaching the rank of Colonel before retiring; and

WHEREAS, Col. Anna M. Butcher completed assignments with increasing responsibilities as staff nurse, head nurse or chief nurse at U. S. Army medical facilities in Korea, Vietnam, Germany and Japan, as well as at home in Kentucky, Alabama, Virginia and Washington, D. C.; and

WHEREAS, Col. Anna M. Butcher's last assignment before retiring was as Chief of the Department of Nursing at the U. S. Army Hospital in Fort Polk, Louisiana; and

WHEREAS, Col. Anna M. Butcher was awarded a Bronze Star, Army Commendation Medal with two oak leaf clusters and a Meritorious Service Medal; and

WHEREAS, Following her military career, Col. Anna M. Butcher returned home to her native Logan County where she cared for her family and friends and continues to live and serve her community; and

WHEREAS, It is the wish of the Legislature to commemorate the service Col. Butcher offered to her country and to the many sick and injured members of the military; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name a section of West Virginia Route 3 near Chapmanville, Logan County,

lying between County Route 3/1 and County Route 3/16, consisting of approximately 1.2 miles and locally known as Smoke House Fork Crawley Creek Road, the “U. S. Army Colonel Anna M. Butcher Road”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the road as the “U. S. Army Colonel Anna M. Butcher Road”; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways and to Col. Anna M. Butcher.

#### **MISCELLANEOUS BUSINESS**

Delegate Walters announced that he was absent when the votes were taken on Com. Sub. for S. B. 243, Com. Sub. for S. B. 284, Com. Sub. for S. B. 287 and Com. Sub. for S. B. 342 and that had he been present, he would have voted “YEA” thereon. The Delegate also announced that he was absent when the votes were taken on Com. Sub. for S. B. 140, Com. Sub. for S. B. 182, Com. Sub. for S. B. 192 and S. B. 198 and had he been present, he would have voted “NAY” thereon.

Delegate Caputo asked and obtained unanimous consent that all the remarks regarding Com. Sub. for S. B. 347, Creating Firearms Act of 2015 be printed in the Appendix to the Journal.

Delegate Guthrie announced that she was absent when the votes were taken on Roll Nos. 472 through 476 and had she been present, she would have voted “YEA” thereon.

Delegate Byrd noted to the Clerk that he was absent when the vote was taken on the passage of Com. Sub. for S. B. 30, and that had he been present, he would have voted “YEA” thereon.

Delegate Sponaule noted to the Clerk that he was absent when the vote was taken on Roll Nos. 490, 491 and 492, and that had he been present, he would have voted “YEA” thereon.

Delegate Manchin announced that he was absent when the vote was taken on Roll Nos. 488 and 489, and had he been present he would have voted “YEA” thereon.

Delegate Ihle asked and obtained unanimous consent that all the remarks regarding Com. Sub. for H. B. 2016 be printed in the Appendix to the Journal.

At 9:07 P.M., the House of Delegates adjourned until 9:30 A.M., Friday, March 13, 2015.







FRIDAY, MARCH 13, 2015

**FIFTY-NINTH DAY**

[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

The House of Delegates met at 9:00 A.M., and was called to order by the Honorable Tim Armstead, Speaker.

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

The Clerk proceeded to read the Journal of Thursday, March 12, 2015, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**MESSAGES FROM THE SENATE**

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on the Judiciary:

**S. C. R. 13** - "Urging the Congress of the United States to propose a balanced budget amendment to the United States Constitution and applying to the Congress, pursuant to Article V of the United States Constitution, to call a convention for proposing a balanced budget amendment."

WHEREAS, The Legislature of West Virginia urges the Congress of the United States to propose a balanced budget amendment to the United States Constitution for the calling of a convention of the states limited to proposing an amendment to the United States Constitution requiring that, in the absence of a national emergency, the total of all

federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year, together with any related and appropriate fiscal restraints; and

WHEREAS, It is the intention of the Legislature that matters shall not be considered at the convention that do not pertain to an amendment requiring that, in the absence of a national emergency, the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year, together with any related and appropriate fiscal restraints; and

WHEREAS, This application is to be considered as covering the balanced budget amendment language of the presently outstanding balanced budget applications from other states, including previously adopted applications from Alabama, Alaska, Arkansas, Colorado, Delaware, Florida, Indiana, Iowa, Kansas, Maryland, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Pennsylvania and Texas. This application shall be aggregated with those other applications for the purpose of attaining the two thirds of states necessary to require the calling of a convention for proposing a balanced budget amendment, but shall not be aggregated with any applications on any other subject; and

WHEREAS, This application constitutes a continuing application in accordance with Article V of the United States Constitution until the legislatures of at least two thirds of the several states have made applications on the same subject or the Congress has proposed an amendment to the United States Constitution equivalent to the amendment proposed in this resolution. This application supersedes all previous applications by the Legislature of the State of West Virginia on the same subject; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature hereby urges the Congress of the United States to propose a balanced budget amendment to the United States

Constitution and applying to the Congress, pursuant to Article V of the United States Constitution, to call a convention for proposing a balanced budget amendment; and, be it

*Further Resolved*, If the convention called by the Congress is not limited to considering a balanced budget amendment, then any delegates, representatives or participants from the State of West Virginia asked to participate in the convention are authorized to debate and vote only on a proposed amendment or amendments to the United States Constitution requiring that, in the absence of a national emergency, the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year, together with any related and appropriate fiscal restraints; and, be it

*Further Resolved*, This application constitutes a continuing application in accordance with Article V of the United States Constitution until the legislatures of at least two thirds of the several states have made applications on the same subject or the Congress has proposed an amendment to the United States Constitution equivalent to the amendment proposed in this resolution. This application supersedes all previous applications by the Legislature of the State of West Virginia on the same subject; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward copies of this resolution to the President and Secretary of the U. S. Senate, the Speaker and Clerk of the House of Representatives of Congress, the members of the Senate and House of Representatives from the State of West Virginia and to the presiding officers of each of the legislative houses of the several states, requesting their cooperation.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolutions, which were read by their titles and referred to the Committee on Rules:

**S. C. R. 33** - “Requesting the Joint Committee on Government and Finance study a West Virginia state income tax credit program to protect our land and water resources by encouraging voluntary preservation and conservation of undeveloped land.”

WHEREAS, West Virginia’s waters are an invaluable public resource and protection of our waters for current and future West Virginians is a fundamental duty of the state; and

WHEREAS, Conservation of West Virginia’s natural areas, forests, farms and other working lands, as defined in and consistent with W.Va. Code §20-12-3(a), is the most effective and affordable means by which to protect our land and waters; and

WHEREAS, In deference to the property rights of private landowners, voluntary conveyance of an interest in lands will afford protection to the lands and waters of the state in the form of an enforceable conservation easement or fee simple title; and

WHEREAS, A private landowner donating some portion or all of an enforceable conservation easement or land in fee is entitled to compensation for a conveyance that protects in perpetuity land and water in our state; and

WHEREAS, The December 15, 2014, report of the Public Water System Supply Study Commission, made pursuant to W.Va. Code §22-31-12, includes a recommendation that, “the Legislature draft legislation for income tax credits for landowners for source water protection”; and

WHEREAS, Several other states have successfully enacted laws and fielded programs that award state income tax credits in exchange for the voluntary preservation of undeveloped land that will protect land and water resources; and

WHEREAS, In order to thoroughly consider and deliberate upon an income tax credit land conservation program, the Legislature requires

that sufficient fact-based data, including impact of such a program upon tax revenues, be available; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study a West Virginia state income tax credit program to protect our land and water resources by encouraging voluntary preservation and conservation of undeveloped land; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance study the desirability, feasibility and cost of a conservation income tax credit program that would award West Virginia state tax credits to landowners who voluntarily donate all or a portion of land in fee or perpetual conservation easements that will protect the lands and waters of the state to the lasting benefit of our citizens; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

**S. C. R. 48** - "Requesting the Joint Committee on Government and Finance study the need and feasibility of county commissions cooperating with municipalities and entering into joint agreements to effect the removal or demolition of dwellings or buildings determined unfit for human habitation."

WHEREAS, Counties and municipalities of West Virginia are each frequently confronted with the removal or demolition of dwellings or buildings determined unfit for human habitation. Both governmental entities have statutory authority to make this determination and take

that action, but there is no specific authority for counties and municipalities to cooperate and enter into agreements to effect the removal or demolition of dwellings or buildings determined unfit for human habitation and are unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the need and feasibility of county commissions cooperating with municipalities and entering into joint agreements to effect the removal or demolition of dwellings or buildings determined unfit for human habitation; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

**S. C. R. 59** - “Requesting the Joint Committee on Government and Finance study how the accomplishments of the Luke Lee Listening, Language and Learning Lab at Marshall University could be expanded throughout the state in order to provide additional programs in West Virginia that help provide listening and spoken language outcomes to children with hearing loss.”

WHEREAS, The Luke Lee Listening, Language and Learning Lab at Marshall University was founded in 2006 as the first preschool program in West Virginia providing listening and spoken language outcomes to children with hearing loss; and

WHEREAS, The Luke Lee Listening, Language and Learning Lab provides services to infants, toddlers, preschoolers and school-age children with hearing loss to allow them to mainstream into their home schools with age-level listening and spoken language skills to communicate with their hearing-aged peers; and

WHEREAS, The Luke Lee Listening, Language and Learning Lab uses hearing technology, including hearing aids and cochlear implants, to help teach deaf children to listen and speak; and

WHEREAS, The Luke Lee Listening, Language and Learning Lab has had great successes in reaching their goals and has shown itself as a program that should be expanded across the state to help deaf children in other areas of West Virginia; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature hereby requests the Joint Committee on Government and Finance study how the accomplishments of the Luke Lee Listening, Language and Learning Lab at Marshall University could be expanded throughout the state in order to provide additional programs in West Virginia that help provide listening and spoken language outcomes to children with hearing loss; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

And,

**S. C. R. 63** - “Urging the Board of Coal Mine Health and Safety to review and assess the provisions of 36 CSR 4 and to develop a series of comprehensive safety regulations governing the movement of mining equipment underground.”

WHEREAS, The Legislature has enacted the Enrolled Committee Substitute for Senate Bill No. 357, titled the Coal Jobs and Safety Act of 2015, during the 2015 Regular Session of the Legislature; and

WHEREAS, The Legislature has created the Board of Coal Mine Health and Safety; and

WHEREAS, The Legislature has authorized the Board of Coal Mine Health and Safety to promulgate rules and regulations governing coal mining activities, including rules and regulations governing safety for all mining operations in the State of West Virginia; and

WHEREAS, The State of West Virginia has the nation’s strongest mine safety laws; and

WHEREAS, These mine safety laws, forged through collaboration among all interested parties, are the model nationwide; and

WHEREAS, Enrolled Committee Substitute for Senate Bill No. 357 may abrogate certain provisions of 36 CSR 4 governing the movement of mining equipment underground; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature of West Virginia hereby urges the Board of Coal Mine Health and Safety to review and assess the provisions of 36 CSR 4 and to develop a series of comprehensive safety regulations governing the movement of mining equipment underground; and, be it

*Further Resolved*, That the Board of Coal Mine Health and Safety, in consultation with the Director of the Office of Miners’ Health,



Safety and Training, shall develop and enact these new safety rules and regulations on or before June 2, 2015; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to each member of the Board of Coal Mine Health and Safety and the Director of the Office of Miners' Health, Safety and Training.

A message from the Senate, by

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

**Com. Sub. for H. B. 2139**, Relating to employment of retired teachers as substitutes in areas of critical need and shortage for substitutes.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, bills of the House of Delegates as follows:

**Com. Sub. for H. B. 2148**, Conforming the motor vehicle law of this state to the requirements of section 1405(a) of the federal Transportation Equity Act for the Twenty-first Century,

**Com. Sub. for H. B. 2187**, Encouraging public officials to display the national motto on all public property and public buildings,

**H. B. 2370**, Increasing the powers of regional councils for governance of regional education service agencies,

**Com. Sub. for H. B. 2377**, Authorizing State Board of Education to approve certain alternatives with respect to instructional time,

**H. B. 2461**, Relating to delinquency proceedings of insurers,

**Com. Sub. for H. B. 2493**, Relating to requirements for insurance policies and contracts providing accident and sickness insurance or direct health care services that cover anti-cancer medications,

**Com. Sub. for H. B. 2496**, Adopting the Interstate Medical Licensure Compact,

**H. B. 2595**, Relating to certificates of need for the development of health facilities in this state,

**H. B. 2608**, Cleaning up redundant language in the statute relating to misdemeanor offenses for violation of protective orders,

**H. B. 2625**, Continuing the current hazardous waste management fee,

**Com. Sub. for H. B. 2662**, Eye Care Consumer Protection Law,

**H. B. 2733**, Removing certain combinations of drugs containing hydrocodone from Schedule III of the controlled substances law,

**H. B. 2780**, Enhancing the ability of campus police officers at public colleges to perform their duties,

**H. B. 2797**, Changing the term “mentally retarded” to “intellectually disabled”; and changing the term “handicapped” to “disabled”,

And,

**H. B. 2884**, Modifying training and development requirement for certain members of certain higher education boards.

A message from the Senate, by

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

**H. B. 2892**, Authorizing certain legislative rules regarding higher education.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

**H. B. 2931**, Adding drugs to the classification of schedule I drugs.

A message from the Senate, by

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

**H. B. 2976**, Expanding the eligible master's and doctoral level programs for which a Nursing Scholarship may be awarded.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 31**, Declaring the Northern Red Salamander to be the official state amphibian.

A message from the Senate, by

The Clerk of the Senate, announced concurrence by the Senate in the amendment of the House of Delegates to the amendment of the Senate, and the passage, as amended, of

**Com. Sub. for H. B. 2550**, Increasing the number of unexcused absences of a student before action may be taken against the parent.

A message from the Senate, by

The Clerk of the Senate, announced concurrence by the Senate in the amendment of the House of Delegates to the amendment of the Senate, and the passage, as amended, of

**S. B. 502**, Relating to eligibility for certain reclamation or remediation tax credit.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 2939**, Relating to requirements for mandatory reporting of sexual offenses on school premises involving students.

On motions of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegate refused to concur in the following Senate amendment and requested that the Senate recede therefrom.

On page one, by striking out everything after the enacting section and inserting in lieu thereof the following:

**“ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

**§49-1-201. Definitions related, but not limited, to child abuse and neglect.**

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, child abuse and neglect, except in those instances where a different meaning is provided or the context in which the word is used clearly indicates that a different meaning is intended.

‘Abandonment’ means any conduct that demonstrates the settled purpose to forego the duties and parental responsibilities to the child;

‘Abused child’ means a child whose health or welfare is being harmed or threatened by:

(A) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another

person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home. Physical injury may include an injury to the child as a result of excessive corporal punishment;

(B) Sexual abuse or sexual exploitation;

(C) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section fourteen-h, article two, chapter sixty-one of this code; or

(D) Domestic violence as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code.

‘Abusing parent’ means a parent, guardian or other custodian, regardless of his or her age, whose conduct has been adjudicated by the court to constitute child abuse or neglect as alleged in the petition charging child abuse or neglect.

‘Battered parent,’ for the purposes of part six, article four of this chapter, means a respondent parent, guardian, or other custodian who has been adjudicated by the court to have not condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by section two hundred two, article twenty-seven, chapter forty-eight of this code which was perpetrated by the same person or persons determined to have abused or neglected the child or children.

‘Child abuse and neglect services’ means social services which are directed toward:

(A) Protecting and promoting the welfare of children who are abused or neglected;

(B) Identifying, preventing and remedying conditions which cause child abuse and neglect;

(C) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in

resolving problems which could lead to a removal of children and a breakup of the family;

(D) In cases where children have been removed from their families, providing time-limited reunification services to the children and the families so as to reunify those children with their families or some portion thereof;

(E) Placing children in suitable adoptive homes when reunifying the children with their families, or some portion thereof, is not possible or appropriate; and

(F) Assuring the adequate care of children or juveniles who have been placed in the custody of the department or third parties.

‘Condition requiring emergency medical treatment’ means a condition which, if left untreated for a period of a few hours, may result in permanent physical damage; that condition includes, but is not limited to, profuse or arterial bleeding, dislocation or fracture, unconsciousness and evidence of ingestion of significant amounts of a poisonous substance.

‘Imminent danger to the physical well-being of the child’ means an emergency situation in which the welfare or the life of the child is threatened. These conditions may include an emergency situation when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health, life, or safety of any child in the home:

(A) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker;

(B) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome;

(C) Nutritional deprivation;

(D) Abandonment by the parent, guardian or custodian;

(E) Inadequate treatment of serious illness or disease;

(F) Substantial emotional injury inflicted by a parent, guardian or custodian;

(G) Sale or attempted sale of the child by the parent, guardian or custodian;

(H) The parent, guardian or custodian's abuse of alcohol or drugs or other controlled substance as defined in section one hundred one, article one, chapter sixty-a of this code, has impaired his or her parenting skills to a degree as to pose an imminent risk to a child's health or safety; or

(I) Any other condition that threatens the health, life, or safety of any child in the home.

'Neglected child' means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when that refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(B) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child's parent or custodian;

(C) 'Neglected child' does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

‘Petitioner or co-petitioner’ means the Department or any reputable person who files a child abuse or neglect petition pursuant to section six hundred one, article four, of this chapter.

‘Permanency plan’ means the part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available.

‘Respondent’ means all parents, guardians, and custodians identified in the child abuse and neglect petition who are not petitioners or co-petitioners.

‘Sexual abuse’ means:

(A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by section three, article eight-c, chapter sixty-one, which a parent, guardian or custodian engages in, attempts to engage in, or knowingly procures another person to engage in with a child notwithstanding the fact that for a child who is less than sixteen years of age the child may have willingly participated in that conduct or the child may have suffered no apparent physical injury or mental or emotional injury as a result of that conduct or, for a child sixteen years of age or older the child may have consented to that conduct or the child may have suffered no apparent physical injury or mental or emotional injury as a result of that conduct; ~~or~~

(B) Any conduct where a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making that display, or of the child, or for the purpose of affronting or alarming the child; ~~or~~

(C) Any of the offenses proscribed in sections seven, eight or nine of article eight-b, chapter sixty-one of this code.

‘Sexual assault’ means any of the offenses proscribed in sections three, four or five of article eight-b, chapter sixty-one of this code.



‘Sexual contact’ means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

‘Sexual exploitation’ means an act where:

(A) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code; or

(B) A parent, guardian or custodian persuades, induces, entices or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display his or her sex organs under circumstances in which the parent, guardian or custodian knows that the display is likely to be observed by others who would be affronted or alarmed.

‘Sexual intercourse’ means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

‘Sexual intrusion’ means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

‘Serious physical abuse’ means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

## **ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.**

### **§49-2-803. Persons mandated to report suspected abuse and neglect; requirements.**

(a) Any medical, dental or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or

law-enforcement official, humane officer, member of the clergy, circuit court judge, family court judge, employee of the Division of Juvenile Services, magistrate, youth camp administrator or counselor, employee, coach or volunteer of an entity that provides organized activities for children, or commercial film or photographic print processor who has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than forty-eight hours after suspecting this abuse or neglect, report the circumstances or cause a report to be made to the Department of Health and Human Resources. In any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report, or cause a report to be made, to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint. Any person required to report under this article who is a member of the staff or volunteer of a public or private institution, school, entity that provides organized activities for children, facility or agency shall also immediately notify the person in charge of the institution, school, entity that provides organized activities for children, facility or agency, or a designated agent thereof, who may supplement the report or cause an additional report to be made.

(b) Any person over the age of eighteen who receives a disclosure from a credible witness or observes any sexual abuse or sexual assault of a child, shall immediately, and not more than forty-eight hours after receiving that disclosure or observing the sexual abuse or sexual assault, report the circumstances or cause a report to be made to the Department of Health and Human Resources or the State Police or other law-enforcement agency having jurisdiction to investigate the report. In the event that the individual receiving the disclosure or observing the sexual abuse or sexual assault has a good faith belief that the reporting of the event to the police would expose either the reporter, the subject child, the reporter's children or other children in the subject child's household to an increased threat of serious bodily injury, the individual may delay making the report while he or she undertakes measures to remove themselves or the affected children

from the perceived threat of additional harm and the individual makes the report as soon as practicable after the threat of harm has been reduced. The law-enforcement agency that receives a report under this subsection shall report the allegations to the Department of Health and Human Resources and coordinate with any other law-enforcement agency, as necessary to investigate the report.

(c) Notwithstanding any provision of this section to the contrary any school employee who has reported or disclosed to them that a child has been sexually abused or sexually assaulted shall forthwith report same to the State Police or other law enforcement agency having jurisdiction to investigate the alleged offence. County boards of education and private school administrators shall provide all employees with a written statement setting forth the requirement contained in this subsection and shall obtain and preserve a signed acknowledgment from school employees that they have received and understand the reporting requirement. As used in this subsection ‘forthwith’ means without delay.

(d) The reporting requirements contained in subsection (c) of this section specifically include reported or disclosed observed conduct involving or between students enrolled in a public or private institution of education, or involving a student and school teacher or personnel.

~~(c)~~(e) Nothing in this article is intended to prevent individuals from reporting suspected abuse or neglect on their own behalf. In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of children, any other person may make a report if that person has reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.

**§49-2-812. Failure to report; penalty.**

Any person, official or institution required by section eight hundred-three of this article to report a case involving a child known

or suspected to be abused or neglected, or required by section eight hundred nine of this article to forward a copy of a report of serious injury, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, is guilty of a misdemeanor and, upon conviction, shall be confined in jail not more than thirty days or fined not more than ~~\$1,000~~ \$5,000, or both fined and confined.”

And,

By amending the title of the bill to read as follows:

**Com. Sub. for H. B. 2939** - “A Bill to amend and reenact §49-1-201 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-2-803 and §49-2-812 of said code, all relating to requirements for mandatory forthwith reporting by school personnel of certain sexual offenses against children; defining terms such as forthwith; adding conduct that must be reported to law enforcement; defining nature of conduct to be reported; modifying criminal penalties for failure to report; and requiring school administrators to provide written notice of reporting requirement to employees and to obtain and preserve signed acknowledgments thereof.”

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

At 9:56 A.M., on motion of Delegate Cowles, the House of Delegates recessed until 11:00 A.M.

### REORDERING OF THE CALENDAR

Delegate Cowles announced that the Committee on Rules had moved Com. Sub. for S. B. 14, on Third Reading, Special Calendar, to the foot of the bills, and Com. Sub. for S. B. 541 on Second Reading, Special Calendar to the House Calendar.

**RESOLUTIONS INTRODUCED**

Mr. Speaker, Mr. Armstead, and All Members of the House of Delegates offered the following resolution, which was read by the Clerk as follows:

**H. R. 19** - “Extolling the life and lamenting the death of Mrs. Shelley Riley Moore, former First Lady of West Virginia and beloved wife, best friend and life partner of Governor Arch A. Moore, Jr.”

WHEREAS, Shelley Riley was born on July 15, 1926, in Miami, Florida, the youngest of three children born to Jacob Lewis and Sadie Riley. Shelley spent her formative years in Uniontown, Pennsylvania, where she graduated high school. In 1944, Shelley followed her siblings to West Virginia University, where she joined Alpha Xi Delta sorority and became President of the Women’s Recreation Association.

WHEREAS, While on a double date in 1946, Shelley met Arch A. Moore, Jr., a young man from Moundsville back from World War II. Following her graduation from West Virginia University with a B.A. in Education, Shelley Riley married Arch Moore on August 11, 1949. They spent several years in Morgantown where Shelley taught math in the public schools. Her husband soon entered public life securing a seat in the West Virginia House of Delegates in 1952. For the next sixty years, Shelley stood as a teammate and source of constancy for all 26 of her husband’s political campaigns and all of her daughter’s races; and

WHEREAS, As the longest serving First Lady in West Virginia’s history, Shelley took on several important causes during her tenure. Most notably, she established the West Virginia Mansion Preservation Foundation to maintain the mansion and its heritage for the people of West Virginia. She conducted countless tours and insisted on open access to the Governor’s residence. She also embraced educational initiatives and programs for children. Shelley was intimately involved with various Girl Scout programs in West Virginia, serving as a

member of the Black Diamond Girl Scout Council Board of Directors. She was dedicated to improving educational opportunities for disabled children and was a driving force with Arch for the numerous initiatives to establish and improve mental health programs around the Mountain State. She served as Chairwoman of the Mental Health Association, National Library Week, honorary chairwoman of the Heart Association, and in many other positions; and

WHEREAS, Shelley Moore was the proud mother of one son, Kim, and two daughters, Shelley and Lucy, all of whom survive her. She is also survived by seven grandchildren; and

WHEREAS, The compassion and grace with which Shelley Moore served as First Lady will be her public legacy, but to her family and friends her legacy will be her warmth, her sense of humor and her unwavering loyalty. Shelley had an ability to listen and connect, traits that made everyone around her know that they mattered. Shelley Moore was an amazing woman who represented the people of West Virginia with grace and dignity as First Lady; and

WHEREAS, West Virginia was saddened to learn of the death of West Virginia's former First Lady, Shelley Riley Moore, on September 13, 2014; therefore, be it

*Resolved by the House of Delegates:*

That the members of the House of Delegates hereby publicly extol the life of Mrs. Shelley Riley Moore, and collectively mourn her death, while remembering that she leaves behind a legacy of success, love and accomplishment; that this House of Delegates proclaims that although Mrs. Shelley Moore has passed from this earthly life, she will continue to live in the hearts and minds of those who knew her; and, be it

*Further Resolved,* That the Clerk of the House of Delegates prepare a certified copy of this resolution for her children; and, be it

*Further Resolved,* That the Clerk of the House of Delegates also cause a certified copy of this resolution to be placed in the Division of Archives and History.

At the request of Delegate Cowles, and by unanimous consent, reference of the resolution (H. R. 19) to a committee was dispensed with, and it was taken up for immediate consideration.

The question now being on the adoption of the resolution, Delegate Cowles demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 502**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the resolution (H. R. 19) adopted.

By Mr. Speaker, Mr. Armstead, and All Members of the House of Delegates offered the following resolution, which was read by the Clerk as follows:

**H. R. 20** - “Memorializing the life and lamenting the death of the Honorable Arch Alfred Moore, Jr., husband, father, grandfather, veteran and West Virginia’s longest serving Governor.”

WHEREAS, Arch Alfred Moore, Jr., was born on April 16, 1923, in Glen Dale, West Virginia, into a family with GOP ties. A grandfather had been Mayor of Moundsville, while an uncle had been Minority Leader in the West Virginia House of Delegates. He attended Marshall County schools before entering the U S Army during World War II. Rising to the rank of Sergeant, Arch Moore served in the European Campaign and was seriously wounded by German machine gun fire in Germany in November 1944. He was decorated with the Purple Heart, Bronze Star, Combat Infantryman’s Badge and European Theater of Operations Ribbon with three battle stars; and

WHEREAS, Following his military service, Arch Moore attended and graduated from West Virginia University and West Virginia University College of Law; and

WHEREAS, Arch Moore married Shelley Riley on August 11, 1949, in Uniontown, Pennsylvania. Arch and Shelley spent several years in Morgantown before he ran for and was elected to a seat in the West Virginia House of Delegates in 1952; and

WHEREAS, Arch Moore possessed personal charisma, strong oratory gifts, and an uncanny ability to recall names, all of which contributed to his success in the political arena; and

WHEREAS, Arch Moore was elected to the United States Congress from the 1<sup>st</sup> Congressional District of West Virginia in 1956, 1958, 1960, 1962, 1964 and 1966; and

WHEREAS, Arch Moore ran for and was elected Governor of West Virginia in 1968 and was reelected in 1972. In 1984, Arch again ran for Governor and was elected to become the first Governor ever to serve three four-year terms; and

WHEREAS, During Arch Moore's first term as Governor, two developments greatly changed the role of the Office of Governor in West Virginia - the Modern Budget Amendment, which authorized the Governor to estimate revenues and propose spending, and a constitutional change allowing an incumbent Governor to seek a consecutive term. During his tenure as Governor, Arch Moore also encountered a national coal strike, a massive road building effort, multiple teacher pay raises, a prison riot, a textbook controversy, the Buffalo Creek disaster, repeated clashes with the Democratic controlled Legislature, and one of the worst floods in West Virginia history; and

WHEREAS, Arch and Shelley were the proud parents of one son, Kim, and two daughters, Shelley and Lucy, all of whom survive him. He is also survived by seven grandchildren; and

WHEREAS, Sadly, the Honorable Arch A. Moore, Jr., passed away on January 7, 2015; therefore, be it



*Resolved by the House of Delegates:*

That the members of the House of Delegates hereby publicly memorialize the life of the Honorable Arch A. Moore, Jr., and collectively mourn his death, while remembering that he leaves behind a legacy of success and accomplishment; that this House of Delegates proclaims that although the Honorable Arch A. Moore, Jr. has passed from this earthly life, he will continue to live in the hearts and minds of those who knew him; and, be it

*Further Resolved,* That the Clerk of the House of Delegates prepare a certified copy of this resolution for his children; and, be it

*Further Resolved,* That the Clerk of the House of Delegates also cause a certified copy of this resolution to be placed in the Division of Archives and History.

At the request of Delegate Cowles, and by unanimous consent, reference of the resolution (H. R. 20) to a committee was dispensed with, and it was taken up for immediate consideration.

The question now being on the adoption of the resolution, Delegate Cowles demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 503**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Marcum and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the resolution (H. R. 20) adopted.

Delegates Westfall, Ashley, Campbell, Bates, Rodighiero, P. Smith, Espinosa, Butler, L. Phillips, Ferro and Ellington offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 151** - "Requesting the Joint Committee on Health authorize a study on the licensure of athletic trainers."

WHEREAS, Athletic trainers are required to register with the Board of Physical Therapy in order to practice in this state; and

WHEREAS, With advances in sports medicine and the increasing encouragement of citizens to participate in sports and other physical activity to promote health and well being, it is important that athletic trainers have proper training and education; and

WHEREAS, The Legislature is committed to protecting the public through the appropriate regulation of professions and occupations; and

WHEREAS, After five years of requiring the registration of athletic trainers, it is appropriate for the Legislature to evaluate the effectiveness of such regulation and consider any revision which should be made to the law governing athletic trainers; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Health is hereby requested to study the licensure of athletic trainers; and, be it

*Further Resolved*, That the Joint Committee on Health report to the regular session of the Legislature, 2016, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved*, That the expenses necessary to conduct this study and to prepare and draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Delegate Rowe offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 152** - “Requesting the Joint Committee on Government and Finance to study the long-term needs for maintenance and construction of local public libraries and methods for providing adequate funding to meet those needs.”

WHEREAS, Local public libraries have played an important role in the achievements of our democracy since its inception and their role in sustained development of this country has been recognized by the Founders of this country, by the great statesmen and orators of the Nineteenth Century, by civil rights leaders, industrialists, journalists and technology innovators; and

WHEREAS, Local public libraries serve not as a mere adjunct to our educational system, but as an integral and critical component of it, which is as significant as the construction and maintenance of public schools; and

WHEREAS, Local public libraries are critical to the economic development of the communities in which they are located and have a proven correlation with higher property values, better schools, increased wages and higher levels of employment than in communities without local public libraries; and

WHEREAS, More than seventy-seven percent of the public libraries in this country are located in small communities and rural areas; and

WHEREAS, Local public libraries are often the only public depository of local history books and resources available to local historians, public officials, teachers, students and families; and

WHEREAS, Despite technological advancement and the widespread availability of books, research and other information through digital media, libraries find sustained demand for their services, and, in the year 2013, the Pew Research Center found that Americans under the age of thirty visit libraries at the same rate as older Americans and are *more likely* to use the technical resources of libraries than their older counterparts; and

WHEREAS, West Virginia can ill afford to neglect or ignore the sustained need for up-to-date, efficient, safe, comfortable and well-funded local public libraries throughout the state; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the long-term needs, in consideration of the impact of local public libraries on their communities and their role in economic development, education and welfare of their communities, in regards to maintenance and construction of local public libraries and the methods for providing adequate funding to meet those needs; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance establish a select committee on local public library improvement to conduct the study on this and such other relevant topics as the Joint Committee may deem appropriate; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on the findings, conclusions and recommendations of the select committee, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

## PETITIONS

Delegate Sobonya presented a petition signed by residents of the State in support of putting prayer back in the public schools of West Virginia; which was referred to the Committee on Education.

**MOTIONS**

Delegate Skinner moved to place S. B. 585, Relating to regulation of transportation network and taxicab companies on the Special Calendar.

Whereupon,

Delegate Cowles moved to postpone the motion indefinitely.

Delegate O'Neal moved the previous question which was sustained.

On this question, the yeas and nays were taken (**Roll No. 504**), and there were—yeas 54, nays 45, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Bates, Blair, Boggs, Byrd, Cadle, Campbell, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Folk, Guthrie, Hartman, Hicks, Hill, Hornbuckle, Ihle, Longstreth, Manchin, Marcum, McCuskey, McGeehan, Miley, Moore, Morgan, J. Nelson, Overington, Pasdon, Perdue, Perry, Pethtel, L. Phillips, R. Phillips, Pushkin, Reynolds, Rodighiero, Rowe, Skinner, Sponaugle, Stansbury, Weld, B. White, H. White and Williams.

ABSENT AND NOT VOTING: Walters.

So, majority of the members present and voting having voted in the affirmative, the motion for the previous question prevailed.

The question now being to postpone indefinitely the motion to place S. B. 585 on the Special Calendar, it was so put.

On this question, the yeas and nays were taken (**Roll No. 505**), and there were—yeas 54, nays 45, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Bates, Blair, Boggs, Byrd, Cadle, Campbell, Caputo, Eldridge, Faircloth, Ferro, Fleischauer, Fluharty, Folk, Guthrie, Hartman, Hicks, Hornbuckle, Ihle, Longstreth, Manchin, Marcum, McCuskey, McGeehan, Miley, Moore, Morgan, J. Nelson, Pasdon, Perdue, Perry, Pethtel, L. Phillips, R. Phillips, Pushkin, Reynolds, Rodighiero, Rowe, Skinner, Sponaugle, Stansbury, Trecoast, Weld, B. White, H. White and Williams.

ABSENT AND NOT VOTING: Walters.

So, a majority of the members present and voting having voted in the affirmative, the motion was postponed indefinitely.

### SPECIAL CALENDAR

#### UNFINISHED BUSINESS

The following resolutions, coming up in regular order, as unfinished business, were reported by the Clerk and adopted:

**H. C. R. 143**, Requesting the Joint Committee on Government and Finance, to study the public-private partnership model for the operation and maintenance of all or some of the State's hospital and nursing facilities,

**H. C. R. 146**, Requesting the Joint Committee on Government and Finance to study the special funds of the State,

**H. C. R. 147**, Requesting the Joint Committee on Government and Finance to study the leasing of oil and gas mineral rights on State lands,

**H. C. R. 148**, Requesting study on the collection, distribution and use of telecommunications fee revenues,

**H. C. R. 149**, Requesting the Joint Committee on Government and Finance to study potential improvements to pensions for retired

teachers and public employees who have been retired for ten or more years,

And,

**H. C. R. 150**, Requesting that the Joint Committee on Government and Finance study the distribution of unemployment rates across the state's fifty-five counties.

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

#### THIRD READING

**Com. Sub. for S. B. 12**, Relating to payment of separated employee's outstanding wages; on third reading, coming up in regular order, with amendments pending, and the restricted right to amend jointly by Delegates E. Nelson and Sponaugle, was reported by the Clerk.

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

“That §21-5-1 and §21-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

#### ARTICLE 5. WAGE PAYMENT AND COLLECTION.

##### §21-5-1. Definitions.

As used in this article:

(a) The term ‘firm’ includes any partnership, association, joint-stock company, trust, division of a corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee,

or successor of any of the same, or officer thereof, employing any person.

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

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

(d) The term 'commissioner' means commissioner of labor or his or her designated representative.

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

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

(g) The term 'deductions' includes amounts required by law to be withheld, and amounts authorized for union or club dues, pension plans, payroll savings plans, credit unions, charities and hospitalization and medical insurance.

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



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

(j) The term ‘construction’ means the furnishing of work in the fulfillment of a contract for the construction, alteration, decoration, painting or improvement of a new or existing building, structure, roadway or pipeline, or any part thereof, or for the alteration, improvement or development of real property: *Provided*, That construction performed for the owner or lessee of a single family dwelling or a family farming enterprise is excluded.

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

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

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

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

**§21-5-4. Cash orders; employees separated from payroll before paydays.**

(a) In lieu of lawful money of the United States, any person, firm or corporation may compensate employees for services by cash order which may include checks, direct deposits or money orders on banks

convenient to the place of employment where suitable arrangements have been made for the cashing of the checks by employees or deposit of funds for employees for the full amount of wages.

(b) Whenever a person, firm or corporation discharges an employee, or whenever an employee quits or resigns from employment, the person, firm or corporation shall pay the employee's wages ~~in full no later than the next regular payday or four business days, whichever comes first. Payment shall be made through the regular pay channels or, if requested by the employee, by mail. due for work that the employee performed prior to the separation of employment on or before the next regular payday on which the wages~~ would otherwise be due and payable: *Provided*, That fringe benefits, as defined in section one of this article, that are provided an employee pursuant to an agreement between the employee and employer and that are due, but pursuant to the terms of the agreement, are to be paid at a future date or upon additional conditions which are ascertainable are not subject to this subsection and are not payable on or before the next regular payday, but shall be paid according to the terms of the agreement. For purposes of this section, 'business day' means any day other than Saturday, Sunday or any legal holiday as set forth in section one, article two, chapter two of this code.

(c) ~~Whenever an employee quits or resigns, the person, firm or corporation shall pay the employee's wages in full no later than the next regular payday. Payment shall be made through the regular pay channels or, if requested by the employee, by mail. However, if the employee gives at least one pay period's written notice of intention to quit, the person, firm or corporation shall pay all wages earned by the employee at the time of quitting. Payment under this section may be made in person in any manner permissible under section three of this article, through the regular pay channels or, if requested by the employee, by mail. If the employee requests that payment under this section be made by mail, that payment shall be considered to have been made on the date the mailed payment is postmarked.~~

(d) When work of any employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, the person, firm or corporation shall pay in full to the employee not later than the next regular payday, either through the regular pay channels or by mail if requested by the employee, wages earned at the time of suspension or layoff.

(e) If a person, firm or corporation fails to pay an employee wages as required under this section, the person, firm or corporation, in addition to the amount which was unpaid when due, is liable to the employee for ~~three~~ two times that unpaid amount as liquidated damages. This section regulates the timing of wage payments upon separation from employment and not whether overtime pay is due. Liquidated damages that can be awarded under this section are not available to employees claiming they were misclassified as exempt from overtime under state and federal wage and hour laws. Every employee shall have a lien and all other rights and remedies for the protection and enforcement of his or her salary or wages, as he or she would have been entitled to had he or she rendered service therefor in the manner as last employed; except that, for the purpose of liquidated damages, the failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he or she is adjudicated bankrupt upon the petition.

(f) As a prerequisite to filing a lawsuit to recover amounts to be paid pursuant to the provisions of this section, an employee shall provide written notice to the employer that the employee believes there are amounts due and owing to the employee for wages or fringe benefits within thirty days of the day the employee should have received the amounts in dispute.”

An amendment to the bill, offered by Delegate Sponaugle, was reported by the Clerk.

Whereupon,

Delegate Sponaugle asked and obtained unanimous consent that the amendment be withdrawn.

On motion of Delegates E. Nelson and Sponaugle, the Finance Committee amendment was amended on page three, section four, following subsection (e), by striking out subsection (f) in its entirety.

The Finance Committee amendment, as amended, was then adopted.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 506**), and there were—yeas 68, nays 31, absent and not voting 1, with the nays and absent and not voting being as follows:

**NAYS:** Byrd, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Guthrie, Hicks, Hornbuckle, Longstreth, Lynch, Manchin, Miley, Moore, Morgan, Moye, Perdue, Perry, Pethtel, L. Phillips, Pushkin, Reynolds, Rodighiero, Rowe, Skinner, P. Smith, Sponaugle, Trecost, Upson, Wagner and H. White.

**ABSENT AND NOT VOTING:** Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 12) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

**Com. Sub. for S. B. 12** - “A Bill to amend and reenact §21-5-1 and §21-5-4 of the Code of West Virginia, 1931, as amended, relating to payment of wages by employers; defining terms; providing for how payments may be made; requiring certain payments by the next regular

payday; providing for payments pursuant to certain agreements; reducing amount of liquidated damages available for violation of this section; providing instance when liquidated damages are not available; clarifying that section does not address whether overtime pay is due; authorizing payment by mail if requested by employee; and establishing date paid if payment mailed pursuant to employee request.”

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

**Com. Sub. for S. B. 170**, Authorizing Bureau of Commerce promulgate legislative rules; on third reading, coming up in regular order, was reported by the Clerk.

Delegate Shott asked and obtained unanimous consent to amend the bill on third reading, and the rule was suspended to permit the offering and consideration of an amendment on third reading.

Delegate Lane asked and obtained unanimous consent that all sponsors of the amendment offered by Delegate Marcum be added as cosponsors to his amendment.

The amendment offered by Delegates Lane, Frich, Moye, Rodighiero, Hicks, Moore, Storch, Miley, Campbell, Perry, Boggs, Bates, Lynch, McGeehan, Butler, Moffatt, Summers, Azinger and Perdue, was reported by the Clerk and adopted, on page six, section two, line eight immediately preceding the word “authorized”, by inserting the word “not”.

And,

On page seven, section two, line five, immediately preceding the word “authorized”, by inserting the word “not”.

Whereupon,

Delegate Marcum asked and obtained unanimous consent that the amendment he had offered be withdrawn.

The bill was then read a third time.

Delegate Householder requested to be excused from voting on the passage of Com. Sub. for S. B. 170 under the provisions of House Rule 49.

The Speaker replied that any impact on Delegate Householder would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Gentleman from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 507**), and there were—yeas 96, nays 3, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Fast, Householder and Ihle.

ABSENT AND NOT VOTING: Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 170) passed.

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

On this question, the yeas and nays were taken, (**Roll No. 508**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Fast.

ABSENT AND NOT VOTING: Walters.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 170) takes effect from its passage.

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

**Com. Sub. for S. B. 323**, Relating to municipal home rule; on third reading, coming up in regular order, was read a third time.

Delegate Howell requested to be excused from voting on questions regarding the passage of Com. Sub. for S. B. 323 under the provisions of House Rule 49.

The Speaker replied that the Delegate, as a member of the Home Rule Board, would be directly affected and not as a member of a class of persons possibly to be affected by the passage of the bill, and excused the Gentleman from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 509**), and there were—yeas 93, nays 5, absent and not voting 1, excused 1, with the nays and absent and not voting and excused being as follows:

NAYS: Deem, Fast, Folk, Moffatt and Sobonya.

ABSENT AND NOT VOTING: Walters.

EXCUSED: Howell.

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

**Com. Sub. for S. B. 352**, Expanding scope of cooperative associations to goods and services including recycling; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 510**), and there were—yeas 85, nays 14, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Ashley, Azinger, Hamrick, Ihle, Kelly, Lane, McGeehan, Pethel, Rodighiero, Storch, Waxman, Weld, Westfall and Zatezalo.

ABSENT AND NOT VOTING: Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 352) passed.

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

Delegate Cowles asked and obtained unanimous consent that Com. Sub. for S. B. 323, Relating to municipal home rule, be taken up for further consideration.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

**Com. Sub. for S. B. 323** - “A Bill to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating to the municipal home rule pilot program generally; continuing ordinances in effect; removing requirements that municipal home rule board must approve a municipality’s amendment to its home rule plan and that a municipal ordinance is nullified if the municipality’s amendment to its home rule plan is not approved by the municipal home rule board; enlarging the pool of eligible municipalities that may participate in the pilot program to thirty; removing requirement that the board approve each municipal ordinance prior to enactment; removing process for enacting ordinance; authorizing amendments to municipal ordinances, acts, resolutions, rules, or regulations enacted pursuant the



municipality's approved written plan; removing provisions prohibiting municipality from enacting ordinance, act, resolution, rule or regulation after the pilot program terminates in 2019; prohibiting municipalities from seeking refunds of moneys collected from taxpayers or monies distributed to municipalities by the tax division under the pilot program: removing obsolete provisions; and reorganizing existing provisions."

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

**S. B. 370**, Reorganizing Governor's Committee on Crime, Delinquency and Correction and its subcommittees; on second reading, coming up in regular order, was read a second time and ordered to third reading.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 511**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hamrick, Walters and B. White.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 370) passed.

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

**Com. Sub. for S. B. 393**, Reforming juvenile justice system; on third reading, coming up in regular order, was read a third time.

Delegate Hartman requested to be excused from voting on the passage of Com. Sub. for S. B. 393 under the provisions of House Rule 49.

The Speaker replied that any impact on Delegate Hartman would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Gentleman from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 512**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Romine and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 393) passed.

Delegate Cowles moved that the bill take effect May 17, 2015.

On this question, the yeas and nays were taken (**Roll No. 513**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Walters.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 393) takes effect May 17, 2015.

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

**Com. Sub. for S. B. 407**, Implementing state safety oversight program; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 514**), and there were—yeas 91, nays 7, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Azinger, Faircloth, Folk, Ihle, McGeehan, Moffatt and J. Nelson.

ABSENT AND NOT VOTING: L. Phillips and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 407) passed.

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

**S. B. 415**, Relating to circuit judges; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 515**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 415) passed.

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

**Com. Sub. for S. B. 423**, Amending Aboveground Storage Tank Act; on third reading, coming up in regular order, with amendments pending, and restricted right to amend jointly by Delegates Shott and Manchin, was reported by the Clerk.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page sixty-nine, line two, by striking out the word “Three” and substituting therefor the word “Four”.

On motion of Delegates Shott and Lane, the bill was amended on page forty-four, section ten, line fourteen, after the word “provide”, by striking out the words “as required by the secretary”.

At page forty-five, section ten, line two, after the stricken language, by striking out the words “and subject to the protections afforded in section fourteen of this article, notice to the applicable public water system” and substituting in lieu thereof “ notice directly to the public water system”.

At page forty-five, section ten, line eight, after the word “storage” and the period, by adding “Subject to the protections afforded in section fourteen of this article, the information required in this subsection shall be delivered to the specific public water system and to state, county and municipal emergency response organizations that are designated by the Secretary to receive required notice.”

At page fifty-two, section fourteen, line sixteen, after the word “than”, by striking out the words “ \$5,000 or confined in a correctional facility for not more than one year, or both” and substituting in lieu thereof “ \$1,000 or confined in a regional jail facility for not more than twenty days, or both.”

And,

At page fifty-six, section fifteen, line eight, after the word “every”, by striking out the word “five” and substituting in lieu thereof the word “ three”.

Delegates Shott and Manchin moved to amend the bill, on page twenty-eight, section five (c), line seventeen, after the word “conditions”, by striking out the words “in the opinion of the secretary”.

And,

On page twenty-nine, section five (c), line one, after the word “place”, by inserting “and are consistent with the requirements of this article”.

The yeas and nays having been ordered, they were taken (**Roll No. 516**), and there were—yeas 32, nays 67, absent and not voting 1, with the yeas and absent and not voting being as follows:

YEAS: Speaker Armstead, Ambler, Bates, Byrd, Canterbury, Caputo, Cooper, Cowles, Duke, Eldridge, D. Evans, Fast, Fleischauer, Fluharty, Guthrie, Hicks, Hornbuckle, Lane, Longstreth, Lynch, Manchin, McCuskey, Moore, O’Neal, Pasdon, Perdue, Pushkin, Reynolds, Rowe, Shott, Skinner and Stansbury.

ABSENT AND NOT VOTING: Walters.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegate Manchin moved to amend the bill on pages twenty-eight and twenty-nine, section five, lines seventeen and eighteen on page twenty-eight and line one on page twenty-nine, by striking out the words “in the opinion of the secretary are sufficient in combination with practices and protections already in place” and inserting in lieu thereof, the following: “not less protective than the requirements of this article”.

Whereupon,

Delegate Manchin asked and obtained unanimous consent that the amendment be withdrawn.

Delegate Manchin moved to amend the bill on page twenty-nine, section five, line ten, following the words “Part 112.”, by inserting the following:

“Initial public notice of tank designations shall be published by the secretary on the Department’s website. Public notice and comment of renewals of permits or major modifications of permits shall be required, pursuant to legislative rules of the Department.”

On the adoption of the amendment, the yeas and nays were demanded, which the demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 517**), and there were—yeas 18, nays 81, absent and not voting 1, with the yeas and absent and not voting being as follows:

YEAS: Bates, Byrd, Caputo, Cowles, Duke, Fleischauer, Fluharty, Guthrie, Lane, Lynch, Manchin, Miley, Moore, Perdue, Pushkin, Shott, Skinner and Weld.

ABSENT AND NOT VOTING: Walters.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegate Manchin moved to amend the bill on page thirty-two, section six, lines six through twelve, by returning subsection (c) to current law, to read as follows:

“(c) The certification form shall be submitted to the secretary on or before January 1, 2015, and each year thereafter.”

An amendment, offered by Delegate Manchin, was reported by the Clerk, on page forty-five, section ten, lines eight through thirteen, by removing the strike through and returning current law into the bill:

“The owner or operator shall also provide as required by the secretary a copy of the spill prevention response plan and any updates thereto, which have been approved by the secretary pursuant to this act, to the applicable public water systems and county and municipal emergency management agencies.”

Whereupon,

Delegate Manchin asked and obtained unanimous consent that the amendment be withdrawn.

An amendment, offered by Delegate Manchin, was reported by the Clerk, on page fifty-four, line twelve, following section fourteen of the bill, by inserting a new section 14a, to read as follows:

**“§22-30-14a. Disclosure of information to utilities.**

The owner or operator of the above ground storage tank shall provide, within the zone of critical concern and zone of peripheral concern, the location, characteristics and approximate quantities of potential sources of significant contaminants contained in tanks, to one or more designees of the public water utility, and that information shall be maintained in a confidential manner by the public water utility subject to penalties of disclosure pursuant to subsection (a), section fourteen of this article.”

Whereupon,

Delegate Manchin asked and obtained unanimous consent that the amendment be withdrawn.

An amendment, offered by Delegate Manchin, was reported by the Clerk, on page fifty-six, section fifteen, line seven, following the words “secretary shall”, by inserting the word “visually”; and on page fifty-six, section fifteen, line eight, following the words “once every”, by striking the word “five” and inserting in lieu thereof, the word “three”.

An amendment to the bill, offered by Delegate Manchin, was reported by the Clerk on pages twenty-eight and twenty-nine, section five, lines seventeen and eighteen, on page twenty-eight, and line one on page twenty-nine, by striking out the words “ in the opinion of the secretary are sufficient in combination with practices and protections already in place” and inserting in lieu thereof, the following: “are as protective as the requirements of this article”.

And,

On pages forty-three and forty-four, section nine, on lines fourteen through eighteen on page forty-five, and lines one and two on page forty-six, by striking out subsection (d), and inserting in lieu thereof, the following:

“(d) The owner or operator of a regulated aboveground storage tank may certify to the secretary that it is subject to: (1) A groundwater protection plan approved by the secretary; or (2) a spill prevention control and countermeasures plan that complies the requirements of 40 C. F. R. Part 112. Such plans shall be made available for review or submitted to the secretary upon request. After a determination by the secretary that the requirements of these provisions are as protective as the provisions of this article, the secretary may approve the same in lieu of a plan developed in accordance with the requirement of this section.”

Whereupon,

Delegate Manchin asked and obtained unanimous consent that the amendment be withdrawn.

Delegate Manchin moved to amend the bill on page twenty-nine, section five, line ten, following the words “Part 112” and the period, by inserting the following:

“Initial public notice of tank designations shall be published by the secretary on the Department’s website. Public notice and comment of renewals of permits or major modifications of permits shall be required, pursuant to legislative rules of the Department.”

Delegate Manchin moved to amend the bill on page thirty-two, section six, lines six through twelve, by returning subsection (c) to current law, to read as follows:

“(c) The certification form shall be submitted to the secretary on or before January 1, 2015, and each year thereafter.”



The Speaker put the question on the adoption of the foregoing amendment, and the same did not prevail.

An amendment to the bill, offered by Delegate Manchin, was reported by the Clerk, as follows:

On page fifty-four, line twelve, following section fourteen of the bill, by inserting a new section 14a, to read as follows:

**“§22-30-14a. Disclosure of information to utilities.**

The owner or operator of the above ground storage tank shall provide, within the zone of critical concern and zone of peripheral concern, the location, characteristics and approximate quantities of potential sources of significant contaminants contained in tanks, to one or more designees of the public water utility, and that information shall be maintained in a confidential manner by the public water utility subject to penalties of disclosure pursuant to subsection (a), section fourteen of this article.”

Whereupon,

Delegate Manchin asked and obtained unanimous consent that the amendment be withdrawn.

An amendment to the bill, offered by Delegate Manchin, was reported by the Clerk, as follows:

On page fifty-six, section fifteen, line seven, following the words “secretary shall”, by inserting the word “visually”; and on page fifty-six, section fifteen, line eight, following the words “once every”, by striking out the word “five” and inserting in lieu thereof, the word “three”.

Whereupon,

Delegate Manchin asked and obtained unanimous consent that the amendment be withdrawn.

There being no further amendments, the bill was then read a third time.

Delegate Williams requested to be excused from voting on the passage of Com. Sub. for S. B. 423 under the provisions of House Rule 49.

The Speaker replied that any impact on Delegate Williams would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Gentleman from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 518**), and there were—yeas 78, nays 21, absent and not voting 1, with the nays and absent and not voting being as follows:

**NAYS:** Speaker Armstead, Byrd, Caputo, Eldridge, Fleischauer, Fluharty, Guthrie, Hicks, Hornbuckle, Lane, Longstreth, Lynch, Manchin, McCuskey, Moore, Perdue, Pushkin, Rowe, Skinner, Stansbury and B. White.

**ABSENT AND NOT VOTING:** Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 423) passed.

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

**S. B. 434**, Relating to horse racing; on third reading, coming up in regular order, was, at the request of Delegate Cowles, and by unanimous consent, laid over one day, retaining its place on the calendar.

**S. B. 479**, Adding additional family court judges; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 519**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Guthrie, Walters and Zatezalo.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 479) passed.

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

**Com. Sub. for S. B. 486**, Authorizing special license plates for Civil Air Patrol vehicles; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 520**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Deem, Guthrie, Walters and Zatezalo.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 486) passed.

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

At 2:48 P.M., on motion of Delegate Cowles, the House of Delegates recessed until 4:00 P.M.

#### SECOND READING

**Com. Sub. for S. B. 60**, Requiring food handler examinations and cards; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Government Organization, was reported by the Clerk, on page two, after the

enacting clause by striking out the enacting section and by striking out the remainder of the bill and inserting in lieu thereof the following:

“That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-2-16, to read as follows:

**ARTICLE 2. LOCAL BOARDS OF HEALTH.**

**§16-2-16. Food handler examinations and cards.**

Any food handler permit or card that has been issued pursuant to the procedures put in place by a local board of health shall be valid for three years. Any such permit or card shall be valid in all counties of this state, provided the applicant pays an additional, one-time fee not to exceed \$10.00 in the county where the applicant works if different from the county where the permit or card was issued. A food handler permit or card, if required, shall be obtained within thirty days of being hired in a restaurant or other applicable food establishment.”

On motion of Delegates Sponaugle and Householder the amendment recommended by the Committee on Government Organization was amended on page one, line four, by striking out the entirety of section sixteen and inserting in lieu thereof the following a new section sixteen to read as follows:

**“§16-2-16. Food handler examinations and cards.**

A food handler permit or card issued pursuant to the procedures put in place by a local county health department shall be valid for at least one year but not longer than three years. The permit or card shall be valid in all counties of this state, if the applicant pays an additional fee not to exceed \$10.00. If required, a permit or card shall be obtained within thirty days of a person being hired in a restaurant or other applicable food establishment. The Bureau for Public Health shall develop minimum guidelines for training programs for individuals seeking a food handler permit or card that may be adopted by local

county health departments. In lieu of state guidelines a local health department may use training courses developed by the American National Standards Institute or other nationally recognized entities for food safety training.”

The amendment recommended by the Committee on Government Organization, as amended, was then adopted.

The bill was then ordered to third reading.

**Com. Sub. for S. B. 88**, Creating WV Clearance for Access: Registry and Employment Screening Act; on second reading, coming up in regular order, was read a second time.

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

“That §15-2-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §16-46-1, §16-46-2, §16-46-3, §16-46-4, §16-46-5, §16-46-6, §16-46-7, §16-46-8 and §16-46-9, all to read as follows:

**ARTICLE 2. WEST VIRGINIA STATE POLICE.**

**§15-2-24. Criminal identification bureau; establishment; supervision; purpose; fingerprints, photographs, records and other information; reports by courts and prosecuting attorneys; offenses and penalties.**

(a) The superintendent of the department shall establish, equip and maintain at the departmental headquarters a criminal identification bureau, for the purpose of receiving and filing fingerprints, photographs, records and other information pertaining to the investigation of crime and the apprehension of criminals, as hereinafter

provided. The superintendent shall appoint or designate a supervisor to be in charge of the criminal identification bureau and such supervisor shall be responsible to the superintendent for the affairs of the bureau. Members of the department assigned to the criminal identification bureau shall carry out their duties and assignments in accordance with internal management rules and regulations pertaining thereto promulgated by the superintendent.

(b) The criminal identification bureau shall cooperate with identification bureaus of other states and of the United States to develop and carry on a complete interstate, national and international system of criminal identification.

(c) The criminal identification bureau may furnish fingerprints, photographs, records or other information to authorized law-enforcement and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States and of the State of West Virginia upon proper request stating that the fingerprints, photographs, records or other information requested are necessary in the interest of and will be used solely in the administration of official duties and the criminal laws.

(d) The criminal identification bureau may furnish, with the approval of the superintendent, fingerprints, photographs, records or other information to any private or public agency, person, firm, association, corporation or other organization, other than a law-enforcement or governmental agency as to which the provisions of subsection (c) of this section shall govern and control, but all requests under the provisions of this subsection (d) for such fingerprints, photographs, records or other information must be accompanied by a written authorization signed and acknowledged by the person whose fingerprints, photographs, records or other information is to be released.

(e) The criminal identification bureau may furnish fingerprints, photographs, records and other information of persons arrested or

sought to be arrested in this state to the identification bureau of the United States government and to other states for the purpose of aiding law enforcement.

(f) Persons in charge of any penal or correctional institution, including any city or county jail in this state, shall take, or cause to be taken, the fingerprints and description of all persons lawfully committed thereto or confined therein and furnish the same in duplicate to the criminal identification bureau, department of public safety. Such fingerprints shall be taken on forms approved by the superintendent of the department of public safety. All such officials as herein named may, when possible to do so, furnish photographs to the criminal identification bureau of such persons so fingerprinted.

(g) Members of the department of public safety, and all other state law-enforcement officials, sheriffs, deputy sheriffs, and each and every peace officer in this state, shall take or cause to be taken the fingerprints and description of all persons arrested or detained by them, charged with any crime or offense in this state, in which the penalty provided therefor is confinement in any penal or correctional institution, or of any person who they have reason to believe is a fugitive from justice or an habitual criminal, and furnish the same in duplicate to the criminal identification bureau of the department of public safety on forms approved by the superintendent of said department. All such officials as herein named may, when possible to do so, furnish to the criminal identification bureau, photographs of such persons so fingerprinted. For the purpose of obtaining data for the preparation and submission to the Governor and the Legislature by the department of public safety of an annual statistical report on crime conditions in the state, the clerk of any court of record, the magistrate of any magistrate court and the mayor or clerk of any municipal court before which a person appears on any criminal charge shall report to the criminal identification bureau the sentence of the court or other disposition of the charge and the prosecuting attorney of every county shall report to the criminal identification bureau such additional information as the bureau may require for such purpose, and all such

reports shall be on forms prepared and distributed by the department of public safety, shall be submitted monthly and shall cover the period of the preceding month.

(h) All persons arrested or detained pursuant to the requirements of this article shall give fingerprints and information required by subsections (f) and (g) of this section. Any person who has been fingerprinted or photographed in accordance with the provisions of this section, who is acquitted of the charges upon which he or she was arrested, and who has no previous criminal record, may, upon the presentation of satisfactory proof to the department, have such fingerprints or photographs, or both, returned to them.

(i) All state, county and municipal law-enforcement agencies shall submit to the bureau uniform crime reports setting forth their activities in connection with law enforcement. It shall be the duty of the bureau to adopt and promulgate rules and regulations prescribing the form, general content, time and manner of submission of such uniform crime reports. Willful or repeated failure by any state, county or municipal law-enforcement official to submit the uniform crime reports required by this article shall constitute neglect of duty in public office. The bureau shall correlate the reports submitted to it and shall compile and submit to the Governor and the Legislature semiannual reports based on such reports. A copy of such reports shall be furnished to all prosecuting attorneys and law-enforcement agencies.

(j) Neglect or refusal of any person mentioned in this section to make the report required herein, or to do or perform any act on his or her part to be done or performed in connection with the operation of this section, shall constitute a misdemeanor and, such person shall, upon conviction thereof, be punished by a fine of not less than \$25 nor more than \$200, or by imprisonment in the county jail for a period of not more than sixty days, or both. Such neglect shall constitute misfeasance in office and subject such persons to removal from office. Any person who willfully removes, destroys or mutilates any of the fingerprints, photographs, records or other information of the



department of public safety, shall be guilty of a misdemeanor and, such person shall, upon conviction thereof, be punished by a fine of not more than \$100, or by imprisonment in the county jail for a period of not more than six months, or both.

(k) The Criminal Identification Bureau (CIB) and the Federal Bureau of Investigation (FBI) shall retain applicant fingerprints for the purpose of participating in the Rapback Program to determine suitability or fitness for a permit, license or employment. Agencies participating in the program shall notify applicants and employees subject to a criminal history check that their fingerprint shall be retained by the CIB and the FBI. Notification shall also be given to the applicant and employee subject to the Rapback Program.

(l) The State Police may assess a fee to applicants, covered providers or covered contractors for conducting the criminal background check and for collecting and retaining fingerprints for rapback as authorized under article forty-six, chapter sixteen of this code. The assessment shall be deposited into a non-appropriated special revenue account within the State Treasurer's Office to be known as the WVSP Criminal History Account. Expenditures from this account shall be made by the superintendent for purposes set forth in this article and are authorized from collections. The account shall be administered by the superintendent and may not be deemed a part of the general revenue of the state.

**ARTICLE 46. WEST VIRGINIA CLEARANCE FOR ACCESS: REGISTRY AND EMPLOYMENT SCREENING ACT.**

**§16-46-1. Definitions.**

As used in this article:

(1) 'Applicant' means an individual who is being considered for employment or engagement with a covered provider or covered contractor.

(2) ‘Background check’ means a prescreening of registries specified by the secretary by rule and a fingerprint-based search of state and federal criminal history record information.

(3) ‘Covered contractor’ means an individual or entity, including their employees and subcontractors, that contracts with a covered provider to perform services that include any direct access services.

(4) ‘Covered provider’ means the following facilities or providers:

(i) A skilled nursing facility;

(ii) A nursing facility;

(iii) A home health agency;

(iv) A provider of hospice care;

(v) A long-term care hospital;

(vi) A provider of personal care services;

(vii) A provider of adult day care;

(viii) A residential care provider that arranges for, or directly provides, long-term care services, including an assisted living facility;

(ix) An intermediate care facility for individuals with intellectual disabilities; and

(x) Any other facility or provider required to participate in the West Virginia Clearance for Access: Registry and Employment Screening program as determined by the secretary by legislative rule.

(5) ‘Department’ means the Department of Health and Human Resources.

(6) ‘Direct access’ means physical contact with a resident, member, beneficiary or client of a covered provider, or access to their property, personally identifiable information, protected health information or financial information.

(7) ‘Direct access personnel’ means an individual who has direct access by virtue of ownership, employment, engagement or agreement with a covered provider or covered contractor. Direct access personnel does not include volunteers or students performing irregular or supervised functions, or contractors performing repairs, deliveries, installations or similar services for the covered provider. The secretary shall determine by legislative rule whether the position in question involves direct access.

(8) ‘Disqualifying offense’ means:

(A) A conviction of any crime described in 42 U. S. C. §1320a-7(a); or

(B) A conviction of any other crime specified by the secretary in rule, which shall include crimes against care-dependent or vulnerable individuals, crimes of violence, sexual offenses and financial crimes.

(9) ‘Negative finding’ means a finding in the prescreening that excludes an applicant from direct access personnel positions.

(10) ‘Notice of ineligibility’ means a notice pursuant to section three of this article that the secretary’s review of the applicant’s criminal history record information reveals a disqualifying offense.

(11) ‘Prescreening’ means a mandatory search of databases and registries specified by the secretary in legislative rule for exclusions and licensure status prior to the submission of fingerprints for a criminal history record information check.

(12) ‘Rap back’ means the notification to the department when an individual who has undergone a fingerprint-based, state or federal

criminal history record information check has a subsequent state or federal criminal history event.

(13) ‘Secretary’ means the Secretary of the West Virginia Department of Health and Human Resources, or his or her designee.

(14) ‘State Police’ means the West Virginia State Police Criminal Identification Bureau.

**§16-46-2. Background check program for covered providers and covered contractors.**

(a) The secretary shall create and implement a background check program to facilitate the processing and analysis of the criminal history and background of applicants to covered providers and covered contractors with direct access. This program shall be called the West Virginia Clearance for Access: Registry and Employment Screening.

(b) The purpose of the program is to protect West Virginia’s vulnerable populations by requiring registry and criminal background checks for all direct access personnel of covered providers and covered contractors.

(c) The program shall include:

(1) A centralized Internet-based system of registries to allow covered providers and covered contractors to perform a mandatory prescreening of applicants;

(2) Fingerprint-based state and federal criminal background checks on all direct access personnel; and

(3) An integrated rap back program with the State Police to allow retention of fingerprints and updates of state and federal criminal information on all direct access personnel until such time as the individual is no longer employed or engaged by the covered provider or covered contractor.

(d) The department shall notify applicants subject to a criminal history record check that their fingerprints shall be retained by the State Police Criminal Identification Bureau and the Federal Bureau of Investigation.

**§16-46-3. Prescreening and criminal background checks.**

(a) Except as otherwise permitted in this article, the covered provider or covered contractor may not employ or engage an applicant prior to completing the background check process.

(b) If the applicant has a negative finding on any required prescreening registry or database, the employer shall notify the individual of such finding.

(c) If the applicant has a negative finding on any required prescreening registry or database, that individual may not immediately be engaged by a covered provider or covered contractor. However, that individual or the employer may apply for a variance pursuant to section five of this article.

(d) If the applicant does not have a negative finding in the prescreening process, the applicant shall submit to fingerprinting for a state and federal criminal history record information check.

(e) The State Police shall notify the secretary of the results of the criminal history record information check.

(f) If the secretary's review of the criminal history record information reveals that the applicant does not have a disqualifying offense, the secretary shall provide written notice to the covered provider or covered contractor that the individual may be engaged.

**§16-46-4. Notice of ineligibility; prohibited participation as direct access personnel.**

(a) If the secretary's review of the applicant's criminal history record information reveals a disqualifying offense, the secretary shall

provide written notice to the covered provider or covered contractor advising that the applicant is ineligible for work. The secretary may not disseminate the criminal history record information.

(b) The covered provider or covered contractor may not engage an applicant with a disqualifying offense as direct access personnel. If the applicant has been provisionally employed pursuant to section six of this article, the employer shall terminate the provisional employment upon receipt of the notice.

**§16-46-5. Variance; appeals.**

(a) If the prescreening process reveals a negative finding, or if the secretary issues a notice of ineligibility, the applicant, or the employer on the applicant's behalf, may file a written request for a variance with the secretary not later than thirty days after the date of the notice required by sections three or four of this article.

(b) The secretary may grant a variance if:

(1) Mitigating circumstances surrounding the negative finding or disqualifying offense is provided; and

(2) The secretary finds that the individual will not pose a danger or threat to residents, members and their property.

(c) The secretary shall establish in legislative rule factors that qualify as mitigating circumstances.

(d) The secretary shall mail to the applicant and the covered provider or covered contractor a written decision within ninety days of receipt of the request indicating whether a variance has been granted or denied.

(e) If an applicant believes that their criminal history record information within this state is incorrect or incomplete, they may challenge the accuracy of such information by writing to the State

Police for a personal review. However, if the discrepancies are at the charge or final disposition level, the applicant must address this with the court or arresting agency that submitted the record to the State Police.

(f) If an applicant believes that their criminal history record information outside this state is incorrect or incomplete, they may appeal the accuracy of such information by contacting the Federal Bureau of Investigation for instructions.

(g) If any changes, corrections, or updates are made in the criminal history record information, the State Police shall notify the secretary that the applicant has appealed the accuracy of the criminal history records and provide the secretary with the updated results of the criminal history record information check, which the secretary shall review *de novo* in accordance with the provisions of this article.

**§16-46-6. Provisional employment pending completion of background check.**

(a) A covered provider or covered contractor may permit an applicant to work on a provisional basis for not more than sixty days pending notification from the secretary regarding the results of the criminal background check if:

(1) The applicant is subject to direct on-site supervision, as specified in rule by the secretary, during the course of the provisional period; and

(2) In a signed statement the applicant:

(A) Affirms that he or she has not committed a disqualifying offense;

(B) Acknowledges that a disqualifying offense reported in the required criminal history record information check shall constitute good cause for termination; and

(C) Acknowledges that the covered provider or covered contractor may terminate the individual if a disqualifying offense is reported in the background check.

(b) Provisional employees who have requested a variance shall not be required to sign such a statement. A covered provider or covered contractor may continue to employ an applicant if an applicant applies for a variance of his or her fitness determination until the variance is resolved.

**§16-46-7. Clearance for subsequent employment.**

(a) An applicant is not required to submit to fingerprinting and a criminal background check if:

(1) The individual previously submitted to fingerprinting and a full criminal background check as required by this article;

(2) The prior criminal background check confirmed that the individual did not have a disqualifying offense or the individual received prior approval from the secretary to work for or with the same type of covered provider or covered contractor; and

(3) The rap back program has not identified any criminal activity that constitutes a disqualifying offense.

(b) The secretary shall provide notice of prior clearance for direct access status upon request by a subsequent covered provider or covered contractor.

**§16-46-8. Fees.**

In order to enforce the requirements and intent of this article, the following fees may be charged:

(1) The State Police may assess a fee to applicants, covered providers or covered contractors for conducting the criminal



background check and for collecting and retaining fingerprints for rap back as authorized under this article.

(2) The secretary may assess a fee to applicants, covered providers or covered contractors for the maintenance of the Internet-based system required by this article. The assessment shall be deposited into a special revenue account within the State Treasurer's Office to be known as the DHHR Criminal Background Administration Account. Expenditures from the account shall be made by the secretary for purposes set forth in this article and are authorized from collections. The account shall be administered by the secretary and may not be deemed a part of the general revenue of the state.

**§16-46-9. Rules; penalties; confidentiality; immunity.**

(a) The secretary shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement the provisions of this article. The secretary may promulgate emergency rules, if justified, pursuant to section fifteen, article three, chapter twenty-nine-a of this chapter as may be required.

(b) Failure of a covered provider or covered contractor to ensure proper completion of the background check process for each individual employed as direct access personnel may result in the imposition of monetary civil penalties. In addition, engaging individuals knowing that they are ineligible to work may subject the employer to monetary civil penalties.

(c) The secretary shall treat and maintain any criminal background search information obtained under this article as confidential. The secretary shall limit the use of records solely to the purposes authorized in this article. The criminal history record information in the custody of the secretary is not subject to subpoena, other than one issued in a criminal action or investigation; is confidential by law and privileged; and is not subject to discovery or admissible in evidence in any private civil action.

(d) The secretary, the department and its employees are immune from liability, civil or criminal, that might otherwise be incurred or imposed for good faith conduct in determining eligibility or granting variances permitted by this article.”

The bill was then ordered to third reading.

**Com. Sub. for S. B. 142**, Authorizing Department of Administration promulgate legislative rules; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page three, after the enacting section, by striking out the remainder of the bill and inserting in lieu thereof the following:

**“ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.**

**§64-2-1. Department of Administration.**

(a) The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section four, article three, chapter five-a of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 16, 2014, relating to the Department of Administration (Purchasing Division, 148 CSR 1), is authorized with the following amendments:

On page two, subsection 3.2, by striking out the word “will” in the three places it appears in that subsection beside the strikethrough of the word “shall” and by removing the strikethroughs of the word “shall” in the three places they appear in that subsection so that the word “shall” is reinstated in the text;

On pages two and three, throughout section 4, by striking out the word “will” in the seven places it appears in that section beside the strikethrough of the word “shall” and by removing the strikethroughs

of the word “shall” in the seven places they appear in that section so that the word “shall” is reinstated in the text;

On pages four, five and seven, throughout section 5, by striking out the word “will” in the ten places it appears in that section beside the strikethrough of the word “shall” and by removing the strikethroughs of the word “shall” in the ten places they appear in that section so that the word “shall” is reinstated in the text;

On page eight, subdivision 6.1.b., by striking out the word “will” and removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page eight, subdivision 6.1.d., by striking out the word “will” and removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page nine, subsection 6.2, by striking out the word “will” and inserting in lieu thereof the word “does”;

On page ten, subdivision 6.3.h., by striking out the word “will” and removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page ten, subdivision 6.4.a., after stricken words “The Director shall make an” by striking out the word “will” and inserting in lieu thereof the word “shall”;

On page ten, subdivisions 6.4.b., 6.4.c., 6.4.d., and 6.4.e., by striking out the word “will” and removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page eleven, subdivision 6.5.a.3., by striking out the word “will” where it appears in that section beside the strikethrough of the word “shall” and by removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page eleven, subdivision 6.5.b, after the strikethrough of the word “shall” by striking out the word “will” and inserting in lieu thereof the word “must”;

On page twelve, subdivision 6.6.b., by striking out the word “will” where it appears beside the strikethrough of the word “shall” and by removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page twelve, subdivision 6.8.d., by striking out the word “will” where it appears beside the strikethrough of the word “shall” and by removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page twelve, subdivision 6.8.f., by striking out the word “must” where it appears beside the strikethrough of the word “shall” and by removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page thirteen, subdivision 7.2.a., by striking out the word “must” where it appears beside the strikethrough of the word “shall” and by removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page thirteen, subdivision 7.2.b.3, after the word “appropriate” and the comma by inserting the word “or”;

On page thirteen, subsection 7.3, by striking out the word “will” where it appears beside the strikethrough of the word “shall” and by removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page fourteen, subdivision 7.5.c., by striking out the word “will” where it appears beside the strikethrough of the word “shall” and by removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page fourteen, subdivision 7.6.a., by striking out the word “will” where it appears beside the strikethrough of the word “shall” and by removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page fourteen, subdivision 7.6.a., after the word “procure” by striking out the words “goods or services” and inserting in lieu thereof the words “specific commodities for immediate delivery”;

On page fourteen, subdivision 7.6.b., after the word “basis” by striking out the words “will permit” and inserting in lieu thereof the word “permits”;

On page fourteen, subdivision 7.6.b., after the word “procure” by striking out the words “goods or services” and inserting in lieu thereof the words “specific commodities for immediate delivery”;

On page fourteen, subdivision 7.6.b., after the word “unit” in the second sentence by deleting the word “must”;

On page fourteen, subdivision 7.5.b., after the words “if possible” by striking the comma and the words “and any” and inserting in lieu thereof a period and the word “Any”;

On page fourteen, subdivision 7.6.c., by striking out the word “will” in the two places it appears in that subdivision beside the strikethrough of the word “shall” and by removing the strikethroughs of the word “shall” in the two places they appear in that subsection so that the word “shall” is reinstated in the text;

On page fourteen, subdivision 7.6.c., after the words “procurement of” by striking out the words “goods or services” and inserting in lieu thereof the words “specific commodities for immediate delivery”;

On page fifteen, subdivision 7.7.b, by striking out the word “will” where it appears beside the strikethrough of the word “shall” and

by removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page fifteen and sixteen, throughout subsection 7.8, by striking out the word “will” in the four places where it appears beside the strikethrough of the word “shall” and by removing the strikethrough of the word “shall” in the four places that it appears in that subsection so that the word “shall” is reinstated in the text;

On page fifteen, subdivision 7.8.a.1.; after the word “Director” by striking the period;

On page sixteen, subdivision 7.9.b., by striking out the word “will” in the two places it appears in that subdivision beside the strikethrough of the word “shall” and by removing the strikethroughs of the word “shall” in the two places they appear in that subdivision so that the word “shall” is reinstated in the text;

On page seventeen, subdivision 7.10.d., by striking out the word “will” where it appears beside the strikethrough of the word “shall” and by removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page seventeen, subdivision 7.10.e., by striking out the word “will” where it appears beside the strikethrough of the word “shall” and by removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page seventeen, throughout subsection 7.11, by striking out the word “will” in the two places it appears in that section beside the strikethrough of the word “shall” and by removing the strikethroughs of the word “shall” in the two places they appear in that section so that the word “shall” is reinstated in the text;

On page seventeen, subdivision 7.12.a.2., after the word “between” and inserting the word “the”;

On page eighteen, subdivision 7.12.b.2., by striking out the word “must” where it appears beside the strikethrough of the word “shall” and by removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page eighteen, subdivision 7.12.c., by striking out the word “must” where it appears beside the strikethrough of the word “shall” and by removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page nineteen, subdivision 8.1.b., by striking out the word “must” where it appears beside the strikethrough of the word “shall” and by removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page nineteen, subdivision 8.1.c., by striking out the word “will” where it appears beside the strikethrough of the word “shall” and by removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page nineteen, subdivision 8.2.a., by striking out the word “will” where it appears beside the strikethrough of the word “shall” and by removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page twenty, subdivision 8.5., after the stricken word “shall” by striking out the words “will remain” and inserting in lieu thereof the word “remains”;

On page twenty, subsection 8.5., by striking out the word “will” where it appears beside the strikethrough of the word “shall” and by removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page twenty, subsection 9.2., by striking out the word “will” where it appears beside the strikethrough of the word “shall” and

by removing the strikethrough of the word “shall” so that the word “shall” is reinstated in the text;

On page twenty-one, section 11, by striking out the word “must” where it appears beside the strikethrough of the word “shall” throughout the section and by removing the strikethrough of the word “shall” where it appears throughout the section so that the word “shall” is reinstated in the text;

On page twenty-two, subsection 11.5., after the word “auction” by striking out the word “will” and inserting the word “shall”;

On page twenty-three, subsection 12.2., by removing the strikethrough of the word “shall” where it appears in that subsection so that the word “shall” is reinstated in the text;

On page twenty-three, subsection 12.2., after the word “them” by inserting the word “as”;

On page twenty-three, subsection 12.3., after the words “defined in” by striking out the word “W. Va.” and inserting in lieu thereof the words “West Virginia”;

On page twenty-four, subdivision 12.3.d., after the words “Purchasing Division” by striking the word “will” and inserting in lieu thereof the word “shall”;

On page twenty-four, subdivision 12.4.a., “Nothing contained herein” by striking out the words “will prohibit” and inserting in lieu thereof the word “prohibits”;

On page twenty-four, subdivision 12.4.c., after the words “spending unit” and the comma, by striking out the word “will” and inserting in lieu thereof the word “shall”;

On page twenty-four, subdivision 12.4.d., by striking out the word “will” in the two places it appears in that subdivision beside the



striking through of the word “shall” and by removing the striking throughs of the word “shall” in the two places they appear in that subdivision so that the word “shall” is reinstated in the text;

On page twenty-four, subdivision 12.4.d., by striking out the word “must” where it appears beside the striking through of the word “shall” and by removing the striking through of the word “shall” so that the word “shall” is reinstated in the text;

On page twenty-five, subdivision 12.4.d.3., after the words “the vendor” striking through the word “must” and inserting in lieu thereof the word “shall”;

On page twenty-five, subsection 12.5, by striking out the word “must” where it appears beside the striking through of the word “shall” and by removing the striking through of the word “shall” so that the word “shall” is reinstated in the text;

On page twenty-five, subsection 13.2., by removing the striking through of the word “shall” so that the word “shall” is reinstated in the text;

And,

On page twenty-five, subsection 13.5., by striking out the word “must” where it appears beside the striking through of the word “shall” and by removing the striking through of the word “shall” so that the word “shall” is reinstated in the text.”

(b) The legislative rule filed in the State Register on July 29, 2014, authorized under the authority of section forty-eight, article three, chapter five-a of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 16, 2014, relating to the Department of Administration (state owned vehicles, 148 CSR 3), is authorized.

(c) The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section forty-four, article three, chapter five-a of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 16, 2014, relating to the Department of Administration (state plan for the operation of the West Virginia State Agency for Surplus Property, 148 CSR 4, is authorized.

### **§64-2-2. Consolidated Public Retirement Board.**

(a) The legislative rule filed in the State Register on July 31, 2014, authorized under the authority of section one, article ten-d, chapter five of this code, relating to the Consolidated Public Retirement Board (refund, reinstatement, retroactive service, loan and employer error interest factors, 162 CSR 7), is authorized.

(b) The legislative rule filed in the State Register on July 31, 2014, authorized under the authority of section one, article ten-d, chapter five of this code, relating to the Consolidated Public Retirement Board (Deputy Sheriff Retirement System, 162 CSR 10), is authorized.

(c) The legislative rule filed in the State Register on the July 31, 2014, authorized under the authority of section one, article ten-d, chapter five of this code, relating to the Consolidated Public Retirement Board (service credit for accrued and unused sick and annual leave, 162 CSR 8), is authorized.

### **§64-2-3. Office of Technology.**

The legislative rule filed in the State Register on July 30, 2014, authorized under the authority of section four, article six, chapter five-a of this code, modified by the Office of Technology to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 3, 2014, relating to the Office of Technology (procedures for sanitization, retirement and disposition of information technology equipment, 163 CSR 1, is authorized.

The bill was then ordered to third reading.

Delegate Cowles moved that the constitutional rule requiring the bill to be fully and distinctly read on three different days be dispensed with.

On this question, the yeas and nays were taken (**Roll No. 521**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Ferro, Skinner and Trecost.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 522**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Walters.

ABSENT AND NOT VOTING: Arvon.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 142) passed.

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

On this question, the yeas and nays were taken (**Roll No. 523**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 142) takes effect from its passage.

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

**S. B. 195**, Authorizing Conservation Committee promulgate legislative rule relating to financial assistance programs; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk, on page two, section one, line six following the word “is”, by inserting the word “not”.

Whereupon,

Delegate Shott asked and obtained unanimous consent that the amendment be withdrawn.

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

“That § 64-9-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND  
BOARDS TO PROMULGATE LEGISLATIVE RULES.**

**§64-9-12. Conservation Committee.**

The legislative rule filed in the State Register on July 28, 2014, authorized under the authority of section four-a, article twenty-one-a, chapter nineteen of this code, modified by the Conservation Committee to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 21, 2014,

relating to the Conservation Committee (financial assistance programs,(63 CSR 2), is not authorized.”

The bill was then ordered to third reading.

**Com. Sub. for S. B. 234**, Exempting certain water and sewer utilities owned by political subdivisions from PSC jurisdiction; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page two after the enacting section by striking out the remainder of the bill and inserting in lieu thereof the following:

“That §8-12-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §8-16-19 of said code be amended and reenacted; that §8-19-4 of said code be amended and reenacted; that §16-13A-1a, §16-13A-9 and §16-13A-25 of said code be amended and reenacted; that §24-1-1, §24-1-1b and 24-1-2 of said code be amended and reenacted; that §24-2-1, §24-2-2, §24-2-3, §24-2- 4a, §24-2-4b, §24-2-7 and §24-2-11 of said code be amended and reenacted; and that §24-3-5 of said code be amended and reenacted, all to read as follows:

## **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.**

#### **§8-12-17. Sale or lease of municipal public utility.**

In any case where a municipality ~~shall~~ owns a gas system, an electric system, a waterworks system, a sewer system or other public utility, and a majority of not less than sixty percent of the members of the governing body thereof shall deem it for the best interest of such municipality that such utility be sold or leased, the governing body shall, by ordinance legally adopted, submit to the qualified voters of

~~such municipality, at any regular municipal election or at any special municipal election called for that purpose, the question of making or effecting such sale or lease. In such case the governing body shall, in the ordinance submitting such question to a vote, set forth in full the terms of such proposed sale or lease, the name of the proposed purchaser or lessee and the date of such election, and a notice containing this information shall be published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such municipality. Such election shall be held in all respects in compliance with the provisions of chapter three of this code, so far as the same are applicable and not inconsistent herewith, and the provisions of article five of this chapter. If a majority of the legal votes cast at such election upon such question be in favor of the proposed sale or lease of such utility, may so sell or lease such gas system, electric system, waterworks system, sewer system or other public utility upon such terms and conditions as said governing body in its discretion, considers in the best interest of the municipality: Provided, That such sale or lease may be made only upon (1) the publication of notice of a hearing before the governing body of the municipality, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in a newspaper published and of general circulation in the municipality, such publication to be made not earlier than twenty days and not later than seven days prior to the hearing, and (2) the approval by the Public Service Commission of West Virginia. ~~the governing body, upon the ascertainment of the result of such election, The governing body, upon the approval of the sale or lease by a majority of its members of not less than sixty percent of the members of the governing body, shall have full power and authority to proceed to execute or effect such sale or lease in accordance with the terms and conditions prescribed in the ordinance approved as aforesaid, and shall have power to do any and all things necessary or incident thereto: Provided, That if at any time after such election approval and before the execution of the authority under the ordinance, any person should present to the governing body~~~~

an offer to buy such public utility at a price which exceeds by at least five percent the sale price which shall have been so ~~voted upon~~ approved and authorized or to lease the same upon terms which the governing body, in its discretion, shall consider more advantageous to the municipality than the terms of the lease which shall have been ~~authorized by vote~~ previously approved as aforesaid, the governing body shall have the power to accept such subsequent offer, and to make such sale or such lease to the person making the offer, ~~without resubmitting the question to a vote~~ upon approval of the offer by a majority of not less than sixty percent of the members of the governing body; but, if a sale shall have been ~~authorized by vote~~ approved by the governing body as aforesaid, and ~~such~~ the subsequent proposition be for a lease, or, if a lease shall have been ~~so authorized~~ approved by the governing body, and the subsequent proposition shall be for a sale, the governing body shall have ~~no power~~ the authority to accept the same ~~without submitting the question thereof to a vote of the people as first above provided~~ upon approval of the offer by a majority of not less than sixty percent of the members of the governing body. ~~Before any such second or subsequent proposition shall be submitted to a vote,~~ after a sale or lease shall have been authorized at an election held ~~hereunder,~~ The person making such proposition shall furnish bond, with security to be approved by the governing body, in a penalty of not less than twenty-five percent of such proposed bid, conditioned to carry such proposition into execution, if the same shall be approved ~~at the election to be called thereon~~ by the governing body. In any case where any such public utility shall be sold or leased by the governing body as hereinabove provided, no part of the moneys derived from such sale or lease shall be applied to the payment of current expenses of the municipality, but the proceeds of such sale or lease shall be applied in payment and discharge of any ~~bonded~~ indebtedness created in respect to such public utility, and in case there be no ~~bonded~~ indebtedness, the governing body, in its discretion, shall have the power and authority to expend all such moneys when received for the purchase or construction of firefighting equipment and buildings for housing such equipment, a municipal building or city hall, and the necessary land upon which to

locate the same, or for the construction of paved streets, avenues, roads, alleys, ways, sidewalks, sewers and other like permanent improvements, and for no other purposes. In case there be a surplus after the payment of such ~~bonded~~ indebtedness, the surplus shall be used as aforesaid.

The requirements of this section shall not apply to the sale or lease of any part of the properties of any such public utility determined by the governing body to be unnecessary for the efficient rendering of the service of such utility.

**§8-16-19. Appeal to Public Service Commission from rates fixed.**

If any party in interest is dissatisfied with the rates fixed under the provisions of ~~the immediately preceding section of this article~~ section eighteen, article sixteen, chapter eight of this code, such party shall have the right to appeal to the Public Service Commission at any time within thirty days after the fixing of such rates by the governing body, but the rates so fixed by the governing body shall remain in full force and effect, until set aside, altered or amended by the Public Service Commission.

**ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.**

**§8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on bonds; rates for services; exemption from taxation.**

Whenever a municipality or county commission shall, under the provisions of this article, determine to acquire, by purchase or otherwise, construct, establish, extend or equip a waterworks system or an electric power system, or to construct any additions, betterments or improvements to any waterworks or electric power system, it shall cause an estimate to be made of the cost thereof, and may, by ordinance or order, provide for the issuance of revenue bonds under the provisions of this article, which ordinance or order shall set forth a brief description of the contemplated undertaking, the estimated cost



thereof, the amount, rate or rates of interest, the time and place of payment and other details in connection with the issuance of the bonds. ~~Such~~ The bonds shall be in such form and shall be negotiated and sold in such manner and upon such terms as the governing body of such municipality or county commission may, by ordinance or order, specify. All ~~such~~ the bonds and the interest thereon shall be exempt from all taxation by this state, or any county, municipality or county commission, political subdivision or agency thereof. Notwithstanding any other provision of this code to the contrary, the real and personal property which a municipality or county has acquired and constructed according to the provisions of this article, and any leasehold interest therein held by other persons, shall be deemed public property and shall be exempt from taxation by the state, or any county, municipality or other levying body, so long as the same is owned by ~~such~~ the municipality or county: *Provided*, That with respect to electric power systems, this exemption for real and personal property shall be applicable only for ~~such~~ the real and personal property: (1) Physically situate within the municipal or county boundaries of the municipality or county which acquired or constructed ~~such~~ the electric power system and there was in place prior to the effective date of the amendments to this section made in the year 1992 an agreement between the municipality and the county commission for payments in lieu of tax; or (2) acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the electric power system is or is to be physically situate. Notwithstanding anything contained in this statute to the contrary, this exemption shall be applicable to any leasehold or similar interest held by persons other than a municipality or county only if acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the electric power system is or is to be physically situate: *Provided, however*, That payments made to any county commission, county school board or municipality in lieu of tax pursuant to such an agreement shall be distributed as if the payments resulted from ad valorem property taxation. ~~Such~~ The bonds shall bear

interest at a rate per annum set by the municipality or county commission, payable at such times, and shall be payable as to principal at such times, not exceeding fifty years from their date, and at such place or places, within or without the state, as shall be prescribed in the ordinance or order providing for their issuance. Unless the governing body of the municipality or county commission shall otherwise determine, ~~such~~ the ordinance or order shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired, constructed, established, extended or equipped, fix minimum rates or charges for water or electricity to be collected prior to the payment of all of said bonds and shall pledge the revenues derived from the waterworks or electric power system for the purpose of paying ~~such~~ the bonds and interest thereon, which pledge shall definitely fix and determine the amount of revenues which shall be necessary to be set apart and applied to the payment of the principal of and interest upon the bonds and the proportion of the balance of ~~such~~ the revenues, which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper maintenance and operation thereof. The rates or charges to be charged for the services from ~~such~~ the waterworks or electric power system shall be sufficient at all times to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and when the same become due, and reasonable reserves therefor, and to provide for the repair, maintenance and operation of the waterworks or electric power system, and to provide an adequate depreciation fund, and to make any other payments which shall be required or provided for in the ordinance or order authorizing the issuance of said bonds.

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 13A. PUBLIC SERVICE DISTRICTS.**

#### **§16-13A-1a. Jurisdiction of the Public Service Commission.**

The jurisdiction of the Public Service Commission relating to public service districts shall be expanded to include the following

powers and ~~such~~ the powers shall be in addition to all other powers of the Public Service Commission set forth in this code:

(a) To study, modify, approve, deny or amend the plans created under section one-b of this article for consolidation or merger of public service districts and their facilities, personnel or administration;

(b) To petition the appropriate circuit court for the removal of a public service district board member or members; and

(c) To create by general order a separate division within the Public Service Commission to provide assistance to public service districts in technological, operational, financial and regulatory matters, including, upon written request of the public service board, assistance to the board in deliberations regarding a proposed rate change or project.

**§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.**

(a) (1) The board may make, enact and enforce all needful rules in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district. The board shall establish, in accordance with this article, rates, fees and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of the public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds under this article. The schedule of the rates, fees and charges may be based upon:

(A) The consumption of water or gas on premises connected with the facilities, taking into consideration domestic, commercial, industrial and public use of water and gas;

(B) The number and kind of fixtures connected with the facilities located on the various premises;

(C) The number of persons served by the facilities;

(D) Any combination of paragraphs (A), (B) and (C) of this subdivision; or

(E) May be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

(2) The board of a public service district with at least four thousand five hundred customers and annual combined gross revenue of \$3 million or more from its separate or combined services may make, enact and enforce all needful rules in connection with the enactment or amendment of rates, fees and charges of the district. At a minimum, these rules shall provide for:

(A) Adequate prior public notice of the contemplated rates, fees and charges by causing a notice of intent to effect such a change to be specified on the monthly billing statement of the customers of the district for the month next preceding the month in which the contemplated change is to be before the board on first reading.

(B) Adequate prior public notice of the contemplated rates, fees and charges by causing to be published as a Class I legal advertisement of the proposed action, in compliance with the provisions of article three, chapter fifty-nine of the code. The publication area for publication shall be all territory served by the district. If the district provides service in more than one county, publication shall be made in a newspaper of general circulation in each county that the district provides service.

(C) The public notice of the proposed action shall state the current rates, fees and charges and the proposed changes to said rates, fees and charges; the date, time and place of both a public hearing on the proposal and the proposed final vote on adoption; and the place or places within the district where the proposed rates, fees and charges may be inspected by the public. A reasonable number of copies of the proposal shall be kept at the place or places and be made available for public inspection. The notice shall also advise that interested parties may appear at the public hearing before the board and be heard with respect to the proposed rates, fees and charges.

(D) The proposed rates, fees and charges shall be read at two meetings of the board with at least two weeks intervening between each meeting. The public hearing may be conducted with or following the second reading.

(E) Rates, fees and charges approved by an affirmative vote of the board shall be forwarded in writing to the county commission appointing the approving board. The county commission shall publish notice of the proposed rates, fees and charges by a Class 1 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of the code. Within forty-five days of receipt of the proposed rates, fees and charges, the county commission shall take action to approve or reject the proposed rates, fees and charges. After forty-five days, ~~and absent action by the county commission,~~ the proposed rates, fees and charges shall be effective with no further action by the board or county commission. In any event, this forty-five-day period ~~may be~~ shall be mandatory unless extended by the official action of both the board proposing the rates, fees and charges, and the appointing county commission.

(F) Enactment of the proposed rates, fees and charges shall follow an affirmative vote ~~or inaction~~ by the county commission and shall be effective no sooner than forty-five days following ~~action or inaction by the county commission~~. The forty-five-day waiting period may be waived by public vote of the county commission only if the

commission finds and declares the district to be in financial distress such that the forty-five day waiting period would be detrimental to the ability of the district to deliver continued and compliant public services.

(2) (3) Where water, sewer, stormwater or gas services, or any combination thereof, are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate of the charges. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. Notwithstanding the provisions of section eight, article three, chapter twenty-four of this code to the contrary, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the applicant's specific customer class or \$50, with the district to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. If a district provides both water and sewer service, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage for water service or \$50 and the greater of a sum equal to two twelfths of the average annual usage for wastewater service of the applicant's specific customer class or \$50. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another deposit equal to the greater of a sum equal to two twelfths of the average usage for the applicant's specific customer class or \$50 has been remitted to the district. After twelve months of prompt payment history, the district shall return the deposit to the customer or credit the customer's account at a rate as the Public Service Commission may prescribe: *Provided*, That where the customer is a tenant, the district is not required to return the deposit until the time the tenant discontinues service with the district.

Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The board may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both, ten days after the water or gas services become delinquent: *Provided, however,* That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the board to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(b) In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately water facilities, sewer facilities or stormwater facilities and the district owns and operates another kind of facility, either water or sewer, or both, as the case may be, then the district and the publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer or stormwater service fees and charges: *Provided,* That any contracts entered into by a public service district pursuant to this section shall be submitted to the Public Service Commission for approval. Any public service district which provides water and sewer service, water and stormwater service or water, sewer and stormwater service has the right to terminate water service for delinquency in payment of water, sewer or stormwater bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer or stormwater district is providing water service and the district providing sewer or stormwater service experiences a delinquency in payment, the district or the municipality included within the boundaries

of the sewer or stormwater district that is providing water service, upon the request of the district providing sewer or stormwater service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer or stormwater account: *Provided, however,* That any termination of water service must comply with all rules and orders of the Public Service Commission: *Provided further,* That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the public service districts to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(c) Any district furnishing sewer facilities within the district may require or may, by petition to the circuit court of the county in which the property is located, compel or may require the Division of Health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any sewer facilities where sewage will flow by gravity or be transported by other methods approved by the Division of Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code, from the houses, dwellings or buildings into the sewer facilities, to connect with and use the sewer facilities and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from the houses, dwellings and buildings where there is gravity flow or transportation by any other methods approved by the Division of Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code and the houses, dwellings and buildings can be adequately served by the sewer facilities of the district and it is declared that the mandatory use of the sewer facilities provided for in this subsection is necessary and essential for the health and welfare of the inhabitants and residents of the districts and of the state. If the public service district requires the property owner to connect with the sewer facilities even when sewage from dwellings may not flow to the main line by gravity and the property owner incurs costs for any changes in the existing dwellings'



exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for the changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump or any other method approved by the Division of Health. Maintenance and operation costs for the extra installation should be reflected in the users charge for approval of the Public Service Commission. The circuit court shall adjudicate the merits of the petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

(d) Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near the sewer facility and the engineer for the district has certified that the sewer facilities are available to and are adequate to serve the owner, tenant or occupant and sewage will flow by gravity or be transported by other methods approved by the Division of Health from the house, dwelling or building into the sewer facilities, the district may charge, and the owner, tenant or occupant shall pay, the rates and charges for services established under this article only after thirty-day notice of the availability of the facilities has been received by the owner, tenant or occupant. Rates and charges for sewage services shall be based upon actual water consumption or the average monthly water consumption based upon the owner's, tenant's or occupant's specific customer class.

(e) The owner, tenant or occupant of any real property may be determined and declared to be served by a stormwater system only after each of the following conditions is met: (1) The district has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40 C. F. R. §122.26; (2) the district's authority has been properly expanded to operate and maintain a stormwater system; (3) the district has made available a stormwater system where stormwater from the real property affects or drains into the stormwater system; and (4) the real property is located in the Municipal Separate Storm Sewer

System's designated service area. It is further hereby found, determined and declared that the mandatory use of the stormwater system is necessary and essential for the health and welfare of the inhabitants and residents of the district and of the state. The district may charge and the owner, tenant or occupant shall pay the rates, fees and charges for stormwater services established under this article only after thirty days' notice of the availability of the stormwater system has been received by the owner. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(f) All delinquent fees, rates and charges of the district for either water facilities, sewer facilities, gas facilities or stormwater systems or stormwater management programs are liens on the premises served of equal dignity, rank and priority with the lien on the premises of state, county, school and municipal taxes. Nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the public service districts to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill. In addition to the other remedies provided in this section, public service districts are granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer, stormwater or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts: *Provided*, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the public service district to purchase the services or facilities.

(g) Anything in this section to the contrary notwithstanding, any establishment, as defined in section three, article eleven, chapter twenty-two of this code, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the Department of Environmental Protection, as prescribed by section eleven of said article, is exempt from the provisions of this section.

(h) A public service district which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall prepare an annual report detailing the collection and expenditure of rates, fees or charges and make it available for public review at the place of business of the governing body and the stormwater utility main office.

**§16-13A-25. Borrowing and bond issuance; procedure.**

~~(a) Notwithstanding any other provisions of this article to the contrary, a A public service district ~~may not~~ has plenary power to borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four of this article, ~~without the prior consent and approval of the Public Service Commission. *Provided*, That approval of funding set forth in section eleven, article two, chapter twenty-four of this code or this section is not required if the funding is for a project which has received a certificate of public convenience and necessity after July 8, 2005, from the commission and where the cost of the project changes but the change does not affect the rates established for the project. Upon written request of the public service board contemplating such transaction or project, the Public Service Commission shall provide technical support to the public service board, including, but not limited to, engineering, design and financial analysis of the proposed transaction or project.~~~~

~~(b) The Public Service Commission may waive the provision of prior consent and approval for entering into contracts for engineering;~~

~~design or feasibility studies pursuant to this section for good cause shown which is evidenced by the public service district filing a request for waiver of this section stated in a letter directed to the commission with a brief description of the project, a verified statement by the board members that the public service district has complied with chapter five-g of this code, and further explanation of ability to evaluate their own engineering contract, including, but not limited to:~~

~~(1) Experience with the same engineering firm; or~~

~~(2) Completion of a construction project requiring engineering services. The district shall also forward an executed copy of the engineering contract to the commission after receiving approval of the waiver.~~

~~(c) An engineering contract that meets one or more of the following criteria is exempt from the waiver or approval requirements:~~

~~(1) A contract with a public service district that is a Class A utility on April 1, 2003, or subsequently becomes a Class A utility as defined by commission rule;~~

~~(2) A contract with a public service district that does not require borrowing and that can be paid out of existing rates;~~

~~(3) A contract where the payment of engineering fees are contingent upon the receipt of funding, and commission approval of the funding, to construct the project which is the subject of the contract; or~~

~~(4) A contract that does not exceed \$15,000.~~

~~(d) Requests for approval or waivers of engineering contracts shall be deemed granted thirty days after the filing date unless the staff of the Public Service Commission or a party files an objection to the request. If an objection is filed, the Public Service Commission shall issue its decision within one hundred twenty days of the filing date. In the event objection is received to a request for a waiver, the application~~

~~shall be considered a request for waiver as well as a request for approval in the event a waiver is not appropriate.~~

~~(e) Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the Public Service Commission in accordance with the provision of chapter twenty-four of this code when a public service district is seeking to acquire or construct public service property.~~

## CHAPTER 24. PUBLIC SERVICE COMMISSION.

### ARTICLE 1. GENERAL PROVISIONS.

#### **§24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of plan as rule; cooperation with Joint Committee on Government and Finance.**

(a) It is the purpose and policy of the Legislature in enacting this chapter to confer upon the Public Service Commission of this state the authority and duty to enforce and regulate the practices, services and rates of public utilities in order to:

(1) Ensure fair and prompt regulation of public utilities in the interest of the using and consuming public;

(2) Provide the availability of adequate, economical and reliable utility services throughout the state;

(3) Encourage the well-planned development of utility resources in a manner consistent with state needs and in ways consistent with the productive use of the state's energy resources, such as coal;

(4) Ensure that rates and charges for utility services are just, reasonable, applied without unjust discrimination or preference,

applied in a manner consistent with the purposes and policies set forth in article two-a of this chapter, and based primarily on the costs of providing these services;

(5) Encourage energy conservation and the effective and efficient management of regulated utility enterprises; and

(6) Encourage removal of artificial barriers to rail carrier service, stimulate competition, stimulate the free flow of goods and passengers throughout the state and promote the expansion of the tourism industry, thereby improving the economic condition of the state.

(b) The Legislature creates the Public Service Commission to exercise the legislative powers delegated to it. The Public Service Commission is charged with the responsibility for appraising and balancing the interests of current and future utility service customers, the general interests of the state's economy and the interests of the utilities subject to its jurisdiction in its deliberations and decisions.

(c) The Legislature directs the Public Service Commission to identify, explore and consider the potential benefits or risks associated with emerging and state-of-the-art concepts in utility management, rate design and conservation. The commission may conduct inquiries and hold hearings regarding such concepts in order to provide utilities subject to its jurisdiction and other interested persons the opportunity to comment, and shall report to the Governor and the Legislature regarding its findings and policies to each of these areas not later than the first day of the regular session of the Legislature in the year 1985, and every two years thereafter.

(d) It is legislative policy to ensure that the Legislature and the general public become better informed regarding the regulation of public utilities in this state and the conduct of the business of the Public Service Commission. To aid in the achievement of this policy, the Public Service Commission annually shall present to the Joint Committee on Government and Finance, created by article three, chapter four of this code, or a subcommittee designated by the joint

committee, a management summary report which describes in a concise manner:

(1) The major activities of the commission for the year especially as such activities relate to the implementation of the provisions of this chapter;

(2) Important policy decisions reached and initiatives undertaken during the year;

(3) The current balance of supply and demand for natural gas and electric utility services in the state and forecast of the probable balance for the next ten years; and

(4) Other information considered by the commission to be important including recommendations for statutory reform and the reasons for such recommendations.

(e) In addition to any other studies and reports required to be conducted and made by the Public Service Commission pursuant to any other provision of this section, the commission shall study and initially report to the Legislature no later than the first day of the regular session of the Legislature in the year 1980 upon:

(1) The extent to which natural gas wells or wells heretofore supplying gas utilities in this state have been capped off or shut in; the number of such wells; their probable extent of future production and the reasons given and any justification for capping off or shutting in such wells; the reasons, if any, why persons engaged or heretofore engaged in the development of gas wells in this state or the Appalachian areas have been discouraged from drilling, developing or selling the production of such wells; and whether there are fixed policies by any utility or group of utilities to avoid the purchase of natural gas produced in the Appalachian region of the United States generally and in West Virginia specifically.

(2) The extent of the export and import of natural gas utility supplies in West Virginia.

(3) The cumulative effect of the practices mentioned in subdivisions (1) and (2) of this subsection upon rates theretofore and hereafter charged gas utility customers in West Virginia. In carrying out the provisions of this section the commission shall have jurisdiction over such persons, whether public utilities or not, as may be in the opinion of the commission necessary to the exercise of its mandate and may compel attendance before it, take testimony under oath and compel the production of papers or other documents. Upon reasonable request by the commission, all other state agencies shall cooperate with the commission in carrying out the provisions and requirements of this subsection.

(f) No later than the first day of the regular session of the Legislature in the year 1980, the Public Service Commission shall submit to the Legislature a plan for internal reorganization which plan shall specifically address the following:

(1) A division within the Public Service Commission which shall include the office of the commissioners, the hearing examiners and such support staff as may be necessary to carry out the functions of decision making and general supervision of the commission, which functions shall not include advocacy in cases before the commission;

(2) The creation of a division which shall act as an advocate for the position of and in the interest of all customers;

(3) The means and procedures by which the division to be created pursuant to the provisions of subdivision (2) of this subsection shall protect the interests of each class of customers and the means by which the commission will assure that such division will be financially and departmentally independent of the division created by subdivision (1) of this subsection;

(4) The creation of a division within the Public Service Commission which shall assume the duties and responsibilities now charged to the commissioners with regard to motor carriers which



division shall exist separately from those divisions set out in subdivisions (1) and (2) of this subsection and which shall relieve the commissioners of all except minimal administrative responsibilities as to motor carriers and which plan shall provide for a hearing procedure to relieve the commissioners from hearing motor carrier cases;

(5) Which members of the staff of the Public Service Commission shall be exempted from the salary schedules or pay plan adopted by the civil service commission and identify such staff members by job classification or designation, together with the salary or salary ranges for each such job classification or designation;

(6) The manner in which the commission will strengthen its knowledge and independent capacity to analyze key conditions and trends in the industries it regulates extending from general industry analysis and supply-demand forecasting to continuing and more thorough scrutiny of the capacity planning, construction management, operating performance and financial condition of the major companies within these industries.

Such plan shall be based on the concept that each of the divisions mentioned in subdivisions (1), (2) and (4) of this subsection shall exist independently of the others and the plan shall discourage ex parte communications between them by such means as the commission shall direct, including, but not limited to, separate clerical and professional staffing for each division. Further, the Public Service Commission is directed to incorporate within the said plan to the fullest extent possible the recommendations presented to the subcommittee on the Public Service Commission of the Joint Committee on Government and Finance in a final report dated February, 1979, and entitled 'A Plan for Regulatory Reform and Management Improvement'.

The commission shall, before January 5, 1980, adopt said plan by order, which order shall promulgate the same as a rule of the commission to be effective upon the date specified in said order, which date shall be no later than December 31, 1980. Certified copies of such

order and rule shall be filed on the first day of the 1980 regular session of the Legislature, by the chairman of the commission with the clerk of each house of the Legislature, the Governor and the Secretary of State. The chairman of the commission shall also file with the Office of the Secretary of State the receipt of the clerk of each house and of the Governor, which receipt shall evidence compliance with this section.

Upon the filing of a certified copy of such order and rule, the clerk of each house of the Legislature shall report the same to their respective houses and the presiding officer thereof shall refer the same to appropriate standing committee or committees.

Within the limits of funds appropriated therefor, the rule of the Public Service Commission shall be effective upon the date specified in the order of the commission promulgating it unless an alternative plan be adopted by general law or unless the rule is disapproved by a concurrent resolution of the Legislature adopted prior to adjournment sine die of the regular session of the Legislature to be held in the year 1980: *Provided*, That if such rule is approved in part and disapproved in part by a concurrent resolution of the Legislature adopted prior to such adjournment, such rule shall be effective to the extent and only to the extent that the same is approved by such concurrent resolution.

The rules promulgated and made effective pursuant to this section shall be effective notwithstanding any other provisions of this code for the promulgation of rules or regulations.

(g) The Public Service Commission is hereby directed to cooperate with the Joint Committee on Government and Finance of the Legislature in its review, examination and study of the administrative operations and enforcement record of the Railroad Safety Division of the Public Service Commission and any similar studies.

(h) (1) The Legislature hereby finds that rates for natural gas charged to customers of all classes have risen dramatically in recent years to the extent that such increases have adversely affected all

customer classes. The Legislature further finds that it must take action necessary to mitigate the adverse consequences of these dramatic rate increases.

(2) The Legislature further finds that the practices of natural gas utilities in purchasing high-priced gas supplies, in purchasing gas supplies from out-of-state sources when West Virginia possesses abundant natural gas, and in securing supplies, directly or indirectly by contractual agreements including take-or-pay provisions, indefinite price escalators or most-favored nation clauses have contributed to the dramatic increase in natural gas prices. It is therefore the policy of the Legislature to discourage such purchasing practices in order to protect all customer classes.

(3) The Legislature further finds that it is in the best interests of the citizens of West Virginia to encourage the transportation of natural gas in intrastate commerce by interstate or intrastate pipelines or by local distribution companies in order to provide competition in the natural gas industry and in order to provide natural gas to consumers at the lowest possible price.

(i) The Legislature further finds that transactions between utilities and affiliates are a contributing factor to the increase in natural gas and electricity prices and tend to confuse consideration of a proper rate of return calculation. The Legislature therefore finds that it is imperative that the Public Service Commission have the opportunity to properly study the issue of proper rate of return for lengthy periods of time and to limit the return of a utility to a proper level when compared to return or profit that affiliates earn on transactions with sister utilities.

(j) The Legislature further finds that water and sewer utilities that are political subdivisions of the state providing separate or combined services and having at least four thousand five hundred customers and annual gross revenues of \$3 million or more are most fairly and effectively regulated by the local governing body with respect to rates, borrowing and capital projects. Therefore, notwithstanding any

contrary provisions of this section, the jurisdiction of the Public Service Commission over water and sewer utilities that are political subdivisions of the state is limited to that granted specifically in this code.

(k) The Legislature further finds that an adequate cash working capital fund is essential to allow water and sewer utilities that are political subdivision of the state to deliver continuous and compliant service. Therefore, these utilities shall maintain a working capital reserve in an amount of no less than one eighth of actual annual operation and maintenance expense. This reserve shall be separate and distinct from and in addition to any repair and replacement fund that may be required by bond covenants.

#### **§24-1-1b. Supplemental rule for reorganization.**

The Public Service Commission shall, by general order, create a division within its staff which shall, upon written request of the governing body of a political subdivision that operates a water, sewer and/or stormwater utility, provide legal, operational, engineering, financial, rate making and accounting advice and assistance to public service districts and Class III and Class IV towns or villages water, sewer and/or stormwater utilities that are political subdivisions of the state, in operational, financial, and regulatory matters, and may perform or participate in the studies required under section one-b, article thirteen-a, chapter sixteen of this code: *Provided, That advice and assistance to a Class III city or Class IV town or village shall only be given if such advice or assistance is specifically requested by the Class III city or the Class IV town or village.* ~~The request may be withdrawn by the city or town at any time, after which the commission shall not provide further assistance or advice.~~

#### **§24-1-2. Definitions.**

Except where a different meaning clearly appears from the context, the words 'public utility' when used in this chapter shall mean and

include any person or persons, or association of persons, however associated, whether incorporated or not, including municipalities, engaged in any business, whether herein enumerated or not, which is, or shall hereafter be held to be, a public service. Whenever in this chapter the words 'commission' or 'Public Service Commission' occur, such word or words shall, unless a different intent clearly appears from the context, be taken to mean the Public Service Commission of West Virginia. Whenever used in this chapter, 'customer' shall mean and include any person, firm, corporation, municipality, public service district or any other entity who purchases a product or services of any utility and shall include any such person, firm, corporation, municipality, public service district or any other entity who purchases such services or product for resale. Whenever in this chapter the words 'governing body' occur, such word or words shall, unless a different intent clearly appears from the context, be taken to mean the municipal body charged with the authority and responsibility of enacting ordinances of the municipality, as defined in section two, article one, chapter eight of this code, or a public service board of a public service district, as defined in section three, article thirteen-a, chapter sixteen of this code.

## **ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**

### **§24-2-1. Jurisdiction of commission; waiver of jurisdiction.**

(a) The jurisdiction of the commission shall extend to all public utilities in this state and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation

and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas or electricity by municipalities or others; sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems: *Provided*, That if a public utility other than a political subdivision intends to provide sewer service by an innovative, alternative method, as defined by the federal Environmental Protection Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction of the Public Service Commission regardless of the number of customers served by the innovative, alternative method; any public service district created under the provisions of article thirteen-a, chapter sixteen of this code; toll bridges, wharves, ferries; solid waste facilities; and any other public service: *Provided, however*, That natural gas producers who provide natural gas service to not more than twenty-five residential customers are exempt from the jurisdiction of the commission with regard to the provisions of such residential service: *Provided further*, That upon request of any of the customers of such natural gas producers, the commission may, upon good cause being shown, exercise such authority as the commission may deem appropriate over the operation, rates and charges of such producer and for such length of time as the commission may consider to be proper: ~~*And provided further*, That the jurisdiction the commission may exercise over the rates and charges of municipally operated public utilities is limited to that authority granted the commission in section four-b of this article: *And provided further*, That the decision making authority granted to the commission in sections four and four-a of this article shall, in respect to an application filed by a public service district, be delegated to a single hearing examiner appointed from the commission staff, which hearing examiner shall be authorized to carry out all decision-making duties assigned to the commission by said sections, and to issue orders having the full force and effect of orders of the commission:~~

(b) The jurisdiction of the commission over political subdivisions of this state providing separate or combined services and having at

least four thousand five hundred customers and annual combined gross revenues of \$3 million or more that are political subdivisions of the state is limited to:

(1) General supervision of public utilities, as granted and described in section five of this article;

(2) Regulation of measurements, practices, acts or services, as granted and described in section seven of this article;

(3) Regulation of a system of accounts to be kept by a public utility that is a political subdivision of the state, as granted and described in section eight of this article;

(4) Submission of information to the commission regarding rates, tolls, charges or practices, as granted and described in section nine of this article;

(5) Authority to subpoena witnesses, take testimony and administer oaths to any witness in any proceeding before or conducted by the commission, as granted and described in section ten of this article; and

(6) Investigation and resolution of disputes involving political subdivisions of the state regarding inter-utility agreements, rates, fees and charges, service areas and contested utility combinations.

(7) Customers of water and sewer utilities operated by a political subdivision of the state and customers of stormwater utilities operated by a public service district may bring formal or informal complaints regarding the commission's exercise of the powers enumerated in this section and the commission shall resolve these complaints.

(8) In the event that a political subdivision has a deficiency in either its bond revenue or bond reserve accounts, or is otherwise in breach of a bond covenant, the bond holder may petition the Public Service Commission for such redress as will bring the accounts to current status or otherwise resolve the breached covenant, and the

Commission shall have jurisdiction to fully resolve the alleged deficiency or breach.

~~(b)~~-(c) The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the State of West Virginia;

(2) Said area can be provided with utility service by a utility which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and

(4) The number of customers to be served is not substantial. The rates the out-of-state utility charges West Virginia customers shall be the same as the rate the utility is duly authorized to charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.

~~(c)~~ (d) Any other provisions of this chapter to the contrary notwithstanding:

(1) An owner or operator of an electric generating facility located or to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which such facility the owner or operator holds a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article as if the certificate of public convenience and necessity for such facility were a siting certificate issued under said section and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with



respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

(2) Any person, corporation or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which facility the owner or operator does not hold a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity pursuant to the provisions of section eleven of this article. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

(3) An owner or operator of an electric generating facility located in this state that had not been designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility, that generates electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both such sales at retail and such sales at wholesale and that had been constructed and had engaged in commercial operation on or before July 1, 2003, shall not be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility, regardless of whether such facility subsequent to its construction has been or will be designated as an exempt wholesale generator under applicable federal

law: *Provided*, That such owner or operator shall be subject to subdivision (5) of this subsection if a material modification of such facility is made or constructed.

(4) Any person, corporation or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has not been or will not be designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility, that will generate electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both such sales at retail and such sales at wholesale and that had not been constructed and had not been engaged in commercial operation on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity pursuant to the provisions of section eleven of this article. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

(5) An owner or operator of an electric generating facility described in this subsection shall, before making or constructing a material modification of the facility that is not within the terms of any certificate of public convenience and necessity or siting certificate previously issued for the facility or an earlier material modification thereof, obtain a siting certificate for the modification from the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity for the modification pursuant to the provisions of section eleven of this

article and, except for the provisions of section eleven-c of this article, shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such modification.

(6) The commission shall consider an application for a certificate of public convenience and necessity filed pursuant to section eleven of this article to construct an electric generating facility described in this subsection or to make or construct a material modification of such electric generating facility as an application for a siting certificate pursuant to section eleven-c of this article if the application for the certificate of public convenience and necessity was filed with the commission prior to July 1, 2003, and if the commission has not issued a final order thereon as of that date.

(7) The limitations on the jurisdiction of the commission over, and on the applicability of the provisions of this chapter to, the owner or operator of an electric generating facility as imposed by, and described in this subsection, shall not be deemed to affect or limit the commission's jurisdiction over contracts or arrangements between the owner or operator of such facility and any affiliated public utility subject to the provisions of this chapter.

#### **§24-2-2. General power of commission to regulate public utilities.**

(a) The commission is hereby given power to investigate all rates, methods and practices of public utilities subject to the provisions of this chapter; to require them to conform to the laws of this state and to all rules, regulations and orders of the commission not contrary to law; and to require copies of all reports, rates, classifications, schedules and timetables in effect and used by the public utility or other person to be filed with the commission, and all other information desired by the commission relating to the investigation and requirements, including inventories of all property in such form and detail as the commission may prescribe. The commission may compel obedience to its lawful orders by mandamus or injunction or other proper proceedings in the name of the state in any circuit court having jurisdiction of the parties

or of the subject matter, or the Supreme Court of Appeals directly, and the proceedings shall have priority over all pending cases. The commission may change any intrastate rate, charge or toll which is unjust or unreasonable or any interstate charge with respect to matters of a purely local nature which have not been regulated by or pursuant to an act of Congress and may prescribe a rate, charge or toll that is just and reasonable, and change or prohibit any practice, device or method of service in order to prevent undue discrimination or favoritism between persons and between localities and between commodities for a like and contemporaneous service. But in no case shall the rate, toll or charge be more than the service is reasonably worth, considering the cost of the service. Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in the order, or until revoked or modified by the commission, unless the order is suspended, modified or revoked by order or decree of a court of competent jurisdiction: *Provided*, That in the case of utilities used by emergency shelter providers, the commission shall prescribe such rates, charges or tolls that are the lowest available. ‘Emergency shelter provider’ means any nonprofit entity which provides temporary emergency housing and services to the homeless or to victims of domestic violence or other abuse.

(b) Notwithstanding any other provision of this code to the contrary, rates are not discriminatory if, when considering the debt costs associated with a future water or sewer project which would not benefit existing customers, the commission establishes rates which ensure that the future customers to be served by the new project are solely responsible for the debt costs associated with the project.

(c) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the commission over water and/or sewer utilities that are political subdivisions of the state providing a separate or combined services and having at least four thousand five hundred customers and annual combined gross revenues of \$3 million or more shall be limited to those powers enumerated in subsection (b), section one of this article.

**§24-2-3. General power of commission with respect to rates.**

(a) The commission shall have power to enforce, originate, establish, change and promulgate tariffs, rates, joint rates, tolls and schedules for all public utilities except for water and/or sewer utilities that are political subdivisions of this state providing a separate or combined services and having at least four thousand five hundred customers and annual combined gross revenues of \$3 million or more: *Provided*, That the commission may exercise such rate authority over municipal-municipally owned electric or natural gas utilities or a municipally owned water and/or sewer utility having less than four thousand five hundred customers and \$3 million dollars annual combined gross revenues, only under the circumstances and limitations set forth in section four-b of this article. And whenever the commission shall, after hearing, find any existing rates, tolls, tariffs, joint rates or schedules enacted or maintained by a utility regulated under the provisions of this section to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall by an order fix reasonable rates, joint rates, tariffs, tolls or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any provisions of law, and the said commission, in fixing the rate of any railroad company, may fix a fair, reasonable and just rate to be charged on any branch line thereof, independent of the rate charged on the main line of such railroad.

(b) In determining just and reasonable rates, the commission may audit and investigate management practices and policies, or have performed an audit and investigation of such practices and policies, in order to determine whether the utility is operating with efficiency and is utilizing sound management practices. The commission shall adopt rules and regulations setting forth the scope, frequency and application of such audits and investigations to the various utilities subject to its jurisdiction. The commission may include the cost of conducting the management audit in the cost of service of the utility.

(c) In determining just and reasonable rates, the commission shall investigate and review transactions between utilities and affiliates. The commission shall limit the total return of the utility to a level which, when considered with the level of profit or return the affiliate earns on transactions with the utility, is just and reasonable.

**§24-2-4a. Procedure for changing rates after June 30, 1981.**

(a) After June 30, 1981, no public utility subject to this chapter, except for water and/or sewer utilities that are political subdivisions of the state providing separate or combined services and having at least four thousand five hundred customers and annual gross revenue of \$3 million or more from its separate or combined services, shall change, suspend or annul any rate, joint rate, charge, rental or classification except after thirty days' notice to the commission and the public, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges shall go into effect; but the commission may enter an order suspending the proposed rate as hereinafter provided. The proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: *Provided*, That the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.

(b) Whenever there shall be filed with the commission any schedule stating a change in the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice affecting any rate or charge, the commission may, either upon complaint or upon its own initiative without complaint, enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or practice; and, if the commission so orders, it may proceed without answer or other form of pleading by the interested parties, but

upon reasonable notice, and, pending such hearing and the decisions thereon, the commission, upon filing with such schedule and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than two hundred seventy days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: *Provided*, That in the case of a public utility having two thousand five hundred customers or less and which is not a political subdivision and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred twenty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and in the case of a public utility having more than two thousand five hundred customers, but not more than five thousand customers, and which is not a political subdivision and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred fifty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and in the case of a public utility having more than five thousand customers, but not more than seven thousand five hundred customers, and which is not a political subdivision and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification,

regulation or practice, but not for a longer period than one hundred eighty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: *Provided, however,* That, in the case of rates established or proposed that increase by less than twenty-five percent of the gross revenue of the regulated public service district, there shall be no suspension period in the case of rates established by a public service district pursuant to section nine, article thirteen-a, chapter sixteen of this code, and the proposed rates of public service districts shall go into effect upon the date of filing with the commission, subject to refund modification at the conclusion of the commission proceeding. In the case of rates established or proposed that increase by more than twenty-five percent of the gross revenue of the public service district, the district may apply for, and the commission may grant, a waiver of the suspension period and allow rates to be effective upon the date of filing with the commission. The public service district shall provide notice by Class 1 legal advertisement in a newspaper of general circulation in its service territory of the percentage increase in rates at least fourteen days prior to the effective date of the increased rates. Any refund determined to be due and owing as a result of any difference between any final rates approved by the commission and the rates placed into effect subject to refund shall be refunded by the public service district as a credit against each customer's account for a period of up to six months after entry of the commission's final order. Any remaining balance which is not fully credited by credit within six months after entry of the commission's final order shall be directly refunded to the customer by check: *Provided, further,* That if any such hearing and decision thereon is not concluded within the periods of suspension, as above stated, such rate, charge, classification, regulation or practice shall go into effect at the end of such period not subject to refund: *And provided further,* That if



any such rate, charge, classification, regulation or practice goes into effect because of the failure of the commission to reach a decision, the same shall not preclude the commission from rendering a decision with respect thereto which would disapprove, reduce or modify any such proposed rate, charge, classification, regulation or practice, in whole or in part, but any such disapproval, reduction or modification shall not be deemed to require a refund to the customers of such utility as to any rate, charge, classification, regulation or practice so disapproved, reduced or modified. The fact of any rate, charge, classification, regulation or practice going into effect by reason of the commission's failure to act thereon shall not affect the commission's power and authority to subsequently act with respect to any such application or change in any rate, charge, classification, regulation or practice. Any rate, charge, classification, regulation or practice which shall be approved, disapproved, modified or changed, in whole or in part, by decision of the commission shall remain in effect as so approved, disapproved, modified or changed during the period or pendency of any subsequent hearing thereon or appeal therefrom. Orders of the commission affecting rates, charges, classifications, regulations or practices which have gone into effect automatically at the end of the of the suspension period are prospective in effect.

(c) At any hearing involving a rate sought to be increased or involving the change of any rate, charge, classification, regulation or practice, the burden of proof to show the justness and reasonableness of the increased rate or proposed increased rate, or the proposed change of rate, charge, classification, regulation or practice shall be upon the public utility making application for such change. The commission shall, whenever practicable and within budgetary constraints, conduct one or more public hearings within the area served by the public utility making application for such increase or change, for the purpose of obtaining comments and evidence on the matter from local ratepayers.

(d) Each public utility subject to the provisions of this section shall be required to establish, in a written report which shall be incorporated into each general rate case application, that it has thoroughly

investigated and considered the emerging and state-of-the-art concepts in the utility management, rate design and conservation as reported by the commission under subsection (c), section one, article one of this chapter, as alternatives to, or in mitigation of, any rate increase. The utility report shall contain as to each concept considered the reasons for adoption or rejection of each. When in any case pending before the commission all evidence shall have been taken and the hearing completed, the commission shall render a decision in such case. The failure of the commission to render a decision with respect to any such proposed change in any such rate, charge, classification, regulation or practice within the various time periods specified in this section after the application therefor shall constitute neglect of duty on the part of the commission and each member thereof.

(e) Where more than twenty members of the public are affected by a proposed change in rates, it shall be a sufficient notice to the public within the meaning of this section if such notice is published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the community where the majority of the resident members of the public affected by such change reside or, in case of nonresidents, have their principal place of business within this state.

(f) The commission may order rates into effect subject to refund, plus interest in the discretion of the commission, in cases in which the commission determines that a temporary or interim rate increase is necessary for the utility to avoid financial distress, or in which the costs upon which these rates are based are subject to modification by the commission or another regulatory commission and to refund to the public utility. In such case the commission may require such public utility to enter into a bond in an amount deemed by the commission to be reasonable and conditioned upon the refund to the persons or parties entitled thereto of the amount of the excess if such rates so put into effect are subsequently determined to be higher than those finally fixed for such utility.

(g) No utility regulated under the provisions of this section may make application for a general rate increase while another general rate application is pending before the commission and not finally acted upon, except pursuant to the provisions of subsection (f) of this section. The provisions of this subsection shall not be construed so as to prohibit any such rate application from being made while a previous application which has been finally acted upon by the commission is pending before or upon appeal to the West Virginia Supreme Court of Appeals.

**§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives and municipally operated public utilities.**

(a) The rates and charges of electric cooperatives, natural gas cooperatives and ~~municipally operated public utilities, except for municipal water and/or sewer utilities that are political subdivisions of the state with at least four thousand five hundred customers and annual combined gross revenue of less than \$3 million dollars, except for~~ municipally operated commercial solid waste facilities as defined in section two, article fifteen, chapter twenty-two of this code, and the rates and charges for local exchange services provided by telephone cooperatives are not subject to the rate approval provisions of section four or four-a of this article, but are subject to the limited rate provisions of this section.

(b) All rates and charges set by electric cooperatives, natural gas cooperatives and municipally operated public utilities that are political subdivisions of the state providing water, sewer, electric and natural gas services and all rates and charges for local exchange services set by telephone cooperatives shall be just, reasonable, applied without unjust discrimination ~~or preference~~ between or preference for any customer or class of customer and based primarily on the costs of providing these services. All rates and charges shall be based upon the measured or reasonably estimated cost of service, and the equitable sharing of

those costs between customers based upon the cost of providing the service received by the customer, including a reasonable plant-in-service depreciation expense. The rates and charges shall be adopted by the electric, natural gas, ~~or~~ telephone cooperative or political subdivision's governing board or body and, in the case of the municipally operated public utility, by municipal ordinance to be effective not sooner than forty-five days after adoption. The forty-five-day waiting period may be waived by public vote of the governing body if that body finds and declares the public utility that is a political subdivision of the state to be in financial distress such that the forty-five-day waiting period would be detrimental to the ability of the utility to deliver continued and compliant public services; *Provided*, That notice of intent to effect a rate change shall be specified on the monthly billing statement of the customers of the utility for the month next preceding the month in which the rate change is to become effective ~~or~~ and the utility governing body shall give its customers and, in the case of a cooperative, its customers, members and stockholders, other reasonable notices as will allow filing of timely objections to the proposed rate change ~~or~~ and full participation in municipal rate legislation through the provision of a public forum in which customers may comment upon the proposed rate change prior to an enactment vote. The rates and charges or ordinance shall be filed with the commission, together with any information showing the basis of the rates and charges and other information as the commission considers necessary. Any change in the rates and charges with updated information shall be filed with the commission. If a petition, as set out in subdivision (1), (2) or (3), subsection (c) of this section, is received and the electric cooperative, natural gas cooperative or telephone cooperative or municipality has failed to file with the commission the rates and charges with information showing the basis of rates and charges and other information as the commission considers necessary, the suspension period limitation of one hundred twenty days and the one hundred-day period limitation for issuance of an order by a hearing examiner, as contained in subsections (d) and (e) of this section, is tolled until the necessary information is filed. The electric cooperative,

natural gas cooperative, telephone cooperative or municipality shall set the date when any new rate or charge is to go into effect.

(c) The commission shall review and approve or modify the rates and charges of electric cooperatives, natural gas cooperatives, telephone cooperatives, or municipal electric or natural gas utilities and municipally owned water and/or sewer utilities that are political subdivisions of the state and having less than four thousand five hundred customers and \$3 million dollars of annual combined gross revenues upon the filing of a petition within thirty days of the adoption of the ordinance or resolution changing the rates or charges by:

(1) Any customer aggrieved by the changed rates or charges who presents to the commission a petition signed by not less than twenty-five percent of the customers served by the municipally operated electric or natural gas public utility or municipally owned water and/or sewer utility having less than four thousand five hundred customers and \$3 million dollars annual combined gross revenues or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state;

(2) Any customer who is served by a municipally ~~operated~~ owner or natural gas public utility and who resides outside the corporate limits and who is affected by the change in the rates or charges and who presents to the commission a petition alleging discrimination between customers within and without the municipal boundaries. The petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customers of the municipally owned electric or natural gas public utility who is affected by the change in rates who reside within the municipal boundaries and who present a petition to the commission alleging discrimination between a customer or group of customers and other customers of the municipal utility. The petition shall be accompanied by evidence of discrimination.

(d) (1) The filing of a petition with the commission signed by not less than twenty-five percent of the customers served by the

municipally ~~operated~~ owned electric or natural gas public utility or a municipally owned water and/or sewer utility having less than four thousand five hundred customers or \$3 million dollars annual combined gross revenues, or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state under ~~subdivision (1)~~ subsection (c) of this section shall suspend the adoption of the rate change contained in the ordinance or resolution for a period of one hundred twenty days from the date the rates or charges would otherwise go into effect or until an order is issued as provided herein.

(2) Upon sufficient showing of discrimination by customers outside the municipal boundaries or a customer or a group of customers within the municipal boundaries under a petition filed under subdivision (2) or (3), subsection (c) of this section, the commission shall suspend the adoption of the rate change contained in the ordinance for a period of one hundred twenty days from the date the rates or charges would otherwise go into effect or until an order is issued as provided herein. A municipal rate ordinance enacted pursuant to the provisions of this section and municipal charter or state code that establishes or proposes a rate increase that results in an increase of less than twenty-five percent of the gross revenue of the utility shall be presumed valid and rates shall be allowed to go into effect, subject to refund, upon the date stated in that ordinance. In the case of rates established or proposed that increase by more than twenty-five percent of the gross revenue of the municipally operated public utility, the utility may apply for, and the commission may grant, a waiver of the suspension period and allow rates to be effective upon enactment.

(e) The commission shall forthwith appoint a hearing examiner from its staff to review the grievances raised by the petitioners. The hearing examiner shall conduct a public hearing and shall, within one hundred days from the date the rates or charges would otherwise go into effect, unless otherwise tolled as provided in subsection (b) of this section, issue an order approving, disapproving or modifying, in whole or in part, the rates or charges imposed by the electric, natural gas or

telephone cooperative or by the municipally operated public utility pursuant to this section.

(f) Upon receipt of a petition for review of the rates under the provisions of subsection (c) of this section, the commission may exercise the power granted to it under the provisions of section three of this article, consistent with the applicable rate provisions of section twenty, article ten, chapter eight of this code, section four, article nineteen of said chapter and section sixteen, article thirteen, chapter sixteen of this code. The commission may determine the method by which the rates are reviewed and may grant and conduct a de novo hearing on the matter if the customer, electric, natural gas or telephone cooperative or municipality requests a hearing.

~~(g) A municipal utility shall be required to refund revenues collected from rates enacted that are disapproved or modified upon subsequent order of the commission entered in a proceeding under this section. Any refund determined to be due and owing as a result of any difference between the municipal rates placed into effect subject to refund and any final rates approved the commission shall be refunded by the municipal utility as a credit against each customer's account for a period of up to six months after entry of the commission's final order. Any remaining balance which is not fully refunded by credit within six months after entry of the commission's final order shall be directly refunded to the individual customer by check.~~

~~(h)~~ (g) The commission may, upon petition by a municipality or an electric, natural gas or telephone cooperative; or municipal electric or natural gas public utility or a municipally owned water and/or sewer utility having less than four thousand five hundred customers and \$3 million dollars annual combined gross revenues, allow an interim or emergency rate to take effect, subject to refund or future modification, if it is determined that the interim or emergency rate is necessary to protect the municipality from financial hardship attributable to the purchase of the utility commodity sold, or the commission determines that a temporary or interim rate increase is necessary for the utility to

avoid financial distress. In such cases, the commission shall waive the forty-five-day waiting period provided for in subsection (b) of this section and the one hundred twenty-day suspension period provided for in subsection (d) of this section.

(h) The commission shall, upon written request of the governing body of a political subdivision, provide technical assistance to the governing body in its deliberations regarding a proposed rate increase.

(i) Notwithstanding any other provision, the commission has no authority or responsibility with regard to the regulation of rates, income, services or contracts by municipally operated public utilities for services which are transmitted and sold outside of the State of West Virginia.

(j) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the commission over water and/or sewer utilities that are political subdivisions of the state and having at least four thousand five hundred customers and annual gross combined revenues of \$3 million or more shall be limited to those powers enumerated in subsection (b), section one of this article.

**§24-2-7. Unreasonable, etc., regulations, practices and services; receivership; procedures respecting receivership; appointment and compensation of receiver; liquidation.**

(a) Whenever, under the provisions of this chapter, the commission shall find any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient or unjustly discriminatory, or otherwise in violation of any provisions of this chapter, or shall find that any service is inadequate, or that any service which is demanded cannot be reasonably obtained, the commission shall determine and declare, and by order fix reasonable measurement, regulations, acts, practices or services, to be furnished, imposed, observed and followed in the state in lieu of those found to be unjust, unreasonable,



insufficient, or unjustly discriminatory, inadequate or otherwise in violation of this chapter, and shall make such other order respecting the same as shall be just and reasonable.

(b) If the Public Service Commission shall determine that any utility is unable or unwilling to adequately serve its customers or has been actually or effectively abandoned by its owners, or that its management is grossly and willfully inefficient, irresponsible or unresponsive to the needs of its customers, the commission may petition to the circuit court of any county wherein the utility does business for an order attaching the assets of the utility and placing such utility under the sole control and responsibility of a receiver. If the court determines that the petition is proper in all respects and finds, after a hearing thereon, that the allegations contained in the petition are true, it shall grant the same and shall order that the utility be placed in receivership. The court, in its discretion and in consideration of the recommendation of the commission, shall appoint a receiver who shall be a responsible individual, partnership or corporation knowledgeable in public utility affairs and who shall maintain control and responsibility for the running and management of the affairs of ~~such~~ the utility. In so doing, the receiver shall operate the utility so as to preserve the assets of the utility and to serve the best interests of its customers. The receiver shall be compensated from the assets of said utility in an amount to be determined by the court.

(c) Control of and responsibility for said utility shall remain in the receiver until the same can, in the best interest of the customers, be returned to the owners, transferred to other owners or assumed by another utility or public service corporation: *Provided*, That if the court after hearing, determines that control of and responsibility for the affairs of the utility should not, in the best interests of its customers, be returned to the legal owners thereof, the receiver shall proceed to liquidate the assets of ~~such~~ the utility in the manner provided by law.

(d) The laws generally applicable to receivership shall govern receiverships created pursuant to this section.

**§24-2-11. Requirements for certificate of public convenience and necessity.**

(a) A public utility, person or corporation other than a political subdivision of the state providing water, sewer and/or stormwater services and having at least four thousand five hundred customers and annual gross combined revenues of \$3 million dollars or more may not begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in section one, article two of this chapter, nor apply for, nor obtain any franchise, license or permit from any municipality or other governmental agency, except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the Public Service Commission a certificate of public convenience and necessity authorizing such construction franchise, license or permit.

(b) Upon the filing of any application for the certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the certificate of convenience and necessity: *Provided*, That the commission, after it gives proper notice and if no substantial protest is received within thirty days after the notice is given, may waive formal hearing on the application. Notice shall be given by publication which shall state that a formal hearing may be waived in the absence of substantial protest, made within thirty days, to the application. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area shall be the proposed area of operation.

(c) Any public utility, person or corporation subject to the provisions of this section other than a political subdivision of the state providing water and/or sewer services having at least four thousand five hundred customers and combined annual gross revenue of \$3 million dollars or more shall give the commission at least thirty days' notice of the filing of any application for a certificate of public convenience and necessity under this section: *Provided*, That the

commission may modify or waive the thirty-day notice requirement and shall waive the thirty-day notice requirement for projects approved by the Infrastructure and Jobs Development Council.

(d) The commission shall render its final decision on any application filed under the provisions of this section or section eleven-a of this article within two hundred seventy days of the filing of the application and within ninety days after final submission of any such application for decision following a hearing: *Provided*, That if the application is for authority to construct a water and sewer project and the projected total cost is less than \$10 million, the commission shall render its final decision within two hundred twenty-five days of the filing of the application.

(e) The commission shall render its final decision on any application filed under the provisions of this section that has received the approval of the Infrastructure and Jobs Development Council pursuant to article fifteen-a, chapter thirty-one of this code within one hundred eighty days after filing of the application: *Provided*, That if a substantial protest is received within thirty days after the notice is provided pursuant to subsection (b) of this section, the commission shall render its final decision within two hundred seventy days or two hundred twenty-five days of the filing of the application, whichever is applicable as determined in subsection (d) of this section.

(f) If the projected total cost of a project which is the subject of an application filed pursuant to this section or section eleven-a of this article is greater than \$50 million, the commission shall render its final decision on any such application filed under the provisions of this section or section eleven-a of this article within four hundred days of the filing of the application and within ninety days after final submission of any such application for decision after a hearing.

(g) If a decision is not rendered within the, time frames established in this section, the commission shall issue a certificate of convenience and necessity as applied for in the application.

(h) The commission shall prescribe rules as it may deem proper for the enforcement of the provisions of this section; and, in establishing that public convenience and necessity do exist, the burden of proof shall be upon the applicant.

(i) Pursuant to the requirements of this section, the commission may issue a certificate of public convenience and necessity to any intrastate pipeline, interstate pipeline or local distribution company for the transportation in intrastate commerce of natural gas used by any person for one or more uses, as defined by rule, by the commission in the case of:

(1) Natural gas sold by a producer, pipeline or other seller to the person; or

(2) Natural gas produced by the person.

(j) A public utility, including a public service district, which has received a certificate of public convenience and necessity after July 8, 2005, from the commission and has been approved by the Infrastructure and Jobs Development Council is not required to, and cannot be compelled to, reopen the proceeding if the cost of the project changes but the change does not affect the rates established for the project.

(k) Any public utility, person or corporation proposing any electric power project that requires a certificate under this section is not required to obtain such certificate before applying for or obtaining any franchise, license or permit from any municipality or other governmental agency.

(l) Water, sewer and/or stormwater utilities that are political subdivisions of the state and having at least four thousand five hundred customers and combined gross revenues of \$3 million dollars or more desiring to pursue construction projects that are not in the ordinary course of business shall provide notice to both current customers and those citizens who will be affected by the proposed construction as follows:

(1) Adequate prior public notice of the contemplated construction by causing a notice of intent to pursue a project that is not in the ordinary course of business to be specified on the monthly billing statement of the customers of the utility for the month next preceding the month in which the contemplated construction is to be before the governing body on first reading.

(2) Adequate prior public notice of the contemplated construction by causing to be published as a Class I legal advertisement of the proposed action, in compliance with the provisions of article three, chapter fifty-nine of the code. The publication area for publication shall be all territory served by the district. If the political subdivision provides service in more than one county, publication shall be made in a newspaper of general circulation in each county that the political subdivision provides service.

(3) The public notice of the proposed construction shall state the scope of the proposed construction, the current rates, fees and charges, the proposed changes to said rates, fees and charges; the date, time, and place of both a public hearing on the proposal and the proposed final vote on adoption; and, the place or places within the political subdivision where the proposed construction and the rates, fees and charges may be inspected by the public. A reasonable number of copies of the proposal shall be kept at the place or places and be made available for public inspection. The notice shall also advise that interested parties may appear at the public hearing before the political subdivision and be heard with respect to the proposed construction and the proposed rates, fees and charges.

(4) The proposed construction and the proposed rates, fees and charges shall be read at two meetings of the governing body with at least two weeks intervening between each meeting. The public hearing may be conducted with or following the second reading.

(5) Enactment of the proposed construction and the proposed rates, fees and charges shall follow an affirmative vote of the governing body and shall be effective no sooner than forty-five days following the

action of the governing body. If the political subdivision proposes rates that will go into effect prior than the completion of construction of the proposed project, the forty-five-day waiting period may be waived by public vote of the governing body only if the political subdivision finds and declares the political subdivision to be in financial distress such that the forty-five-day waiting period would be detrimental to the ability of the political subdivision to deliver continued and compliant public services: *Provided*, That in no event shall the rate become effective prior to the date that the county commission has entered an order approving the action of the public service district board.

(6) Rates, fees and charges approved by an affirmative vote of the public services district board shall be forwarded in writing to the county commission appointing the approving board. The county commission shall, within forty-five days of receipt of the proposed rates, fees and charges, take action to approve or reject the proposed rates, fees and charges. After forty-five days, and absent action by the county commission, the proposed rates, fees and charges shall be effective with no further action by the board or county commission. In any event this forty-five day period may be extended by official action of both the board proposing the rates, fees and charges and the appointing county commission.

(7) The county commission shall provide notice to the public by a Class I legal advertisement of the proposed action, in compliance with the provisions of article three, chapter fifty-nine of this code, of the meeting where it shall consider the proposed increases in rates, fees and charges no later than one week prior to the meeting date.

### **ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.**

#### **§24-3-5. Schedule of rates to be filed with commission.**

Every public utility ~~subject to the provisions of this chapter~~ shall file with the commission, and keep open to public inspection, schedules showing all the rates, charges and tolls for service to be rendered by it or by other persons, firms or corporations in connection

with it: *Provided*, That the reports and tariffs filed by interstate carriers with the Public Service Commission may be copies of its reports and tariffs filed with the Interstate Commerce Commission; but nothing herein shall preclude the Public Service Commission from requiring interstate carriers to furnish information bearing upon any complaint or question pending before said Public Service Commission and with which it has a right to deal.”

The bill was then ordered to third reading.

**Com. Sub. for S. B. 242**, Creating criminal penalties for certain automated telephone calls during state of emergency or preparedness; on second reading, coming up in regular order, was read a second time.

Delegate McGeehan moved to amend the bill on page two, section b, line eleven, by inserting the following:

“Notwithstanding any other provisions of this code, the West Virginia National Guard and any member thereof shall not be released from the state into active duty combat unless the United States Congress has passed an official declaration of war or has taken an official action pursuant to Article I, Section 8, Clause, 15, of the United States Constitution to explicitly call forth the state militia to execute the laws of the union, repel an invasion, or suppress an insurrection. The Governor shall take all actions necessary to comply with the requirements of this section.”

Delegate O’Neal arose to a point of order as to the germaneness of the amendment.

To the point of order the Speaker replied, stating that the fundamental purpose of the bill relates to automated phone calls during a state of emergency and the amendment National Guard call-ups was not germane to the fundamental purpose of the bill.

The bill was then ordered to third reading.

**Com. Sub. for S. B. 248**, Requiring certain insurance and owner information be provided following car accident; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk on page one, after the enacting section, by striking out the remainder of the bill and inserting in lieu thereof the following:

**“ARTICLE 4. ACCIDENTS.**

**§17C-4-3. Duty to give information and render aid.**

(a) (1) The driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall ~~give, if physically able to do so,~~ provide to the person struck or the driver or occupant of or person attending any vehicle collided with, the following:

(A) His or her name, ~~address and the registration number~~ year, make, model and last four digits of the vehicle identification number of the vehicle he or she is driving; and

(B) Proof of security and financial responsibility required by section three, article two-a, and section two, article four, chapter seventeen-d of this Code, and if provided by insurance, the information provided upon the certificate of insurance, including the name of the insured, the name and contact information of the insurer and insurance policy number. ~~and shall upon request and if available exhibit his or her driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with and~~

(2) A driver may meet the requirements of this subsection by providing the information required herein to a law enforcement officer who is investigating or providing assistance at the scene of the collision, who shall, if practical under the circumstances, provide the information to any person entitled thereto pursuant to this subsection.



(b) The driver of any vehicle involved in a crash resulting in injury to or death of any person, if physically able to do so, shall render to any person injured in such crash reasonable assistance, including the carrying, or the making arrangements for the carrying, of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.”

On motion of Delegates McCuskey and Rowe the amendment was amended on page one, line seven, immediately following the words “her name”, by inserting “a valid telephone number where he or she may be contacted”.

The Judiciary Committee amendment, as amended, was then adopted.

Delegate Cowles moved that the constitutional rule requiring the bill to be fully and distinctly read on three different days be dispensed with.

On this question, the yeas and nays were taken (**Roll No. 524**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon and Deem.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 525**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon and Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 248) passed.

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

**S. B. 250**, Relating to Conservation Agency financial assistance applications from district supervisors; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 261**, Clarifying definition of ‘owner’ of dam; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Agriculture and Natural Resources, was reported by the Clerk and adopted, amending the bill on page seven, section three, line ninety-nine, by striking out the work “may” and inserting in lieu thereof the work “shall”.

The bill was then ordered to third reading.

Delegate Cowles moved that the constitutional rule requiring the bill to be fully and distinctly read on three different days be dispensed with.

On this question, the yeas and nays were taken (**Roll No. 526**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Deem and Pushkin.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 527**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon and Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 261) passed.

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

**S. B. 267**, Repealing code relating to Governor's Office of Health Enhancement and Lifestyle Planning; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Delegate Cowles moved that the constitutional rule requiring the bill to be fully and distinctly read on three different days be dispensed with.

On this question, the yeas and nays were taken (**Roll No. 528**), and there were—yeas 92, nays 5, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Fleischauer, Guthrie, Hornbuckle, Marcum and Pushkin.

ABSENT AND NOT VOTING: Arvon, Deem and Walters.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 529**), and there were—yeas 93, nays 4, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Fleischauer, Guthrie, Perdue and Pushkin.

ABSENT AND NOT VOTING: Arvon, Deem and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 267) passed.

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

**Com. Sub. for S. B. 273**, Relating to brewer, resident brewer and brewpub licensing and operations; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page three, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“That §11-16-3, §11-16-6, §11-16-9 and §11-16-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §11-16-6a and §11-16-6b, all to read as follows:

#### **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, or imported or transhipped 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 or 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 guidelines, a portion of which premises are 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 chapter sixty 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 chapter sixty of this code.

~~(5)~~(6) ‘Commissioner’ means the West Virginia Alcohol Beverage Control Commissioner.

~~(6)~~ (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 shall be 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 article eleven of this chapter notwithstanding the liability of trustees in article ten, chapter forty-four-d of this code.

(7) (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 agreement has been approved by the commissioner. The franchise agreement binds the parties so that a distributor, appointed by a brewer, may distribute all of 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 of 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.

(8) (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 subdivision (2), subsection (a), section twenty-one of this article 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.

(9) (10) 'Freestanding liquor retail outlet' means a retail outlet that sells only liquor, beer, nonintoxicating beer and other alcohol-related products, as defined pursuant to section four, article three-a, chapter sixty of this code.

(10) (11) 'Growler' means a container or jug that is made of glass, ceramic, or metal container or jug or other material approved by the commissioner, that may be only thirty-two or sixty-four fluid ounces in size and must be capable of being securely sealed. The growler is utilized by a brewpub 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. 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-resistant 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.

(11) (12) 'Line extension' means any nonintoxicating beer product that is an extension of 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.

~~(12)~~ (13) ‘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 nine and six-tenths of alcohol by weight, or twelve percent by volume, whichever is greater. The word ‘liquor’ as used in chapter sixty of this code does not include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.

~~(13)~~ (14) ‘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 section eleven-a of this article.

~~(14)~~ (15) ‘Nonintoxicating beer sampling day’ means any days and hours of the week where Class A retail licensees may sell nonintoxicating beer pursuant to section eleven-a and subdivision (1), subsection (a), section eighteen of this article, and is approved, in writing, by the commissioner to conduct a nonintoxicating beer sampling event.

~~(15)~~ (16) ‘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 twelve percent alcohol by volume or nine and six-tenths percent alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol effect.

~~(16)~~ (17) ‘Original container’ means the container used by ~~the~~ a resident brewer or brewer at the place of manufacturing, bottling or otherwise producing nonintoxicating beer or nonintoxicating craft beer for sale at wholesale.



~~(17)~~ (18) 'Person' means and includes an individual, firm, partnership, limited partnership, limited liability company, association or corporation.

(19) 'Private club' means a license issued pursuant to article seven, chapter sixty of this code.

~~(18)~~ (20) '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 and which does not brew or manufacture more than twenty-five thousand barrels of nonintoxicating beer or nonintoxicating craft beer annually, and does not self-distribute more than ten thousand barrels thereof in the State of West Virginia annually.

~~(19)~~ (21) '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.

~~(20)~~ (22) '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) No person shall 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 no 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 such 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 such resident brewery, place of manufacture or

bottling, but a resident brewer is not permitted to act as a distributor as defined in section three of this article: *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 ~~consumer~~ patron for personal use and not for resale, quantities of draught beer in quantities of one-eighth, one-fourth and in original containers that are no larger in size than one-half barrels in the original containers barrel for off-premises consumption. A resident brewer ~~owning~~ who also has a brewpub license may sell nonintoxicating beer or nonintoxicating craft beer produced by the ~~brewpub resident brewer~~ in a sealed growler cans, or bottles or sealed growlers, pursuant to section six-b of this article, for personal consumption off of a the brewpub's licensed premise premises and not for resale.

(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, ~~or~~ loans, ~~or~~ forbearance of money or property of any kind, nature or description, or other thing of value, or ~~by the giving of~~ give any rebates or discounts of any kind whatsoever, except as may be permitted by rule, regulation or order promulgated by the commissioner in accordance with this article.

(c) Notwithstanding ~~paragraphs~~ subsections (a) and (b) ~~above 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 ~~for up to two growlers per customer for personal consumption off of a licensed premises and not for resale as provided in section six-b of this article.~~

**§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 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 ten 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 twenty-one 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.

(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, must 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, must 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 up to two sixty-four ounce, or four thirty-two ounce, growlers of nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident brewer per customer per day 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, pipe lines, barrel tubes and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under section twenty-three of this article.

(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 twenty-five thousand 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 subdivision (1), subsection (a), section eighteen of this article. A licensed brewer or resident brewer authorized under this section, shall be subject to the applicable penalties under section twenty-three of this article, for violations of this section.

(l) *Rules.* — The commissioner, in consultation with the Bureau for Public Health concerning sanitation, is authorized to propose rules for legislative approval, pursuant to article three, chapter twenty-nine-a of this code, to implement this section.

**§11-16-6b. Brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee and Class B retail licensee’s authority to sell growlers.**

(a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to regulate, control and support the brewing, manufacturing, distribution, sale, consumption, transportation and storage of 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 brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee or Class B retail licensee 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 brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee or Class B retail licensee who pays the fee in subsection (i) of this section and meets the requirements of this section, may offer nonintoxicating beer or nonintoxicating craft beer for retail sale to

patrons from their licensed premises in a growler for personal consumption only off of the licensed premises and not for resale. Prior to the sale, the licensee shall verify, using proper identification that any patron purchasing nonintoxicating beer or nonintoxicating craft beer is twenty-one years of age or over and that the patron is not visibly intoxicated. A licensee authorized under this section, may not sell, give or furnish alcoholic liquors, including wine, for consumption off of its licensed premises, unless it is a private club licensed to sell sealed wine for consumption off of the licensed premises and meets the requirements set out in subdivisions (j) and (l), section three, article eight, chapter sixty of this code, for the sale of wine, not liquor.

(c) *Retail sales.* — Every licensee authorized 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.

(d) *Payment of taxes and fees.* — A licensee authorized 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.

(e) *Advertising.* — A licensee authorized under this section, may advertise a particular brand or brands of nonintoxicating beer or nonintoxicating craft beer, 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.

(f) *Growler requirements.* — A licensee authorized under this section, must fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensee authorized under this section, must sanitize, fill, securely seal and label any growler prior to its sale. A licensee authorized under this section, may only offer for retail sale up to two sixty-four ounce, or four thirty-two ounce, growlers of

nonintoxicating beer or nonintoxicating craft beer per customer per day for personal consumption off of the licensed premises and not for resale. A licensee under this section, may refill a growler subject to the requirements of this section. A licensee shall visually inspect any growler before filling or refilling it. A licensee may not fill or refill any growler that appears to be cracked, broken, unsafe or otherwise unfit to serve as a sealed beverage container.

(g) *Growler labeling.* — A licensee authorized 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.

(h) *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, pipe lines, barrel tubes and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under section twenty-three of this article.

(i) *Fee.* — Commencing July 1, 2015, and by every July 1 thereafter, there is an annual \$100 nonrefundable fee for a licensee, except for a licensed brewpub, to sell growlers as provided by this section. The licensee must be in good standing with the state at the time of paying the fee.

(j) *Limitations on licensees.* — A licensee under this section, may only sell growlers during the hours of operation set forth in subdivision (1), subsection (a), section eighteen of this article. Any licensee



licensed under this section must maintain a secure area for the sale of nonintoxicating beer or nonintoxicating craft beer in a growler. The secure area must only be accessible by the licensee. Any licensee licensed under this section shall be subject to the applicable penalties under section twenty-three of this article, for violations of this section.

(k) *Nonapplicability of certain statutes.* — Notwithstanding any other provision of this code to the contrary, licensees under this section are permitted to break the seal of the original container for the limited purpose of filling a growler as provided in this section. Any unauthorized sale of nonintoxicating beer or nonintoxicating craft beer, or any consumption not permitted on the licensee’s licensed premises is subject to penalties under this article.

(l) *Rules.* — The commissioner is authorized to propose rules for legislative approval, pursuant to article three, chapter twenty-nine-a of this code, to implement this section.

**§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of nonintoxicating beer permitted; distributors; brewers; brewpubs.**

~~There is levied and imposed an annual license tax upon all dealers in and of nonintoxicating beer as defined by this article, which~~ (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. ~~and, If the license is granted for a less shorter period, it then the license fee shall be computed semiannually in proportion to the remainder of the fiscal year.~~

(b) The annual license fees are as follows:

(1) Retail dealers shall be divided into two classes, Class A and Class B. ~~In the case of~~

(A) For a Class A retail dealer, the license fee is \$150 for each place of business; the license fee for social, fraternal or private clubs not operating for profit, and having been in continuous operation for two years or more immediately preceding the date of application, is \$150: *Provided*, That railroads operating in this state may dispense nonintoxicating beer upon payment of an annual license tax of \$10 for each dining, club or buffet car in which the beer is dispensed.

Class A licenses issued for railroad dining, club or buffet cars authorize the licensee to sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All other Class A licenses authorize the licensee to sell nonintoxicating beer at retail for consumption on or off the licensed premises.

~~In the case of (B) For a Class B retailer~~ retail dealer, the license fee, for a Class B license 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 consumer patron, for personal use and not for resale, quantities of draught beer in quantities of one-eighth, one-fourth and in original containers that are no larger in size than one-half barrels in the original containers barrel for off-premises consumption.

A Class B license may be issued only to the proprietor or owner of a grocery store. For the purpose of this article, the term 'grocery store' means ~~and includes~~ 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 ~~means~~ 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. ~~The commissioner may propose for legislative approval legislative rules pursuant to chapter twenty-nine-a of this code necessary to carry this provision into effect.~~ Caterers or party supply stores are required to

purchase the appropriate licenses from the Alcohol Beverage Control Administration.

(2) ~~In the case of distributors~~ For a distributor, the license fee is \$1,000 for each place of business.

(3) ~~In the case of~~ 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 (12,500) or less of nonintoxicating beer or nonintoxicating craft beer, the license fee is \$500 for each place of manufacture;

(B) Twelve thousand five hundred one barrels (12,501) and up to twenty-five thousand (25,000) barrels of nonintoxicating beer or nonintoxicating craft beer, the license fee is \$1,000 for each place of manufacture;

(C) More than twenty-five thousand one (25,001) barrels of nonintoxicating beer or nonintoxicating craft beer, the license fee is \$1,500 for each place of manufacture. ~~(4) In the case of~~

(4) For a brewer whose principal place of business or manufacture is not located in this state, the license fee is \$1,500 for each place of manufacture. 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 twenty-five thousand 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 (b)(3) 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 ~~\$1,000~~ \$500 for each place of manufacture.

(c) As part of the application or renewal application and in order to determine a brewer or resident brewer's license fee pursuant to this section, a brewer or resident brewer shall provide the commissioner, on a form provided by the commissioner, with an estimate of the number of nonintoxicating beer or nonintoxicating craft beer barrels and gallons it will produce during the year based upon the production capacity of the brewer's or resident brewer's manufacturing facilities, and the prior year's production and sales volume of nonintoxicating beer or nonintoxicating craft beer.

(d) On or before July 15 of each year, every brewer or resident brewer who is granted a license shall file a final report, on a form provided by the commissioner, that is dated as of June 30 of each year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in barrels and gallons produced at its principal place of business and manufacture during the prior year.

(e) If the actual total production of nonintoxicating beer or nonintoxicating craft beer by the brewer or resident brewer exceeded the brewer's or resident brewer's estimate that was filed with the application or renewal 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 section twenty-three of this article.

**§11-16-12. Bond of brewer, distributor, and Class A retail dealer; action on bond of retail dealer upon revocation of license; duty of prosecuting attorney.**

(a) In addition to furnishing the information required by this article, each brewer or distributor applying for a license under this

article shall furnish, as prerequisite to a license, a bond with some solvent surety company as surety, to be approved by the commissioner, payable to the State of West Virginia, conditioned for the payment of any and all additional taxes accruing during the period of such license, and conditioned further for the faithful observance of the provisions of this article, the rules, regulations and orders promulgated pursuant thereto and of any other laws of the State of West Virginia generally relating to the sale, transportation, storage and distribution of nonintoxicating beer, which said bonds shall be forfeited to the state upon the revocation of the license of any such brewer or distributor. The amount of such bond, in the case of a resident brewer ~~or brewpub~~, shall be not less than \$5,000, nor more than \$10,000, and in the case of a distributor, not less than \$2,000, nor more than \$5,000 for each place of business licensed and conducted within the state, the amount of such bond, between the minimum and maximum amounts, to be determined in the discretion of the commissioner. There shall be no bond for a brewpub license, as the license privilege itself secures the payment of taxes and is subject to suspension and revocation for failure to pay said taxes. In the case of brewers shipping nonintoxicating beer into the state, any brewer must also furnish a bond in a penalty of not less than \$5,000 nor more than \$25,000 conditioned as hereinabove in this subsection provided and any bond furnished pursuant hereto shall be forfeited to the state in the full amount of said bond upon revocation of license of any such brewer or distributor. Such money received by the state shall be credited to the state fund, general revenue.

(b) Each Class A retail dealer, in addition to furnishing the information required by this article, shall furnish as prerequisite to obtaining a license, a bond with some solvent surety company as surety, to be approved by the commissioner, payable to the State of West Virginia, in the amount not less than \$500, nor more than \$1000, within the discretion of the commissioner. All such bonds shall be conditioned for the faithful observance of the provisions of this article, the rules, regulations and orders promulgated pursuant thereto and of any other laws of the State of West Virginia generally relating to the

distribution, sale and dispensing of nonintoxicating beer, and shall be forfeited to the state in the full amount of said bond upon the revocation of the license of any such retail dealer. Such money received by the state shall be credited to the state fund, general revenue.

(c) Upon the revocation of the license of any Class A retail dealer by the commissioner or by any court of competent jurisdiction, the commissioner or the clerk of said court shall notify the prosecuting attorney of the county wherein such retail dealer's place of business is located, or the prosecuting attorney of the county wherein the licensee resides, of such revocation, and, upon receipt of said notice, it shall be the duty of such prosecuting attorney forthwith to institute appropriate proceedings for the collection of the full amount of said bond. Upon request of such prosecuting attorney, the commissioner shall deliver the bond to him. Willful refusal without just cause therefor by the prosecuting attorney to perform said duty hereby imposed shall subject him to removal from office by the circuit court of the county for which said prosecuting attorney was elected upon proper proceedings and proof in the manner provided by law."

The bill was then ordered to third reading.

Delegate Cowles moved that the constitutional rule requiring the bill to be fully and distinctly read on three different days be dispensed with.

On this question, the yeas and nays were taken (**Roll No. 530**), and there were—yeas 97, nays 1, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Azinger.

ABSENT AND NOT VOTING: Arvon and Deem.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a third time,

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 531**), and there were—yeas 87, nays 11, absent and not voting 2, with the nays and absent and not voting being as follows:

**NAYS:** Speaker Armstead, Azinger, Border, Fast, Householder, Ireland, Miley, Moye, Overington, Sobonya and Trecost.

**ABSENT AND NOT VOTING:** Arvon and Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 273) passed.

On motion of Delegate Shott, the title of the bill was amended to read as follows:

**Com. Sub. for S. B. 273** - “A Bill to amend and reenact the §11-16-3, §11-16-6, §11-16-9 and §11-16-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §11-16-6a and §11-16-6b, all relating to brewer, resident brewer, brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee and Class B retail licensee licensing and operations; clarifying, adding and revising definitions; providing legislative findings; authorizing licensed brewers and resident brewers to offer complimentary nonintoxicating beer and nonintoxicating craft beer samples; authorizing licensed brewers, resident brewers, brewpubs, Class A retail dealers, Class B retail dealers, private clubs, Class A retail licensees and Class B retail licensees to sell nonintoxicating beer and nonintoxicating craft beer in growlers subject to limitations; imposing operational, advertising, sanitation, sealing and labeling standards; authorizing and imposing penalties; authorizing promulgation of rules; clarifying and imposing license requirements and fees; removing an authorization to propose rules; changing the license fee schedule for certain brewers and

resident brewers; decreasing the license fee for brewpubs; requiring annual production report; providing for fee correction; authorizing penalty for failure to submit production report; removing brewpub bonding requirement; and providing clarifying and technical amendments.”

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

**Com. Sub. for S. B. 274**, Relating to TANF program sanctions; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Cowles, and by unanimous consent, the bill was advanced to third reading with amendments pending, and the rule was suspended to permit the consideration of the amendments on that reading.

**Com. Sub. for S. B. 286**, Relating to compulsory immunizations of students; exemptions; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk on page two, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“That §16-3-4 and §16-3-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER INFECTIOUS DISEASES.**

**§16-3-4. Compulsory immunization of school children; information disseminated; offenses; penalties.**

(a) Whenever a resident birth occurs, the ~~state director of health commissioner~~ shall promptly provide parents of the newborn child with information on immunizations mandated by this state or required for admission to a public private, parochial school in this state or a state-regulated child care center.



(b) ~~All children~~ Except as hereinafter provided, a child entering school or a state-regulated child care center for the first time in this state shall have been must be immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubeola, rubella, tetanus and whooping cough. ~~Any person who cannot give satisfactory proof of having been immunized previously or a certificate from a reputable physician showing that an immunization for any or all diphtheria, polio, rubeola, rubella, tetanus and whooping cough is impossible or improper or sufficient reason why any or all immunizations should not be done, shall be immunized for diphtheria, polio, rubeola, rubella, tetanus and whooping cough prior to being admitted in any of the schools in the state.~~

(c) No child or person ~~shall~~ may be admitted or received in any of the schools of the state or a state-regulated child care center until he or she has been immunized ~~as hereinafter provided or produces a certificate from a reputable physician showing that an immunization for~~ against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubeola, rubella, tetanus and whooping cough has been done or is impossible or improper or other sufficient reason why such immunizations have not been done or produces a certificate from the commissioner a licensed physician granting the child or person an exemption from the compulsory immunization requirements of this section.

(d) Any ~~teacher~~ school or state-regulated child care center personnel having information concerning any person who attempts to ~~enter be enrolled in a school or state regulated child care center for the first time~~ without having been immunized against chickenpox hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubeola, rubella, tetanus and whooping cough shall report the names of all such persons to the county health officer commissioner. ~~It shall be the duty of the health officer in counties having a full-time health officer to see that such persons are immunized before entering school:~~ *Provided, That*

~~(e) Persons enrolling from schools outside of the state may be provisionally enrolled under minimum criteria established by the director of the department of health commissioner so that the person's immunization may be completed while missing a minimum amount of school. *Provided, however, That* No person shall be allowed to enter school without at least one dose of each required vaccine.~~

~~In counties where there is no full-time health officer or district health officer, the county commission or municipal council shall appoint competent physicians to do the immunizations and fix their compensation.~~

~~(f) County health departments shall furnish the biologicals for this immunization free of charge for children of parents or guardians who attest that they cannot afford or otherwise access vaccines elsewhere.~~

~~(g) Health officers and physicians who ~~shall do this immunization work~~ provide vaccinations shall give to all persons and children must present the person vaccinated with a certificate free of charge showing that they have been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubeola, rubella, tetanus and whooping cough, or he or she may give the certificate to any person or child whom he or she knows to have been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubeola, rubella, tetanus and whooping cough.~~

~~(h) The commissioner is authorized to grant, renew, condition, deny, suspend or revoke exemptions to the compulsory immunization requirements of this section, on a statewide basis, upon sufficient medical evidence that immunization is contraindicated or there exists a specific precaution to a particular vaccine.~~

~~(i) A request for an exemption to the compulsory immunization requirements of this section must be accompanied by the certification of a licensed physician stating that the physical condition of the child is such that immunization is contraindicated or there exists a specific precaution to a particular vaccine.~~

(2) The commissioner is authorized to appoint and employ an Immunization Officer to make determinations on request for an exemption to the compulsory immunization requirements of this section, on a statewide basis, and delegate to the Immunization Officer the authority granted to the commissioner by this subsection.

(3) A person appointed and employed as the Immunization Officer must be a physician licensed under the laws of this state to practice medicine.

(4) The Immunization Officer's decision on a request for an exemption to the compulsory immunization requirements of this section may be appealed to the State Health Officer.

(5) The final determination of the State Health Officer is subject to a right of appeal pursuant to the provisions of article five, chapter twenty-nine a of this code.

(h) A person shall qualify for a medical exemption to a compulsory vaccination by:

(1) Filing a certificate from a licensed physician at least fifteen days prior to entering school stating that the physical condition of the child is such that immunization is contraindicated or there exists a specific precaution to a particular vaccine with the school this child will attend and contemporaneously filing the certificate with the Commissioner for the Bureau of Public Health.

(2) Within 10 business days of the filing, the commissioner may condition, deny, suspend or revoke an exemption only after consulting with the child's licensed physician who certified the exemption. The commissioner shall provide a reason based upon by substantial medical evidence that the immunization is not contraindicated or there does not exist a specific precaution to a particular vaccine.

(3) The final determination of the State Health Officer is subject to a right of appeal pursuant to the provisions of article five, chapter twenty-nine a of this code.

(i) The Secretary of the Department of Health and Human Resources and the Commissioner of the Bureau for Public Health shall not add to the compulsory vaccinations required by this section through the promulgation of a rule.

(j) The changes made to this section during the 2015 Regular Session of the Legislature supercede any interpretive rule and any action taken by the Department of Health and Human Resources in the promulgation of an interpretive rule regarding compulsory immunizations. That rule and any action take pursuant to it will be null and void with upon the effective date of this legislation.

(.fk) If any A physician shall give who provides any person with a false certificate of immunization against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubeola, rubella, tetanus and whooping cough he or she shall be is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$25 nor more than \$100.

~~Any parent or guardian who refuses to permit his or her child to be immunized against diphtheria, polio, rubeola, rubella, tetanus and whooping cough, who cannot give satisfactory proof that the child or person has been immunized against diphtheria, polio, rubeola, rubella, tetanus and whooping cough previously, or a certificate from a reputable physician showing that immunization for any or all is impossible or improper, or sufficient reason why any or all immunizations should not be done, shall be guilty of a misdemeanor and, except as herein otherwise provided, shall, upon conviction, be punished by a fine of not less than ten nor more than \$50 for each offense.~~

#### **§16-3-5. Distribution of free vaccine preventives of disease.**

(a) *Declaration of legislative findings and purpose.* — The Legislature finds and declares that early immunization for preventable diseases represents one of the most cost-effective means of disease prevention. The savings which can be realized from immunization,

compared to the cost of health care necessary to treat the illness and lost productivity, are substantial. Immunization of children at an early age serves as a ~~preventative~~ preventive measure both in time and money and is essential to maintain our children's health and well-being. The costs of childhood immunizations should not be allowed to preclude the benefits available from a comprehensive, medically supervised child immunization service. ~~Furthermore, the federal government has established goals that require ninety percent of all children to be immunized by age two and provided funding to allow uninsured children to meet this goal.~~

(b) The ~~State Director~~ Commissioner of the Bureau for Public Health shall acquire vaccine for the prevention of polio, measles, meningitis, mumps, rubella, chickenpox, diphtheria, pertussis, tetanus, hepatitis-b, haemophilus influenzae-b and other vaccine ~~preventives of disease~~ preventable diseases as ~~may be deemed~~ considered necessary or required by law and shall distribute the same, free of charge, in ~~such quantities as he or she may deem~~ considers necessary, to ~~county and municipal health officers~~ public and private providers, to be used by them for the benefit of ~~and without expense to the~~ citizens ~~within their respective jurisdictions~~; to check contagions and control epidemics.

(c) The ~~county and municipal health officers~~ shall have Commissioner of the Bureau for Public Health, through the immunization program, has the responsibility to ~~properly store and distribute, ensure the distribution,~~ free of charge, of federally supplied vaccines to public and private medical or osteopathic physicians within their jurisdictions ~~providers~~ providers to be ~~utilized~~ used to check contagions and control epidemics: *Provided*, That the public and private medical or osteopathic physicians shall ~~providers may~~ not make a charge for the vaccine itself when administering it to a patient. The ~~county and municipal health officers~~ shall provide a receipt to the ~~State Director of Health for~~ Commissioner of the Bureau for Public Health, through the immunization program, shall keep an accurate record of any vaccine delivered as ~~herein provided~~ in this section.

(d) ~~The Director of the Division Health~~ commissioner is charged with establishing ~~a childhood an~~ an Immunization Advisory Committee. The advisory committee is to plan for universal access, make recommendations on the distribution of vaccines acquired pursuant to this section, advise the secretary on the changing needs and opportunities for immunization from known diseases for all persons across their life span and tracking of track immunization compliance in accordance with federal and state laws. The childhood Members of the Immunization Advisory Committee shall be designated and appointed by the Secretary of the Department of the Health and Human Resources commissioner no later than the first day of July, one thousand nine hundred ninety-four and July 1, 2015. The Advisory Committee shall be comprised of representatives from the following groups: Public health nursing, public health officers, primary health care providers, pediatricians, family practice physicians, health care administrators, pharmacists, state Medicaid program ~~the Commissioner of the Bureau for Medical Services, or his or her designee, the health insurance industry, the Director of the Public Employees Insurance Agency, or his or her designee, the self-insured industry and a minimum of three consumers. The state epidemiologist shall serve~~ serves as an advisor to the committee. The commissioner, or his or her designee, serves as the chair of the Advisory Committee. Members of the advisory committee shall serve two-year four-year terms.

(e) An advisory committee member may not participate in a matter involving specific parties that will have a direct and predicable effect on their financial interest. An effect will not be direct in instances where the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative.

~~(e)~~ (f) All health insurance policies and prepaid care policies issued in this state which provide coverage for the children of the insured shall provide coverage for child immunization services to include the cost of the vaccine, if incurred by the health care provider, and all costs of administration from birth through age sixteen eighteen years. These services ~~shall be~~ are exempt from any deductible, per-visit charge

and/or copayment provisions which may be in force in these policies or contracts. This section does not exempt other health care services provided at the time of immunization from any deductible ~~and~~ or copayment provisions.

(f) (g) Attending physicians, midwives, nurse practitioners, hospitals, birthing centers, clinics and other appropriate health care providers shall provide parents of newborns and preschool age children with information on the following immunizations: Diphtheria, polio, mumps, meningitis, measles, rubella, tetanus, hepatitis-b, hemophilus influenzae-b, chickenpox and whooping cough. This information should include the availability of free immunization services for children.”

Delegates Ellington and Rohrbach moved to amend the amendment on page four, line seventeen, by removing the period inserting a colon and the following: “*Provided*, That the commissioner shall meet with and strictly review the exemptions from a physician who had approved what appears to be an excessive number of exemptions.” ,

The Speaker put the question on the adoption of the foregoing amendment, and the same did not prevail.

On the adoption of the amendment, Delegate Lane demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 532**), and there were—yeas 51, nays 46, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Ashley, Bates, Boggs, Byrd, Campbell, Caputo, Eldridge, Ferro, Fleischauer, Frich, Guthrie, Hartman, Hicks, Hornbuckle, Longstreth, Lynch, Manchin, Marcum, McCuskey, Miley, Moore, Morgan, Moye, Perdue, Perry, Pethel, R. Phillips, Pushkin, Reynolds, Rodighiero, Rohrbach, Romine, Rowe, Skinner, P. Smith, Sponaule, Stansbury, Statler, Trecoast, Wagner, Walters, Weld, Westfall, B. White, H. White and Williams.

ABSENT AND NOT VOTING: Arvon, Deem and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

The bill was then ordered to third reading.

**S. B. 295**, Establishing appeal process for DHHR Board of Review and Bureau for Medical Services decisions; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page four, section thirteen, line fifty-one, following the word “review”, by replacing the period with a colon and inserting the following proviso:

*“Provided, That all records prepared and transmitted that involve a minor shall be filed under seal.”*

The bill was then ordered to third reading.

**S. B. 304**, Relating to farmers markets; on second reading, coming up in regular order, was read a second time.

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

“That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §19-35-1, §19-35-2, §19-35-3 and §19-35-4, all to read as follows:

**ARTICLE 35. FARMERS MARKETS.**

**§19-35-1. Legislative Findings.**

(a) Farmers markets are critical incubators for small farm and food businesses because they offer an inexpensive, accessible, entry-level



market for reaching consumers directly, though research has shown that the average vendor makes only a nominal dollar amount in sales on any given market day;

(b) The number of farmers markets and the variety of products sold at farmers markets has increased significantly in the past ten years, adding millions of dollars to the state's economy;

(c) Encouraging locally-grown and raised food is important to the health and welfare of the citizens of West Virginia;

(d) Permit fees and requirements for farmers market vendors can vary widely from county to county and from one regulatory official to the other. Current food permit categories are not designed for farmers markets and their vendors, but rather for restaurants, grocery stores or concessioners;

(e) Food permits required for farmers market vendors are currently not recognized across county lines.

#### **§19-35-2. Definitions.**

For purposes of this article:

(a) 'Consignment farmers market' means a farmers market in which two or more vendors deliver their own farm and food products to a common location maintained by a third party that markets the vendors' products and receives a percentage share of the profits from sales, with the individual vendor retaining ownership of the farm and food product until it is sold.

(b) 'Farm and food product' means any agriculture, horticulture, agroforestry, animal husbandry, dairy, livestock, cottage food, beekeeping or other similar product. Farm and food products are to be properly labeled.

(c) 'Farmers market' means:

(1) A traditional farmers market in which two or more vendors gather to sell farm and food products directly to consumers at a fixed location;

(2) An on-farm market or farm stand run by an individual producer that sells farm and food products;

(3) An online farmers market in which two or more vendors collectively market farm and food products and retain ownership of those products until they are sold; or

(4) A consignment farmers market.

(d) ‘Farmers market vendor’ or ‘vendor’ means a person or entity that sells farm and food products at a farmers market.

**§19-35-3. Farmers market vendor permit; scope.**

(a) Vendors at a farmers market selling farm and food products that require a food establishment permit shall apply for a uniform farmers market vendor permit and pay the annual permit fee to the local health department in the jurisdiction in which the farmers market is located. The permit is valid in all counties in this state, and vendors are not required to apply to more than one local health department for a uniform farmers market vendor permit. The uniform farmers market vendor permit shall be required in lieu of the food establishment permit, notwithstanding any other provisions of code or rule that require a food establishment permit or any other permit from a local health department.

(b) The application must include any other farmers market locations under the jurisdiction of another local health department that the vendor will sell farm and food products subject to the permit. The local health department which approves the application for the uniform farmers market vendor permit shall provide notice of the approval to any other local health departments that the vendor will be subject to, as indicated on the application.

(c) (1) The annual permit fee for the uniform farmers market vendor permit is as follows:

(A) For vendors selling farm and food products under the jurisdiction of only one local health department, the annual fee is \$15.

(B) For vendors selling farm and food products under the jurisdiction of more than one local health department, the annual fee is \$25.

(2) The annual permit fee shall be collected and deposited in accordance with subsection six, section eleven, article two, chapter sixteen of this code.

(d) The following vendors are exempt from the requirements of the uniform farmers market vendor permit:

(1) Vendors delivering their products to a consignment farmers market; or

(2) Vendors selling fresh, uncut produce or other any other farm and food product not subject to a permit by a local health department through rule or regulation.

(e) A consignment farmers market shall obtain a food establishment permit issued by the local health department.

(f) Every uniform farmers market vendor permit shall be displayed in a conspicuous manner.

(g) Notwithstanding the provisions of article two, chapter sixteen of this code, a local health department has the right to inspect and suspend the uniform farmers market vendor permit for violation of rules or the local health department regulations of a vendor at any farmers market in its jurisdiction, or at the vendor's home or business address, if it is in the inspecting local health department's jurisdiction.

regardless of what local health department issued the uniform farmers market vendor permit.

(h) Nothing in this article eliminates or limits other state and federal rules and regulations that apply to certain farm and food products sold at a farmers market or a consignment farmers market.

**§19-35-4. Legislative rules.**

(a) The West Virginia Department of Health and Human Resources shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code for the purposes of implementing this article.

(b) The West Virginia Department of Health and Human Resources shall consult with the West Virginia Department of Agriculture, and shall consider the guidelines established in the Farmers Market Vendor Guide and Memorandum F-16, Food Permits at Farmers Markets in promulgating the rules.”

The bill was then ordered to third reading.

Delegate Cowles moved that the constitutional rule requiring the bill to be fully and distinctly read on three different days be dispensed with.

On this question, the yeas and nays were taken (**Roll No. 533**), and there were—yeas 92, nays none, absent and not voting 8, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Byrd, Deem, Longstreth, L. Phillips, Pushkin, Walters and Weld.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 534**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Deem, L. Phillips and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 304) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

**S. B. 304** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-35-1, §19-35-2, §19-35-3 and §19-35-4, all relating to farmers markets; stating purpose and definitions; requiring a uniform farmers market vendor permit, establishing annual permit fees; providing exemptions; allowing inspection by local health departments; and requiring rulemaking.”

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

**S. B. 310**, Exempting nonprofit public utility companies from B&O tax; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 312**, Relating to disqualification of general election nominees for failure to file campaign finance statements; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page one, following the enacting section, by striking the remainder of the bill and inserting in lieu thereof the following:

**“ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.****§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.**

(a) Any person, candidate, financial agent or treasurer of a political party committee who fails to file a sworn, itemized statement required by this article within the time limitations specified in this article or who willfully files a grossly incomplete or grossly inaccurate statement ~~shall be~~ 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. ~~in the discretion of the court~~ Sixty days after any primary or other election, the Secretary of State, ~~or~~ county clerk or municipal recorder, as the case may be, shall give notice of any failure to file a sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any person, candidate, financial agent or treasurer of a political party committee and forward copies of any grossly incomplete or grossly inaccurate statement to the prosecuting attorney of the county where the person, candidate, financial agent or treasurer resides, is located or has its principal place of business.

(b) (1) Any person, candidate, financial agent or treasurer of a political party committee who fails to file a sworn, itemized statement as required in this article or who files a grossly incomplete or grossly inaccurate statement may be assessed a civil penalty by the Secretary of State of \$25 a day for each day after the due date the statement is delinquent, grossly incomplete or grossly inaccurate. Sixty days after any primary or other election, the county clerk shall give notice to the Secretary of State of any failure to file a sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any person, candidate, financial agent or treasurer of a political party committee and forward copies of such delinquent, incomplete or inaccurate statements to the Secretary of State.

(2) A civil penalty assessed pursuant to this section shall be payable to the State of West Virginia and is collectable as authorized by law for the collection of debts.

(3) The Secretary of State may negotiate and enter into settlement agreements for the payment of civil penalties assessed as a result of the filing of a delinquent, grossly incomplete or inaccurate statement.

(4) The Secretary of State and county clerk may review and audit any sworn statement required to be filed pursuant to this article. The State Election Commission shall propose legislative rules for promulgation, in accordance with chapter twenty-nine-a of this code, to establish procedures for the assessment of civil penalties as provided in this section.

~~(c) No candidate nominated at a primary election who has failed to file a sworn statement, as required by this article, shall have his or her name placed on the official ballot for the ensuing election, unless there has been filed by or on behalf of such candidate, or by his or her financial agent, if any, the financial statement relating to nominations required by this article: (1) Any candidate, whether nominated by primary election or appointed by executive committee or executive committee chair, who has failed to file any sworn statement as required by this article, relating to the immediately preceding primary election for any office by the eighty-fourth day before the general election, is disqualified and may not have his or her name appear on the general election ballot. The provisions of subsection (d), section five-b of this article notwithstanding, any sworn statement filed after the deadline required by section five of this article must be received in the office indicated by subsection (a), section five-b of this article by the close of business on the eighty-fourth day before the general election.~~

(2) It is unlawful to issue a commission or certificate of election, or to administer the oath of office, to any person elected to any public office who has failed to file a any sworn statement as required by this article and no person may enter upon the duties of his or her office

until he or she has filed such statement, nor may he or she receive any salary or emolument for any period prior to the filing of ~~such~~ the statement.

(3) The vacancy on the ballot created by the disqualification in this subsection is subject to section nineteen, article five, chapter three of this code.

(d) As used in this section, ‘grossly’ means substantive and material, and specifically includes false or misleading representations and acts of omissions.

(e) The Secretary of State shall provide by rule protocols for written notice via certified mail return receipt requested to the person, candidate, financial agent or treasurer of a political party committee that is not in compliance with the requirements of this section. With respect to a violation of subsection (c) of this section, the notice shall be provided sixty days after any primary or other election.”

The bill was then ordered to third reading.

Delegate Cowles moved that the constitutional rule requiring the bill to be fully and distinctly read on three different days be dispensed with.

On this question, the yeas and nays were taken (**Roll No. 535**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Deem, L. Phillips and Walters.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 536**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:



ABSENT AND NOT VOTING: Arvon, Deem, L. Phillips and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 312) passed.

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

**Com. Sub. for S. B. 315**, Relating to civil actions filed under Consumer Protection Act; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page eleven, section one hundred six, line thirteen, following the period by inserting the following:

“Any party to an action for damages under this subsection has the right to demand a jury trial.”

On page eleven, section one hundred six, line fourteen, by striking out the subsection in its entirety, and inserting in lieu thereof the following:

“(b) No award of damages in an action pursuant to subsection (a) may be made without proof that the person seeking damages suffered an actual out-of-pocket loss that was proximately caused by a violation of this article. If a person seeking to recover damages for a violation of this article alleges that an affirmative misrepresentation is the basis for his or her claim then he or she must prove that the deceptive act or practice caused him or her to enter into the transaction that resulted in his or her damages. If a person seeking to recover damages for a violation of this article alleges that the concealment or omission of information is the basis for his or her claim, then he or she must prove that the person’s loss was proximately caused by the concealment or omission.”

On page eleven, section one hundred six, line twenty-one, following the word “action”, by inserting the words “counterclaim, cross-claim, or third party claim”.

On page eleven, section one hundred six, line twenty-four, following the word “mail”, by inserting the words “return receipt requested”.

And,

On page eleven, section one hundred six, line twenty-six, following the word “violation”, by inserting a comma and the words “but ten days in the case a cause of action has already been filed” followed by a comma.

The bill was then ordered to third reading.

**Com. Sub. for S. B. 316**, Exempting new veteran-owned business from certain fees paid to Secretary of State; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page twenty-three, section twelve, line fifty-three, following the words “of this code” and the period, by adding a new sentence to read as follows: “Notwithstanding anything in this code to the contrary, a veteran must be honorably discharged or under honorable conditions, and as described in 38 U.S.C. §101.”

The bill was then ordered to third reading.

**S. B. 318**, Relating to payment of wages by employers; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 325**, Relating to filing of candidates’ financial disclosure statements; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Cowles, and by unanimous consent, the bill was advanced to third reading with an amendment pending, and the further right to amend jointly by Delegates Shott and Manchin, and the rule was suspended to permit the consideration of the amendment on that reading.

**S. B. 363**, Establishing maximum rates and service limitations for reimbursement of health care services by Court of Claims; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 373**, Allowing wireless communication image serve as proof of motor vehicle insurance; on second reading, coming up in regular order, was read a second time.

Delegate Cowles moved that the constitutional rule requiring the bill to be fully and distinctly read on three different days be dispensed with.

On this question, the yeas and nays were taken (**Roll No. 537**), and there were—yeas 93, nays 1, absent and not voting 6, with the nays and absent and not voting being as follows:

NAYS: Lynch.

ABSENT AND NOT VOTING: Arvon, Deem, Folk, Guthrie, L. Phillips and Walters.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 538**), and there were—yeas 92, nays 1, absent and not voting 7, with the nays and absent and not voting being as follows:

NAYS: Lynch.

ABSENT AND NOT VOTING: Arvon, Deem, Guthrie, L. Phillips, Storch, Walters and Weld.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 373) passed.

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

**S. B. 418**, Relating to trustee real estate sale under deed of trust; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Delegate Cowles moved that the constitutional rule requiring the bill to be fully and distinctly read on three different days be dispensed with.

On this question, the yeas and nays were taken (**Roll No. 539**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Deem, Guthrie, L. Phillips, Storch and Walters.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a third time.

Delegates Byrd, Lane and Moye and requested to be excused from voting on the passage of S. B. 418 under the provisions of House Rule 49.

The Speaker replied that any impact on the Delegates would be as members of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Members from voting.

Delegates Marcum, Skinner and H. White requested to be excused from voting on the passage of S. B. 418 under the provisions of House Rule 49.

The Speaker replied that Delegates did exhibit direct personal or pecuniary interest therein and not as a member of a class of persons, and excused the Members from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 540**), and there were—yeas 89, nays 2, absent and not voting 6, excused 3, with the nays and absent and not voting and excused being as follows:

NAYS: Eldridge and Pushkin.

ABSENT AND NOT VOTING: Arvon, Cadle, Deem, L. Phillips, Romine and Walters.

EXCUSED: Marcum, Skinner and H. White.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 418) passed.

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

At 7:28 P.M., on motion of Delegate Cowles, the House of Delegates recessed until 8:00 P.M.

**S. B. 425**, Providing WVU, MU and WVSOM more authority to invest assets; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 439**, Relating to higher education personnel; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page ten,

section two-a, line one, following the words “of the council, shall”, by striking out the remainder of the subsection and inserting in lieu thereof: “create the following positions, and fill the positions beginning July 1, 2016, with well qualified and appropriately credentialed individuals who will report to the Vice Chancellor for Human Resources and work collaboratively with governing boards and their employees at all levels:

(1) A Generalist/Manager who is responsible for a wide range of human resources management, the Human Resources Information System, reporting, and program development activities;

(2) A Director of Classification and Compensation who is responsible for maintaining job classification systems, assisting organizations with classification and compensation matters, coordinating compensation studies with the compensation planning and review committee and external vendors, and conducting annual compensation program updates or market reviews;

(3) A Training and Development Specialist who is responsible for assessing training needs, and for planning, designing, developing, implementing and/or coordinating delivery of training and development programs and activities as required in subdivision (9), subsection (e) of this section, and section six, article seven of this chapter.

On page eleven, section one, lines three and four, following the word “transparency”, by striking out the comma and the words “when possible” and the comma.

On page thirteen, section one, following line two, by inserting a new subsection (e) as follows:

“(e) It is further the intent of the Legislature to encourage strongly that each organization dedicate a portion of future tuition increases to fund the classified salary schedule, and after full funding of the salary

schedule is achieved, to move toward meeting salary goals for faculty, classified and nonclassified employees.”

On page thirteen, two, line eight, before the word “Benefits” and the semicolon, by inserting the subdivision designation “(1)”.

On page thirteen, two, line twelve, before the word “Compensation”, by inserting the subdivision designation “(2)”.

On page thirteen, section two, line fourteen, before the words “Compensatory time”, by inserting the subdivision designation “(3)”.

On page fourteen, section two, line one, before the words “Employee classification”, by inserting the subdivision designation “(4)”.

On page fourteen, section two, line six, before the words “Full-time”, by inserting the subdivision designation “(5)”.

On page fourteen, section two, line ten, before the word “Health”, by inserting the subdivision designation “(6)”.

On page twenty, section eight, line fourteen, by striking out the subdivision designation “(A)” and inserting in lieu thereof the designation “(1)”;

On page twenty, section eight, line sixteen, by striking out the subdivision designation “(B)” and inserting in lieu thereof the designation “(2)”.

On page twenty-three, section eleven, line nineteen, following the period, by inserting the following: “An institution may not have more than ten percent of its total number of classified and nonclassified employees in positions considered by the president to be critical to the institution pursuant to said section two, article nine-a of this chapter.”

On page twenty-five, section eleven, line two, by striking out the word “reports” and inserting in lieu thereof the word “report”.

On page twenty-six, eleven, line seven, by striking out the subdivision designation “(A)” and inserting in lieu thereof the designation “(1)”.

On page twenty-six, section eleven, line thirteen, by striking out the word “reports” and inserting in lieu thereof the word “report”.

On page twenty-six, eleven, line fifteen, by striking out the subdivision designation “(B)” and inserting in lieu thereof the designation “(2)”.

On page twenty-seven, section eleven, line ten, by striking out the subsection designation “(c)” and inserting in lieu thereof the designation “(d)”.

On page twenty-seven, section eleven, line sixteen, by striking out the subdivision designation “(d)” and inserting in lieu thereof the designation “(e)”.

On page thirty-one, two, line five, before the word “Classified employee”, by inserting a subdivision designation “(1)”.

On page thirty-two, section two, line four, before the word “Salary”, by inserting a subdivision designation “(2)”.

On page thirty-two, two, line eight, before the words “Schedule’ or”, by inserting a subdivision designation “(3)”.

On page thirty-two, section two, line ten, preceding the words “Years of”, by inserting a subdivision designation “(4)”.

On page thirty-five, section two, line nineteen, before the word “Classification”, by inserting a subdivision designation “(1)”.

On page thirty-six, section two, line three, before the word “Classified”, by inserting a subdivision designation “(2)”.



On page thirty-six, section two, line twelve, before the word “Job”, by inserting a subdivision designation “(3)”.

On page thirty-six, section two, line fifteen, before the word “Job”, by inserting a subdivision designation “(4)”.

On page thirty-six, section two, line eighteen, before the word “Job”, by inserting a subdivision designation “(5)”.

On page thirty-seven, section two, line five, before the word “Job”, by inserting a subdivision designation “(6)”.

On page thirty-seven, section two, line eight, preceding the word “Job”, by inserting a subdivision designation “(7)”.

On page thirty-seven, section two, line fifteen, before the word “Job”, by inserting a subdivision designation “(8)”.

On page thirty-seven, section two, line nineteen, before the word “Job”, by inserting a subdivision designation “(9)”.

On page thirty-eight, section two, line two, before the word “Midpoint”, by inserting a subdivision designation “(10)”.

On page thirty-eight, section two, line six, before the word “Nonclassified”, by inserting a subdivision designation “(11)”;

On page thirty-eight, section two, line twelve, by striking out the subdivision designation “(1)” and inserting a subdivision designation “(A)”.

On page thirty-eight, section two, line thirteen, following the semicolon, by striking out the word “or”.

On page thirty-eight, section two, line fourteen, by striking out the subdivision designation “(2)” and inserting a subdivision designation “(B)”.

On page thirty-eight, section two, line fifteen, before the period, by inserting a semicolon, followed by the word “or” and a new paragraph (C) as follows:

“(C) Is in a position considered by the president to be critical to the institution pursuant to policies adopted by the governing board”.

On page thirty-eight, section two, line sixteen, before the word “Organization”, by inserting a subdivision designation “(12)”.

On page 39, section two, line 1, before the word “Pay” by inserting a subdivision designation “(13)”.

On page thirty-nine, section two, line three, before the word “Point”, by inserting a subdivision designation “(14)”.

On page thirty-nine, section two, line nine, before the word “Position”, by inserting a subdivision designation “(15)”.

On page forty, section two, line three, before the word “Pay”, by inserting a subdivision designation “(16)”.

On page forty, section three, line ten, by striking out the subsection designation “(a)”.

On page forty-one, section four, line seventeen, by striking out the subdivision designation “(A)” and inserting a subdivision designation “(1)”.

On page forty-two, section four, line six, by striking out the subdivision designation “(B)” and inserting in lieu thereof the designation “(2)”.

On page forty-two, section four, line eleven, by striking out the subdivision designation “(C)” and inserting in lieu thereof the designation “(3)”.

On page forty-seven, section five, line fourteen, by striking out the word “external”.

On page forty-seven, section five, line fourteen, following the words “salary study”, by striking out the semicolon and inserting the words “conducted by an external vendor pursuant to section six of this article”, followed by a semicolon.

On page forty-nine, section six, line fourteen, by striking out the subsection designation “(c)” and inserting in lieu thereof the designation “(b)”.

On page fifty, section six, line one, by striking out the subsection designation “(d)” and inserting in lieu thereof the designation “(c)”.

On page fifty, section six, line twelve, by striking out the subsection designation “(e)” and inserting in lieu thereof the designation “(d)”.

On page fifty, section six, line fourteen, following the word “study”, by inserting a period and striking out the remainder of the sentence.

On page fifty, section six, line fourteen, before the words “At the conclusion”, by inserting the new sentence “The study shall be completed by December 1, 2016, and on December 1 every fifth year thereafter.”

On page fifty, section six, line fifteen, before the word “study” by striking out the word “the” and inserting in lieu thereof the word “each”.

On page fifty-one, section six, line six, by striking out the subsection designation “(f)” and inserting in lieu thereof the subsection designation “(e)”.

On page fifty-one, section six, line seventeen, by striking out the subsection designation “(g)” and inserting in lieu thereof the subsection designation “(f)”.

And,

On page fifty-two, section six, line sixteen, by striking out the subsection designation “(h)” and inserting in lieu thereof the subsection designation “(g)”.

The bill was then ordered to third reading.

**S. B. 447**, Allowing issuance of diploma by public, private or home school administrator; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 453**, Relating to motor vehicle dealers, distributors, wholesalers and manufacturers; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk on page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

*“Be it enacted by the Legislature of West Virginia:*

That §17A-6A-1, §17A-6A-3, §17A-6A-4, §17A-6A-5, §17A-6A-6, §17A-6A-8, §17A-6A-8a, §17A-6A-9, §17A-6A-10, §17A-6A-11, §17A-6A-12, §17A-6A-13, §17A-6A-15 and §17A-6A-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto five new sections, designated §17A-6A-12a, §17A-6A-14a, §17A-6A-15a, §17A-6A-15b and §17A-6A-15c, all to read as follows:

**ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLESALEERS AND MANUFACTURERS.**

**§17A-6A-1. Legislative finding.**

The Legislature finds and declares that the distribution and sale of motor vehicles in this state vitally affects the general economy and the public welfare and that in order to promote the public welfare and in exercise of its police power, it is necessary to regulate motor vehicle dealers, manufacturers, distributors and representatives of vehicle manufacturers and distributors doing business in this state in order to avoid undue control of the independent new motor vehicle dealer by the vehicle manufacturer or distributor and to insure that dealers fulfill their obligations under their franchises and provide adequate and sufficient service to consumers generally, and to protect and preserve the investments and properties of the citizens and motor vehicle dealers of this state.

**§17A-6A-3. Definitions.**

For the purposes of this article, the words and phrases defined in this section have the meanings ascribed to them, except where the context clearly indicates a different meaning.

(1) ‘Dealer agreement’ means the franchise, agreement or contract in writing between a manufacturer, distributor and a new motor vehicle dealer which purports to establish the legal rights and obligations of the parties to the agreement or contract with regard to the purchase, lease or sale of new motor vehicles, accessories, service and sale of parts for motor vehicles.

(2) ‘Designated family member’ means the spouse, child, grandchild, parent, brother or sister of a deceased new motor vehicle dealer who is entitled to inherit the deceased dealer’s ownership interest in the new motor vehicle dealership under the terms of the dealer’s will, or who has otherwise been designated in writing by a deceased dealer to succeed the deceased dealer in the new motor vehicle dealership, or is entitled to inherit under the laws of intestate succession of this state. With respect to an incapacitated new motor

vehicle dealer, the term means the person appointed by a court as the legal representative of the new motor vehicle dealer's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased new motor vehicle dealer. However, the term means only that designated successor nominated by the new motor vehicle dealer in a written document filed by the dealer with the manufacturer or distributor, if such a document is filed.

(3) 'Distributor' means any person, resident or nonresident who, in whole or in part, offers for sale, sells or distributes any new motor vehicle to a new motor vehicle dealer or who maintains a factor representative, resident or nonresident, or who controls any person, resident or nonresident who, in whole or in part, offers for sale, sells or distributes any new motor vehicle to a new motor vehicle dealer.

(4) 'Established place of business' means a permanent, enclosed commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of motor vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning and other land-use regulatory ordinances and as licensed by the Division of Motor Vehicles.

(5) 'Factory branch' means an office maintained by a manufacturer or distributor for the purpose of selling or offering for sale vehicles to a distributor, wholesaler or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives. The term includes any sales promotion organization maintained by a manufacturer or distributor which is engaged in promoting the sale of a particular make of new motor vehicles in this state to new motor vehicle dealers.

(6) 'Factory representative' means an agent or employee of a manufacturer, distributor or factory branch retained or employed for the purpose of making or promoting the sale of new motor vehicles or for supervising or contracting with new motor vehicle dealers or proposed motor vehicle dealers.

(7) 'Good faith' means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade.

(8) 'Manufacturer' means any person who manufactures or assembles new motor vehicles; or any distributor, factory branch or factory representative and, in the case of a school bus, truck tractor, road tractor or truck as defined in section one, article one of this chapter, also means a person engaged in the business of manufacturing a school bus, truck tractor, road tractor or truck, their engines, power trains or rear axles, including when engines, power trains or rear axles are not warranted by the final manufacturer or assembler, and any distributor, factory branch or representative.

(9) 'Motor vehicle' means that term as defined in section one, article one of this chapter, including motorcycle, school bus, truck tractor, road tractor, truck and recreational vehicle, all-terrain vehicle and utility terrain vehicle as defined in subsections (c), (d), (f), (h), (l) ~~and~~ (nn) and (vv), respectively, of said section, but not including a farm tractor or farm equipment. The term 'motor vehicle' also includes, for a school bus, truck tractor, road tractor, truck, its component parts, including, but not limited to, its engine, transmission or real axle manufactured for installation in a school bus, truck tractor, road tractor or truck.

(10) 'New motor vehicle' means a motor vehicle which is in the possession of the manufacturer, distributor or wholesaler, or has been sold only to a new motor vehicle dealer and on which the original title has not been issued from the new motor vehicle dealer.

(11) 'New motor vehicle dealer' means a person who holds a dealer agreement granted by a manufacturer or distributor for the sale of its motor vehicles, who is engaged in the business of purchasing, selling, leasing, exchanging or dealing in new motor vehicles, service of said vehicles, warranty work and sale of parts who has an established place of business in this state and is licensed by the Division of Motor Vehicles.

(12) 'Person' means a natural person, partnership, corporation, association, trust, estate or other legal entity.

(13) 'Proposed new motor vehicle dealer' means a person who has an application pending for a new dealer agreement with a manufacturer or distributor. 'Proposed motor vehicle dealer' does not include a person whose dealer agreement is being renewed or continued.

(14) 'Relevant market area' means the area located within a twenty-air mile radius around an existing same line-make new motor vehicle dealership: *Provided*, That a fifteen-mile relevant market area as it existed prior to the effective date of this statute shall apply to any proposed new motor vehicle dealership as to which a manufacturer or distributor and the proposed new motor vehicle dealer have executed on or before the effective date of this statute a written agreement, including a letter of intent, performance agreement or commitment letter, concerning the establishment of the proposed new motor vehicle dealership.

**§17A-6A-4. Cancellation of dealer contract; notification.**

(1) Notwithstanding any agreement, a manufacturer or distributor shall not cancel, terminate, fail to renew or refuse to continue any dealer agreement with a new motor vehicle dealer unless the manufacturer or distributor has complied with all of the following:

(a) Satisfied the notice requirement of section seven of this article;

(b) Acted in good faith;

(c) Engaged in full and open communication with franchised dealer; and

(d) Has good cause for the cancellation, termination, nonrenewal or discontinuance.

(2) Notwithstanding any agreement, good cause exists when a manufacturer or distributor can demonstrate termination is necessary



due to a material breach of a reasonable term or terms of the agreement by a dealer when weighed against the interests of the dealer and the public. The burden of proof is on the manufacturer to prove good cause by a preponderance of the evidence. The interests of the dealer and the public shall include consideration of:

(a) The relationship of the dealer's sales to the sales in the relevant market;

(b) The investment and financial obligations of the dealer under the terms of the franchise agreement;

(c) The effect on the public cancellation of the franchise agreement would cause;

(d) The adequacy of the dealer's sales and service facilities, equipment, parts and personnel in relation to other dealers in the relevant market;

(e) Whether the dealer is honoring existing warranties;

(f) Whether the dealer is complying, or can comply within a reasonable time, with reasonable capitalization requirements; and

(g) The dealer's overall performance under the reasonable terms of the franchise agreement. This shall include the overall fairness of the agreement terms, the enforceability of the agreement and the relative bargaining power of the parties.

(h) Whether the manufacturer made available the appropriate volumes and type of motor vehicles to the dealer, and a reasonable opportunity for sales and service training to the dealer.

(3) If In addition to the requirements of subsection (2) of this section, if the failure by the new motor vehicle dealer to comply with a provision of the dealer agreement relates to the performance of the new motor vehicle dealer in sales or service, good cause exists for the

purposes of a termination, cancellation, nonrenewal or discontinuance under subsection (1) of this section when the new motor vehicle dealer failed to effectively carry out the performance provisions of the dealer agreement if all of the following have occurred:

(a) The new motor vehicle dealer was given written notice by the manufacturer or distributor of the failure;

(b) The notification stated that the notice of failure of performance was provided pursuant to this article;

(c) The new motor vehicle dealer was afforded a reasonable opportunity to exert good faith efforts to carry out the dealer agreement; and

(d) The failure continued for more than three hundred sixty days after the date notification was given pursuant to subdivision (a) of this subsection.

**§17A-6A-5. Circumstances not constituting good cause.**

Notwithstanding any agreement, the following alone ~~shall~~ does not constitute good cause for the termination, cancellation, nonrenewal or discontinuance of a dealer agreement under subdivision (d), subsection (1), section four of this article:

(a) A change in ownership of the new motor vehicle dealer's dealership. This subdivision does not authorize any change in ownership which would have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent which may not be unreasonably or untimely withheld.

(b) The refusal of the new motor vehicle dealer to purchase or accept delivery of any new motor vehicle parts, accessories or any other commodity or services not ordered by the new motor vehicle dealer.

(c) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a dealer agreement for the sale of another make or line of new motor vehicles, or that the new motor vehicle dealer has established another make or line of new motor vehicles in the same dealership facilities as those of the manufacturer or distributor: *Provided*, That the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the dealer agreement and with any reasonable facilities' requirements of the manufacturer or distributor.

(d) The fact that the new motor vehicle dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new motor vehicle dealer's spouse, son or daughter: *Provided*, That the sale or transfer shall not have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent.

(e) This section does not apply to any voluntary agreement entered into after a disagreement or civil action has arisen for which the dealer has accepted separate and valuable consideration. Any prospective agreement is void as a matter of law.

#### **§17A-6A-6. Burden of proof.**

For each termination, cancellation, nonrenewal or discontinuance, the manufacturer or distributor ~~shall have~~ has the burden of proof by a preponderance of the evidence for showing that he or she has acted in good faith, that the notice requirement has been complied with, and that there was good cause by a preponderance of the evidence for the termination, cancellation, nonrenewal or discontinuance.

#### **§17A-6A-8. Reasonable compensation to dealer.**

(1) Upon the termination, cancellation, nonrenewal or discontinuance of any dealer agreement, the new motor vehicle dealer

shall be allowed fair and reasonable compensation by the manufacturer or distributor for the following:

(a) Any new motor vehicle inventory, manufactured for sale in the United States, purchased from the manufacturer, distributor or other dealers, in the ordinary course of business, which has not been materially altered, substantially damaged or driven for more than ~~seven hundred fifty~~ one thousand miles, except that for any new motorcycle, new all-terrain vehicle or utility terrain vehicle inventory including motorhomes and travel trailers, regardless of gross vehicle weight, purchased from the manufacturer or distributor, that inventory must not have been materially altered, substantially damaged or driven for more than fifty miles and for motor vehicles with a rating greater than twenty-six thousand one pounds gross vehicle weight driven no more than five thousand miles. For purposes of a school bus, truck tractor, road tractor or truck, materially altered does not include dealer additions, such as, but not limited to, racks, mud flaps, fifth wheel assemblies, dump or tank bodies;

(b) Supplies and parts inventory purchased at the published list price purchased from, or at the direction of, the manufacturer or distributor. Parts shall be restricted to those and listed in the manufacturer's or distributor's current parts catalog;

(c) Equipment, special tools, furnishings and signs purchased or leased from, or at the direction of, the manufacturer or distributor; and

(d) Special computer software, hardware, license fees and other programs mandated by the manufacturer to provide training or communication with the manufacturer.

(2) Upon the termination, cancellation, nonrenewal or discontinuance of a dealer agreement by the manufacturer or distributor, the manufacturer or distributor shall also pay to the new motor vehicle dealer a sum equal to the current, fair rental value of his or her established place of business for a period of three years from the

effective date of termination, cancellation, nonrenewal or discontinuance, or the remainder of the lease, whichever is less. If the dealer, directly or indirectly, owns the dealership facility, the manufacturer shall pay the dealer a sum equal to the reasonable rental value of the dealership premises for three years. However, the dealer shall have the obligation to mitigate his or her damages, including, but not limited to, listing the facility with a commercial real estate agent and other reasonable steps to sell or lease the property. During this three-year period the manufacturer shall have the right to occupy and use the facilities until such time as the dealer is able to otherwise sell or lease the property to another party. The payment required by this subsection does not apply to any termination, cancellation, nonrenewal or discontinuance made pursuant to subsection (c), section ~~five~~ seven of this article.

(3) ~~Upon~~ In addition to the items listed in subsections (1) and (2) of this section, the termination, cancellation or nonrenewal where the manufacturer or distributor is discontinuing the sale of a product line, the manufacturer or distributor shall pay or provide to the motor vehicle dealer:

~~(a) Compensation consistent with the length of time the dealer carried the line and the investment and timing thereof required by the manufacturer or distributor of the dealer; and~~

~~(b)~~(a) Support of the manufacturer's or distributor's warranty obligations by making parts available and compensating dealers for warranty parts and labor for five years: *Provided*, That the motor vehicle dealer has adequate facilities, trained personnel and equipment to perform warranty repairs.

(b) Any actual damages that can be proven by a dealer by a preponderance of the evidence;

(c) Any costs the dealer incurred for facility upgrades or alternations required by the manufacturer, distributor or factory branch within the previous five years; and

(d) Within forty-five days after termination, dealer shall submit evidence of items to the manufacturer in accordance with reasonable manufacturer requirements. The manufacturer shall have thirty days from receipt of this evidence to note any objection. If not objected thereto, payment by the manufacturer to the dealer shall be made within thirty days. Thereafter, interest accumulates at the rate of the Fifth Federal Reserve District's secondary discount rate in effect on January 2 of the year in which payment is due plus five percentage points. If a dispute arises over the sufficiency of any evidence or an amount submitted, when interest begins to accumulate will be determined in accordance with West Virginia common law.

**§17A-6A-8a. Compensation to dealers for service rendered.**

(1) Every motor vehicle manufacturer, distributor or wholesaler, factory branch or distributor branch, or officer, agent or representative thereof, shall:

(a) Specify in writing to each of its motor vehicle dealers, the dealer's obligation for delivery, preparation, warranty and factory recall services on its products;

(b) Compensate the motor vehicle dealer for warranty and factory recall service required of the dealer by the manufacturer, distributor or wholesaler, factory branch or distributor branch or officer, agent or representative thereof; and

(c) Provide the dealer the schedule of compensation to be paid the dealer for parts, work and service in connection with warranty and recall services and the time allowance for the performance of the work and service.

(2) In no event may:

(a) The schedule of compensation fail to compensate the dealers for the work and services they are required to perform in connection with the dealer's delivery and preparation obligations, or fail to

adequately and fairly compensate the dealers for labor, parts and other expenses incurred by the dealer to perform under and comply with manufacturer's warranty agreements and factory recalls;

(b) Any manufacturer, distributor or wholesaler, or representative thereof, pay its dealers an amount of money for warranty or recall work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty and nonrecall work of the like kind; and

(c) Any manufacturer, distributor or wholesaler, or representative thereof, compensate for warranty and recall work based on a flat-rate figure that is less than what the dealer charges for retail work.

(3) It is a violation of this section for any manufacturer, distributor, wholesaler or representative to require any dealer to pay in any manner, surcharges, limited allocation, audits, charge backs or other retaliation if the dealer seeks to recover its nonwarranty retail rate for warranty and recall work.

(4) The retail rate charged by the dealer for parts is established by the dealer submitting to the manufacturer or distributor one hundred sequential nonwarranty customer-paid service repair orders that contain warranty-like parts or ninety consecutive days of nonwarranty customer-paid service repair orders that contain warranty-like parts covering repairs made no more than one hundred eighty days before the submission and declaring the average percentage markup.

(5) The retail rate customarily charged by the dealer for labor rate must be established using the same process as provided under subsection (4) of this section and declaring the average labor rate. The average labor rate must be determined by dividing the amount of the dealer's total labor sales by the number of total hours that generated those sales. If a labor rate and parts markup rate simultaneously declared by the dealer, the dealer may use the same repair orders to complete each calculation as provided under subsection (4) of this section. A reasonable allowance for labor for diagnostic time shall be

either included in the manufacturer's labor time allowance or listed as a separate compensable item. A dealer may request additional time allowance for either diagnostic or repair time, which request shall not be unreasonable denied by the manufacturer.

(6) In calculating the retail rate customarily charged by the dealer for parts and labor, the following work may not be included in the calculation:

(a) Repairs for manufacturer or distributor special events, specials or promotional discounts for retain customer repairs;

(b) Parts sold at wholesale;

(c) Routine maintenance not covered under any retail customer warranty, including fluids, filters and belts not provided in the course of repairs;

(d) Nuts, bolts fasteners and similar items that do not have an individual part number;

(e) Tires;

(f) Vehicle reconditioning;

(7) The average of the parts markup rates and labor rate is presumed to be reasonable and must go into effect thirty days following the manufacturer's approval. A manufacturer or distributor may rebut the presumption by a preponderance of the evidence that a rate is unreasonable in light of the practices of all other same line-make franchised motor vehicle dealers in an economically similar area of the state offering the same line-make vehicles, not later than thirty days after submission. If the average parts markup rate or average labor rate is rebutted, or both, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than thirty days after submission.



(8) Each manufacturer, in establishing a schedule of compensation for warranty work, shall rely on the vehicle dealer's declaration of hourly labor rates and parts as stated in subsections (4), (5) and (6) of this section and may not obligate any vehicle dealer to engage in unduly burdensome or time-consuming documentation of rates or parts, including obligating vehicle dealers to engage in transaction-by-transaction or part-by-part calculations.

(9) A dealer or manufacturer may demand that the average parts markup or average labor rate be calculated using the process provided under subsections (4) and (5) of this section; however, the demand for the average parts markup may not be made within twelve months of the last parts markup declaration and the demand for the average labor rate may not be made within twelve months of the last labor rate declaration. If a parts markup or labor rate is demanded by the dealer or manufacturer, the dealer shall determine the repair orders to be included in the calculation under subsections (4) and (5) of this section.

(10) As it applies to a school bus, truck tractor, road tractor and truck as defined in section one, article one of this chapter, with a gross vehicle weight on excess of twenty-six thousand one pounds the manufacturer, distributor and/or O. E. M. supplier shall pay the dealer its incurred actual time at the retail labor rate for retrieving a motor vehicle and returning a motor vehicle to dealer's designated parking area. Dealer shall be paid \$50 minimum for each operation that requires the use of each electronic tool (i.e. laptop computer). The manufacturer or distributor may not reduce what is paid to a dealer for this retrieval or return time, or for the electronic tool charge. The dealer is allowed to add to a completed warranty repair order three hours for every twenty-four hours the manufacturer, distributor and/or O. E. M. supplier makes the dealer stop working on a vehicle while the manufacturer, distributor and/or O. E. M. supplier decides how it wants the dealer to proceed with the repairs.

~~(4)~~(11) All claims made by motor vehicle dealers pursuant to the section for compensation for delivery, preparation, warranty and recall

work, including labor, parts and other expenses, shall be paid by the manufacturer within thirty days after approval and shall be approved or disapproved by the manufacturer within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition or the dealer failed to reasonable substantiate the claim in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose. No charge back may be made until the dealer has had notice and an opportunity to support the claim in question. No otherwise valid reimbursement claims may be denied once properly submitted within manufacturers' submission guidelines due to a clerical error or omission or based on a different level of technician technical certification or the dealer's failure to subscribe to any manufacturer's computerized training programs.

~~(5)~~(12) Notwithstanding the terms of a franchise agreement or provision of law in conflict with this section, the dealer's delivery, preparation, warranty and recall obligations constitutes the dealer's sole responsibility for product liability as between the dealer and manufacturer and, except for a loss caused by the dealer's failure to adhere to the obligations, a loss caused by the dealer's negligence or intentional misconduct or a loss caused by the dealer's modification of a product without manufacturer authorization, the manufacturer shall reimburse the dealer for all loss incurred by the dealer, including legal fees, court costs and damages, as a result of the dealer having been named a party in a product liability action.

#### **§17A-6A-9. Payment of compensation.**

(1) Compensation for new motor vehicle inventory under subdivision (a), subsection (1), section eight of this article shall be paid within sixty days after the effective date of the termination, cancellation, nonrenewal or discontinuance. Compensation for items

of personal property required by subdivisions (b), (c) and (d), subsection (1), section eight of this article shall be paid within sixty days after the effective date of the termination, cancellation, nonrenewal or discontinuance. ~~if the~~ The new motor vehicle dealer has met will meet all reasonable requirements of the dealer agreement with respect to the return of the repurchased personal property, including providing clear title.

(2) Reasonable compensation pursuant to subdivision (a), subsection (1), section eight of this article may not be less than the new motor vehicle dealer's net acquisition cost, including any special promotions ordered by the manufacturer, such as advertising charges; ~~and special tools purchased from the manufacturer or distributor within three years of the date of termination, cancellation, nonrenewal or discontinuance.~~ Reasonable compensation pursuant to subdivision (b) of said subsection shall be the amount stated in the manufacturer's or distributor's current parts price list. Reasonable compensation pursuant to subdivisions (c) and (d) of said subsection shall be the fair market value of the personal property: determined by a five-year straight line depreciation schedule.

(3) In the event payment is not made within ninety days as provided in subsection (1) of this section, interest ~~accrues on all amounts due the new motor vehicle dealer at a rate of twelve percent per annum;~~ shall accumulate at the rate of the Fifth Federal Reserve District's secondary discount rate in effect on January 2 of the year in which payment is due plus five percentage points. In determining when interest begins to accumulate, the court may consider whether the dealer reasonably complied with the reasonable manufacturer's submission requirements and the reasonableness of the manufacturer's determinations in refusing or delaying payment to the dealer.

#### **§17A-6A-10. Prohibited practices.**

(1) A manufacturer or distributor may not require any new motor vehicle dealer in this state to do any of the following:

(a) Order or accept delivery of any new motor vehicle, part or accessory of the vehicle, equipment or any other commodity not required by law which was not voluntarily ordered by the new motor vehicle dealer. This section does not prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor;

(b) Order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor;

(c) Unreasonably participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices, display decorations, brand signs and dealer identification, nondiagnostic computer equipment and displays or other materials at the expense of the new motor vehicle dealer;

(d) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement, limit inventory, invoke sales and service warranty or other types of audits or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement is not a violation of this article;

(e) Change the capital structure or financial requirements of the new motor vehicle dealership without reasonable business justification in light of the dealer's market, historical performance and compliance with prior capital structure or financial requirements and business necessity, or the means by or through which the dealer finances the operation of the dealership if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria. The burden of proof is on

the manufacturer to prove business justification by a preponderance of the evidence;

(f) Refrain from participation in the management of, investment in or the acquisition of any other line of new motor vehicle or related products, provided that the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements and makes no change in the principal management of the dealer. Notwithstanding the terms of any franchise agreement, a manufacturer or distributor may not enforce any requirements, including facility requirements, that a new motor vehicle dealer establish or maintain exclusive facilities, personnel or display space, when the requirements are unreasonable considering current economic conditions and are not otherwise justified by reasonable business considerations. The burden of proving that current economic conditions or reasonable business considerations justify exclusive facilities is on the manufacturer or distributor and must be proven by a preponderance of the evidence;

(g) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, where to do so would be unreasonable. The burden is on the manufacturer or distributor to prove reasonableness by a preponderance of the evidence;  
and

(h) Prospectively assent to a waiver of trial by jury release, arbitration, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this article or require any controversy between a new motor vehicle dealer and a manufacturer or distributor to be referred to a person other than the duly constituted courts of ~~the~~ this state or the United States District Courts of the Northern or Southern Districts of West Virginia. Nothing in this prevents a motor vehicle dealer, after a civil action is filed, from entering into any agreement of settlement, arbitration, assignment or waiver of a trial by jury; if the referral would be binding upon the new motor vehicle dealer.

(i) To coerce or require any dealer, whether by agreement, program, incentive provision or otherwise, to construct improvements to its facilities or to install new signs or other franchisor image elements that replace or substantially alter those improvements, signs or franchisor image elements completed within the proceeding ten years that were required and approved by the manufacturer, factory branch, distributor or distributor branch or one of its affiliates. If a manufacturer, factory branch, distributor or distributor branch offers incentives or other payments to a consumer or dealer paid on individual vehicle sales under a program offered after the effective date of this subdivision and available to more than one dealer in the state that are premised, wholly or in part, on dealer facility improvements or installation of franchisor image elements required by and approved by the manufacturer, factory branch, distributor or distributor branch and completed within ten years preceding the program shall be deemed to be in compliance with the program requirements pertaining to construction of facilities or installation of signs or other franchisor image elements that would replace or substantially alter those previously constructed or installed with that ten year period. This subdivision shall not apply to a program that is in effect with more than one dealer in the state on the effective date of this subsection, nor to any renewal of such program, nor to a modification that is not a substantial modification of a material term or condition of such program;

(j) To condition the award, sale, transfer, relocation or renewal of a franchise or dealer agreement or to condition sales, service, parts or finance incentives upon site control or an agreement to renovate or make substantial improvements to a facility: *Provided*, That voluntary and noncoerced acceptance of such conditions by the dealer in writing, including, but not limited to, a written agreement for which the dealer has accepted separate and valuable consideration, does not constitute a violation;

(k) To enter into a contractual requirement imposed by the manufacturer, distributor or a captive finance source as follows:

(i) In this section, 'captive finance source' means any financial source that provides automotive-related loans or purchases retail installment contracts or lease contracts for motor vehicles in this state and is, directly or indirectly, owned, operated or controlled by such manufacturer, factory branch, distributor or distributor branch.

(ii) It shall be unlawful for any manufacturer, factory branch, captive finance source, distributor or distributor branch, or any field representative, officer, agent or any representative of them, notwithstanding the terms, provisions or conditions of any agreement or franchise, to require any of its franchised dealers located in this state to agree to any terms, conditions or requirements in subdivisions (a) through (j), inclusive, of this subsection in order for any such dealer to sell to any captive finance source any retail installment contract, loan or lease of any motor vehicles purchased or leased by any of the dealer's customers, or to be able to participate in, or otherwise, directly or indirectly, obtain the benefits of the consumer transaction incentive program payable to the consumer or the dealer and offered by or through any captive finance source as to that incentive program.

(iii) The applicability of this section is not affected by a choice of law clause in any agreement, waiver, novation or any other written instrument.

(iv) It shall be unlawful for a manufacturer or distributor to use any subsidiary corporation, affiliated corporation or any other controlled corporation, partnership, association or person to accomplish what would otherwise be illegal conduct under this section on the part of the manufacturer or distributor.

(2) A manufacturer or distributor may not do any of the following:

(a) (i) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in reasonable quantities relative to the new motor vehicle dealer's market area and facilities, unless the failure is caused by acts or occurrences beyond the

control of the manufacturer or distributor, or unless the failure results from an order by the new motor vehicle dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor. No manufacturer or distributor may penalize a new motor vehicle dealer for an alleged failure to meet sales quotas where the alleged failure is due to actions of the manufacturer or distributor;

(ii) Refuse to offer to its same line-make new motor vehicle dealers all models manufactured for that line-make, including, but not limited to, any model that contains a separate label or badge indicating a upgraded version of the same model. This provision does not apply to motorhome, travel trailer, or fold-down camping trailer manufacturers; or

(iii) Require as a prerequisite to receiving a model or series of vehicles that a new motor vehicle dealer pay an extra unreasonable acquisition fee or surcharge, or purchase unreasonable advertising displays or other materials, or conduct unreasonable remodeling, renovation or reconditioning of the dealer's facilities, or any other type of unreasonable upgrade requirement;

(b) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor, including any numerical calculation or formula used, nationally or within the dealer's market, to make the allocations within thirty days of a request. Any information or documentation provided by the manufacturer may be subject to a reasonable confidentiality agreement;

(c) Refuse to disclose to a new motor vehicle dealer the total number of new motor vehicles of a given model, which the manufacturer or distributor has sold during the current model year within the dealer's marketing district, zone or region, whichever geographical area is the smallest within thirty days of a request;



(d) Increase prices of new motor vehicles which the new motor vehicle dealer had ordered and then eventually delivered to the same retail consumer for whom the vehicle was ordered, if the order was made prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer which has been submitted to the vehicle manufacturer is evidence of each order. In the event of manufacturer or distributor price reductions or cash rebates, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of \$5 shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. A price difference applicable to new model or series motor vehicles at the time of the introduction of the new models or the series is not a price increase or price decrease. This subdivision does not apply to price changes caused by the following:

(i) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law;

(ii) In the case of foreign-made vehicles or components, revaluation of the United States dollar; or

(iii) Any increase in transportation charges due to an increase in rates charged by a common carrier and transporters;

(e) Offer any refunds or other types of inducements to any dealer for the purchase of new motor vehicles of a certain line-make to be sold to this state or any political subdivision of this state without making the same offer available upon request to all other new motor vehicle dealers of the same line-make;

(f) Release to an outside party, except under subpoena or in an administrative or judicial proceeding to which the new motor vehicle dealer or the manufacturer or distributor are parties, any business, financial or personal information which has been provided by the

dealer to the manufacturer or distributor, unless the new motor vehicle dealer gives his or her written consent;

(g) Deny a new motor vehicle dealer the right to associate with another new motor vehicle dealer for any lawful purpose;

(h) Establish a new motor vehicle dealership. ~~which would unfairly compete with a new motor vehicle dealer of the same line-make operating under a dealer agreement with the manufacturer or distributor in the relevant market area.~~ A manufacturer or distributor ~~shall is not be considered to be unfairly competing to have established~~ a new motor vehicle dealership if the manufacturer or distributor is:

(A) Operating a preexisting dealership temporarily for a reasonable period.

(B) Operating a preexisting dealership which is for sale at a reasonable price.

(C) Operating a dealership with another person who has made a significant investment in the dealership and who will acquire full ownership of the dealership under reasonable terms and conditions;

(i) A manufacturer may not, except as provided by this section, directly or indirectly:

(A) Own an interest in a dealer or dealership: Provided, That a manufacturer may own stock in a publicly held company solely for investment purposes;

(B) Operate a dealership, including, but not limited to, displaying a motor vehicle intended to facilitate the sale of new motor vehicles other than through franchised dealers, unless the display is part of an automobile trade show that more than two automobile manufacturers participate in; or

(C) Act in the capacity of a new motor vehicle dealer. ~~Provided, That a manufacturer may own an interest, other than stock in a publicly held company, solely for investment purposes;~~

(j) A manufacturer or distributor may own an interest in a franchised dealer, or otherwise control a dealership, for a period not to exceed twelve months from the date the manufacturer or distributor acquires the dealership if:

(i) The person from whom the manufacturer or distributor acquired the dealership was a franchised dealer; and

(ii) The dealership is for sale by the manufacturer or distributor at a reasonable price and on reasonable terms and conditions;

(k) The twelve-month period may be extended for an additional twelve months. Notice of any such extension of the original twelve-month period must be given to any dealer of the same line-make whose dealership is located in the same county, or within twenty air miles of, the dealership owned or controlled by the manufacturer or distributor prior to the expiration of the original twelve-month period. Any dealer receiving the notice may protest the proposed extension within thirty days of receiving notice by bringing a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the extension;

(l) For the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been under represented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a dealership if the manufacturer's or distributor's participation in the dealership is in a bona fide relationship with a franchised dealer who:

(i) Has made a significant investment in the dealership, subject to loss;

(ii) Has an ownership interest in the dealership; and

(iii) Operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions;

(m) Unreasonably withhold consent to the sale, transfer or exchange of the dealership to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state;

(n) Fail to respond in writing to a request for consent to a sale, transfer or exchange of a dealership within sixty days after receipt of a written application from the new motor vehicle dealer on the forms generally utilized by the manufacturer or distributor for such purpose and containing the information required therein. Failure to respond to the request within the sixty days is consent;

(o) Unfairly prevent a new motor vehicle dealer from receiving reasonable compensation for the value of the new motor vehicle dealership;

(p) Audit any motor vehicle dealer in this state for warranty parts or warranty service compensation, service compensation, service or sales incentives, manufacturer rebates or other forms of sales incentive compensation more than twelve months after the claim for payment or reimbursement has been made by the automobile dealer. No chargeback may be made until the dealer has had notice and an opportunity to support the claim in question within thirty days of receiving notice of the chargeback. No otherwise valid reimbursements claims may be denied once properly submitted in accordance with the manufacturer's submission guidelines due to clerical error or omission. ~~Provided, That the provisions of this~~ This subsection ~~do~~ does not apply where a claim is fraudulent. In addition, the manufacturer or distributor is responsible for reimbursing the audited dealer for all copying, postage and administrative costs incurred by the dealer during the audit. Any charges to a dealer as a result of the audit must be separately billed to the dealer;

(q) Unreasonably restrict a dealer's ownership of a dealership through noncompetition covenants, site control, sublease, collateral pledge of lease, right of first refusal, option to purchase, or otherwise. A right of first refusal is created when:

(i) A manufacturer has a contractual right of first refusal to acquire the new motor vehicle dealer's assets where the dealer owner receives consideration, terms and conditions that are either the same as or better than those they have already contracted to receive under the proposed change of more than fifty percent of the dealer's ownership.

(ii) The proposed change of the dealership's ownership or the transfer of the new vehicle dealer's assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one of the dealer's owners to one of the following:

(A) A designated family member of one or more of the dealer owners;

(B) A manager employed by the dealer in the dealership during the previous five years and who is otherwise qualified as a dealer operator;

(C) A partnership or corporation controlled by a designated family member of one of the dealers;

(D) A trust established or to be established:

(i) For the purpose of allowing the new vehicle dealer to continue to qualify as such under the manufacturer's or distributor's standards; or

(ii) To provide for the succession of the franchise agreement to designated family members or qualified management in the event of death or incapacity of the dealer or its principle owner or owners.

(iii) Upon exercising the right of first refusal by a manufacturer, it eliminates any requirement under its dealer agreement or other

applicable provision of this statute that the manufacturer evaluate, process or respond to the underlying proposed transfer by approving or rejecting the proposal, is not subject to challenge as a rejection or denial of the proposed transfer by any party.

(iv) Except as otherwise provided in this subsection, the manufacturer or distributor agrees to pay the reasonable expenses, including reasonable out-of-pocket professional fees which shall include, but not be limited to, accounting, legal or appraisal services fees that are incurred by the proposed owner or transferee before the manufacturer's or distributor's exercise of its right of first refusal. Payment of the expenses and fees for professional services are not required if the dealer fails to submit an accounting of those expenses and fees within twenty days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such a written account of fees and expenses may be requested by a manufacturer or distributor before exercising its right of first refusal;

(r) Except for experimental low-volume not-for-retail sale vehicles, cause warranty and recall repair work to be performed by any entity other than a new motor vehicle dealer;

(s) Make any material or unreasonable change in any franchise agreement, including, but not limited to, the dealer's area of responsibility without giving the new motor vehicle dealer written notice by certified mail of the change at least sixty days prior to the effective date of the change, and shall include an explanation of the basis for the alteration. Upon written request from the dealer, this explanation shall include, but is not limited to, a reasonable and commercially acceptable copy of all information, data, evaluations, and methodology relied on or based its decision on, to propose the change to the dealer's area of responsibility. Any information or documentation provided by the manufacturer or distributor may be produced subject to a reasonable confidentiality agreement. At any time prior to the effective date of an alteration of a new motor vehicle dealer's area of responsibility, and after the completion of any internal

appeal process pursuant to the manufacturer's or distributor's policy manual, the motor vehicle dealer may petition the court to enjoin or prohibit the alteration within thirty days of receipt of the manufacturer's internal appeal process decision. The court shall enjoin or prohibit the alteration of a motor vehicle dealer's area of responsibility unless the franchisor shows, by a preponderance of the evidence, that the alteration is reasonable and justifiable in light of market conditions. If a motor vehicle dealer petitions the court, no alteration to a motor vehicle dealer's area of responsibility shall become effective until a final determination by the court. If a new motor vehicle dealer's area of responsibility is altered, the manufacturer shall allow twenty-four months for the motor vehicle dealer to become sales effective prior to taking any action claiming a breach or nonperformance of the motor vehicle dealer's sales performance responsibilities;

(t) Fail to reimburse a new motor vehicle dealer, at the dealer's regular rate, or the full and actual cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the dealership if the provision of the loaner vehicle is required by the manufacturer;

(u) Compel a new motor vehicle dealer through its finance subsidiaries to agree to unreasonable operating requirements or to directly or indirectly terminate a franchise through the actions of a finance subsidiary of the franchisor. This subsection does not limit the right of a finance subsidiary to engage in business practices in accordance with the usage of trade in retail or wholesale vehicle financing;

(v) Discriminate directly or indirectly between dealers on vehicles of like grade or quantity where the effect of the discrimination would substantially lessen competition; and

(w) Use or employ any performance standard that is not fair and reasonable and based upon accurate and verifiable data made available to the dealer;

(x) To require or coerce any new motor vehicle dealer to sell, offer to sell or sell exclusively extended service contract, maintenance plan or similar product, including gap or other products, offered, endorsed or sponsored by the manufacturer or distributor by the following means:

(i) By an act of statement that the manufacturer or distributor will adversely impact the dealer, whether it is express or implied;

(ii) By a contract made to the dealer on the condition that the dealer shall sell, offer to sell or sell exclusively an extended service contract, extended maintenance plan or similar product offered, endorsed or sponsored by the manufacturer or distributor;

(iii) By measuring the dealer's performance under the franchise agreement based on the sale of extended service contracts, extended maintenance plans or similar products offered, endorsed or sponsored by the manufacturer or distributor;

(iv) By requiring the dealer to actively promote the sale of extended service contracts, extended maintenance plans or similar products offered, endorsed or sponsored by the manufacturer or distributor;

(v) Nothing in this paragraph prohibits a manufacturer or distributor from providing incentive programs to a new vehicle dealer who makes the voluntary decision to offer to sell, sell or sell exclusively an extended service contract, extended maintenance plan or similar product offered, endorsed or sponsored by the manufacturer or distributor.

(y) Require a dealer to purchase goods or services from a vendor selected, identified or designated by a manufacturer, factory branch, distributor, distributor branch or one of its affiliates by agreement, program, incentive provision or otherwise without making available to the dealer the option to obtain the goods or services of



substantially similar quality and overall design from a vendor chosen by the dealer and approved by the manufacturer, factory branch, distributor or distributor branch: *Provided*, That such approval may not be unreasonably withheld: *Provided, however*, That the dealer's option to select a vendor is not available if the manufacturer or distributor provides substantial reimbursement for the goods or services offered. Substantial reimbursement is equal to the difference in price of the goods and services from manufacturer's proposed vendor and the motor vehicle dealer's selected vendor: *Provided further*, That the goods are not subject to the manufacturer or distributor's intellectual property or trademark rights, or trade dress usage guidelines.

(z) Notwithstanding any provision of this article to the contrary, a manufacturer who does not use dealer franchises as part of its business model may operate not more than five separate dealership locations that sell new motor vehicles.

(3) A manufacturer or distributor, either directly or through any subsidiary, may not terminate, cancel, fail to renew or discontinue any lease of the new motor vehicle dealer's established place of business except for a material breach of the lease.

(4) Except as may otherwise be provided in this article, no manufacturer or franchisor ~~shall~~ may sell, directly or indirectly, any new motor vehicle to a consumer in this state, except through a new motor vehicle dealer holding a franchise for the line-make covering such new motor vehicle. This subsection ~~shall~~ does not apply to manufacturer or franchisor sales of new motor vehicles to charitable organizations, qualified vendors or employees of the manufacturer or franchisor.

(5) Except when prevented by an act of God, labor strike, transportation disruption outside the control of the manufacturer or time of war, a manufacturer or distributor may not refuse or fail to deliver, in reasonable quantities and within a reasonable time, to a dealer having a franchise agreement for the retail sale of any motor

vehicle sold or distributed by the manufacturer, any new motor vehicle or parts or accessories to new motor vehicles as are covered by the franchise if the vehicles, parts and accessories are publicly advertised as being available for delivery or are actually being delivered. ~~All models offered for sale by the manufacturer, without any enrollment, surcharge, unreasonable facility or building or any other unreasonable type of upgrade requirement or acquisition fee, shall be available to the franchised dealer at no additional cost for that particular model of vehicle.~~

**§17A-6A-11. Where motor vehicle dealer deceased or incapacitated.**

(1) Any designated family member of a deceased or incapacitated new motor vehicle dealer may succeed the dealer in the ownership or operation of the dealership under the existing dealer agreement if the designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to the dealership within one hundred twenty days after the dealer's death or incapacity, agrees to be bound by all of the terms and conditions of the dealer agreement, and the designated family member meets the current criteria generally applied by the manufacturer or distributor in qualifying new motor vehicle dealers. A manufacturer or distributor may refuse to honor the existing dealer agreement with the designated family member only for good cause. In determining whether good cause exists for refusing to honor the agreement, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the manufacturer's existing written, reasonable and uniformly applied standards for business experience and financial qualifications. The designated family member will have a minimum of one year to satisfy that manufacturer's written and reasonable standards and financial qualifications for appointment as the dealer and principal.

(2) The manufacturer or distributor may request from a designated family member such personal and financial data as is reasonably

necessary to determine whether the existing dealer agreement should be honored. The designated family member shall supply the personal and financial data promptly upon the request.

(3) If a manufacturer or distributor believes that good cause exists for refusing to honor the succession, the manufacturer or distributor may, within forty-five days after receipt of the notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, or within forty-five days after the receipt of the requested personal and financial data, serve upon the designated family member notice of its refusal to approve the succession.

(4) The notice of the manufacturer or distributor provided in subsection (3) of this section shall state the specific grounds for the refusal to approve the succession and that discontinuance of the agreement shall take effect not less than ~~ninety~~ one hundred-eighty days after the date the notice is served.

(5) If notice of refusal is not served within the sixty days provided for in subsection (3) of this section, the dealer agreement continues in effect and is subject to termination only as otherwise permitted by this article.

(6) This section does not preclude a new motor vehicle dealer from designating any person as his or her successor by will or any other written instrument filed with the manufacturer or distributor, and if such an instrument is filed, it alone determines the succession rights to the management and operation of the dealership.

(7) If the manufacturer challenges the succession, it maintains the burden of proof to show good cause by a preponderance of the evidence. If the person seeking succession files a civil action within the one hundred eighty days set forth in subsection (4) of this section, no action may be taken by the manufacturer contrary to the dealer agreement until such time as the civil action and any appeal has been exhausted: *Provided*, That when a motor vehicle dealer appeals a decision upholding a manufacturer's decision to not allow succession

based upon the designated person's insolvency, conviction of a crime punishable by imprisonment in excess of one year under the law which the designated person was convicted, the dealer agreement shall remain in effect pending exhaustion of all appeals only if the motor vehicle dealer establishes a likelihood of success on appeal and the public interest will not be harmed by keeping the dealer agreement in effect pending entry of final judgment after the appeal.

**§17A-6A-12. Establishment and relocation or establishment of additional dealers.**

(1) As used in this section, 'relocate' and 'relocation' do not include the relocation of a new motor vehicle dealer within four miles of its established place of business or an existing new motor vehicle dealer sells or transfers the dealership to a new owner and the successor new motor vehicle dealership owner relocates to a location within four miles of the seller's last open new motor vehicle dealership location. The relocation of a new motor vehicle dealer to a site within the area of sales responsibility assigned to that dealer by the manufacturing branch or distributor may not be within six air miles of another dealer of the same line-make.

(2) Before a manufacturer or distributor enters into a dealer agreement establishing or relocating a new motor vehicle dealer within a relevant market area where the same line-make is represented, the manufacturer or distributor shall give written notice to each new motor vehicle dealer of the same line-make in the relevant market area of its intention to establish an additional dealer or to relocate an existing dealer within that relevant market area.

(3) Within sixty days after receiving the notice provided in subsection (2) of this section, or within sixty days after the end of any appeal procedure provided by the manufacturer or distributor, a new motor vehicle dealer of the same line-make within the affected relevant market area may bring a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located

to determine whether good cause exists for the establishing or relocating of the proposed new motor vehicle dealer. *Provided*, That a new motor vehicle dealer of the same line-make within the affected relevant market area shall not be permitted to bring such an action if the proposed relocation site would be further from the location of the new motor vehicle dealer of the same line-make than the location from which the dealership is being moved. Once an action has been filed, the manufacturer or distributor may not establish or relocate the proposed new motor vehicle dealer until the circuit court has rendered a decision on the matter. An action brought pursuant to this section shall be given precedence over all other civil matters on the court's docket. The manufacturer has the burden of proving that good cause exists for establishing or relocating a proposed new motor vehicle dealer.

(4) This section does not apply to the reopening in a relevant market area of a new motor vehicle dealer that has been closed ~~or sold~~ within the preceding two years if the established place of business of the new motor vehicle dealer is within four air miles of the established place of business of the closed or sold new motor vehicle dealer.

(5) In determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line-make, the court shall take into consideration the existing circumstances, including, but not limited to, the following:

(a) Permanency and amount of the investment, including any obligations incurred by the dealer in making the investment;

(b) Effect on the retail new motor vehicle business and the consuming public in the relevant market area;

(c) Whether it is injurious or beneficial to the public welfare;

(d) Whether the new motor vehicle dealers of the same line-make in the relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of that line-make in

the market area, including the adequacy of motor vehicle sales and qualified service personnel;

(e) Whether the establishment or relocation of the new motor vehicle dealer would promote competition;

(f) Growth or decline of the population and the number of new motor vehicle registrations in the relevant market area; and

(g) The effect on the relocating dealer of a denial of its relocation into the relevant market area.

**§17A-6A-12a. Restriction on motor vehicle dealer's use of dealership property.**

(1) A manufacturer shall not require that a new motor vehicle dealer, a proposed new motor vehicle dealer, or any owner of an interest in a dealership facility enter into or agree to a property use agreement as a condition to any of the following:

(a) Awarding a dealer agreement to a prospective new motor vehicle dealer.

(b) Adding a line make or dealer agreement to an existing new motor vehicle dealer.

(c) Renewing a dealer agreement with an existing new motor vehicle dealer.

(d) Approving a relocation of a new motor vehicle dealer's place of business.

(e) Approving a sale or transfer of the ownership of a dealership or a transfer of a dealer agreement to another person.

(2) Subsection (1) of this section does not apply to a property use agreement if any of the following are offered and accepted for that agreement:

(a) Monetary consideration.

(b) Separate and valuable consideration that can be calculated to a sum certain.

(3) If a manufacturer and new motor vehicle dealer are in parties to a property use agreement, the dealer agreement between the manufacturer and new motor vehicle dealer is terminated by a manufacturer or by a successor manufacturer or by operation of law and the reason for the termination is not a reason described in paragraphs one through five, inclusive, subdivision (c), section seven of this article, the property use agreement terminates and ceases to be effective at the time the dealer agreement is terminated.

(4) If any provision contained in a property use agreement entered into on or after the effective date of the amendatory act that added this subsection is inconsistent with this section, the provision is voidable at the election of the affected new motor vehicle dealer, proposed new motor vehicle dealer, or owner of an interest in the dealership facility.

(5) As used in this section, 'property use agreement' means any of the following:

(a) An agreement that requires that a new motor vehicle dealer establish or maintain exclusive dealership facilities.

(b) An agreement that restricts the ability of a new motor vehicle dealer, or the ability of the dealer's lessor if the dealer is leasing the dealership facility, to transfer, sell, lease, or change the use of the place of business of the dealership, whether by sublease, lease, collateral pledge of lease, right of first refusal to purchase or lease, option to purchase, option to lease, or other similar agreement, regardless of who the parties to that agreement are.

(c) Any similar agreement between a manufacturer and a new motor vehicle dealer and commonly known as a site control agreement or exclusive use agreement.

**§17A-6A-13. Obligations regarding warranties.**

(1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery and warranty service on its products. The manufacturer or distributor shall compensate the new motor vehicle dealer for warranty service required of the dealer by the manufacturer or distributor. The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, work and service, and the time allowance for the performance of the work and service in a manner in compliance with section eight-a of this article.

(2) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, ~~the principal factor to be given consideration shall be the prevailing wage rates being paid by dealers in the community in which the dealer is doing business, and in no event may the compensation of a dealer for warranty labor and parts be less than the rates charged by the dealer for like service to retail customers for nonwarranty service and repairs, provided that the rates are reasonable:~~ section eight-a of this article shall govern: However, Provided, That in the case of a new motor vehicle dealer of new motorcycles or recreational vehicles, motorboat trailers, all-terrain vehicles, utility terrain vehicles and snowmobiles, in no event may the compensation of a dealer for warranty parts be less than is the greater of the dealer's cost of acquiring the part plus twenty thirty percent or the manufacturer's suggested retail price: Provided, however, That in the case of a dealer of travel trailers, fold-down camping trailers and motorhomes, the compensation of a dealer's cost for warranty parts is not less than the dealer's cost of acquiring the part plus twenty percent.

(3) A manufacturer or distributor may not do any of the following:



(a) Fail to perform any warranty obligation;

(b) Fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the defects; or

(c) Fail to compensate any of the new motor vehicle dealers licensed in this state for repairs effected by the recall.

(4) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be paid within thirty days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within thirty days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within thirty days after the receipt of the form is considered to be approved and payment shall be made within thirty days. The manufacturer has the right to initiate an audit of a claim within twelve months after payment and to charge back to the new motor vehicle dealer the amount of any false, fraudulent or unsubstantiated claim, subject to the requirements of section eight-a of this article.

(5) The manufacturer shall accept the return of any new and unused part, component or accessory that was ordered by the dealer, and shall reimburse the dealer for the full cost charged to the dealer for the part, component or accessory if the dealer returns the part and makes a claim for the return of the part within one year of the dealer's receipt of the part, component or accessory and provides reasonable documentation, to include any changed part numbers to match new part numbers, provided that the part was ordered for a warranty repair.

**§17A-6A-14a. Open account protection.**

If there is a dispute between the manufacturer, factory branch, distributor or distributor branch and the dealer with respect to any

matter referred to this article, either party may notify, in writing, the other party of its request to challenge, through the manufacturer's appeal process or the circuit courts of the state of West Virginia. A manufacturer, factory branch, distributor, or distributor branch may not collect chargebacks, fully or in part, either through direct payment or by charge to the dealer's account, for warranty parts or service compensation, including service incentives, sales incentives, other sales compensation, surcharges, fees, penalties or any financial imposition of any type arising from an alleged failure of the dealer to comply with a policy of, directive from or agreement with the manufacturer, factory branch, distributor or distributor branch until thirty days following final notice of the amount charged to the dealer following all internal processes of the manufacturer, factory, factory branch, distributor or distributor branch. Within thirty days following receipt of final notice, the dealer may, in writing, request a hearing or seek civil relief from the manufacturer's appeal process or the circuit courts of the state of West Virginia. If a dealer requests a hearing or files a civil action, the manufacturer, factory branch, distributor or distributor branch may not collect the chargeback, fully or in part, either through direct payment or by charge to the dealer's account, until the completion of the hearing or civil action, and all appeal, civil or otherwise, have been exhausted concerning the validity of the chargeback.

**§17A-6A-15. Indemnity.**

Notwithstanding the terms of any dealer agreement, a manufacturer or distributor shall indemnify and hold harmless its dealers for any reasonable expenses incurred, including damages, court costs and attorney's fees, arising ~~solely~~ out of complaints, claims or actions to the extent such complaints, claims or actions ~~which~~ relate to the manufacture, assembly, design of a new motor vehicle or other functions by the manufacturer or distributor beyond the control of the dealer, including, without limitation, the selection by the manufacturer or distributor of parts or components for the vehicle, and any damages

to merchandise occurring prior to acceptance of the vehicle by the dealer to the dealer if the carrier is designated by the manufacturer or distributor, if the new motor vehicle dealer gives timely notice to the manufacturer or distributor of the complaint, claim or action.

**§17A-6A-15a. Dealer data, obligation of manufacturer, vendors, suppliers and others; consent to access dealership information; indemnification of dealer.**

(a) Except as expressly authorized in this section, a manufacturer or distributor cannot require a motor vehicle dealer to provide it customer information to the manufacturer or distributor unless necessary for the sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or dealer incentives, for manufacturer's marketing purposes, for evaluation of dealer performance, for analytics, or to support claims submitted by the new motor vehicle dealer for reimbursement for warranty parts or repairs. Nothing in this section shall limit the manufacturer's ability to require or use customer information to satisfy any safety or recall notice obligation or other legal obligation.

(b) The dealer is only required to provide the customer information to the extent lawfully permissible; and to the extent the requested information relates solely to specific program requirements or goals associated with the manufacturer's or distributor's own vehicle makes. A manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch or dealer management computer system vendor may not prohibit a dealer from providing a means to regularly and continually monitor the specific data accessed from or written to the dealer's computer system and from complying with applicable state and federal laws and any rules or regulations promulgated thereunder. These provisions do not impose an obligation on a manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor or any third party acting on behalf of any manufacturer,

factory branch, distributor, distributor branch or dealer management computer system vendor to provide that capability.

(c) A manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch or dealer management computer system vendor, may not provide access to customer or dealership information maintained in a dealer management computer system used by a motor vehicle dealer located in this state, other than a subsidiary or affiliate of the manufacturer factory branch, distributor or distributor branch without first obtaining the dealer's prior express written consent, revocable by the dealer upon ten business days written notice, to provide the access.

Upon a written request from a motor vehicle dealer, the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of, or through any manufacturer, factory branch, distributor, distributor branch or dealer management computer system vendor shall provide to the dealer a written list of all specific third parties other than a subsidiary or affiliate of the manufacturer, factory branch, distributor or distributor branch to whom any data obtained from the dealer has actually been provided within the twelve-month period prior to date of dealer's written request. If requested by the dealer, the list shall further describe the scope and specific fields of the data provided. The consent does not change the person's obligations to comply with the terms of this section and any additional state or federal laws, and any rules or regulations promulgated thereunder, applicable to them with respect to the access.

(d) A manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor or any third party acting on behalf of or through any dealer management computer system vendor, having electronic access to customer or motor vehicle dealership data in a dealership management computer system used by a motor vehicle dealer located in this state shall provide notice in a

reasonable timely manner to the dealer of any security breach of dealership or customer data obtained through the access.

(e) As used in this section:

(1) ‘Dealer management computer system’ means a computer hardware and software system that is owned or leased by the dealer, including a dealer’s use of web applications, excluding a web application operated by a manufacturer, software or hardware, whether located at the dealership or provided at a remote location and that provides access to customer records and transactions by a motor vehicle dealer located in this state and that allows the motor vehicle dealer timely information in order to sell vehicles, parts or services through the motor vehicle dealership.

(2) ‘Dealer management computer system vendor’ means a seller or reseller of dealer management computer systems, a person that sells computer software for use on dealer management computer systems or a person who services or maintains dealer management computer systems.

(3) ‘Security breach’ means an incident of unauthorized access to and acquisition of records or data containing dealership or dealership customer information where unauthorized use of the dealership or dealership customer information has occurred.

(4) ‘Customer information’ means ‘nonpublic personal’ as defined in 16 C. F. R. §313.

(f) Notwithstanding the terms or conditions of any consent, authorization, release, novation, franchise or other contract or agreement, every manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor or any third party acting on behalf of or through a manufacturer, factory branch, distributor, distributor branch or dealer management computer system vendor shall fully indemnify, defend and hold harmless any dealer or manufacturer, factory branch, distributor or distributor branch from all

damages, attorney fees and costs, other costs and expenses incurred by the dealer from complaints, claims or actions arising out of manufacturer's, factory's branch, distributor's, distributor's branch, dealer management computer system vendor's or any third party for its willful, negligent or illegal use or disclosure of dealers consumer or customer data or other information in dealer's computer system. The indemnification includes, but is not limited to, judgments, settlements, fines, penalties, litigation costs, defense costs, court costs, costs related to the disclosure of security breaches and attorneys' fees arising out of complaints, claims, civil or administrative actions.

(g) This section applies to contracts entered into after the effective date of this section.

**§17A-6A-15b. Exports; rebuttable presumption on behalf of dealer.**

It is unlawful for a manufacturer or distributor to take or threaten to take any adverse action against a dealer pursuant to an export or sale-for-resale prohibition because the dealer sold or leased a vehicle to a customer who either exported the vehicle to a foreign country or resold the vehicle in violation of the prohibition, unless the export or sale-for-resale prohibition policy was provided to the dealer in writing prior to the sale or lease, and the dealer knew or reasonably should have known of the customer's intent to export or resell the vehicle in violation of the prohibition at the time of sale or lease. If the dealer causes the vehicle to be registered in this state or any other state and has determined that the customer is not on a list of known or suspected exporters provided by the manufacturer at the time of sale, a rebuttable presumption is established that the dealer did not have reason to know of the customer's intent to export or resell the vehicle.

**§17A-6A-15c. Manufacturer performance standards; uniform application, prohibited practices.**

A manufacturer may not require dealer adherence to a performance standard or standards which are not applied uniformly to other

similarly situated dealers. In addition to any other requirements of the law, the following shall apply:

(1) A performance standard, sales objective or program for measuring dealer performance that may have a material effect on a dealer, including the dealer's right to payment under any incentive or reimbursement program, and the application of the standard, sales objective or program by a manufacturer, distributor or factory branch shall be reasonable and based on accurate information.

(2) Upon written request from a dealer participating in the program, the manufacturer shall provide in writing the dealer's performance requirement or sales goal or objective, which shall include a reasonable and general explanation of the methodology, criteria and calculations used.

(3) A manufacturer shall allocate a reasonable and appropriate supply of vehicles to assist the dealer in achieving any performance standards established by the manufacturer and distributor.

(4) The manufacturer or distributor has the burden of proving by a preponderance of the evidence that the performance standard, sales objective or program for measuring dealership performance complies with this article.

**§17A-6A-18. West Virginia law to apply.**

Notwithstanding the terms, provisions or requirements of any franchise agreement, contract or other agreement of any kind between a new motor vehicle dealer and a manufacturer or distributor captive finance source or any subsidiary, affiliate or partner of a manufacturer or distributor, the provisions of this code apply to all such agreements and contracts. Any provisions in the agreements and contracts which violate the terms of this section are null and void.”

An amendment to the amendment offered by Delegates Ashley, R. Phillips, McCuskey, Zatezalo, Storch, Weld, Kelly, Blair, R. Smith,

Campbell, B. White, Folk, Hartman, Bates, Perry, H. White, Marcum and Lynch was reported by the Clerk on page twenty-five, section ten, line twenty-eight, by deleting subsection (z) in its entirety.”

Delegates Miller, Moffatt and Morgan requested to be excused from voting on Com. Sub. for S. B. 453 under the provisions of House Rule 49.

The Speaker replied that any impact on the Delegates would be as members of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Members from voting.

The yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 541**), and there were—yeas 66, nays 31, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Azinger, Boggs, Caputo, Cowles, Fast, Ferro, Fleischauer, Guthrie, Hamilton, Hanshaw, Hartman, Hornbuckle, Ihle, Kurcaba, Lane, Longstreth, Manchin, Marcum, McGeehan, Miley, Moore, Moye, Perdue, Pethtel, Pushkin, Rowe, P. Smith, Sponaugle, Trecost, Walters and H. White.

ABSENT AND NOT VOTING: Arvon, Deem and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the amendment to the amendment was adopted.

The Judiciary Committee amendment, as amended, was then adopted.

The bill was then ordered to third reading.

**Com. Sub. for S. B. 455**, Relating to public higher education procurement and payment of expenses; on second reading, coming up in regular order, was read a second time.



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

“That §12-3A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18B-1F-4 of said code be amended and reenacted; that §18B-5-4, §18B-5-6 and §18B-5-7 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-5-4a, all to read as follows:

## **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

### **ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.**

#### **§12-3A-6. Receipting of electronic commerce purchases.**

(a) The State Treasurer may establish a system for acceptance of credit card and other payment methods for electronic commerce purchases from spending units. Notwithstanding any other provision of this code to the contrary, each spending unit utilizing WEB commerce, electronic commerce or other method that offers products or services for sale shall utilize the State Treasurer’s system for acceptance of payments except as provided in subsection (b) of this section.

(b) A state institution of higher education may receive credit card payments from systems of acceptance other than that provided by the State Treasurer if:

(1) The proposed alternate system is compliant with the Payment Card Industry Data Security Standards for acceptance of payments, and the institution is proposing to use the alternate system for the sole purpose of:

(A) Processing the payment of academic transcripts; or

(B) Accepting payment for applications for admission if necessary to participate in a national or regional program for applications for admission; or

(2) The institution certifies that the use of the alternate system will not cause a reduction in the volume of credit card revenues by more than ten percent as compared to previous credit card revenues processed on behalf of the institution during the previous fiscal year and the State Treasurer consents to the use.

~~(b)~~(c) To facilitate electronic commerce, the State Treasurer may charge a spending unit for the banking and other expenses incurred by the Treasurer on behalf of the spending unit and for any work performed, including, without limitation, assisting in the development of a website and utilization of the Treasurer's payment gateway. A special revenue account, entitled the Treasurer's Financial Electronic Commerce Fund, is created in the State Treasury to receive the amounts charged by the Treasurer. The Treasurer may expend the funds received in the Treasurer's Financial Electronic Commerce Fund only for the purposes of this article and for other purposes as determined by the Legislature.

~~(c)~~(d) The State Treasurer may authorize a spending unit to assess and collect a fee to recover or pay the cost of accepting bank, charge, check, credit or debit cards from amounts collected.

~~(d)~~(e) Upon written request from a political subdivision, the State Treasurer may provide services of his or her office to a political subdivision and charge for the services.

~~(e)~~(f) The State Treasurer shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this section.

## **CHAPTER 18B. HIGHER EDUCATION.**

### **ARTICLE 1F. MANAGEMENT AGREEMENTS FOR THE HIGHER EDUCATION POLICY COMMISSION.**

**§18B-1F-4. Powers and duties of board of directors and corporation.**

(a) The primary responsibility of the corporation is to manage the day to day operations of the Technology Park through collaboration agreements with the commission. To that end, the board of directors has the following powers and duties:

(1) To employ an executive director subject to the provisions of section five of this article;

(2) To approve employment of other staff recommended by the executive director as being necessary and appropriate to carry out the purposes of this article and subject to agreements with the commission;

(3) To serve as fiscal agent and provide additional services, including, but not limited to, property management, human resources management, and purchasing;

(4) To meet as a governing body. A corporation created under this article is exempt from the provisions of section three, article nine-a, chapter six of this code and from the provisions of article one, chapter twenty-nine-b of this code;

(5) To receive, purchase, hold, lease, use, sell and dispose of real and personal property of all classes, subject to the provisions of subdivision (8) of this subsection and section eight of this article;

(6) To receive from any source whatsoever grants to be expended in accomplishing the objectives of this article;

(7) To receive from any source whatsoever aid or contributions of money, property or other things of value to be held, used and applied only for the purposes for which the aid or contributions may be made;

(8) To accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article. Any

transfer of endowment or other assets by the commission to the corporation or by the corporation to the commission for management shall be formalized in a memorandum of agreement to assure, at a minimum, that any restrictions governing the future disposition of funds are preserved. The commission may not transfer ownership of the Technology Park property to the corporation;

(9) To make, amend and repeal bylaws, rules and its governing documents consistent with the provisions of this article to effectuate the purpose and scope of the corporation;

(10) To alter the purpose or scope of the corporation; and

(11) To delegate the exercise of any of its powers except for the power to approve budgets to the executive director, subject to the directions and limitations contained in its governing documents.

(b) The commission may issue revenue bonds under the terms of section ten, article eight of this chapter for capital improvements at the Technology Park.

~~(b)~~(c) In addition to the powers and duties provided for in this section and any other powers and duties that may be assigned to it by law or agreement, the corporation has other powers and duties necessary to accomplish the objectives of this article or as provided by law.

#### **ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.**

##### **§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.**

(a) The council, commission and each governing board shall purchase or acquire all materials, supplies, equipment, services and printing required for that governing board or the council or commission, as appropriate, and the state institutions of higher education under their jurisdiction, except the governing boards of

Marshall University and West Virginia University, respectively, are subject to subsection (d) of this section.

(b) The commission and council jointly shall adopt rules governing and controlling acquisitions and purchases in accordance with this section. The rules shall ensure that the following procedures are followed:

(1) No person is precluded from participating and making sales thereof to the council, commission or governing board except as otherwise provided in section five of this article. Providing consulting services such as strategic planning services does not preclude or inhibit the governing boards, council or commission from considering a qualified bid or response for delivery of a product or a commodity from the individual providing the services;

(2) Specifications are established and prescribed for materials, supplies, equipment, services and printing to be purchased;

(3) Purchase order, requisition or other forms as may be required are adopted and prescribed;

(4) Purchases and acquisitions in such quantities, at such times and under contract, are negotiated for and made in the open market or through other accepted methods of governmental purchasing as may be practicable in accordance with general law;

(5) Bids are advertised on all purchases exceeding ~~\$25,000~~ \$50,000 and made by means of sealed or electronically-submitted bids and competitive bidding or advantageous purchases effected through other accepted governmental methods and practices. Competitive bids are not required for purchases of ~~\$25,000~~ \$50,000 or less.

(6) Notices for acquisitions and purchases for which competitive bids are being solicited are posted either in the purchasing office of the specified institution involved in the purchase or by electronic means available to the public, at least ~~two weeks~~ five days prior to making the

purchases. The rules shall ensure that the notice is available to the public during business hours;

(7) Purchases are made in the open market;

(8) Vendors are notified of bid solicitation and emergency purchasing; and

(9) No fewer than three bids are obtained when bidding is required, except if fewer than three bids are submitted, an award may be made from among those received.

(c) When a state institution of higher education submits a contract, agreement or other document to the Attorney General for approval as to form as required by this chapter the following conditions apply:

(1) 'Form' means compliance with the Constitution and statutes of the State of West Virginia;

(2) The Attorney General does not have the authority to reject a contract, agreement or other document based on the substantive provisions in the contract, agreement or document or any extrinsic matter as long as it complies with the Constitution and statutes of this state;

(3) Within fifteen days of receipt, the Attorney General shall notify the appropriate state institution of higher education in writing that the contract, agreement or other document is approved or disapproved as to form. If the contract, agreement or other document is disapproved as to form, the notice of disapproval shall identify each defect that supports the disapproval; and

(4) If the state institution elects to challenge the disapproval by filing a writ of mandamus or other action and prevails, then the Attorney General shall pay reasonable attorney fees and costs incurred.

(d) Pursuant to this subsection, the governing boards of Marshall University and West Virginia University, respectively, may carry out the following actions:

(1) Purchase or acquire all materials, supplies, equipment, services and printing required for the governing board without approval from the commission or the Vice Chancellor for Administration and may issue checks in advance to cover postage as provided in subsection (f) of this section;

(2) ~~Make purchases~~ Purchase from cooperative buying groups, consortia, the federal government or from federal government contracts if the materials, supplies, services, equipment or printing to be purchased is available from these groups and if this would be the most financially advantageous manner of making the purchase;

(3) Select and acquire by contract or lease all grounds, buildings, office space or other space, and capital improvements, including equipment, if the rental is necessarily required by the governing board; and

(4) Use purchase cards under terms approved for the commission, the council and governing boards of state institutions of higher education and participate in any expanded program of use as provided in subsection (u) of this section.

(e) The governing boards shall adopt sufficient accounting and auditing procedures and promulgate and adopt appropriate rules subject to section six, article one of this chapter to govern and control acquisitions, purchases, leases and other instruments for grounds, buildings, office or other space, and capital improvements, including equipment, or lease-purchase agreements.

(f) The council, commission or each governing board may issue a check in advance to a company supplying postage meters for postage used by that board, the council or commission and by the state institutions of higher education under their jurisdiction.

(g) When a purchase is to be made by bid, any or all bids may be rejected. However, all purchases based on advertised bid requests shall

be awarded to the lowest responsible bidder taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the governing boards, council or commission and delivery terms. The preference for resident vendors as provided in section thirty-seven, article three, chapter five-a of this code applies to the competitive bids made pursuant to this section.

(h) The governing boards, council and commission shall maintain a purchase file, which shall be a public record and open for public inspection.

(1) After the award of the order or contract, the governing boards, council and commission shall indicate upon the successful bid the following information:

(A) Designation as the successful bid;

(B) The reason any bids were rejected; and

(C) The reason for rejection, if the mathematical low vendor was not awarded the order or contract.

(2) A record in the purchase file may not be destroyed without the written consent of the Legislative Auditor. Those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication may be destroyed without the written consent of the Legislative Auditor.

(3) All files, no matter the storage method, shall be open for inspection by the Legislative Auditor upon request.

(i) The commission and council, also jointly, shall promulgate rules to prescribe qualifications to be met by any person who is to be employed as a buyer pursuant to this section. These rules shall require that a person may not be employed as a buyer unless that person, at the time of employment, has one of the following qualifications:



(1) Is a graduate of an accredited college or university; or

(2) Has at least four years' experience in purchasing for any unit of government or for any business, commercial or industrial enterprise.

(j) Any person making purchases and acquisitions pursuant to this section shall execute a bond in the penalty of \$50,000, payable to the State of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in form prescribed by the Attorney General and conditioned upon the faithful performance of all duties in accordance with this section and sections five through eight, inclusive, of this article and the rules of the governing board and the council and commission. In lieu of separate bonds for these buyers, a blanket surety bond may be obtained. The bond shall be filed with the Secretary of State and the cost of the bond shall be paid from funds appropriated to the applicable governing board or the council or commission.

(k) All purchases and acquisitions shall be made in consideration and within limits of available appropriations and funds and in accordance with applicable provisions of article two, chapter five-a of this code relating to expenditure schedules and quarterly allotments of funds. Notwithstanding any other provision of this code to the contrary, only those purchases exceeding the dollar amount for competitive sealed bids in this section are required to be encumbered. ~~and they~~ Such purchases may be entered into the state's centralized accounting system by the staff of the commission, council or governing boards to satisfy the requirements of article two, chapter five-a of this code to determine whether the amount of the purchase is within the quarterly allotment of the commission, council or governing board, is in accordance with the approved expenditure schedule and otherwise conforms to the article: Provided, That, notwithstanding the foregoing provisions of this subsection or any other provision of this code to the contrary, purchases by Marshall University or West Virginia University are not required to be encumbered.

(l) The governing boards, council and commission may make requisitions upon the State Auditor for a sum to be known as an advance allowance account, not to exceed five percent of the total of the appropriations for the governing board, council or commission, and the State Auditor shall draw a warrant upon the Treasurer for those accounts. All advance allowance accounts shall be accounted for by the applicable governing board or the council or commission once every thirty days or more often if required by the State Auditor.

(m) Contracts entered into pursuant to this section shall be signed by the applicable governing board or the council or commission in the name of the state and shall be approved as to form by the Attorney General. A contract which requires approval as to form by the Attorney General is considered approved if the Attorney General has not responded within fifteen days of presentation of the contract. A contract or a change order for that contract and notwithstanding any other provision of this code to the contrary, associated documents such as performance and labor/material payments, bonds and certificates of insurance which use terms and conditions or standardized forms previously approved by the Attorney General and do not make substantive changes in the terms and conditions of the contract do not require approval as to form by the Attorney General. The Attorney General shall make a list of those changes which he or she considers to be substantive and the list, and any changes to the list, shall be published in the State Register. A contract that exceeds the dollar amount requiring competitive sealed bids in this section shall be filed with the State Auditor. If requested to do so, the governing boards, council or commission shall make all contracts available for inspection by the State Auditor. The governing board, council or commission, as appropriate, shall prescribe the amount of deposit or bond to be submitted with a bid or contract, if any, and the amount of deposit or bond to be given for the faithful performance of a contract.

(n) If the governing board, council or commission purchases or contracts for materials, supplies, equipment, services and printing contrary to sections four through seven of this article or the rules

pursuant to this article, the purchase or contract is void and of no effect.

(o) A governing board or the council or commission, as appropriate, may request the director of purchasing to make available the facilities and services of that department to the governing boards, council or commission in the purchase and acquisition of materials, supplies, equipment, services and printing. The director of purchasing shall cooperate with that governing board, council or commission, as appropriate, in all such purchases and acquisitions upon that request.

(p) Each governing board or the council or commission, as appropriate, may permit private institutions of higher education to join as purchasers on purchase contracts for materials, supplies, services and equipment entered into by that governing board or the council or commission. A private institution desiring to join as purchaser on purchase contracts shall file with that governing board or the council or commission, as appropriate, an affidavit signed by the president or designee of the private institution requesting that it be authorized to join as purchaser on purchase contracts of that governing board or the council or commission, as appropriate. The private institution shall agree that it is bound by such terms and conditions as that governing board or the council or commission may prescribe and that it will be responsible for payment directly to the vendor under each purchase contract.

(q) Notwithstanding any other provision of this code to the contrary, the governing boards, council and commission, as appropriate, may make purchases from cooperative buying groups, consortia, the federal government or from federal government contracts if the materials, supplies, services, equipment or printing to be purchased is available from that source, and purchasing from that source would be the most financially advantageous manner of making the purchase.

(r) An independent performance audit of all purchasing functions and duties which are performed at any state institution of higher

education ~~except Marshall University and West Virginia University~~ shall be performed at least once in each fiscal year three-year period. The Joint Committee on Government and Finance shall conduct the performance audit and the governing boards, council and commission, as appropriate, are responsible for paying the cost of the audit from funds appropriated to the governing boards, council or commission.

(1) The governing boards of ~~Marshall University and West Virginia University, respectively~~ board shall provide for independent performance audits of all purchasing functions and duties on ~~their~~ its campuses at least once in each three-year period.

(2) Each audit shall be inclusive of the entire time period that has elapsed since the date of the preceding audit.

(3) Copies of all appropriate documents relating to any audit performed by ~~the governing boards of Marshall University and West Virginia University~~ a governing board shall be furnished to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability within thirty days of the date the audit report is completed.

(s) The governing boards shall require each institution under their respective jurisdictions to notify and inform every vendor doing business with that institution of section fifty-four, article three, chapter five-a of this code, also known as the Prompt Pay Act of 1990.

(t) Consultant services, such as strategic planning services, do not preclude or inhibit the governing boards, council or commission from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services.

(u) Purchasing card use may be expanded by the council, commission and state institutions of higher education pursuant to this subsection.

(1) The council and commission jointly shall establish procedures to be implemented by the council, commission and any institution

under their respective jurisdictions using purchasing cards. The procedures shall ensure that each meets the following conditions:

(A) Appropriate use of the purchasing card system;

(B) Full compliance with article three, chapter twelve of this code relating to the purchasing card program; and

(C) Sufficient accounting and auditing procedures for all purchasing card transactions.

(2) Notwithstanding any other provision of this code to the contrary, the council, commission and any institution authorized pursuant to subdivision (3) of this subsection may use purchasing cards for the following purposes:

(A) Payment of travel expenses directly related to the job duties of the traveling employee, including, but not limited to, fuel and food; and

(B) Payment of any routine, regularly scheduled payment, including, but not limited to, utility payments and real property rental fees.

(3) The commission and council each shall evaluate the capacity of each institution under its jurisdiction for complying with the procedures established pursuant to subdivision (2) of this subsection. The commission and council each shall authorize expanded use of purchasing cards pursuant to that subdivision for any institution it determines has the capacity to comply.

**§18B-5-4a. Construction projects.**

Notwithstanding any other provision of this code to the contrary, and specifically section one, article twenty-two, chapter five of this code, a state institution of higher education under the jurisdiction of the commission is not required to solicit competitive bids or require a valid bid bond or other surety for any construction project unless the value exceeds \$100,000 in total cost.

**§18B-5-6. Other code provisions relating to purchasing and design-build procurement not controlling; exceptions; criminal provisions and penalties; financial interest of governing boards, etc.; receiving anything of value from interested party and penalties therefor; application of bribery statute.**

The provisions of article three, chapter five-a of this code and section five, article twenty-two-a, chapter five of this code do not control or govern design-build procurement or the purchase, acquisition or other disposition of any equipment, materials, supplies, services or printing by the commission or the governing boards, except as provided in sections four through seven of this article. Sections twenty-nine, thirty and thirty-one, article three, chapter five-a of this code apply to all purchasing activities of the commission and the governing boards.

Neither the commission, the governing boards, nor any employee of the commission or governing boards, may be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any equipment, materials, supplies, services or printing, nor in any firm, partnership, corporation or association furnishing them, except as may be authorized by the provisions of chapter six-b of this code. Neither the commission, the governing boards nor any employee of the commission or governing boards may accept or receive directly or indirectly from any person, firm or corporation, known by the commission, governing boards or such employee to be interested in any bid, contract or purchase, by rebate, gift or otherwise, any money or other thing of value whatsoever or any promise, obligation or contract for future reward or compensation, except as may be authorized by the provisions of chapter six-b of this code.

A person who violates any of the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in jail not less than three months nor more than one year, or fined not

less than \$50 nor more than \$1,000, or both imprisoned and fined, in the discretion of the court. Any person who violates any provisions of this section by receiving money or other thing of value under circumstances constituting the crime of bribery under the provisions of section three, article five-a, chapter sixty-one of this code shall, upon conviction of bribery, be punished as provided in section nine of said article.

**§18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials.**

(a) The commission, the council and the governing boards shall dispose of obsolete and unusable equipment, surplus supplies and other unneeded materials, either by transfer to other governmental agencies or institutions, by exchange or trade, or by sale as junk or otherwise. The commission, the council and each governing board shall adopt rules governing and controlling the disposition of all such equipment, supplies and materials. The rules shall provide for disposition of the equipment, supplies and materials as sound business practices warrant under existing circumstances and conditions and for adequate prior notice to the public of the disposition.

~~(1) At least ten days prior to the disposition, the Commission, the Council or the governing boards, as applicable, shall advertise, by newspaper publication as a Class H legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in the county in which the equipment, supplies and materials are located; the availability or sales of such disposable equipment, supplies and materials:~~

~~(2) The Commission, the Council or governing boards, as applicable, may sell the disposable equipment, supplies and materials, in whole or in part, at public auction or by sealed bid, or may transfer, exchange or trade the same to other governmental agencies or institutions (if by transfer, exchange or trade, then without advertising); in whole or in part, as sound business practices may warrant under existing circumstances and conditions:~~

~~(3) The requirements set forth in subsection (a) of this section apply to Marshall University and West Virginia University relating only to those items of obsolete and unusable equipment, surplus supplies and other unneeded materials that exceed five thousand dollars in recorded net book value. Marshall University and West Virginia University may dispose of obsolete and unusable computers and computer-related equipment pursuant to the provisions of section two, article three of this chapter.~~

(b) The commission, council or governing board, as appropriate, ~~except for Marshall University and West Virginia University~~ shall report ~~annually~~ biannually to the Legislative Auditor all sales of commodities made during the preceding ~~six months~~ biennium. ~~(1) The report shall include a description of the commodities sold, the name of the buyer to whom each commodity was sold, and the price paid by the buyer.~~

~~(2) Marshall University and West Virginia University shall report biennially to the Legislative Auditor the total sales of commodities made during the preceding biennium along with the total recorded net book value of such commodities.~~

(c) The proceeds of sales or transfers shall be deposited in the State Treasury to the credit on a pro rata basis of the fund or funds from which the purchase of the particular commodities or expendable commodities was made. The commission, council or governing board, as appropriate, may charge and assess fees reasonably related to the costs of care and handling with respect to the transfer, warehousing, sale and distribution of state property that is disposed of or sold pursuant to the provisions of this section.

(d) Notwithstanding the provisions of this section, the commission, council or a governing board may donate equipment, supplies and materials with the approval of the commission, council or governing board or their designee, as appropriate.”



On motion of Delegates Westfall and Ashley, the Finance Committee amendment was amended on page fourteen, section 4a, beginning on line six, following the words “state institution of higher education”, by striking out the words “under the jurisdiction of the commission”.

On motion of Delegates Nelson and Pasdon the House Finance Committee amendment was amended on page four, section four, line fourteen, by striking out the words “ten, article eight” and inserting in lieu thereof the words “eight, article ten”.

The Finance Committee amendment, as amended, was then adopted.

The bill was then ordered to third reading.

**S. B. 510**, Amending Uniform Interstate Family Support Act; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Delegate Cowles moved that the constitutional rule requiring the bill to be fully and distinctly read on three different days be dispensed with.

On this question, the yeas and nays were taken (**Roll No. 542**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Deem, Folk, J. Nelson and L. Phillips.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 543**), and there were—yeas 92, nays 3, absent

and not voting 5, with the nays and absent and not voting being as follows:

NAYS: Azinger, Fast and Sobonya.

ABSENT AND NOT VOTING: Arvon, Deem, Folk, Kelly and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 510) passed.

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

**Com. Sub. for S. B. 523**, Creating Alcohol and Drug Overdose Prevention and Clemency Act; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page nine, section three, lines one through six, by striking out subdivision (b)(4).

On motion of Delegate Pushkin, the bill was amended on page ten, section four, line eighteen, by inserting a new subsection (g), to read as follows:

“(g) A person who seeks assistance pursuant to subsection (a) of this section is not subject to any sanction for a violation of a condition of pretrial release, probation, furlough or parole.”

The bill was then ordered to third reading.

**Com. Sub. for S. B. 529**, Relating to PERS, SPRS and TRS benefits and costs; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Cowles, and by unanimous consent, the bill was advanced to third reading with amendments pending, and with

restricted right to amend jointly by Delegates Nelson and Boggs, and the rule was suspended to permit the consideration of the amendments on that reading.

The bill was then ordered to third reading.

**Com. Sub. for S. B. 537**, Changing mandatory school instructional time from days to minutes; on second reading, coming up in regular order, was read a second time.

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

“That §18-5-45 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-45. School calendar.**

(a) As used in this section:

(1) ‘Instructional day’ means a day within the instructional term which meets the following criteria:

(A) Instruction is offered to students for at least the minimum amount of hours provided by state board rule;

(B) Instructional time is used for instruction and cocurricular activities; and

(C) Other criteria as the state board determines appropriate.

(2) ‘Cocurricular activities’ are activities that are closely related to identifiable academic programs or areas of study that serve to complement academic curricula as further defined by the state board.

(b) *Findings.* –

(1) The primary purpose of the school system is to provide instruction for students.

(2) The school calendar, as defined in this section, is designed to define the school term both for employees and for instruction.

(3) The school calendar shall provide for one hundred eighty separate instructional days.

(c) The county board shall provide a school term for its schools that contains the following:

(1) An employment term that excludes Saturdays and Sundays and consists of at least two hundred days, which need not be successive. The beginning and closing dates of the employment term may not exceed forty-eight weeks;

(2) Within the employment term, an instructional term for students of no less than one hundred eighty separate instructional days, which includes an inclement weather and emergencies plan designed to guarantee an instructional term for students of no less than one hundred eighty separate instructional days;

(3) Within the employment term, noninstructional days shall total twenty and shall be comprised of the following:

(A) Seven paid holidays;

(B) Election day as specified in section two, article five, chapter eighteen-a of this code;

(C) Six days to be designated by the county board to be used by the employees outside the school environment, with at least four outside the school environment days scheduled to occur after the one hundred thirtieth instructional day of the school calendar; and

(D) The remaining days to be designated by the county board for purposes to include, but not be limited to:

- (i) Curriculum development;
- (ii) Preparation for opening and closing school;
- (iii) Professional development;
- (iv) Teacher-pupil-parent conferences;
- (v) Professional meetings;

(vi) Making up days when instruction was scheduled but not conducted; and

(vii) At least four two-hour blocks of time for faculty senate meetings with each two-hour block of time scheduled once at least every forty-five instructional days; and

(4) Scheduled out-of-calendar days that are to be used for instructional days in the event school is canceled for any reason.

(d) A county board of education shall develop a policy that requires additional minutes of instruction in the school day or additional days of instruction to recover time lost due to emergency closures, late arrivals and early dismissals related to weather or other conditions as determined by the county superintendent, at his or her sole discretion, that make attendance unsafe for students. Effective with the effective date of this section, any amount of instructional time previously accrued during the instructional term or added to the instructional day subsequent to emergency closures that results in instructional time provided to students in excess of the following minimums shall be counted toward meeting the 180 separate instructional day requirement as follows:

(1) For schools with grades kindergarten up to and including the 5<sup>th</sup> grade, instructional time provided in excess of 315 minutes per

instructional day may be accrued or added and each accumulated 315 minutes of such time shall count as an instructional day recovered;

(2) For schools with grades 6 through and including the 8<sup>th</sup> grade, instructional time provided in excess of 330 minutes per instructional day may be accrued or added and each accumulated 330 minutes of such time shall count as an instructional day recovered;

(3) For schools with grades 9 through and including the 12<sup>th</sup> grade, instructional time provided in excess of 345 minutes per instructional day may be accrued or added and each accumulated 345 minutes of such time shall count as an instructional day recovered; and

(4) For schools with grade levels in more than one of the above subdivisions (1), (2) and (3), the subdivision applicable to the highest grade level at the school is applicable for the entire school.

(e) If it is not possible to complete one hundred eighty separate instructional days with the current school calendar after counting the accrued and added instructional time in accordance with subsection (d) of this section, the county board shall schedule instruction on any available noninstructional day, regardless of the purpose for which the day originally was scheduled, or an out-of-calendar day and the day will be used for instruction of students: *Provided*, That the provisions of this subsection do not apply to:

(A) Holidays;

(B) Election day; and

(C) Saturdays and Sundays.

(f) The instructional term shall commence and terminate on a date selected by the county board.

(g) The state board may not schedule the primary statewide assessment program more than thirty days prior to the end of the

instructional year unless the state board determines that the nature of the test mandates an earlier testing date.

(h) The following applies to cocurricular activities:

(1) The state board shall determine what activities may be considered cocurricular;

(2) The state board shall determine the amount of instructional time that may be consumed by cocurricular activities; and

(3) Other requirements or restrictions the state board may provide in the rule required to be promulgated by this section.

(i) Extracurricular activities may not be used for instructional time.

(j) Noninstructional interruptions to the instructional day shall be minimized to allow the classroom teacher to teach.

(k) Prior to implementing the school calendar, the county board shall secure approval of its proposed calendar from the state board or, if so designated by the state board, from the state superintendent.

(l) In formulation of a school's calendar, a county school board shall hold at least two public meetings that allow parents, teachers, teacher organizations, businesses and other interested parties within the county to discuss the school calendar. The public notice of the date, time and place of the public hearing must be published in a local newspaper of general circulation in the area as a Class II legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.

(m) The county board may contract with all or part of the personnel for a longer term of employment.

(n) The minimum instructional term may be decreased by order of the state superintendent in any county declared a federal disaster area.

and in any county in which the Governor declares a state of emergency or emergency preparedness, and where the event causing the declaration is substantially related to a reduction of instructional days.

(o) Notwithstanding any provision of this code to the contrary, the state board may grant a waiver to a county board for its noncompliance with provisions of this chapter eighteen and chapters eighteen-a, eighteen-b and eighteen-c of this code to maintain compliance in reaching the mandatory one hundred eighty separate instructional days established in this section.

(p) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purpose of implementing the provisions of this section.

~~(q) The amendments to this section during the 2013 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2014, and the provisions of this section existing immediately prior to the 2013 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2014.~~

(q) Nothing in this section prohibits a county board from proposing nor the state board from approving in accordance with section five, article two of this chapter, a school term or instructional term that is part of a comprehensive plan to optimize student learning and meets meets the spirit and intent of this section, but is an alternative to this section.”

The bill was then ordered to third reading.

**Com. Sub. for S. B. 542**, Clarifying provisions of Consumer Credit and Protection Act relating to debt collection; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page



seventeen, section one hundred one, line eighteen, following the word “creditor”, by adding the words “or debt collector”.

And,

On page nineteen, section one hundred one, line twelve, following the word “creditor”, by adding the words “or debt collector”.

An amendment to the bill, offered by Delegates Rowe and Fleischauer, was reported by the Clerk.

Whereupon,

Delegate Rowe asked and obtained unanimous consent that the amendment be withdrawn.

The bill was then ordered to third reading.

**Com. Sub. for S. B. 548**, Changing procedure for filling U. S. Senator vacancies; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page ten, section four, line nineteen, immediately following the word “for”, by inserting the words “a special primary election that is not less than ninety nor more than one hundred twenty days from the date of the vacancy and a”.

On page eleven, section four, line one, by striking out the word “eighty-four” and inserting in lieu thereof the word “ninety”.

On page eleven, section four, line two, by striking out the words “vacancy and requiring nomination of candidates as provided in subdivision (2) of this subsection” and inserting in lieu thereof the words “special primary election” and on page eleven, section four, line ten, by striking out the entirety of subdivision (2).

On page eleven, section four, line eighteen after the word “special” by inserting the words “primary election that is not less than ninety nor more than one hundred twenty days from the date of the vacancy and a special”.

On page eleven, section four, line nineteen, by striking out the word “eighty-four” and inserting in lieu thereof the word “ninety”.

On page twelve, section four, line one, by striking out the words “vacancy and requiring nomination of candidates as provided in subdivision (2) of this subsection” and inserting in lieu thereof the words “special primary election”.

On page thirteen, section four, line one, by striking out the entirety of subdivision (2).

And,

By renumbering the remaining subdivisions accordingly.

Delegates Marcum and White moved to amend the bill on page ten, section one, line five, following the period, by inserting a new subsection (h), to read as follows:

“(h) Notwithstanding any provision of this code to the contrary, whenever a person has been elected or appointed to a public office that will require his or her resignation to hold another public office, if appointed or elected to such other public office, the elected official is deemed to have resigned from the public office he or she currently holds, upon the certification of his or her election or appointment to the subsequent public office: Provided, That the effective date of such resignation shall be no later than the day the person is eligible to take the subsequent public office.”

On the adoption of the amendment, Delegate Marcum demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 544**), and there were—yeas 38, nays 58, absent and not voting 4, with the yeas and absent and not voting being as follows:

YEAS: Bates, Boggs, Byrd, Campbell, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Guthrie, Hamilton, Hartman, Hicks, Hornbuckle, Longstreth, Lynch, Manchin, Marcum, Miley, Moore, Morgan, Moye, Perdue, Perry, Pethtel, R. Phillips, Pushkin, Reynolds, Rodighiero, Rohrbach, Rowe, Skinner, P. Smith, Sponaule, Summers, Trecost, H. White and Williams.

ABSENT AND NOT VOTING: Arvon, Deem, L. Phillips and Zatezalo.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

The bill was then ordered to third reading.

**S. B. 577**, Allowing higher education governing boards invest certain funds with nonprofit foundations; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page two, section twelve-e, line three, following the words “of this article” and the comma, by inserting the words “after first consulting with the West Virginia investment management board and the state board of treasury investments to determine what their estimated rate of return on investment, including administrative expenses, would be if the moneys to be invested with the foundation were instead to be invested with the investment management board or the board of treasury investments when compared to any estimated return on investment, including administrative expenses, provided by the foundation” followed by a comma.

On page four, section twelve-e, line one, by striking out subsection (f) in its entirety and inserting in lieu thereof a new subsection (f) to read as follows:

“(f) Prior to the initial transfer of funds to a foundation, the four-year public college or university shall submit its plan for the investment of the funds with its foundation to the higher education policy commission for its review. The purpose of review shall solely be to determine if the plan is financially prudent for the institution. Upon the commission’s written finding that the plan is financially prudent for the institution, the institution is authorized to transfer its funds to the foundation for purposes of investment under this section.”

And,

On page four, section twelve-e, line nine, following the words “university has”, by striking out the remainder of the subsection and inserting in lieu thereof the words “a long-term bond from not less than two of the following rating entities of at least A3 by Moody’s Investors Service, A- by Standard & Poor’s and A- by Fitch Ratings.”

The bill was then ordered to third reading.

**S. B. 582**, Relating to Herbert Henderson Office of Minority Affairs; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Cowles, and by unanimous consent, the bill was advanced to third reading with amendments pending and with restricted right to amend by the Gentleman, and the rule was suspended to permit the consideration of the amendments on that reading.

Delegate Cowles then asked and obtained unanimous consent to withdraw his motion.

At the request of Delegate Cowles, and by unanimous consent, the bill was advanced to third reading with the right to amend, and the rule was suspended to permit the consideration of the amendments on that reading.

**S. B. 584**, Transferring Cedar Lakes Camp and Conference Center to private, nonstock, not-for-profit corporation; on second reading, coming up in regular order, was read a second time.

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

“That §18-2-16 and §18-2-16a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new article, designated §18-2L-1, §18-2L-2, §18-2L-3, §18-2L-4, §18-2L-5, §18-2L-6, §18-2L-7, §18-2L-8, §18-2L-9, §18-2L-10 and §18-2L-11, all to read as follows:

**ARTICLE 2. STATE BOARD OF EDUCATION.**

**§18-2-16. Establishment and operation of state camp and conference center; rental thereof; expenditures; gifts and donations; county court may erect and equip buildings.**

(a) For the purpose of developing competent leadership, developing character, training for useful citizenship, fostering patriotism and of providing and encouraging the development of organized recreational activities for Future Farmers of America and Future Homemakers of America members, and other youth and adult groups, a camp and conference center is hereby established.

The West Virginia Board of Education is hereby authorized to secure a site for the camp and conference center at some suitable place and provide the necessary buildings and equipment therefor. The camp and conference center shall be operated by the division of vocational education of the West Virginia Board of Education. The camp and conference center may be rented for educational purposes only and the rent received therefor shall be deposited in the State Treasury and paid out on requisition of the division of vocational

education of the West Virginia Board of Education for the maintenance and operation of the camp and conference center.

The minimum salary requirements in sections eight-a and eighteen, article four, chapter eighteen-a of this code do not apply to service employees who are initially employed on or after July 1, 2014 by the division of vocational education to provide services at the camp and conference center.

Any appropriations now or hereafter made by the Legislature to carry out the provisions and purposes of this section shall be expended through the West Virginia Board of Education.

The West Virginia Board of Education may receive and use such gifts and donations of money, land, buildings, materials, equipment, supplies and labor, either from public or private sources, as may be offered unconditionally or under such conditions as in the judgment of the West Virginia Board of Education are proper and consistent with the provisions of this section.

All the money received as gifts and donations by the West Virginia Board of Education shall be deposited in the State Treasury to be used by the Board of Education in establishing and maintaining the aforesaid camp and conference center. A report of all gifts and donations offered and accepted, together with the names of the donors and the amounts contributed by each and all disbursements therefrom shall be submitted annually to the Governor of the state by the West Virginia Board of Education.

The county commission of any county may appropriate and expend money from the general county fund, or from any special fund available for such purpose, to erect and equip a cottage or county building on the camp and conference center property.

(b) The provisions of this section shall expire upon the transfer of Cedar Lakes Camp and Conference Center to a private, nonstock, not-

for-profit corporation in accordance with the provisions of article two-1 of this chapter.

**§18-2-16a. Construction of buildings and recreational facilities at state camp and conference center; charges for use; financing by revenue bonds or notes permissible; trustee for holders of bonds or notes; contents of trust agreement.**

(a) The West Virginia Board of Education is hereby authorized to construct, erect, acquire and improve dining halls, cottages and other buildings or recreational facilities it considers necessary and beneficial for the proper conduct and management of the camp and conference center and may charge such rates, fees, rentals and other charges for the use of the buildings and recreational facilities as it determines necessary and advisable.

The construction, erection, acquisition and improvement of dining halls, cottages and other buildings or recreational facilities may be financed by the issuance of revenue bonds or notes of the state of West Virginia payable solely from the revenues derived from the operation of the camp and conference center notwithstanding any of the provisions of section sixteen of this article.

The revenue bonds or notes shall be authorized by resolution of the West Virginia Board of Education, hereinafter referred to in this section as the 'board', and the revenue bonds or notes shall not constitute a debt of the state of West Virginia within the meaning of any of its statutes or constitution.

The principal of and interest on the bonds or notes shall be payable solely from the special fund provided for in this section for such payment. The board shall pledge the moneys in the special fund, except that part of the proceeds of sale of any bonds or notes to be used to pay the cost of a project, for the payment of the principal of and interest on bonds or notes issued pursuant to this section. The pledge shall apply

equally and ratably to separate series of bonds or notes or upon such priorities as the board determines. The bonds or notes shall be authorized by resolution of the board which shall recite an estimate of the cost of the project, and shall provide for the issuance of bonds or notes in an amount sufficient, when sold as provided in this section, to produce such cost, less the amount of any funds, grant or grants, gift or gifts, contribution or contributions received, or in the opinion of the board expected to be received from any source. The acceptance by the board of any and all funds, grants, gifts and contributions, whether in money or in land, labor or materials, is hereby expressly authorized. All bonds or notes shall have and are hereby declared to have all the qualities of negotiable instruments. The bonds or notes shall bear interest at not more than twelve percent per annum, payable semiannually, and shall mature in not more than forty years from their date or dates of issuance, and may be made redeemable at the option of the board, at such price and under such terms and conditions, as the board may fix prior to the issuance of the bonds or notes. The board shall determine the form of the bonds or notes, including coupons, if any, to be attached thereto to evidence the right of interest payments, which bonds or notes shall be signed by the chairman and secretary of the board, under the great seal of the state, attested by the Secretary of State, and the coupons, if any, attached thereto shall bear the facsimile signature of the chairman of the board. In case any of the officers whose signatures appear on the bonds or notes or coupons issued as authorized under this section shall cease to be such officers before the delivery of the bonds or notes, the signatures are nevertheless valid and sufficient for all purposes the same as if they had remained in office until such delivery. The board shall fix the denominations of the bonds or notes, the principal and interest of which shall be payable at the office of the Treasurer of the state of West Virginia at the state capitol, or at the option of the holder, at some bank or trust company within or without the state of West Virginia to be named in the bonds or notes, in such medium as may be determined by the board. The bonds or notes and interest thereon are exempt from taxation by the state of West Virginia, or any county or municipality in the state. The board



may provide for the registration of the bonds or notes in the name of the owners as to principal alone, and as to both principal and interest under such terms and conditions as the board may determine, and shall sell the bonds or notes in such manner as it may determine to be for the best interest of the state and the board, taking into consideration the financial responsibility of the purchaser, and the terms and conditions of the purchase, and especially the availability of the proceeds of the bonds or notes when required for payment of the cost of the project, the sale to be made at a price not lower than a price which, computed upon standard tables of bond values, will show a net return of not more than thirteen percent per annum to the purchaser upon the amount paid therefor. The proceeds of the bonds or notes shall be used solely for the payment of the cost of the project for which bonds or notes were issued, and shall be deposited and checked out in the same manner as provided by article six, chapter five of this code, and under such further restrictions, if any, as the board may provide. If the proceeds of bonds or notes issued for a project or a specific group of projects exceeds the cost of the project or projects, the surplus shall be paid into the fund provided for in this section for payment of the principal and interest of the bonds or notes. The fund may be used for the purchase of any of the outstanding bonds or notes payable from the fund at the market price, but at not exceeding the price, if any, at which the bonds or notes are in the same year redeemable. All bonds or notes redeemed or purchased shall forthwith be canceled and shall not again be issued. Prior to the preparation of definitive bonds or notes, the board may, under like restrictions, issue temporary bonds or notes with or without coupons, exchangeable for definitive bonds or notes upon the issuance of the latter.

Notwithstanding the provisions of sections nine and ten, article six, chapter twelve of this code, revenue bonds or notes issued under the authority granted in this section are eligible as investments for the Workers' Compensation Fund, Teachers Retirement Fund, Division of Public Safety Death, Disability and Retirement Fund, West Virginia Public Employees Retirement System and as security for the deposit of

all public funds. The revenue bonds or notes may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required by this article, or by the constitution of the state. For all projects authorized under the provisions of this section, the aggregate amount of all issues of bonds or notes outstanding at one time shall not exceed \$2.5 million including the renegotiation, reissuance or refinancing of any bonds or notes.

Notwithstanding anything in this section to the contrary, the board is authorized to issue bonds or notes or otherwise finance or refinance the projects in this section, including the costs of issuance and sale of the bonds or notes or financing, all necessary financial and legal expenses and creation of debt service reserve funds in an amount not to exceed \$2.5 million.

The board may enter into an agreement or agreements with any trust company, or with any bank having the powers of a trust company, whether within or outside of the state, as trustee for the holders of bonds or notes issued under this section, setting forth in the agreement the duties of the state and of the board in respect of the acquisition, construction, improvement, maintenance, operation, repair and insurance of the project, the conservation and application of all moneys, the insurance of moneys on hand or on deposit, and the rights and remedies of the trustee and the holders of the bonds or notes, as may be agreed upon with the original purchasers of the bonds or notes. The agreement or agreements shall include provisions restricting the individual right of action of bondholders or noteholders as is customary in trust agreements respecting bonds or notes and debentures of corporations, protecting and enforcing the rights and remedies of the trustee and the bondholders or noteholders, and provide for approval by the original purchasers of the bonds or notes of the appointment of consulting architects, and of the security given by those who contract to construct the project, and by any bank or trust company in which the proceeds of bonds or notes or rentals shall be deposited, and for approval by the consulting architects of all contracts for construction.

All expenses incurred in carrying out the agreement may be treated as a part of the cost of maintenance, operation and repairs of the project.

(b) The bonding authority granted under subsection (a) of this section shall expire upon the transfer of Cedar Lakes Camp and Conference Center to a private, nonstock, not-for-profit corporation in accordance with the provisions of article two-1 of this chapter.

**ARTICLE 2L. TRANSFER OF CEDAR LAKES CAMP AND CONFERENCE CENTER.**

**§18-2L-1. Definitions.**

As used in this article:

(1) ‘Board’ means the West Virginia Board of Education.

(2) ‘Cedar Lakes’ means the camp and conference center established pursuant to section sixteen, article two of this chapter.

(3) ‘Cedar Lakes employee’ means any employee of the board whose job responsibilities are primarily at or concern Cedar Lakes.

(4) ‘Department’ means the Department of Education.

(5) ‘Foundation’ means a private, nonstock, not-for-profit corporation established under the laws of this state to which the board will transfer Cedar Lakes and which otherwise meets the requirements of section four of this article.

(6) ‘Transfer agreement’ means the agreement between the board and the foundation that transfer ownership, operation and control of Cedar Lakes from the board to the foundation.

(7) ‘Transfer date’ means either July 1, 2017, or the date by which the board has secured or performed all approvals, authorizations and any other actions necessary to transfer Cedar Lakes from the board to the foundation.

(8) ‘Transition fund’ means the Cedar Lakes Transition Fund established pursuant to section five of this article.

**§18-2L-2. Purpose and legislative findings.**

(a) *Legislative intent.* – It is the intent of the Legislature in enacting this article to transfer ownership, operation and control of Cedar Lakes to private, nonstock, not-for-profit corporation, in order for the camp and conference center to continue independently and to best fulfill its purpose of developing competent leadership, developing character, training for useful citizenship, fostering patriotism and of providing and encouraging the development of organized recreational activities for Future Farmers of American and Future Homemakers of America members, and other youth and adult groups.

(b) *Findings.* – The Legislature finds and declares that:

(1) Pursuant to section sixteen, article two of this chapter, the Legislature authorized the board to establish Cedar Lakes for the purpose of developing competent leadership, developing character, training for useful citizenship, fostering patriotism and of providing and encouraging the development of organized recreational activities for Future Farmers of American and Future Homemakers of America members, and other youth and adult groups.

(2) Over the decades, Cedar Lakes has fulfilled this purpose and has become an integral part of the local economy and the Jackson County community;

(3) The Legislature recognizes the economic and social value of Cedar Lakes and that its continued viability depends on it becoming an independent, self-sustaining entity; and

(4) A private, not-for-profit structure is the best means of assuring prudent financial management and, in turn, the fulfilling of the purposes of Cedar Lakes and serving the local economy, the Jackson County community and the state.

**§18-2L-3. Board authorized to contract with foundation.**

The board is hereby authorized to enter into the transfer agreement and all other contractual agreements necessary to transfer Cedar Lakes to the foundation, as consistent with this article.

**§18-2L-4. Description of foundation.**

The foundation to which the board transfers Cedar Lakes upon the transfer date shall be a nonstock, not-for-profit corporation established pursuant to the provisions of chapter thirty-one-e of this code, known as the West Virginia Nonprofit Corporation Act.

**§18-2L-5. Establishment of the Cedar Lakes Transition Fund.**

Upon the effective date of the enactment of this article in 2015, there is hereby established in the State Treasury a Cedar Lakes Transition Fund over which the state treasurer is custodian to be administered by the department. Moneys transferred or otherwise payable to the transition fund shall be deposited in the State Treasury to the credit of the transition fund. Disbursements shall be made from the transition fund pursuant to and for the purposes provided in the article.

**§18-2L-6. Agreement; required provisions.**

Notwithstanding section ten, article three, chapter twelve of this code, or any other provision of this code to the contrary, the board is hereby authorized to enter into a transfer agreement with the foundation, which shall contain the following provisions, subject to further specification as shall be mutually agreed upon by the board and the foundation:

(a) On the transfer date, the board shall disburse and pay to the foundation all moneys subject to the control of the board then held in any state fund or wherever located which had theretofore been delivered as a donation to the department or otherwise for or on behalf

of the Cedar Lake Camp and Conference Center, the FFA-FHA Camp and Conference Center, or such other purpose or activity related to the department's governance of Cedar Lakes.

(b) On the transfer date, the board shall transfer and deed to the foundation in fee simple absolute all real estate at Cedar Lakes owned by the board, and this transfer of real estate shall comply and be consistent with the provisions of section three, article five, chapter one of this code;

(c) The board shall transfer and assign contractual rights and contractual duties specifically relating to Cedar Lakes to the foundation: *Provided*, That contractual rights and contractual duties that are not specifically related to Cedar Lakes remain with the board;

(d) Effective on the transfer date, the foundation shall assume responsibility for and shall defend, indemnify and hold harmless the board, the department, and the state with respect to all liabilities and duties of Cedar Lakes and all claims for breach of contract resulting from the foundation's action or failure to act after the transfer date; and

(e) On and after the transfer date, the foundation shall own, operate and control Cedar Lakes and all of its property and assets in fee simple absolute.

**§18-2L-7. Exemption from certain requirements.**

In order, as expeditiously as possible, to transfer Cedar Lakes from the board to the foundation, the transactions provided by this article shall be exempt from the bidding and public sale requirements, from the approval of contractual agreements by the Department of Administration or the Attorney General, and from the requirements of chapter five-a of this code. Moreover, the board shall also be exempt from these provisions with respect to its operations of Cedar Lakes prior to and up to the transfer date. The board, with respect to its operations of Cedar Lakes prior to and up to the transfer date, shall not

be required to use the Enterprise Resource Planning System or other related rules established or authorized in article six-d, chapter twelve of this code.

**§18-2L-8. Certain personnel provisions concerning Cedar Lakes employees.**

(a) Immediately upon the transfer of Cedar Lakes from the board to the foundation on the transfer date, all Cedar Lakes employees shall become at-will employees of the foundation.

(b) Any person who:

(1) was a Cedar Lakes employee as of January 1, 2017;

(2) was a Cedar Lakes employee who become an employee of the foundation upon the transfer date; and

(3) Is laid off by the foundation on or before July 1, 2018, is entitled to be placed on an appropriate reemployment list maintained by the Division of Personnel and to be allowed a preference on that list. The Division of Personnel shall maintain such an employee on the reemployment list indefinitely, or until the employee has declined three offers of employment at a paygrade substantially similar to that of his or her position as a Cedar Lakes employee upon termination from employment, or until he or she is reemployed by the executive branch of state government, whichever occurs earlier.

(c) The foundation shall enter into an agreement with the Division of Personnel for the provision of services and training to an employee of the foundation who is laid off on or before July 1, 2018, and requires additional training to obtain other gainful employment. The Division of Personnel shall administer the program. The fees required for those services and training shall be in an amount established by the Division of Personnel and the foundation, and shall be paid out of the transition fund.

(d) Any Cedar Lakes employee as of the transfer date and who becomes an employee of the foundation shall have the following options related to their accrued and unused sick leave: Freeze said accrued and unused sick leave at the balance that exists as of the transfer date and use said sick leave at the time of retirement for those purposes that would have been available to the employee under law in existence at the date of the transfer had the employee retired on the transfer date. With respect to any Cedar Lakes employee as of the transfer date and who becomes an employee of the foundation, the department shall pay the employee such amounts as the employee is entitled for his or her accrued but unused annual leave, not to exceed forty days.

(e) The Division of Personnel shall cooperate fully by assisting in all activities necessary to expedite all changes for the board, Cedar Lakes and employees, including, but not limited to, all of the above subsections.

**§18-2L-9. No waiver of sovereign immunity.**

Nothing contained in this article shall be deemed or construed to waive or abrogate in any way the sovereign immunity of the state or to deprive the board, department or any officer or employee thereof of sovereign immunity.

**§18-2L-10. Not obligation of the state.**

The obligations of the foundation shall not constitute debts or obligations of the board, department or the state.

**§18-2L-11. Sections and provisions severable.**

The sections of this article, and the provisions and parts of said sections, are severable and it is the intention to confer the whole or any part of the powers provided for in this article and, if any of said sections, or the provisions or parts of any said sections, or the application thereof to any person or circumstance, are for any reason



held unconstitutional or invalid, it is the intention that the remaining sections of this article, and the remaining provisions or parts of any said sections, shall remain in full force and effect.”

On motion of Delegates Westfall and Ashley the committee amendment was amended on page twelve, section eight, line six, following the words “retired on the transfer date”, by striking out the period and inserting in lieu thereof a semicolon and the words “or have his or her accrued and unused sick leave irrevocably surrendered in exchange for one hour of pay for each hour of accrued and unused sick leave surrendered to be payable from the transition fund”, followed by a period.

On motion of Delegate E. Nelson, the committee amendment was amended on page ten, section six, line five, following the word “absolute”, by striking out the remainder of the subsection and inserting in lieu thereof the words “all right, title and interest of the state in the surface of any and all real estate at Cedar Lakes owned by the board, reserving to the state any and all mineral rights appertaining thereto.”

The amendment of the Committee on Finance, as amended, was then adopted.

The bill was then ordered to third reading.

#### MESSAGES FROM THE SENATE

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had refused to concur in the amendment of the House of Delegates and requested the House to recede from its amendment to

**Com. Sub. for S. B. 37**, Creating Revised Uniform Arbitration Act.

On motion of Delegate Cowles, the House of Delegates refused to recede from its amendment and requested the Senate to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates Lane, Hanshaw and Bates.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 2098**, Authorizing those health care professionals to provide services to patients or residents of state-run veterans' facilities without obtaining an authorization to practice.

On motions of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates concurred in the following Senate amendments:

On page two, section eleven-b, line one, by striking out the word "shall" and inserting in lieu thereof the words "is authorized and encouraged to the best of its ability to".

On page three, section twelve-c, line one, by striking out the word "shall" and inserting in lieu thereof the words "is authorized and encouraged to the best of its ability to".

And,

By amending the title of the bill to read as follows:

**Com. Sub. for H. B. 2098** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-3-11b; and to amend said code by adding thereto a new section, designated §30-14-12c, all relating to services provided by allopathic and osteopathic physicians in federal veterans’ affairs facilities in this state; authorizing allopathic and osteopathic physicians to provide services to patients or residents of state-run veterans’ facilities by allowing them to obtain license without the required examination from the appropriate licensing agency of this state; limiting scope of the license to practice only in the state-run veterans’ facilities; providing rule-making authority to the appropriate licensing agencies of allopathic and osteopathic physicians; and requiring report to the Legislature.”

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 545**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Deem and L. Phillips.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2098) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with a title amendment, a bill of the House of Delegates, as follows:

**H. B. 2224**, Providing that historical reenactors are not violating the provision prohibiting unlawful military organizations.

On motions of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegates concurred in the following Senate title amendment:

**H. B. 2224** - “A Bill to amend and reenact §15-1F-7 of the Code of West Virginia, 1931, as amended, relating to unlawful military organizations; providing that historical reenactors are not violating the provision prohibiting unlawful military organizations; and providing that individuals or groups of individuals who drill, perform or parade at public ceremonies, including funerals, are not violating the provision prohibiting unlawful military organizations.”

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 546**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Canterbury, Deem, L. Phillips and B. White.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2224) passed.

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

On this question, the yeas and nays were taken (**Roll No. 547**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Arvon, Canterbury, Deem, L. Phillips and Walters.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2224) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect, July 1, 2015, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 2478**, Relating to public school finance.

On motions of Delegate Cowles, the bill was taken up for immediate consideration and the House of Delegate, refused to concur in the following Senate amendment and requested that the Senate recede therefrom.

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

### MISCELLANEOUS BUSINESS

Delegate Hartman noted to the Clerk that he was absent on yesterday when the vote was taken on Roll No. 453, and that had he been present, he would have voted “YEA” thereon.

Delegate B. White noted that he was absent when the votes were taken on Roll Nos. 511 and 546, and that had he been present, he would have voted “YEA” thereon.

Delegate L. Phillips noted that she was absent when the vote was taken on Roll No. 514, and that had she been present, she would have voted “YEA” thereon.

Delegate Zatezalo noted that he was absent when the votes were taken on Roll Nos. 519 and 520, and that had he been present, he would have voted “YEA” thereon.

Delegate Bates asked and obtained unanimous consent that the remarks of Delegate Lane regarding Com. Sub. for S. B. 423 be printed in the Appendix to the Journal.

Delegates Storch and Weld noted that they were absent when the vote was taken on Roll No. 538, and that had they been present, they would have voted "YEA" thereon.

Delegate Guthrie announced that she was absent when the votes were taken on Roll Nos. 519 and 520, and that had she been present, she would have voted "YEA" thereon.

Delegate Canterbury announced that he was absent when the votes were taken on Roll Nos. 546 and 547, and that had he been present, he would have voted "YEA" thereon.

Delegate Cadle noted to the Clerk that he was absent when the vote was taken on Roll No. 540, and that had he been present, he would have voted "YEA" thereon.

At 10:47 P.M., the House of Delegates adjourned until 10:00 A.M., Saturday, March 14, 2015.