

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4008

BY DELEGATES ELLINGTON, STATLER, CRISS,

HOUSEHOLDER, SMITH, GEARHART, ESPINOSA, HANNA,

HORST, BRIDGES, AND ROHRBACH

[Passed March 12, 2022; in effect ninety days from passage.]

1 AN ACT to amend and reenact §18B-1-1f of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §18B-1B-4 of said code, all relating to powers and duties of the
3 Higher Education Policy Commission generally; establishing additional criteria for a state
4 college or university to be considered exempt from the requirement that the commission
5 approve the establishment of new programs on their own campuses for programs
6 incentivized within the funding formula established herein; directing the Higher Education
7 Policy Commission, in conjunction with the West Virginia Council for Community and
8 Technical College Education, to propose rules to establish a funding formula model
9 governing its appropriation request to the Legislature regarding distribution of general
10 revenue to the state's institutions of higher education; setting forth parameters for the
11 formula and minimum requirements for the rule; revising and removing certain related
12 commission powers and duties; requiring interim chancellor to meet all criteria required of
13 the chancellor; clarifying the commission and council's responsibilities, in conjunction with
14 the West Virginia Network, to support systemwide technology needs; revising provisions
15 for rulemaking regarding transfers of credits and obtaining academic credit or advanced
16 placement standing based on experience; authorizing commission to promulgate rules,
17 and exercise powers and duties, governing student loans, scholarships, state aid as
18 provided in Chapter 18C of the code; removing requirements to provide education about
19 certain disease; and making non-substantive technical cleanup corrections and clarifying
20 changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GOVERNANCE.

§18B-1-1f. STATE COLLEGE AND UNIVERSITY EXEMPTION STATUS.

1 (a) The Legislature finds that:

2 (1) Efficiencies, entrepreneurialism, and the effectiveness of governing boards in fulfilling
3 certain goals can be incentivized through the accountability and autonomy associated with
4 exemption status for state colleges and universities based on meeting certain criteria; and

5 (2) Leading higher education authorities in the nation identify common, key performance
6 indicators as an important measure of institutional effectiveness, including, but not limited to,
7 enrollment benchmarks, fiscal benchmarks, and student success benchmarks.

8 (b) The following definitions apply to terms used in this section:

9 (1) "Administratively exempted schools" means state colleges and universities:

10 (A) That achieve and maintain three out of five of the following:

11 (i) Graduation rates: A three-year average graduation rate of not less than 45 percent;

12 (ii) Retention rates: A three-year average retention rate of not less than 60 percent; and

13 (iii) Credit head count enrollment: A three-year credit head count enrollment increase, or
14 a decrease of not more than five percent over the same period;

15 (iv) Days of cash reserved: A three-year average of not less than 50 days cash reserved;

16 and

17 (v) Composite Financial Index: A Composite Financial Index of not less than one as
18 reported in the college and university's audited financial statements; or

19 (B) Whose governing board requests a review by the chancellor of any special
20 circumstances and the commission grants administratively exempted status based on those
21 special circumstances as verified by the chancellor after his or her review.

22 (2) "Composite Financial Index" means the benchmarking tool used by the Higher
23 Learning Commission as a financial indicator and developed specifically for the higher education
24 industry and is a combination of several different ratios, each of which is comprised of data that,
25 when analyzed further, can provide insight into an institution's financial health and inform
26 decision-making processes;

27 (3) "Credit headcount enrollment" means the total number of unique students, but not
28 counting dual-enrolled high school students, who enrolled in credit-bearing classes during the fall,
29 spring, and summer terms in a given academic year at a specific institution;

30 (4) "Days of cash reserved" means the audited end of fiscal year cash balance, multiplied
31 by 365, and then divided by the audited total expenses less depreciation, and less other post
32 employment benefit and pension liability expenses;

33 (5) "Graduation rates" means the proportion of first time in college students who obtain a
34 bachelor's degree within six years, as further defined by and reported to the commission;

35 (6) "Retention rates" means the proportion of first-time, fall term, full-time freshmen
36 students who are in continuing enrollment in the fall term of the next succeeding year; and

37 (7) "State college and university" shall have the same meaning as provided in §18B-1-2
38 of this code.

39 (c) Any state college and university may apply to the commission for designation as an
40 administratively exempted school. The commission shall make its determination as to whether to
41 grant or deny exemption designation based on the definition of administratively exempted school.
42 The commission shall propose rules for legislative approval pursuant to §29A-3A-1 *et seq.* of this
43 code to implement the provisions of this section and that addresses loss of an administratively
44 exempted designation. The rule shall at least include the following:

45 (1) After the first year an administratively exempted school fails to meet three of the five
46 criteria under the definition of administratively exempted schools, the commission may advise the
47 institution on strategies that may be implemented in order to meet three of the five criteria before
48 the following year;

49 (2) An institution may not lose its designation as an administratively exempted school until
50 it has failed to meet three of the five criteria under the definition of administratively exempted
51 schools for two consecutive years;

52 (3) If an institution is administratively exempt based on special circumstances, the
53 commission may revoke the administratively exempted status of a state college and university if
54 it determines that the special circumstance that the state college and university's administratively
55 exempted status is based on no longer exists; and

56 (4) The commission shall provide notice to the institution at least 30 days before revoking
57 the institution's administratively exempted status.

58 (d) Notwithstanding any other provision of this code to the contrary:

59 (1) West Virginia University, including West Virginia University Potomac State College and
60 West Virginia University Institute of Technology; Marshall University; and the West Virginia School
61 of Osteopathic Medicine, which are statutorily exempted schools under §18B-1-2 of this code, are
62 institutions of unique characteristics and their continuing inclusion as a statutorily exempted
63 school is confirmed; and

64 (2) No other state institution of higher education maintains exempted school status
65 pursuant to any other provision of this code except any exempted school status designated by
66 the commission pursuant to this section: *Provided*, That notwithstanding any provision of this
67 section to the contrary, any college or university shall be exempt from the requirement that the
68 commission approve the establishment of new four-year programs on their own campuses for
69 programs incentivized within the funding formula established in §18B-1B-4 of this code if the state
70 appropriation to that school is less than 40 percent of their operating expenses for three
71 consecutive years.

72 (e) Notwithstanding any other provision of this code to the contrary, any state college and
73 university that applies and is designated by the commission as an administratively exempted
74 school is exempt from the following:

75 (1) The required approval of capital projects to ensure that capital projects and facility
76 needs are managed effectively pursuant to §18B-1B-4(a)(10) of this code;

77 (2) The development and approval of institutional mission definitions pursuant to §18B-
78 1B-4(a)(34) of this code;

79 (3) The program approval required pursuant to §18B-1B-4(a)(35) of this code;

80 (4) The rules providing guidance to the governing boards in filling vacancies in the office
81 of the president pursuant to §18B-1B-6(d) of this code;

82 (5) The commission's rule governing and controlling acquisitions and purchases pursuant
83 to §18B-5-4 of this code, upon adoption by the board of governors of said school of its own rule
84 governing and controlling acquisitions and purchases pursuant to §18B-5-4 of this code, following
85 the procedures for adoption of rules provided for in this code;

86 (6) The required approval of capital improvement projects exceeding \$3 million pursuant
87 to §18B-19-6 of this code;

88 (7) The required approval of lease-purchase agreements for capital improvements and
89 equipment of \$1.5 million or greater pursuant to §18B-19-11 of this code; and

90 (8) The required approval of real estate transactions, lease purchase, and new building
91 construction exceeding \$1 million pursuant to §18B-19-13 of this code.

92 (g) Not later than the January interims of each year, the commission shall submit a report
93 to the Legislative Oversight Commission on Education Accountability relating to the
94 administratively exempted schools eligibility criteria established by this section, providing the data
95 for each of the three preceding years, as available, and the three-year average thereof, for each
96 of the state institutions of higher education under its jurisdiction. The commission shall share the
97 report with the institutions.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-4. Powers and duties of Higher Education Policy Commission.

1 (a) The primary responsibility of the commission is to provide shared services in a cost-
2 effective manner upon request to the state colleges and universities, the West Virginia Council
3 for Community and Technical College Education, and the community and technical colleges;

4 undertake certain statewide and regional initiatives as specifically designated in this chapter,
5 including those related to the administration of grants and scholarships and including those in
6 conjunction with the council; to review, confirm, or approve certain actions undertaken by
7 governing boards, as delineated in this chapter; and assist in the development of policy that will
8 achieve the goals, objectives and priorities found in §18B-1-1a and §18B-1D-1 of this code. The
9 commission shall exercise its authority and carry out its responsibilities in a manner that is
10 consistent and not in conflict with the powers and duties assigned by law to the West Virginia
11 Council for Community and Technical College Education and the powers and duties assigned to
12 the governing boards. To that end, the commission has the following powers and duties relating
13 to the governing boards under its jurisdiction:

14 (1) Develop and advance the public policy agenda pursuant to §18B-1D-1 *et seq.* of this
15 code to address major challenges facing the state, including, but not limited to, the goals,
16 objectives, and priorities established in this chapter

17 (2) In conjunction with the council, propose emergency and legislative rules in accordance
18 with §29A-3A-1 and §18B-1-6 of this code to establish a performance-based funding formula
19 model the commission and council shall use, beginning in the fiscal year 2024 budget cycle, in
20 developing their annual budget requests to ensure the fair and equitable distribution and use of
21 public funds among the state's institutions of higher education, including the statutorily and
22 administratively exempted schools. This funding formula model shall advance the goals of the
23 state's postsecondary education system by emphasizing outcomes focused on student success
24 and institutional mission achievement. The formula shall include a range of variables that shall
25 be weighted in a manner that corresponds to each institution's mission and provides incentives
26 for productivity improvements consistent with the goal of strengthening the state's economy and
27 workforce by developing the most competitive and capable graduates in the nation. The rule
28 shall, at a minimum:

29 (A) Establish a set of objective performance metrics that reflect and support the state's
30 higher education goals and priorities and the methodology by which those metrics shall be used
31 in the allocation of state funds;

32 (B) Ensure that a portion of each institution's base appropriation is allocated based on
33 outcomes achieved over a defined period of time;

34 (C) Incentivize postsecondary program offerings that align with the state's higher
35 education and workforce development priorities; and

36 (D) Establish safeguards to ensure stability of the funding formula model including, but
37 not limited to, providing for periodic reviews of and revision to the performance metrics and
38 funding methodology in addition to accounting for inflation;

39 (3) In collaboration with the council and the governing boards:

40 (A) Building public consensus around and sustaining attention to a long-range public policy
41 agenda. In developing the agenda, the commission and council shall seek input from the
42 Legislature, the Governor, the governing boards, and the State Board of Education and local
43 school districts to create the necessary linkages to assure smooth, effective and seamless
44 movement of students through the public education and post-secondary education systems and
45 to ensure that the needs of public school courses and programs can be fulfilled by the graduates
46 produced and the programs offered;

47 (B) Assisting governing boards in carrying out their duty effectively to govern the individual
48 institutions of higher education;

49 (4) Serve as a point of contact to state policymakers:

50 (A) The Governor for the public policy agenda; and

51 (B) The Legislature by maintaining a close working relationship with the legislative
52 leadership and the Legislative Oversight Commission on Education Accountability;

53 (5) Upon request, provide shared services to a state institution of higher education;

54 (6) Administer scholarship and grant programs as provided for in this code;

55 (7) Establish and implement the benchmarks and performance indicators for state colleges
56 and universities necessary to measure institutional progress in achieving state policy priorities
57 and institutional missions pursuant to §18B-1D-7 of this code;

58 (8) Establish a formal process for recommending capital investment needs and for
59 determining priorities for state colleges and universities for these investments for consideration
60 by the Governor and the Legislature as part of the appropriation request process pursuant to
61 §18B-19-1 *et seq.* of this code;

62 (9) Except the statutorily and administratively exempted schools, develop standards and
63 evaluate governing board requests for capital project financing in accordance with §18B-19-1 *et*
64 *seq.* of this code;

65 (10) Except the statutorily and administratively exempted schools, ensure that governing
66 boards manage capital projects and facilities needs effectively, including review and approval of
67 capital projects, in accordance with §18B-19-1 *et seq.* of this code;

68 (11) Acquire legal services as considered necessary, including representation of the
69 commission, the governing boards, employees, and officers before any court or administrative
70 body, notwithstanding any other provision of this code to the contrary. The counsel may be
71 employed either on a salaried basis or on a reasonable fee basis. In addition, the commission
72 may, but is not required to, call upon the Attorney General for legal assistance and representation
73 as provided by law;

74 (12) Employ a chancellor, and any interim chancellor employed shall meet all criteria
75 required of the chancellor, pursuant to §18B-1B-5 of this code;

76 (13) Employ other staff as necessary and appropriate to carry out the duties and
77 responsibilities of the commission and the council, in accordance with §18B-4-1 *et seq.* of this
78 code;

79 (14) Provide suitable offices in Kanawha County for the chancellor, vice chancellors, and
80 other staff;

81 (15) Approve the total compensation package from all sources for presidents of institutions
82 under its jurisdiction, except the statutorily exempted schools, as proposed by the governing
83 boards. The governing boards, except the governing boards of the statutorily exempted schools,
84 must obtain approval from the commission of the total compensation package both when
85 institutional presidents are employed initially and afterward when any change is made in the
86 amount of the total compensation package: *Provided*, That the commission shall receive notice,
87 but need not approve or confirm, an increase in the compensation of an institutional president
88 that is exactly in the ratio of compensation increases allocated to all institutional employees and
89 approved by the governing board to expressly include the president;

90 (16) Assist and facilitate the work of the institutions to implement the policy of the state to
91 assure that parents and students have sufficient information at the earliest possible age on which
92 to base academic decisions about what is required for students to be successful in college, other
93 post-secondary education and careers related, as far as possible, to results from current
94 assessment tools in use in West Virginia;

95 (17) Approve and implement a uniform standard jointly with the council to determine which
96 students shall be placed in remedial or developmental courses. The standard shall be aligned
97 with college admission tests and assessment tools used in West Virginia and shall be applied
98 uniformly by the governing boards. The chancellors shall develop a clear, concise explanation of
99 the standard which they shall communicate to the State Board of Education and the state
100 superintendent of schools;

101 (18) Jointly with the council and in conjunction with the West Virginia Network, support
102 systemwide technology needs through leveraged consortium purchasing, software, database and
103 networking support, and other services including, but not limited to, the following:

104 (A) Expanding distance learning and technology networks to enhance teaching and
105 learning, and promoting access to quality educational offerings with minimum duplication of effort;
106 and

107 (B) Increasing the delivery of instruction to nontraditional students, providing services to
108 business and industry, and increasing the management capabilities of the higher education
109 system.

110 (C) Notwithstanding any other provision of law or this code to the contrary, the council,
111 commission, and governing boards are not subject to the jurisdiction of the Chief Technology
112 Officer for any purpose;

113 (19) Propose rules in accordance with §29A-3A-1, *et seq.* and §18B-1-6 of this code to
114 ensure that, within sound academic policy, a student may transfer and apply toward the
115 requirements of any postsecondary credential the maximum number of credits earned at any
116 regionally accredited in-state or out-of-state institution of higher education in a manner that
117 minimizes the need to repeat courses or incur additional costs. This requirement applies to
118 transfer processes for all levels of postsecondary programs delivered at community and technical
119 colleges, baccalaureate-degree-granting institutions, and graduate-degree-granting institutions;

120 (20) Propose rules in accordance with §29A-3A-1, *et seq.* and §18B-1-6 of this code to
121 develop a program through which a student who has gained knowledge and skills through
122 employment, participation in education, and training at vocational schools or other education
123 institutions, or Internet-based education programs, may demonstrate by competency-based
124 assessment that he or she has the necessary knowledge and skills to be granted academic credit
125 or advanced placement standing toward the requirements of an associate's degree or a
126 bachelor's degree at a state institution of higher education;

127 (21) Seek out and attend regional, national, and international meetings and forums on
128 education and workforce development-related topics as, in the commission's discretion, are
129 critical for the performance of their duties as members, for the purpose of keeping abreast of
130 education trends and policies to aid it in developing the policies for this state to meet the
131 established education goals, objectives, and priorities pursuant to §18B-1-1a and §18B-1D-1 *et*
132 *seq.* of this code;

133 (22) Promulgate and implement a rule for governing boards and institutions to follow when
134 considering capital projects pursuant to §18B-19-1 *et seq.* of this code, which rule shall provide
135 for appropriate deference to the value judgments of governing boards and may not apply to the
136 statutorily or administratively exempted schools;

137 (23) Submit to the appropriate agencies of the executive and legislative branches of state
138 government an appropriation request that reflects recommended appropriations for the
139 commission and the governing boards under its jurisdiction including the statutorily and
140 administratively exempted schools. The commission shall submit as part of its appropriation
141 request the separate recommended appropriation request it received from the council, both for
142 the council and for the governing boards under the council's jurisdiction. The commission annually
143 shall submit the proposed allocations based on the funding formula model required by subdivision
144 (a)(2) of this section;

145 (24) Promulgate rules allocating reimbursement of appropriations, if made available by the
146 Legislature, to governing boards for qualifying noncapital expenditures incurred in providing
147 services to students with physical, learning, or severe sensory disabilities;

148 (25) Pursuant to §29A-3A-1 *et seq.* and §18B-1-6 of this code, promulgate rules necessary
149 or expedient to fulfill the purposes of this chapter and Chapter 18C of this code;

150 (26) Determine when a joint rule among the governing boards under its jurisdiction is
151 necessary or required by law and, in those instances, in consultation with the governing boards
152 under its jurisdiction, promulgate the joint rule;

153 (27) Promulgate and implement a rule jointly with the council whereby course credit
154 earned at a community and technical college transfers for program credit at any other state
155 institution of higher education and is not limited to fulfilling a general education requirement;

156 (28) Promulgate a rule pursuant to §18B-10-1 of this code establishing tuition and fee
157 policy for all governing boards under the jurisdiction of the commission, except the statutorily and
158 administratively exempted schools. The rule shall include, but is not limited to, the following:

159 (A) Differences among institutional missions;

160 (B) Strategies for promoting student access;

161 (C) Consideration of charges to out-of-state students; and

162 (D) Such other policies as the commission and council consider appropriate;

163 (29) Notwithstanding any other provision of this code to the contrary sell, lease, convey,
164 or otherwise dispose of all or part of any real property that it owns, in accordance with §18B-19-
165 1 *et seq.* of this code;

166 (30) Policy analysis and research focused on issues affecting institutions of higher
167 education generally or a geographical region thereof;

168 (31) Development and approval of institutional mission definitions except the statutorily
169 and administratively exempted schools: *Provided*, That the commission may use funds
170 appropriated by the Legislature for incentive funds to influence institutional behavior in ways that
171 are consistent with public priorities, including the statutorily and administratively exempted
172 schools;

173 (32) Academic program review and approval for governing boards under its jurisdiction,
174 except the statutorily and administratively exempted schools. The review and approval includes
175 use of institutional missions as a template to judge the appropriateness of both new and existing
176 programs and the authority to implement needed changes.

177 (A) The commission's authority to review and approve academic programs for the
178 statutorily and administratively exempted schools is limited to programs that are proposed to be
179 offered at a new location not presently served by that institution: *Provided*, That West Virginia
180 University and the West Virginia University Institute of Technology are subject to the commission's
181 authority as provided in §18B-1C-2 of this code.

182 (B) In reviewing and approving academic programs, the commission shall focus on the
183 following policy concerns:

184 (i) New programs may not be implemented which change the institutional mission, unless
185 the institution also receives approval for expanding the institutional mission;

186 (ii) New programs which require significant additional expense investments for
187 implementation may not be implemented unless the institution demonstrates that:

188 (I) The expenses shall be addressed by effective reallocations of existing institutional
189 resources; or

190 (II) The expenses can be legitimately spread out over future years and shall be covered
191 by reasonably anticipated additional net revenues from new enrollments;

192 (iii) A new undergraduate program which is significantly similar to an existing program
193 already in the geographic service area may not be implemented unless the institution requesting
194 the new program demonstrates a compelling need in the service area that is not being met by the
195 existing program: *Provided*, That the academic programs of the statutorily and administratively
196 exempted schools are not to be taken into consideration except as it relates to academic programs
197 offered at West Virginia University in Beckley and West Virginia University Institute of Technology
198 in Beckley.

199 (C) The commission shall approve or disapprove proposed academic degree programs in
200 those instances where approval is required as soon as practicable. The commission shall
201 maintain by rule a format model by which a new program approval shall be requested by an
202 institution. When a request for approval of a new program is submitted to the commission, the
203 chancellor shall provide notice within two weeks as to whether the submission meets the required
204 format, and if it does not the chancellor shall identify each specific deficiency and return the
205 request to the institution. The institution may refile the request for approval with the commission
206 to address any identified deficiencies. Within 30 days after the chancellor's confirmation that the
207 request meets the required format, the commission shall either approve or disapprove the request
208 for the new program. The commission may not withhold approval unreasonably.

209 (33) Distribution of funds appropriated to the commission, including incentive and
210 performance-based funds;

211 (34) Administration of state and federal student aid programs under the supervision of the
212 vice chancellor for administration, including promulgation of rules necessary to administer those
213 programs;

214 (35) Serving as the agent to receive and disburse public funds when a governmental entity
215 requires designation of a statewide higher education agency for this purpose;

216 (36) Developing and distributing information, assessment, accountability and personnel
217 systems for state colleges and universities, including maintaining statewide data systems that
218 facilitate long-term planning and accurate measurement of strategic outcomes and performance
219 indicators;

220 (37) Jointly with the council, promulgating and implementing rules for licensing and
221 oversight for both public and private degree-granting and nondegree-granting institutions that
222 provide post-secondary education courses or programs in the state. The council has authority
223 and responsibility for approval of all post-secondary courses or programs providing community
224 and technical college education as defined in §18B-1-2 of this code;

225 (38) Developing, facilitating, and overseeing statewide and regional projects and initiatives
226 related to providing post-secondary education at the baccalaureate level and above such as those
227 using funds from federal categorical programs or those using incentive and performance-based
228 funds from any source;

229 (39) (A) For all governing boards under its jurisdiction, except for the statutorily exempted
230 schools, the commission shall review institutional operating budgets, review, and approve capital
231 budgets, and distribute incentive and performance-based funds.

232 (B) For the governing boards of the statutorily exempted schools, the commission shall
233 distribute incentive and performance-based funds and may review and comment upon the
234 institutional operating budgets and capital budgets. The commission's comments, if any, shall be

235 made part of the governing board's minute record and shall be filed with the Legislative Oversight
236 Commission on Education Accountability;

237 (40) May provide information, research, and recommendations to state colleges and
238 universities relating to programs and vocations with employment rates greater than 90 percent
239 within six months post-graduation; and

240 (41) May provide information, research, and recommendations to state colleges and
241 universities on coordinating with the West Virginia State Board of Education about complimentary
242 programs.

243 (b) In addition to the powers and duties provided in this section and any other powers and
244 duties assigned to it by law, the commission has other powers and duties necessary or expedient
245 to accomplish the purposes of this chapter and Chapter 18C of this code: *Provided*, That the
246 provisions of this subsection may not be construed to shift management authority from the
247 governing boards to the commission.

248 (c) The commission may withdraw specific powers of a governing board under its
249 jurisdiction for a period not to exceed two years, if the commission determines that either of the
250 following conditions exist:

251 (1) The commission has received information, substantiated by independent audit, of
252 significant mismanagement or failure to carry out the powers and duties of the governing board
253 according to state law; or

254 (2) Other circumstances which, in the view of the commission, severely limit the capacity
255 of the governing board to exercise its powers or carry out its duties and responsibilities.

256 The commission may not withdraw specific powers for a period exceeding two years.
257 During the withdrawal period, the commission shall take all steps necessary to reestablish sound,
258 stable and responsible institutional governance.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2022.

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Governor