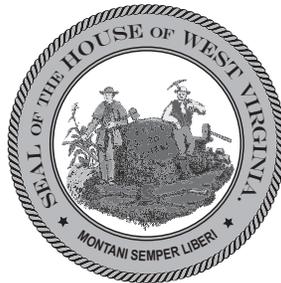


West Virginia Legislature

JOURNAL
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April 8, 2017
SIXTIETH DAY

Saturday, April 8, 2017

SIXTIETH 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, April 7, 2017, being the first order of business, when the further reading thereof was dispensed with and the same approved.

Committee Reports

Delegate Hanshaw, 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 6th day of April, 2017, 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. 2180, Authorizing the issuance of special "In God We Trust" motor vehicle registration plates,

H. B. 2188, Extending the length of time for the special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth,

H. B. 2518, Creating a legislative rule to permit a pharmacist or pharmacy intern to administer certain immunizations,

Com. Sub. for H. B. 2519, Medicaid program compact,

Com. Sub. for H. B. 2586, Relating to required minimum distribution of retirement benefits of plans administered by the Consolidated Public Retirement Board,

H. B. 2653, Extending the Multi State Real-Time Tracking System,

H. B. 2706, Authorizing legislative rules regarding higher education,

H. B. 2796, Relating to the West Virginia National Guard entering into contracts and subcontracts for specialized technical services,

And,

H. B. 2856, Declaring public policy and legislative intent for improving the marketing, quality and frequency of passenger rail service of the Cardinal Passenger Train.

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. 2129, Relating to the powers and authority of state and local law enforcement to enforce underage drinking laws at private clubs.

On motion of Delegate Cowles, the House of Delegates refused to concur in the following amendment of the bill by the Senate and requested the Senate to recede therefrom:

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

“That §60-7-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. LICENSES TO PRIVATE CLUBS.**§60-7-13. Revocation or suspension of license; monetary penalty; hearing; assessment of costs; establishment of enforcement fund.**

(a) Upon a determination by the commissioner that a licensee has: (i) Violated the provisions of article sixteen, chapter eleven, or of this chapter; (ii) acted in such a way as would have precluded initial or renewal licensure; or (iii) violated any rule or order promulgated by the commissioner, the commissioner may impose any one or a combination of the following sanctions:

(1) Revoke the licensee's license;

(2) Suspend the licensee's license;

(3) Place the licensee on probationary status for a period not to exceed twelve months; and

(4) Impose a monetary penalty not to exceed \$1,000 for each violation where revocation is not imposed.

(b) Any monetary penalty assessed and collected by the commissioner shall be transmitted to the State Treasurer for deposit into the State Treasury to the credit of a special revenue fund designated the Alcohol Beverage Control Enforcement Fund, which is hereby created. All moneys collected, received and deposited in the Alcohol Beverage Control Enforcement Fund shall be kept and maintained for expenditures by the commissioner for the purpose of enforcement of the statutes and rules pertaining to alcoholic liquor, and shall not be treated by the State Treasurer or State Auditor as any part of the general revenue of the state. At the end of each fiscal year all funds in the Alcohol Beverage Control Enforcement Fund in excess of \$20,000 shall be transferred to the General Revenue Fund.

(c) In addition to the grounds for revocation, suspension or other sanction of a license set forth in subsection (a) of this section, conviction of the licensee of any offense constituting a violation of the laws of this state or of the United States relating to alcoholic liquor, nonintoxicating beer or gambling shall be mandatory grounds for such sanctioning of a license. Conviction of the licensee of any violation of the laws of this state or of the United States relating to prostitution, or the sale, possession

or distribution of narcotics or controlled substances, shall be mandatory grounds for revocation of the licensee's license for a period of at least one year.

(d) In addition to the grounds for revocation, suspension or other sanction of a license set forth in this section, the commissioner may, in his or her discretion, revoke, suspend or otherwise sanction a licensee for failing to alert, in a timely manner, emergency medical services or law enforcement of a life-threatening medical emergency occurring on the premises of the licensee's private club.

(e) If a life threatening medical emergency occurs on a licensee's private premises requiring notification under subsection (d) of this section, the licensee shall notify the Alcohol Beverage Control Administration within forty-eight hours of the emergency's occurrence. The commissioner may, in his or her discretion, revoke, suspend or otherwise sanction a licensee for failing to comply with the 48-hour notification requirement."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2129 – "A Bill to amend and reenact §60-7-13 of the Code of West Virginia, 1931, as amended, relating to authorizing the Commissioner of the Alcohol Beverage Control Administration to revoke, suspend or otherwise sanction a private club licensed to sell alcohol for failing to alert emergency medical services and law enforcement of a life-threatening medical emergency occurring on the licensee's premises; requiring private clubs licensed to sell alcohol to notify the Alcohol Beverage Control Administration of any life-threatening medical emergencies occurring on the licensee's premises within a week of the emergency's occurrence; and authorizing the Commissioner of the Alcohol Beverage Control Administration to revoke, suspend or otherwise sanction a licensee for failing to notify the Alcohol Beverage Control Administration of a life-threatening medical emergency that has taken place on the licensee's premises."

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. 2555, Relating to tax credits for apprenticeship training in construction trades.

On motion of Delegate Cowles, the House of Delegates refused to concur in the following amendment of the bill by the Senate and requested the Senate to recede therefrom:

On page two, section one, after line twenty-five, by inserting a new subsection, designated subsection (d), to read as follows:

"(d) *Apprentices shall be legal residents.* — In addition to other requirements of this section, in order for a taxpayer to claim the credit created in this section, the taxpayer shall require any apprentice for whom it claims a credit to submit to an employment eligibility check through the E-verify system, administered by United States Citizenship and Immigration Services" followed by semicolon.

And,

By relettering the remaining subsection.

On page two, section one, line twenty, by changing the period to a colon and inserting the following proviso: "Provided, That in order to ensure this tax credit does not subsidize the payment of the minimum wage, an apprentice working for the participating taxpayer may not be paid an hourly wage less than \$2 above the applicable minimum wage per hour."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2555 – “A Bill to amend and reenact §11-13W-1 of the Code of West Virginia, 1931, as amended, relating to tax credits for apprenticeship training in construction trades; removing requirement that eligibility is limited to programs jointly administered by labor and management trustees; providing that the apprentice must be paid at least two dollars above the applicable minimum wage in order for a participating taxpayer to claim the credit; conforming provisions to current law; and requiring that taxpayers seeking to take advantage of the apprenticeship tax credit must perform an employment eligibility check through the E-verify system.”

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. 2631, Relating to time standards for disposition of complaint proceedings.

On motion of Delegate Cowles, the House of Delegates refused to concur in the following amendment of the bill by the Senate and requested the Senate to recede therefrom:

On page two, section five, line sixteen, after the word “ruling” and the period, by inserting the following:

“The time period for final ruling shall be tolled for any delay requested or caused by the accused or by counsel for the accused and in no event shall a complaint proceeding be dismissed for exceeding the time standards in this section when such overage is the result of procedural delay or obstructive action by the accused or his or her counsel or agents.”

On page two, section five, lines seventeen through twenty-three, by striking out all of subsection (d), and relettering the remaining subsections.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2631 – “A Bill to amend and reenact §30-1-5 of the Code of West Virginia, 1931, as amended, relating to time standards for disposition of complaint proceedings and tolling the time periods for delays attributable to the accused.”

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

Com. Sub. for H. B. 2721, Removing the cost limitation on projects completed by the Division of Highways.

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

Senators Boso, Swope and Jeffries.

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 Walters, Gearheart and Bates.

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 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

Com. Sub. for H. B. 2722, Eliminating the financial limitations on utilizing the design-build program for highway construction.

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

Senators Boso, Swope and Jeffries.

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 Walters, Gearheart and Bates.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2759, Creating Statewide Interoperable Radio Network.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

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

“ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-409. Prohibited acts – Transportation of controlled substances into state; penalties.

(a) Except as otherwise authorized by the provisions of this code, it ~~shall be~~ is unlawful for any person to transport or cause to be transported into this state a controlled substance with the intent to deliver the same or with the intent to manufacture a controlled substance.

(b) Any person who violates this section with respect to:

(1) A controlled substance classified in Schedule I or II, which is a narcotic drug, shall be guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than ~~one year~~ a determinate term of not less than one nor more than fifteen years, or fined not more than \$25,000, or both;

(2) Any other controlled substance classified in Schedule I, II or III shall be guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for a determinate term of not less than one year nor more than five ~~ten~~ years, or fined not more than \$15,000, or both: Provided, That for the substance marihuana, as scheduled in subdivision (24) subsection (d), section two hundred four, article two of this chapter, the penalty, upon conviction of a violation of this subsection, shall be that set forth in subdivision (3) of this subsection.

(3) A substance classified in Schedule IV shall be guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for a determinate term of not less than one year nor more than ~~three~~ five years, or fined not more than \$10,000, or both;

(4) A substance classified in Schedule V shall be guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than \$5,000, or both: *Provided*, That for offenses relating to any substance classified as Schedule V in article ten of this chapter, the penalties established in said article apply.

(c) Notwithstanding the provisions of subsection (b) of this section, any person violating or causing a violation of subsection (a) of this section involving one kilogram or more of heroin, five kilograms or more of cocaine or cocaine base, one hundred grams or more of phencyclidine, ten grams or more of lysergic acid diethylamide, or fifty grams or more of methamphetamine or five hundred grams of a substance or material containing a measurable amount of methamphetamine, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than thirty years.

(d) Notwithstanding the provisions of subsection (b) of this section, any person violating or causing a violation of subsection (a) of this section involving one hundred but fewer than 1000 grams

of heroin, not less than five hundred but fewer than 5,000 grams of cocaine or cocaine base, not less than ten but fewer than ninety-nine grams of phencyclidine, not less than one but fewer than ten grams of lysergic acid diethylamide, or not less than five but fewer than fifty grams of methamphetamine or not less than fifty grams but fewer than five hundred grams of a substance or material containing a measurable amount of methamphetamine, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than twenty years.

(e) Notwithstanding the provisions of subsection (b) of this section, any person violating or attempting to violate the provisions of subsection (a) of this section involving not less than ten grams nor more than one hundred grams of heroin, not less than fifty grams nor more than five hundred grams of cocaine or cocaine base, not less than two grams nor more than ten grams of phencyclidine, not less than two hundred micrograms nor more than one gram of lysergic acid diethylamide, or not less than four hundred ninety nine milligrams nor more than five grams of methamphetamine or not less than twenty grams nor more than fifty grams of a substance or material containing a measurable amount of methamphetamine is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than fifteen years.

~~(e)~~(f) The offense established by this section shall be in addition to and a separate and distinct offense from any other offense set forth in this code.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2759 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §5A-3-3a; to amend and reenact §5A-6-8 of said code; to amend and reenact §5A-10-6 of said code; and to amend said code by adding thereto a new article, designed §15-14-1, §15-14-2, §15-14-3, §15-14-4, §15-14-5, §15-14-6, §15-14-7, §15-14-8, §15-14-9 and §15-14-10, all relating to creating Statewide Interoperable Radio Network; establishing short title; defining terms; establishing objectives and purpose; creating position of Statewide Interoperable Coordinator; prescribing duties for Statewide Interoperability Coordinator; creating Statewide Interoperability Executive Committee; prescribing duties for Statewide Interoperability Executive Committee; creating the Regional Interoperability Committee; prescribing duties for Regional Interoperability Committee; providing for transfer of assets and staffing of Statewide Interoperable Radio Network from the Department of Health and Human Resources to the West Virginia Department of Homeland Security and Emergency Management with a certain exception; establishing special revenue account for Statewide Interoperable Radio Network designated as the Statewide Interoperable Radio Network Account; providing for deposit of revenues derived from the lease of property managed as part of the West Virginia Statewide Interoperable Radio Network into the Statewide Interoperable Radio Network Account; exempting Statewide Interoperable Radio Network from certain Purchasing Division and Office of Technology requirements; and authorizing emergency and legislative rulemaking.”

On the passage of the bill, the yeas and nays were taken (**Roll No. 513**), 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 (Com. Sub. for H. B. 2759) passed.

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

On this question, the yeas and nays were taken (**Roll No. 514**), 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 H. B. 2759) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2805, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

On motion of Delegate Cowles, the House of Delegates refused to concur in the following amendment of the bill by the Senate and requested the Senate to recede therefrom:

On page seven, section one, by striking out paragraph (116).

On page twenty, section one, by striking out paragraph (466).

On page twenty-one, section one, by striking out paragraph (480).

And,

By renumbering the remaining paragraphs.

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:

H. B. 2962, Enlarging the authority of the Tax Commissioner to perform background investigations of employees and contractors.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page four, section one, line seventy-six, after the word "state", by striking out the word "of" and inserting in lieu thereof the word "or".

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. 515**), 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. 2962) 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. 2967, Relating generally to administration of estates and trusts.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

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

“That §44-1-1, §44-1-6, §44-1-7, §44-1-8, §44-1-14a and §44-1-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §44-3A-3 of said code be amended and reenacted; and that §44-5-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-1. Executor has no powers before qualifying.

A person appointed by a will executor thereof shall not have the powers of executor until he or she qualifies as such by taking an oath and giving bond, unless not required to post bond by section eight of this article, before the county ~~court~~ commission in which the will, or an authenticated copy thereof, is admitted to record, or before the clerk thereof in vacation, except that he or she may provide for the burial of the testator, pay reasonable funeral expenses and preserve the estate from waste.

§44-1-6. Bond and oath; termination of grant in certain cases.

At the time of the grant of administration upon the estate of any intestate, the person to whom it is granted shall, in the ~~county court~~ county commission or before the clerk granting it, give bond, unless not required to post bond by section eight of this article, and take an oath that the deceased has left no will so far as he or she knows, and that he or she will faithfully perform the duties of ~~his~~ the office to the best of his or her judgment. If a will of the deceased be afterwards admitted to record, or if, after administration is granted to a creditor or other person than a distributee, any distributee who shall not have before refused shall apply for administration, there may be a grant of probate or administration, after reasonable notice to such creditor or other person theretofore appointed, in like manner as if the former grant had not been made, and such former grant shall thereupon cease.

§44-1-7. Penalty of bond.

(a) Every bond ~~of~~ required to be given by an executor or administrator shall be in a penalty equal, at the least, to the full value of the personal estate of the deceased to be administered; and where there is a will which authorizes the executor or administrator to sell real estate, or receive the rents and profits thereof, the bond shall be in a penalty equal, at the least, to the full value both of such

personal estate and of such real estate, or of such personal estate and of such rents and profits, as the case may be.

(b) If on the filing of the inventory or appraisal of the estate it shall appear that the penalty of the bond does not comply as to amount with the foregoing requirements, the court county commission in which, or the clerk before whom, such bond was given, shall immediately notify such executor or administrator of such fact and require of him or her a new or additional bond, and the failure of such executor or administrator to give the same within a reasonable time shall be sufficient cause for his or her removal.

§44-1-8. When executor or administrator not to give bond; when surety not required.

(a) Subject to the provisions of section three, article five of this chapter governing the appointment of a nonresident of this state as an executor, where the will directs that an executor shall not give bond, it shall not be required of him or her, unless at the time the will is admitted to probate or at any time subsequently, on the application of any person interested, or from the knowledge of the court and after a hearing, it is required by the county commission or clerk admitting the will to probate, it is deemed proper that bond ought to be given.

(b) No surety shall be required on the bond of the executor if he or she is also the sole beneficiary of the decedent, unless the will directs otherwise, and no surety shall be required on the bond of the administrator if he or she is the sole distributee of the decedent, unless at the time the will is admitted to probate or the administrator is appointed or at any time thereafter, on the application of any person interested, and after a hearing, it is required by the county commission that surety ought to be given.

(c) In all such cases where no surety is required of the executor or administrator, the executor or administrator shall nevertheless be liable upon his or her bond upon his or her own personal recognizance in the event of default, failure or misadministration by the executor or administrator.

§44-1-14a. Notice of administration of estate; time limits for filing of objections; liability of personal representative.

(a) Within thirty days of the filing of the appraisal of any estate or within one hundred twenty days of the date of qualification of the personal representative if an appraisal is not filed as required in section fourteen of this article, the clerk of the county commission shall publish, once a week for two successive weeks, in a newspaper of general circulation within the county of the administration of the estate, a notice, which is to include:

- (1) The name of the decedent;
- (2) The name and address of the county commission before whom the proceedings are pending;
- (3) The name and address of the personal representative;
- (4) The name and address of any attorney representing the personal representative;
- (5) The name and address of the fiduciary commissioner, if any;
- (6) The date of first publication;
- (7) A statement that claims against the estate must be filed within sixty days of the date of first publication in accordance with article two or article three-a of this chapter;

(8) A statement that any person seeking to impeach or establish a will must make a complaint in accordance with section eleven, twelve or thirteen, article five, chapter forty-one of this code;

(9) A statement that an interested person objecting to the qualifications of the personal representative or the venue or jurisdiction of the court must be filed with the county commission within sixty days after the date of first publication or thirty days of service of the notice, whichever is later; and

(10) If the appraisal of the assets of the estate shows the value to be \$200,000 or less, exclusive of real estate specifically devised and nonprobate assets, or, if it appears to the clerk that there is only one beneficiary of the probate estate and that the beneficiary is competent at law, a statement substantially as follows: 'Settlement of the estate of the following named decedents will proceed without reference to a fiduciary commissioner unless within sixty days from the first publication of this notice a reference is requested by a party in interest or an unpaid creditor files a claim and good cause is shown to support reference to a fiduciary commissioner'. If a party in interest requests the fiduciary commissioner to conclude the administration of the estate or an unpaid creditor files a claim, no further notice to creditors shall be published in the newspaper, and the personal representative shall be required to pay no further fees, except to the fiduciary commissioner for conducting any hearings, or performing any other duty as a fiduciary commissioner. The time period for filing claims against the estate shall expire upon the time period set out in the notice to creditors published by the clerk of the county commission as required in this subsection (a). If an unpaid creditor files a claim, the fiduciary commissioner shall conduct a hearing on the claim filed by the creditor, otherwise, the fiduciary commissioner shall conclude the administration of the estate as requested by the interested party.

(11) This notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication of such notice shall be equivalent to personal service on creditors, distributees and legatees.

(b) If no appraisal is filed within the time period established pursuant to section fourteen of this article, the county clerk shall send a notice to the personal representative by first class mail, postage prepaid, indicating that the appraisal has not been filed.

(c) The personal representative shall promptly make a diligent search to determine the names and addresses of creditors of the decedent who are reasonably ascertainable.

(d) The personal representative shall, within sixty days after the date of first publication, serve a copy of the notice, published pursuant to subsection (a) of this section, by first class mail, postage prepaid or by personal service on the following persons:

(1) If the personal representative is not the decedent's surviving spouse and not the sole beneficiary or sole heir, the decedent's surviving spouse, if any;

(2) If there is a will and the personal representative is not the sole beneficiary, any beneficiaries;

(3) If there is not a will and the personal representative is not the sole heir, any heirs;

(4) The trustee of any trust in which the decedent was a grantor, if any; and

(5) All creditors identified under subsection (c) of this section, other than a creditor who filed a claim as provided in article two of this chapter or a creditor whose claim has been paid in full.

(e) Any person interested in the estate who objects to the qualifications of the personal representative or the venue or jurisdiction of the court, shall file notice of an objection with the county commission within ~~ninety~~ sixty days after the date of the first publication as required in subsection (a) of this section or within thirty days after service of the notice as required by subsection (d) of this section, whichever is later. If an objection is not timely filed, the objection is forever barred.

(f) A personal representative acting in good faith is not personally liable for serving notice under this section, notwithstanding a determination that notice was not required by this section. A personal representative acting in good faith who fails to serve the notice required by this section is not personally liable. The service of the notice in accordance with this subsection may not be construed to admit the validity or enforceability of a claim.

(g) The clerk of the county commission shall collect a fee of \$20 for the publication of the notice required in this section.

(h) For purposes of this section, the term 'beneficiary' means a person designated in a will to receive real or personal property.

§44-1-26. Action on bond of personal representative.

Where an execution on a judgment or decree against a personal representative is returned without being satisfied, there may be forthwith brought and prosecuted an action against the ~~obligors~~ surety in any bond given by such personal representative for the faithful discharge of his or her duties.

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF OF CLAIM.

§44-3A-3. Office of fiduciary supervisor created; general powers; qualifications; tests for qualification; training program; salary.

(a) There is hereby created within the county commission an office, designated the fiduciary supervisor, who shall be appointed by order of the commission and whose office, with the consent of the clerk of the county commission, shall be housed within the office of such clerk or shall be housed in such other office as the commission may designate. Such fiduciary supervisor shall at the local option of each such commission, be either a part-time or full-time employee as may be required by the county commission and shall receive such salary as may be fixed by order of the county commission.

(b) The fiduciary supervisor shall have general supervision of all fiduciary matters and of the fiduciaries or personal representatives thereof and of all fiduciary commissioners and of all matters referred to such commissioners and shall make all ex parte settlements of the accounts of such fiduciaries except as to those matters referred to fiduciary commissioners for settlement.

(c) The county commission shall determine that the person to be appointed as fiduciary supervisor is fully qualified by education or experience, or both, to perform the duties assigned to such office by this chapter or other provisions of this code. Such person shall have the requisite knowledge of the legal issues raised and problems presented by any of the proceedings had and documents filed pursuant to the chapter, the procedures required with respect thereto, the rights of all parties and interested persons with respect to such procedures and the duties to be performed in examining and approving the several and various papers and documents presented to the fiduciary supervisor. The State ~~Tax Commissioner~~ Auditor shall design and supervise a test to be given to all persons selected or appointed as fiduciary supervisor who are not licensed to practice law in this state, if any, which test shall include such matters as the Tax Commissioner deems appropriate to determine the proficiency, experience, knowledge and skill to perform all of the duties imposed upon or to be

imposed upon fiduciary supervisors generally. Such test shall be administered under the authority of the ~~State Tax Commissioner~~ Auditor by such person or persons as he or she may designate either at the county wherein the fiduciary supervisor is to serve or at such other place as the ~~Tax Commissioner~~ State Auditor may designate. The results of the test given to any person or persons shall be kept confidential except as to those persons who have completed the same to the satisfaction of the ~~Tax Commissioner~~ State Auditor and except as to those persons who may desire their individual test results to be made public. ~~Each county commission shall be notified as to the names of those persons who have satisfactorily completed such test. The Tax Commissioner shall provide for the uniformity of the test to be given and for grading and evaluating the results thereof.~~

~~The Tax Commissioner~~ The State Auditor shall at least annually conduct a training program for fiduciary supervisors who are not licensed to practice law in this state. The training program shall be conducted at such times and places and consist of such subjects as the ~~Tax Commissioner~~ State Auditor may determine. All fiduciary supervisors who are not licensed to practice law shall be required to attend such training programs and those supervisors as are so licensed may attend.

(d) The fiduciary supervisor shall give bond with good security to be approved by the county commission in an amount equal to the amount posted by the clerk of the county commission in the county wherein such fiduciary supervisor is to serve.

(e) Neither the fiduciary supervisor nor any person to whom the duties of fiduciary supervisor have been delegated, in whole or in part (excluding fiduciary commissioners) shall engage in the practice of law, for compensation or otherwise, with respect to the administration of any estate or trust wherein the fiduciary thereof has qualified in his or her county or with respect to any proceedings before him or her or which are or may be referred to a fiduciary commissioner in his or her county. Nor shall a fiduciary commissioner or special fiduciary commissioner engage in the practice of law with respect to matters referred to him or her as such commissioner. Any fiduciary supervisor or person to whom any of the functions or duties of the fiduciary supervisor have been delegated or fiduciary commissioner or special fiduciary commissioner who so engages in the practice of law contrary to the limited prohibitions of this section, shall be removed from his or her office or employment and, in addition thereto, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined \$1,000.

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

(a) Notwithstanding any other provision of law, no individual who is a nonresident of this state, nor any banking institution which does not maintain a main office or branch office within this state nor any corporation having its principal office or place of business outside this state, may be appointed or act as executor, administrator, curator, testamentary guardian, guardian or conservator in this state, except that:

(1) An individual who is a nonresident of this state may be appointed ancillary administrator of a nonresident decedent's assets situate in this state if such nonresident individual is lawfully acting as executor in said decedent's state of domicile and submits letters of probate authenticated by the probate authorities of the decedent's state of domicile to the clerk of the county commission of any county of this state wherein ancillary administration is sought;

(2) An individual who is a nonresident of this state may be appointed ancillary administrator of a nonresident decedent's assets situate in this state if such nonresident individual is acting as

administrator in said decedent's state of domicile and submits letters of administration authenticated by the probate authorities of the decedent's state of domicile to the clerk of the county commission of any county of this state wherein ancillary administration is sought;

(3) An individual who is a nonresident of this state may be appointed and act as testamentary guardian of a nonresident infant and thereby exercise dominion and control over such nonresident infant's assets situate in this state upon submission of authenticated documentation that such nonresident testamentary guardian was so appointed at the place of domicile of the nonresident infant. Such authenticated documentation shall be submitted to the clerk of the county commission of any county of this state wherein assets belonging to such nonresident infant are situate;

(4) An individual who is a nonresident of this state and who is named executor by a resident decedent may qualify and act as executor in this state;

(5) An individual who is a nonresident of this state may be appointed and act as administrator of a resident decedent's assets in this state if appointed in accordance with the provisions of section four, article one of this chapter;

(6) An individual who is a nonresident of this state may be appointed as the testamentary guardian of a resident infant if appointed in accordance with the provisions of section one, article ten of this chapter; and

(7) An individual who is a nonresident of this state may be appointed as guardian or conservator of a resident incompetent: *Provided*, That such appointment is made in accordance with the provisions of article two, chapter forty-four-a of this code and if such nonresident individual may otherwise qualify as guardian or conservator.

(b) Nonresident individuals enumerated in subsection (a) of this section shall give bond with corporate surety thereon, qualified to do business in this state, and the amount of such bond shall not be less than double the value of the personal assets and double the value of any real property authorized to be sold or double the value of any rents and profits from any real property which the nonresident individual is authorized to receive, except that:

(1) Any nonresident individual enumerated in subsection (a) of this section who is the spouse, parent, sibling, lineal descendent or sole beneficiary of a resident or nonresident decedent shall give bond with corporate surety thereon qualified to do business in this state, with such penalty as may be fixed pursuant to the provisions of ~~section~~ sections seven or eight, article one of this chapter, as approved by the clerk of the county commission;

(2) Where the terms of a decedent's will directs that a nonresident individual enumerated in subdivisions (1), (3), (4) and (6), subsection (a) of this section named in a decedent's will shall not give bond or give bond at a specified amount, it shall not be required or shall be required only to the extent required under the terms of the will, unless at the time the will is admitted to record or at any time subsequently, on the application of any person interested, or from the knowledge of the commission or clerk admitting the will to record, it is deemed proper that greater bond be given.

(c) When a nonresident individual is appointed as executor, administrator, testamentary guardian, guardian or conservator pursuant to the provisions of subsection (a) of this section, said individual thereby constitutes the clerk of the county commission wherein such appointment was made as his or her true and lawful attorney-in-fact upon whom may be served all notices and process in any action or proceeding against him or her as executor, administrator, testamentary guardian, guardian or conservator or with respect to such estate, and such qualification shall be a manifestation of said nonresident individual's agreement that any notice or process, which is served in the manner

hereinafter provided in this subsection, shall be of the same legal force and validity as though such nonresident was personally served with notice and process within this state. Service shall be made by leaving the original and two copies of any notice or process together with a fee of \$5 with the clerk of such county commission. The fee of \$5 shall be deposited with the county treasurer. Such clerk shall thereupon endorse upon one copy thereof the day and hour of service and shall file such copy in his or her office and such service shall constitute personal service upon such nonresident: *Provided*, That the other copy of such notice or process shall be forthwith sent by registered or certified mail, return receipt requested, deliver to addressee only, by said clerk or to such nonresident at the address last furnished by him or her to said clerk and either: (1) Such nonresident's return receipt signed by him or her; or (2) the registered or certified mail bearing thereon the stamp of the post office department showing that delivery therefore was refused by such nonresident is appended to the original notice or process filed therewith in the office of the clerk of the county commission from which such notice or process was issued. No notice or process may be served on such clerk of the county commission or accepted by him or her less than thirty days before the return date thereof. The clerk of such county commission shall keep a record in his or her office of all such notices and processes and the day and hour of service thereof. The provision for service of notice or process herein provided is cumulative and nothing herein contained shall be construed as bar to service by publication where proper or the service of notice or process in any other lawful mode or manner.

(d) The personal estate of a resident decedent, infant or incompetent may not be removed from this state until the inventory or appraisal of that resident decedent's, infant's or incompetent's assets have been filed and any new or additional bond required to satisfy the penalty specified in subsection (b) of this section has been furnished. The liability of a nonresident executor, administrator, testamentary guardian, guardian or conservator and of any such surety shall be joint and several and a civil action on any such bond may be instituted and maintained against the surety, notwithstanding any other provision of this code to the contrary, even though no civil action has been instituted against such nonresident.

(e) Any such nonresident who removes from this state assets administered in and situate in this state without complying with the provisions of this section, the provisions of article eleven of this chapter or any other requirement pertaining to fiduciaries generally, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in the county jail for not more than one year, or, in the discretion of the court, by both such fine and confinement.

(f) If a nonresident appointed pursuant to subsection (a) of this section fails or refuses to file an accounting required by this chapter, and the failure continues for two months after the due date, he or she may, upon notice and hearing, be removed or subjected to any other appropriate order by the county commission, and if his or her failure or refusal to account continues for six months, he or she shall be removed by the county commission."

And,

By amending the title of the bill to read as follows:

H. B. 2967 – "A Bill to amend and reenact §44-1-1, §44-1-6, §44-1-7, §44-1-8, §44-1-14a and §44-1-26 of the Code of West Virginia, 1931, as amended; to amend and reenact §44-3A-3 of said code; and to amend and reenact §44-5-3 of said code, all relating generally to administration of estates and trusts; waiving surety requirements for administrators of estates where grantee is sole beneficiary or sole distributee of the decedent; requiring county commission to hold hearing if application filed by interested party to compel nonresident executor otherwise exempt from bond requirements to post bond; requiring county commission to hold hearing if application filed by

interested party to compel sole beneficiary to post surety; removing authority of clerk of county commission to require bond or surety from certain executors and administrators upon knowledge; making executor or administrator not required to post surety liable upon his or her own personal recognizance in the event of default, failure or misadministration; requiring interested parties objecting to the qualifications of a personal representative or venue to file notice with the county commission sixty days after the date of first publication; transferring to State Auditor duty to administer fiduciary supervisor qualifying test; requiring State Auditor provide annual training for fiduciary supervisors not licensed to practice law in this state; authorizing action against bond surety when execution on judgment or decree against personal representative is returned without being satisfied; and making technical corrections.”

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. 516**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: Fast.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2967) 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. 2980, Relating to civil lawsuit filing fees for multiple defendant civil action.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

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

“CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-24d. State Police Forensic Laboratory Fund.

The State Police Forensic Laboratory Fund is hereby created within the Treasury of the state. The fund shall be administered by the superintendent and shall consist of all moneys made available for the operations of the State Police Forensic Laboratory from any source, including, but not limited to, all fees, all gifts, grants, bequests or transfers from any source, any moneys that may be appropriated and designated for the forensic laboratory by the Legislature and all interest or other return earned from investment of the fund. Expenditures from the fund shall be for the operations of the State Police Forensic Laboratory 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 the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending June 30, 2018, expenditures are authorized from collections rather than pursuant to an explicit appropriation by the Legislature.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL
ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

(a) The clerk of a circuit court shall charge and collect for services rendered by the clerk the following fees which shall be paid in advance by the parties for whom services are to be rendered:

(1) Except as provided in subdivisions (2) and (3) of this subsection, for instituting any civil action under the Rules of Civil Procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals or removals of civil cases from magistrate court, or any other action, cause, suit or proceeding, \$200, of which \$30 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code and \$45 shall be deposited in the special revenue account designated the Fund for Civil Legal Services for Low Income Persons, established by paragraph (B), subdivision (4), subsection (c), section ten of this article, and \$20 deposited in the special revenue account created in section six hundred three, article twenty-six, chapter forty-eight of this code to provide legal services for domestic violence victims;

(2) For instituting an action for medical professional liability, \$400, of which \$10 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code;

(3) Beginning on and after July 1, 1999, for instituting an action for divorce, separate maintenance or annulment, \$135;

(4) For petitioning for the modification of an order involving child custody, child visitation, child support or spousal support, \$85;

(5) For petitioning for an expedited modification of a child support order, \$35; ~~and~~

(6) For filing any pleading that includes a counterclaim, cross claim, third-party complaint or motion to intervene, \$200, which shall be deposited in the special revenue account designated the Fund for Civil Legal Services for Low Income Persons, established by paragraph (B), subdivision (4), subsection (c), section ten of this article: *Provided*, That this subdivision and the fee it imposes does not apply in family court cases nor may more than one such fee be imposed on any one party in any one civil action; and

(7) Except for civil actions within the jurisdiction of family courts, for each defendant or respondent named in the initial pleading upon the institution of a civil action in which there are two or more named defendants, and for each additional defendant, respondent or third-party defendant subsequently named in a pleading filed in the civil action, \$15, payable upon the institution of the civil action or upon the filing of the initial pleading that names the additional defendant, respondent or third-party defendant, of which \$10 shall be deposited in the general fund of the county in which the office of the circuit clerk is located, and \$5 shall be deposited in the State Police Forensic Laboratory Fund, established under section twenty-four-d, article two, chapter fifteen of this code: *Provided*, That for purposes of this subdivision, "defendant or respondent named" does not include those defendants or respondents identified as "John/Jane Doe."

(b) In addition to the foregoing fees, the following fees shall be charged and collected:

(1) For preparing an abstract of judgment, \$5;

(2) For a transcript, copy or paper made by the clerk for use in any other court or otherwise to go out of the office, for each page, \$1;

(3) For issuing a suggestion and serving notice to the debtor by certified mail, \$25;

(4) For issuing an execution, \$25;

(5) For issuing or renewing a suggestee execution and serving notice to the debtor by certified mail, \$25;

(6) For vacation or modification of a suggestee execution, \$1;

(7) For docketing and issuing an execution on a transcript of judgment from magistrate court, \$3;

(8) For arranging the papers in a certified question, writ of error, appeal or removal to any other court, \$10, of which \$5 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code;

(9) For each subpoena, on the part of either plaintiff or defendant, to be paid by the party requesting the same, 50 cents;

(10) For additional service, plaintiff or appellant, where any case remains on the docket longer than three years, for each additional year or part year, \$20; and

(11) For administering funds deposited into a federally insured interest-bearing account or interest-bearing instrument pursuant to a court order, \$50, to be collected from the party making the deposit. A fee collected pursuant to this subdivision shall be paid into the general county fund.

(c) In addition to the foregoing fees, a fee for the actual amount of the postage and express may be charged and collected for sending decrees, orders or records that have not been ordered by the court to be sent by mail or express.

(d) The clerk shall tax the following fees for services in a criminal case against a defendant convicted in such court:

(1) In the case of a misdemeanor, \$85; and

(2) In the case of a felony, \$105, of which \$10 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(e) The clerk of a circuit court shall charge and collect a fee of \$25 per bond for services rendered by the clerk for processing of criminal bonds and the fee shall be paid at the time of issuance by the person or entity set forth below:

(1) For cash bonds, the fee shall be paid by the person tendering cash as bond;

(2) For recognizance bonds secured by real estate, the fee shall be paid by the owner of the real estate serving as surety;

(3) For recognizance bonds secured by a surety company, the fee shall be paid by the surety company;

(4) For ten percent recognizance bonds with surety, the fee shall be paid by the person serving as surety; and

(5) For ten percent recognizance bonds without surety, the fee shall be paid by the person tendering ten percent of the bail amount.

In instances in which the total of the bond is posted by more than one bond instrument, the above fee shall be collected at the time of issuance of each bond instrument processed by the clerk and all fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code. Nothing in this subsection authorizes the clerk to collect the above fee from any person for the processing of a personal recognizance bond.

(f) The clerk of a circuit court shall charge and collect a fee of \$10 for services rendered by the clerk for processing of bail piece and the fee shall be paid by the surety at the time of issuance. All fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(g) No clerk is required to handle or accept for disbursement any fees, cost or amounts of any other officer or party not payable into the county treasury except on written order of the court or in compliance with the provisions of law governing such fees, costs or accounts.

(h) Fees for removal of civil cases from magistrate court shall be collected by the magistrate court when the case is still properly before the magistrate court. The magistrate court clerk shall forward the fees collected to the circuit court clerk.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2980 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2-24d; and to amend and reenact §59-1-11 of said code, all relating to creating a special revenue account designated the State Police Forensic Laboratory Fund; providing for funding mechanisms; clarifying funding sources; establishing parameters for expenditures from the fund; vesting administration responsibility for the fund to the superintendent; relating to fees for services rendered by circuit clerks in certain civil actions; imposing additional fees in certain civil actions that include two or more named defendants, respondents or third-party defendants; setting that fee at \$15 per defendant; providing for distribution of the additional fees between the general fund of the county in which the office of the circuit clerk is located and the State Police Forensic Laboratory Fund; and excluding John or Jane Doe defendants from the per-defendant fee.”

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. 517**), and there were—yeas 88, nays 12, absent and not voting none, with the nays being as follows:

Nays: Eldridge, Folk, Gearheart, Hicks, Marcum, Martin, McGeehan, Paynter, Phillips, Rodighiero, Upson and Wagner.

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. 2980) 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, of

Com. Sub. for S. B. 362, Authorizing redirection of certain amounts to General Revenue Fund.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page six, by striking out all of sections ten-d and ten-e and inserting in lieu thereof a new section, designated ten-g, all to read as follows:

“§29-22A-10g. Redirection of certain amounts from net terminal revenue.

(a) The Governor may, by Executive Order, redirect seventy-five percent of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2017, and ending before July 1, 2018, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent 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.

(b) The Governor is authorized to redirect deposits of revenues, pursuant to subsection (a) of this section, notwithstanding the following provisions of code:

- (1) Paragraph (B), subdivision (9), subsection (c), section ten of this article;
- (2) Paragraph (B), subdivision (9), subsection (a), section ten-b of this article;
- (3) Subdivision (1), subsection (g), section ten-d of this article;
- (4) Subdivision (1), subsection (f), section ten-e of this article; or
- (5) Any other provision of this code to the contrary.”

And,

On page one, by striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

“That §23-2C-3 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 §29-22A-10g, all to read as follows” and a colon.

And,

By amending the title of the bill to read as follows:

Com. Sub. for S. B. 362 – “A Bill to amend and reenact §23-2C-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §29-22A-

10g, all relating to authorizing the redirection of certain amounts to the General Revenue Fund; authorizing the redirection of amounts collected from certain surcharges and assessments on workers' compensation insurance policies for periods prior to July 1, 2018; and authorizing the redirection of amounts collected from certain deposits of revenues from net terminal income for periods prior to July 1, 2018."

The bill, as amended by the House, and further amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 518**), and there were—yeas 92, nays 8, absent and not voting none, with the nays being as follows:

Nays: Baldwin, Canestraro, Ferro, Fluharty, Iaquina, Robinson, Sponaugle 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. 362) passed.

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

Resolutions Introduced

Delegates Robinson, Arvon, Atkinson, Baldwin, Bates, Blair, Boggs, Brewer, Butler, Byrd, Canestraro, Capito, Caputo, Cooper, Criss, Dean, Deem, Diserio, Eldridge, Ellington, A. Evans, E. Evans, Ferro, Fleischauer, Fluharty, Folk, N. Foster, Frich, Gearheart, Hamilton, Hamrick, Hanshaw, Hartman, Hicks, Higginbotham, Hill, Hollen, Hornbuckle, Householder, Iaquina, Isner, Kelly, Kessinger, Lane, Lewis, Longstreth, Love, Lovejoy, Lynch, Marcum, Maynard, Miley, C. Miller, R. Miller, Moore, Moye, Overington, Paynter, Pethel, Phillips, Pushkin, Pyles, Queen, Rodighiero, Rohrbach, C. Romine, R. Romine, Rowan, Rowe, Shott, Sobonya, Sponaugle, Statler, Storch, Sypolt, Thompson, Wagner, Walters, Ward, Westfall, White, Williams, Wilson and Zatezalo offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 137 – "Requesting the Joint Committee on Government and Finance study methods to incentivize and advise middle and high school students to participate in career and technical education programs."

Whereas, Eighty-one percent of high school dropouts report that real-world learning opportunities would have kept them in high school; and

Whereas, Career and technical education programs prepare students to be college and career ready by providing core academic, technical, and employability skills; and

Whereas, High-quality career and technical education programs ensure that coursework is aligned with rigorous academic standards and specific skills needed in specialized career pathways are addressed; and

Whereas, Eighty-one percent of students taking a college preparatory academic curriculum with rigorous career and technical education courses met college and career readiness goals; and

Whereas, The level of academic achievement students attain by eighth grade has a more significant impact on their college and career readiness than any other academic factor; and

Whereas, Neighboring states Ohio and Virginia have middle school level career and technical training programs and Pennsylvania, Maryland, and Kentucky have high school level career and technical training programs; and

Whereas, According to the West Virginia Higher Education Policy Commission, in 2012, only 56.4 percent of high school students pursued higher education pathways; and

Whereas, According to the Association for Career and Technical Education, the graduation rate for CTE student is a staggering ninety-three percent; and

Whereas, Eighty percent of secondary CTE graduates who pursued post-secondary education had earned a credential or were still enrolled after two years; and

Whereas, According to the National Center for Education Statistics, in 2009, CTE post-secondary graduates had an employment rate in their field of study of 79.7 percent; and

Whereas, Given the importance of career and technical education programs in fostering college and career readiness, it is essential that middle and high school students are informed and prepared to take advantage of career and technical education programs in their schools and communities; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study methods to incentivize and advise middle and high school students to participate in career and technical education programs; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2018, 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 a study, prepare reports and draft necessary legislation, be paid from legislative appropriations to the Joint Committee on Government and Finance.

Delegates Summers, Caputo, Ellington, Pushkin, Rodighiero and Rohrbach offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 138 – “Requesting the Joint Committee on Government and Finance study the nursing shortage in West Virginia.”

Whereas, West Virginia has one of the lowest workforce participation rates in the country, while simultaneously having one of the highest nursing shortages in the country; and

Whereas, Hospitals in the state have had to begin offering lucrative signing bonuses to entice nurses not living in West Virginia to come to the state; and

Whereas, Only a third of all RN licenses issued by the West Virginia Board of Nursing in 2016 were issued to individuals native to the state; and

Whereas, Solving the nursing shortage by means of hiring contracted traveling nurses is not ideal in the long run, due to nature of driving up costs and increasing turnover; 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 diagnosing the problem and discussing potential solutions to the nursing shortage in conjunction with WV Board of Nursing; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2018 on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, prepare a report and draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Delegates Sobonya, Cowles, Criss, Frich, Sypolt, Householder, McGeehan, Moore, Phillips and Storch offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 139 – “Requesting the Joint Committee on Government and Finance study the tax on sales of tobacco products other than cigarettes and the excise tax on e-cigarette liquid.”

Whereas, West Virginia Code §11-17-3(b) levies a tax on tobacco products other than cigarettes as an excise tax and imposes this tax “at a rate equal to seven percent of the wholesale price on each article or item of tobacco products other than cigarettes sold by the wholesaler or subjobber dealers, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer”; and

Whereas, Electronic cigarette retailers offer a product that is not a tobacco cigarette or traditional tobacco product and should therefore be recognized as a different type of retail product with a tax treatment that is consistent with taxation of other retail products; and

Whereas, Electronic cigarette retailers seek the study of the tax on the sales of e-cigarettes, tax rates and appropriate definitions to properly identify this product in contrast to tobacco cigarettes and tobacco products other than cigarettes and study of a fair, proper and modern method for the imposition of these taxes; and

Whereas, The industry seeks stability in the West Virginia retail market where an uncompetitive environment has been created from the current tax structure and, as a result of which, several electronic cigarette retailers have ceased operation in West Virginia after the enactment of the current tax structure in 2016; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is requested to study the tax treatment of wholesale and retail sales of e-cigarettes and e-cigarette liquid as distinguished from “tobacco products other than cigarettes” with consideration of the rates, point of imposition and fairness of the tax; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2018, 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 Upson, Blair and Ellington offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 140 – “Requesting that the Joint Committee on Government and Finance study legislation to prohibit ‘cyberbullying’ and electronic harassment of minors.”

Whereas, Cyberbullying is bullying that takes place using electronic technology. Electronic technology includes devices and equipment such as cell phones, computers, and tablets as well as communication tools including social media sites, text messages, chat, and websites. Examples of cyberbullying include vicious text messages or emails, rumors sent by email or posted on social networking sites, and embarrassing pictures, videos, websites, or fake profiles.

Whereas, Current statistics indicate that cyberbullying is a very frequent occurrence. In 2015, a survey conducted by the Center for Disease Control’s Youth Risk Behavior Surveillance System indicated that an estimated 16% of high school students were bullied electronically in the 12 months prior to the survey; and

Whereas, Legislation on bullying and cyberbullying has been proposed and implemented throughout the country. One such piece of cyberbullying legislation, called “Grace’s Law”, was enacted into law in Maryland in 2013. Legislation was proposed in the 2017 Regular Session to implement “Grace’s Law” in West Virginia. However, there have been constitutional challenges to cyberbullying laws in several states recently, which have resulted in those laws being struck down; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study cyberbullying laws due to the potential constitutional challenges they may face, and provide some examples of language that could pass constitutional muster; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2018, on findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation to be paid from legislative appropriations to the Joint Committee on Government and Finance.

Delegates Dean, Mr. Speaker (Mr. Armstead), Atkinson, Baldwin, Brewer, Byrd, Capito, Cooper, Espinosa, E. Evans, Ferro, Fleischauer, Folk, N. Foster, Harshbarger, Hicks, Hill, Hollen, Lane, Lewis, Lovejoy, Lynch, Marcum, Martin, Maynard, McGeehan, O’Neal, Phillips, Pyles, Queen, Rodighiero, Rohrbach, R. Romine, Rowan, Rowe, Statler, Storch, Thompson, Wagner and Zatezalo offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 141 – “Requesting the Joint Committee on Government and Finance study policies ensuring that nationally certified or licensed athletic trainers are available during practices and games for all interscholastic student athletes in West Virginia.”

Whereas, Sports-related injuries among interscholastic athletes are a public health issue and current board of education policies only require trainers be present at football games and practice; and

Whereas, There are many benefits to participating in interscholastic sports including enhanced awareness of healthy lifestyles, weight management, increased self-esteem, and enhanced learning capacity; and

Whereas, Students are more likely to face unnecessary injuries and tragic deaths when appropriate health care professionals, such as licensed athletic trainers, are not present; and

Whereas, Licensed athletic trainers receive formal education and training in injury prevention, first aid and emergency care, and rehabilitation of injuries and can assist in reducing sports-related injuries and deaths in practices and competitions; and

Whereas, Several institutions of higher education located in West Virginia offer degrees in athletic training; and

Whereas, Athletic training is one of the fastest growing allied health care professions; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby requests the Joint Committee on Government and Finance to study policies ensuring that nationally certified or licensed athletic trainers are available during practices and games for all interscholastic student athletes in West Virginia; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2018, 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.

Reordering of the Calendar

Delegate Cowles announced that the Committee on Rules had transferred S. B. 25 and Com. Sub. for S. B. 219, on Third Reading, House Calendar, to the Special Calendar.

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. 124, Study relating to power generation facilities,

H. C. R. 125, US Army SGT Benny Fleming Memorial Bridge,

And,

H. C. R. 128, Study relating to maintenance and custodial work on state and county buildings, facilities and equipment to be done under private contract.

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

Third Reading

S. B. 25, Creating farm-to-food bank 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. 519**), 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. 25) passed.

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

Com. Sub. for S. B. 219, Relating to conspiracy to commit crimes under Uniform Controlled Substances Act; on third reading, coming up in regular order, was read a third time.

Delegate Fast asked unanimous consent to amend the bill on third reading, which consent was not given, objection being heard.

Delegate Fast then so moved.

On this motion, the yeas and nays were taken (**Roll No. 520**), and there were—yeas 11, nays 89, absent and not voting none, with the yeas being as follows:

Yeas: Speaker Armstead, Arvon, Butler, Fast, Frich, Hollen, Love, C. Miller, Pushkin, Sobonya and Ward.

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 521**), and there were—yeas 91, nays 9, absent and not voting none, with the nays being as follows:

Nays: Fast, Fleischauer, Folk, Hornbuckle, McGeehan, Pushkin, Robinson, Rowe and Sponaugle.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 219) passed.

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

Motions

Delegate Cowles asked and obtained unanimous consent that, for the remainder of the session, members of Conference Committees be permitted to vote on any question or issue before the House

which they may have missed as a direct result of their duties on Conference Committees, provided that such members notify the Clerk of the House in writing before the Daily Journal is printed, how they wished to vote, and that any such vote not change the outcome on any question.

Conference Committee Report

Delegate Zatezalo, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for H. B. 2447, Renaming the Court of Claims the state Claims Commission.

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 Committee Substitute for House Bill 2447 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That the House agree to the amendment of the Senate to the bill striking out everything after the enacting section, and that both houses agree to an amendment as follows:

On page nine, after section seventeen, article two, chapter fourteen, by adding a new section, to read as follows:

§14-2-17a. Shortened procedure for road condition claims.

Notwithstanding the regular and shortened procedures provided for in sections sixteen and seventeen of this article, there shall be a shortened procedure for road condition claims. The shortened procedure authorized by this section shall apply only to a claim possessing all of the following characteristics:

- (1) The claim does not arise under an appropriation for the current fiscal year.
- (2) The claim alleges that a condition on the state's highways or roads caused property damage.
- (3) The Division of Highways concurs in the claim.
- (4) The amount claimed does not exceed \$1,000.

The Division of Highways shall prepare a stipulation concerning the claim and file it with the clerk. The commission shall order the claim approved and shall file its statement with the clerk.

And,

That both houses recede from their respective positions as to the title of the bill and agree to a new title to read as follows:

Com. Sub. for H. B. 2447 – “A Bill to repeal §14-2-6 and §14-2-18 of the Code of West Virginia, 1931, as amended; to repeal §14-2A-7 of said code; to amend and reenact §14-2-3, §14-2-4, §14-2-4a, §14-2-5, §14-2-7, §14-2-8, §14-2-9, §14-2-10, §14-2-11, §14-2-12, §14-2-13, §14-2-14, §14-2-15, §14-2-16, §14-2-17, §14-2-19, §14-2-20, §14-2-21, §14-2-22, §14-2-23, §14-2-24, §14-2-25, §14-2-26, §14-2-27 and §14-2-28 of said code; to amend said code by adding thereto a new section, designated §14-2-17a; and to amend and reenact §14-2A-5, §14-2A-6, §14-2A-9, §14-2A-10, §14-

2A-11, §14-2A-12, §14-2A-13, §14-2A-14, §14-2A-15, §14-2A-16, §14-2A-17, 14-2A-18, §14-2A-19, §14-2A-19a, §14-2A-19b, §14-2A-20, §14-2A-21, §14-2A-25, §14-2A-26 and §14-2A-28 of said code, all relating to certain claims against the state generally; renaming the West Virginia Court of Claims the West Virginia Legislative Claims Commission; renaming judges commissioners; clarifying the length of the existing terms for the current commissioners; clarifying that commissioners are not judicial officers; modifying definitions; providing explicit power of removal of commissioners to the President of the Senate and the Speaker of the House of Delegates; providing authority to the President of the Senate and the Speaker of the House of Delegates for the hiring of a clerk, chief deputy clerk, deputy clerks, claim investigators, and support staff and setting salaries for said positions; authorizing the President of the Senate and Speaker of the House to permit commissioners serve more than one hundred twenty days in any fiscal year; increasing the monetary limit for agency agreed to claims from \$1,000 to \$3,000; and updating and modifying and clarifying procedures and practices of the commission.”

Respectfully Submitted,

Mark Zatezalo,
John D. O’Neal, IV
Rodney Miller,
*Conferees on the part
of the House of Delegates.*

Ryan J. Weld,
Mark R. Maynard,
Glenn Jeffries,
*Conferees on the part
of the Senate.*

On motion of Delegate Zatezalo, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 522**), and there were—yeas 65, nays 34, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Baldwin, Barrett, Bates, Boggs, Brewer, Byrd, Canestraro, Caputo, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Hicks, Hornbuckle, Iaquinta, Isner, Longstreth, Love, Lovejoy, Lynch, Marcum, Miley, Moye, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Sponaugle, Thompson and Williams.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2447) passed.

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

At 11:53 a.m., on motion of Delegate Cowles, the House of Delegates recessed until 1:00 p.m.

* * * * *

Afternoon Session

* * * * *

The House of Delegates was called to order by the Honorable Tim Armstead, Speaker.

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. 2083, Increasing the felony criminal penalties for exposing children to methamphetamine manufacturing.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

“ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§60A-10-12. Exposure of children to methamphetamine manufacturing; penalties.

(a) Any person eighteen years of age or older who knowingly causes or permits a minor to be present in a location where methamphetamine is manufactured or attempted to be manufactured is guilty of a felony and, upon conviction thereof, shall be confined imprisoned in a state correctional facility for not less than one two nor more than five ten years, fined not more than \$10,000, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, the penalty for a violation of said subsection when the child suffers serious bodily injury as such is defined in the provisions of section one, chapter eight-b of this code shall be confined in a state correctional facility for not less than three nor more than fifteen years, fined not more than twenty-five thousand dollars, or both any person eighteen years of age or older who knowingly causes or permits a minor to be present in a location where methamphetamine is manufactured or attempted to be manufactured and the child thereby suffers serious bodily injury 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, fined not more than \$25,000, or both imprisoned and fined.

(c) As used in subsection (b) of this section, ‘serious bodily injury’ shall have the same meaning as this term is defined in section one, article eight-b, chapter sixty-one of this code.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2083 – “A Bill to amend and reenact §60A-10-12 of the Code of West Virginia, 1931, as amended, relating to the Methamphetamine Laboratory Eradication Act; increasing the felony criminal penalty for knowingly causing or permitting a minor to be present in a location where methamphetamine is manufactured or attempted to be manufactured; clarifying that knowingly causing or permitting a minor to be present in a location where methamphetamine is manufactured and thereby causing the minor serious bodily injury is a separate, distinct offense; and clarifying the definition of serious bodily injury.”

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. 523**), and there were—yeas 96, nays 2, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Folk and McGeehan.

Absent and Not Voting: Kessinger and Nelson.

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. 2083) 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. 2367, Establishing a criminal offense of organized retail crime.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

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

“That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-3A-7, to read as follows:

ARTICLE 3A. Shoplifting.

§61-3A-7. Organized retail theft; offenses; penalties; cumulation; venue; forfeiture.

(a) Any person who enters into a common scheme or plan with two or more other persons to violate the provisions of section one of this article involving merchandise of a cumulative value of \$2,000 or more with the intent to sell, trade or otherwise distribute the merchandise shall be guilty of a felony, and, upon conviction, shall be imprisoned in a state correctional facility for a determinate term of not less than one nor more than ten years or be fined not less than \$1,000 nor more than \$10,000, or both imprisoned and fined.

(b) Notwithstanding the provisions of subsection (a) of this section any person who enters into a common scheme or plan with two or more other persons to violate the provisions of section one of this article involving merchandise of a cumulative value of \$10,000 or more with the intent to sell, trade or otherwise distribute the merchandise shall be guilty of a felony, and, upon conviction, shall be imprisoned in a state correctional facility for a determinate term of not less than two nor more than twenty years fined not less than \$2,000 nor more than \$25,000, or both imprisoned and fined.

(c) Any person who purchases, trades or barter for, or otherwise obtains with any form of consideration, merchandise from persons he knows or has reason to believe was obtained by three or more persons engaged in a common scheme or plan to violate the provisions of section one of this article shall be guilty of a felony.

(d) Any person who violates the provisions of subsection (c) of this section by purchasing, trading or bartering for merchandise with a cumulative value of \$2,000 or more shall, upon conviction, be imprisoned in a state correctional facility for a determinate term of not less than one year, nor more than ten years or fined not less than \$1,000 nor more than \$10,000, or both imprisoned and fined.

(e) Notwithstanding the provisions of subsection (d) of this section, any person who violates the provisions of subsection (c) of this section by purchasing, trading or bartering for merchandise with a

cumulative value of \$10,000 or more shall, upon conviction, be imprisoned in a state correctional facility for a determinate term of not less than two years, nor more than twenty years or fined not less than \$2,000 nor more than \$25,000, or both imprisoned and fined.

(f) In determining the value of merchandise in a prosecution under this section, it is permissible to cumulate the value of merchandise obtained as part of a common scheme or plan.

(g) Violations of subsections (a), (b) and (c) of this section occurring in one or more counties of this state may be prosecuted in any county wherein any part of the offense was committed and the provisions of subsection (f) of this section are applicable to offenses so occurring.

(h)(1) Any interest a person has acquired or maintained in any cash, asset or other property of value in any form, derived in part or total from any proceeds obtained from participating in a violation of this section, may be seized and forfeited consistent with the procedures in the West Virginia Contraband Forfeiture Act, as provided in article seven, chapter sixty-a of this code.

(2) Notwithstanding subdivision (1) of this subsection, at sentencing for a violation of this section, the court may direct disgorgement to the victim or victims of any cash, asset or other property of value in any form, derived in part or total from any proceeds obtained from such violation.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2367 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3A-7, relating to establishing the offenses of organized retail theft and knowing purchase of materials obtained by organized retail theft; establishing elements of offenses; defining terms; establishing criminal penalties; providing for the cumulation of merchandise values; providing for prosecution in any county in which any part of an offense occurs; providing for seizure and forfeiture of cash, assets or other property derived in part or total from any proceeds from participating in a violation of the section; and authorizing a sentencing court to order disgorgement of illegal gains.”

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. 524**), and there were—yeas 95, nays 3, absent and not voting 2, with the yeas and absent and not voting being as follows:

Nays: Folk, McGeehan and Wilson.

Absent and Not Voting: Kessinger and Nelson.

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. 2367) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect July 1, 2017, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2561, Relating to public school support.

On motion of Delegate Cowles, the House of Delegates refused to concur in the following amendment of the bill by the Senate and requested the Senate to recede therefrom:

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

“That §11-6A-5a of the Code of West Virginia, 1931, as amended, be repealed; that §11-8-6f and §11-8-12 of said code be amended and reenacted; that §18-9A-2, §18-9A-4, §18-9A-5, §18-9A-6a, §18-9A-7, §18-9A-9, §18-9A-10 and §18-9A-11 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18-9A-25; that §18-9D-2, §18-9D-3, §18-9D-4c and §18-9D-16 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §18-9D-4d and §18-9D-22, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 8. LEVIES.

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

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

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

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

(a) Notwithstanding any other provision of code to the contrary, for the 2017 tax year and thereafter, the regular levy rates for county boards of education shall be the sum of the levy rates set forth in subdivisions (1), (2) and (3), section six-c of this article for each class of property, which are: (1) For Class I property, 22.95 cents per \$100; (2) for Class II property, 45.9 cents per \$100; and (3) for Class III and Class IV property, 91.8 cents per \$100: *Provided, That, annually, county boards of education may decrease their regular levy rates to no lower than the following rates: (1) For Class I property, 19.4 cents per \$100; (2) for Class II property, 38.8 cents per \$100; and (3) for Class III and Class IV property, 77.6 cents per \$100.*

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

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

The Legislature finds and declares that there has been, overall, a statewide decline in enrollment in the public schools of this state; due to this decline, most public schools have ample space for students, teachers and administrators; however, some counties of this state have experienced significant increases in enrollment due to significant growth in those counties; that those counties experiencing significant increases do not have adequate facilities to accommodate students, teachers and administrators. Therefore, the Legislature finds that county boards of education in those high-growth counties should have the authority to designate revenues generated from the application of the regular school board levy due to new construction or improvements placed in a Growth County School Facilities Act Fund be used for school facilities in those counties to promote the best interests of this state's students.

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

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

(3) For any growth county, as defined in subdivision (1) of this subsection, that adopts a resolution choosing to use the provisions of this subsection, pursuant to subdivision (2) of this subsection, assessed values resulting from additional appraisal or valuation due to new construction or improvements to existing real property shall be designated as new property values and identified by the county assessor. The statewide regular school board levy rate as established by the Legislature shall be applied to the assessed value designated as new property values and the resulting property tax revenues collected from application of the regular school board levy rate shall be placed in a separate account designated as the Growth County School Facilities Act Fund. Revenues deposited in the Growth County School Facilities Act Fund shall be appropriated by the county board of education for construction, maintenance or repair of school facilities. Revenues in the fund may be carried over for an indefinite length of time and may be used as matching funds for the purpose of obtaining funds from the School Building Authority or for the payment of bonded indebtedness

incurred for school facilities. For any growth county choosing to use the provisions of this subsection, estimated school board revenues generated from application of the regular school board levy rate to new property values are not to be considered as local funds for purposes of the computation of local share under the provisions of section eleven, article nine-a, chapter eighteen of this code.

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

§11-8-12. Levy estimate by board of education; certification and publication.

(a) Each board of education shall, at the session provided for in section nine of this article, if the laying of a levy has been authorized by the voters of the district under article nine, chapter eighteen of this code, ascertain the condition of the fiscal affairs of the district, and make a statement setting forth:

(1) The amount due, and the amount that will become due and collectible during the current fiscal year except from the levy of taxes to be made for the year;

(2) The interest, sinking fund and amortization requirements for the fiscal year of bonded indebtedness legally incurred upon a vote of the people, as provided by law, by any school district existing prior to May 22, 1933, before the adoption of the Tax Limitation Amendment;

(3) Other contractual indebtedness not bonded, legally incurred by any such school district existing prior to May 22, 1933, before the adoption of the Tax Limitation Amendment, owing by such district;

(4) The amount to be levied for the permanent improvement fund;

(5) The total of all other expenditures to be paid out of the receipts for the current fiscal year, with proper allowance for delinquent taxes, exonerations and contingencies;

(6) The amount of such total to be raised by the levy of taxes for the current fiscal year;

(7) The proposed rate of levy in cents on each \$100 assessed valuation of each class of property;

(8) The separate and aggregate amounts of the assessed valuation of real, personal and public utility property within each class.

(b) The secretary of the board shall forward immediately a certified copy of the statement to the Auditor and shall publish the statement immediately. The session shall then stand adjourned until the third Tuesday in April, at which time it shall reconvene except where otherwise permitted by section nine of this article: *Provided*, That no provision of this section or section nine of this article may be construed to abrogate any requirement imposed on the board of education by article nine-b, chapter eighteen of this code.

(c) Notwithstanding any other provision of code to the contrary, for the 2017 tax year only, at the session that is reconvened on the third Tuesday in April, 2017, the county board may change its proposed regular levy rates from the original proposed levy rates that were included in the statement required by subsection (a) of this section. All other requirements pertaining to county boards of

education establishing their regular levy rates continue to apply including the requirement for the State Auditor to approve the levy rate.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-2. Definitions.

For the purpose of this article:

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

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

(c) 'Professional salaries' means the state legally mandated salaries of the professional educators as provided in article four, chapter eighteen-a of this code.

(d) 'Professional educator' ~~shall be is~~ synonymous with and ~~shall have has~~ the same meaning as 'teacher' as defined in section one, article one of this chapter and includes technology integration specialists.

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

(f) 'Professional student support personnel' means a 'teacher' as defined in section one, article one of this chapter who is assigned and serves on a regular full-time basis as a counselor or as a school nurse with a bachelor's degree and who is licensed by the West Virginia Board of Examiners for Registered Professional Nurses. For all purposes except for the determination of the allowance for professional educators pursuant to section four of this article, professional student support personnel are professional educators.

(g) 'Service personnel salaries' means the state legally mandated salaries for service personnel as provided in section eight-a, article four, chapter eighteen-a of this code.

(h) 'Service personnel' means all personnel as provided in section eight, article four, chapter eighteen-a of this code. For the purpose of computations under this article of ratios of service personnel to net enrollment, a service employee ~~shall be is~~ counted as that number found by dividing his or her number of employment days in a fiscal year by two hundred: *Provided*, That the computation for any service person employed for three and one-half hours or less per day as provided in section eight-a, article four, chapter eighteen-a of this code ~~shall be is~~ calculated as one-half an employment day.

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

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

(A) Net enrollment includes no more than one thousand of those adults counted on the basis of full-time equivalency and apportioned annually to each county in proportion to the adults participating in regular secondary vocational programs in the prior year counted on the basis of full-time equivalency; and

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

(2) Students enrolled in early childhood education programs as provided in section forty-four, article five of this chapter, counted on the basis of full-time equivalency;

(3) No pupil ~~shall~~ may be counted more than once by reason of transfer within the county or from another county within the state, and no pupil shall be counted who attends school in this state from another state;

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

(5) For the purposes of determining the county's basic foundation program only, for any county whose net enrollment as determined under all other provisions of this definition is less than one thousand four hundred, the net enrollment of the county shall be increased by an amount to be determined in accordance with the following:

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

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

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

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

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

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

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

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

(n) '~~Levies~~ Maximum levies for general current expense purposes' means ninety percent of the maximum levy rate for county boards of education ~~calculated or set by the Legislature pursuant to section six-f, as derived from the sum of the levy rates in subdivisions (1), (2) and (3), section six-c, article eight, chapter eleven of this code~~ for each class of property.

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

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

§18-9A-4. Foundation allowance for professional educators.

(a) The basic foundation allowance to the county for professional educators ~~shall be~~ is the amount of money required to pay the state minimum salaries, in accordance with provisions of article four, chapter eighteen-a of this code, ~~to the personnel employed,~~ subject to the following:

(1) ~~Subject to subdivision (2) of this subsection, in~~ In making this computation ~~no~~ a county shall receive an allowance for ~~the personnel which number is in excess of professional educators~~ state aid-eligible professional educator positions to each one thousand students in net enrollment as follows:

(A) For each high-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed~~ seventy-two and ~~one tenth~~ three tenths professional educators per each one thousand students in net enrollment;

(B) For each medium-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed~~ seventy-two and ~~twenty-five~~ forty-five one hundredths professional educators per each one thousand students in net enrollment;

(C) For each low-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed~~ seventy-two and ~~four~~ six tenths professional educators per each one thousand students in net enrollment; ~~and~~

(D) For each sparse-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed~~ seventy-two and ~~fifty-five~~ seventy-five one hundredths professional educators per each one thousand students in net enrollment; and

(E) For any professional educator positions, or fraction thereof, determined for a county pursuant to paragraphs (A), (B), (C) and (D) of this subdivision that exceed the number employed, the county's allowance for these positions shall be determined using the average state-funded salary of professional educators for the county;

(2) ~~For the ratios applicable to each of the four density categories set forth in subdivision (1) of this subsection, the number of professional educators per each one thousand students in net~~

~~enrollment increases by five one hundredths per year for each of fiscal years 2010, 2011, 2012 and 2013. For each fiscal year thereafter, the ratios remain at the 2013 level~~

~~(3)~~ (2) The number of and the allowance for personnel paid in part by state and county funds shall be prorated; and

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

(b) ~~Subject to subsection (c) of this section each,~~ Each county board shall establish and maintain a minimum ratio of professional instructional personnel per ~~one thousand students in net enrollment~~ state aid-funded professional educators as follows:

(1) For each high-density county, the minimum ~~number~~ ratio of professional instructional personnel per ~~one thousand students in net enrollment is sixty-five and eight tenths~~ state aid-funded professional educators, or the number employed, whichever is less, is ninety-one and twenty-nine one hundredths percent;

(2) For each medium-density county, the minimum ~~number~~ ratio of professional instructional personnel per ~~one thousand students in net enrollment is sixty-five and nine tenths~~ state aid-funded professional educators, or the number employed, whichever is less, is ninety-one and twenty-four one hundredths percent;

(3) For each low-density county, the minimum ~~number~~ ratio of professional instructional personnel per ~~one thousand students in net enrollment is sixty-six~~ state aid-funded professional educators, or the number employed, whichever is less, is ninety-one and eighteen one hundredths percent;

(4) For each sparse-density county, the minimum ~~number~~ ratio of professional instructional personnel per ~~one thousand students in net enrollment is sixty-six and five one hundredths~~ state aid-funded professional educators, or the number employed, whichever is less, is ninety-one and seven one hundredths percent; and

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

~~(c) For the ratios applicable to each of the four density categories set forth in subsection (b) of this subsection, the number of professional instructional personnel per each one thousand students in net enrollment increases by five one hundredths per year for each of fiscal years 2010, 2011, 2012 and 2013. For each fiscal year thereafter, the ratios remain at the 2013 level~~

~~(d)~~ (c) Any county board which does not establish and maintain the applicable minimum ratio required in subsection (b) of this section shall suffer a pro rata reduction in the allowance for professional educators under this section: *Provided, That* ~~no~~ a county shall may not be penalized if it has increases in enrollment during that school year: *Provided, however,* That for the school year 2008-2009, only, no county shall 2017-2018, only, a county may not be penalized for not meeting the applicable minimum ratio required in subsection (b) of this section.

~~(e)~~ (d) A county shall may not increase the number of administrative personnel employed as either professional educators or pay grade H service personnel above the number which were

employed, or for which positions were posted, on June 30, 1990, and therefore, county boards shall whenever possible utilize classroom teachers for curriculum administrative positions through the use of modified or extended contracts.

~~(f) As the number of professional educators per each one thousand students in net enrollment increases during fiscal years 2009 through 2013, any additional positions that are created as a result of that increase shall be positions that will enhance student achievement and are consistent with the needs as identified in each county board's electronic county strategic improvement plan. County boards are encouraged to fill at least some of the additional positions with technology integration specialists.~~

~~(g) During the 2008-2009 interim period, and every three interim periods thereafter, the Legislative Oversight Commission on Education Accountability shall review the four density categories created in section two of this article, the ratios for professional educators established in this section and the ratios for service personnel established in section five of this article~~

§18-9A-5. Foundation allowance for service personnel.

The basic foundation allowance to the county for service personnel ~~shall be~~ is the amount of money required to pay the annual state minimum salaries in accordance with the provisions of article four, chapter eighteen-a of this code, ~~to such service personnel employed,~~ subject to the following:

(1) ~~For the school year beginning on July 1, 2008, and thereafter, no~~ A county shall receive an allowance for ~~an amount in excess of~~ state aid-eligible service personnel positions per one thousand students in net enrollment, as follows:

(A) For each high-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed~~ forty-three and ninety-seven one hundredths service personnel per one thousand students in net enrollment;

(B) For each medium-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed~~ forty-four and fifty-three one hundredths service personnel per one thousand students in net enrollment;

(C) For each low-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed~~ forty-five and one tenth service personnel per one thousand students in net enrollment; ~~and~~

(D) For each sparse-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed~~ forty-five and sixty-eight one hundredths service personnel per one thousand students in net enrollment; ~~and~~

(E) For any service personnel positions, or fraction thereof, determined for a county pursuant to this subdivision that exceed the number employed, the county's allowance for these positions shall be determined using the average state-funded minimum salary of service personnel for the county;

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

~~(2)~~ (3) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the service personnel for the school or program may be

prorated among the participating counties on the basis of each one's enrollment therein and that the personnel shall be considered within the above stated limit.

§18-9A-6a. Teachers Retirement Fund allowance; unfunded liability allowance.

(a) The total Teachers Retirement Fund allowance ~~shall be~~ is the sum of the basic foundation allowance for professional educators, the basic foundation allowance for professional student support personnel and the basic foundation allowance for service personnel, as provided in sections four, ~~and five~~ and eight of this article; all salary equity appropriations authorized in section five, article four of chapter eighteen-a; and such amounts as are to be paid by the counties pursuant to sections five-a and five-b of said article to the extent such county salary supplements are equal to the amount distributed for salary equity among the counties, multiplied by ~~fifteen percent~~ the average retirement contribution rate for each county board. The average contribution rate for each county board is based on the required employer contributions for state aid-eligible employees participating in the retirement plans pursuant to articles seven-a and seven-b of this chapter.

(b) The Teachers Retirement Fund allowance amounts provided for in subsection (a) of this section shall be accumulated in the Employers Accumulation Fund of the state Teachers Retirement System pursuant to section eighteen, article seven-a of this chapter, and shall be in lieu of the contribution required of employers pursuant to subsection (b) of said section as to all personnel included in the allowance for state aid in accordance with sections four, ~~and five~~ and eight of this article.

(c) In addition to the Teachers Retirement Fund allowance provided for in subsection (a) of this section, there shall be an allowance for the reduction of any unfunded liability of the Teachers Retirement Fund in accordance with the following provisions of this subsection. On or before December 31, of each year, the actuary or actuarial firm employed in accordance with the provisions of section four, article ten-d, chapter five of this code shall submit a report to the President of the Senate and the Speaker of the House of Delegates which sets forth an actuarial valuation of the Teachers Retirement Fund as of the preceding ~~the thirtieth day of~~ June 30. Each annual report shall recommend the actuary's best estimate, at that time, of the funding necessary to both eliminate the unfunded liability over a forty-year period beginning on ~~the first day of July, one thousand nine hundred ninety-four~~ July 1, 1994, and to meet the cash flow requirements of the fund in fulfilling its future anticipated obligations to its members. In determining the amount of funding required, the actuary shall take into consideration all funding otherwise available to the fund for that year from any source: *Provided*, That the appropriation and allocation to the Teachers Retirement Fund made pursuant to the provisions of section six-b of this article shall be included in the determination of the requisite funding amount. In any year in which the actuary determines that the Teachers Retirement Fund is not being funded in such a manner, the allowance made for the unfunded liability for the next fiscal year shall be not less than the amount of the actuary's best estimate of the amount necessary to conform to the funding requirements set forth in this subsection.

§18-9A-7. Foundation allowance for transportation cost.

(a) The allowance in the foundation school program for each county for transportation ~~shall be~~ is the sum of the following computations:

(1) A percentage of the transportation costs incurred by the county for maintenance, operation and related costs exclusive of all salaries, including the costs incurred for contracted transportation services and public utility transportation, as follows:

(A) For each high-density county, eighty-seven and one-half percent;

(B) For each medium-density county, ninety percent;

(C) For each low-density county, ninety-two and one-half percent;

(D) For each sparse-density county, ninety-five percent;

(E) For any county for the transportation cost for maintenance, operation and related costs, exclusive of all salaries, for transporting students to and from classes at a multicounty vocational center, the percentage provided in paragraphs (A) through (D), inclusive, of this subdivision as applicable for the county plus an additional ten percent; and

(F) For any county for that portion of its school bus system that uses as an alternative fuel compressed natural gas or propane, the percentage provided in paragraphs (A) through (D), inclusive, of this subdivision as applicable for the county plus an additional ten percent: *Provided*, That for any county receiving an additional ten percent for that portion of their bus system using bio-diesel as an alternative fuel during the school year 2012-2013, bio-diesel shall continue to qualify as an alternative fuel under this paragraph to the extent that the additional percentage applicable to that portion of the bus system using bio-diesel shall be decreased by two and one-half percent per year for four consecutive school years beginning in school year 2014-2015: *Provided, however*, That any county using an alternative fuel and qualifying for the additional allowance under this subdivision shall submit a plan regarding the intended future use of alternatively fueled school buses;

(2) The total cost, within each county, of insurance premiums on buses, buildings and equipment used in transportation;

(3) An amount equal to eight and one-third percent of the current replacement value of the bus fleet within each county as determined by the state board. ~~*Provided*, That the amount for the school year beginning July 1, 2015, will be \$15,000,000 and the amount for the school year beginning July 1, 2016, will be \$18,000,000.~~ The amount shall only be used for the replacement of buses except as provided in subdivision (4) of this subsection. Buses purchased after July 1, 1999 that are driven one hundred eighty thousand miles, regardless of year model, ~~will be~~ are subject to the replacement value of eight and one-third percent as determined by the state board. In addition, in any school year in which its net enrollment increases when compared to the net enrollment the year immediately preceding, a school district may apply to the state superintendent for funding for an additional bus or buses. The state superintendent shall make a decision regarding each application based upon an analysis of the individual school district's net enrollment history and transportation needs: *Provided*, That the superintendent ~~shall~~ may not consider any application which fails to document that the county has applied for federal funding for additional buses. If the state superintendent finds that a need exists, a request for funding shall be included in the budget request submitted by the state board for the upcoming fiscal year;

(4) Notwithstanding the restriction on the use of funds for the replacement of buses pursuant to subdivision (3) of this subsection, up to \$200,000 of these funds in any school year may be used by a county for school facility and equipment repair, maintenance and improvement or replacement or other current expense priorities if a request by the county superintendent listing the amount, the intended use of the funds and the serviceability of the bus fleet is approved by the state superintendent. Before approving the request, the state superintendent shall verify the serviceability of the county's bus fleet based upon the state school bus inspection defect rate of the county over the two prior years; and

~~(4)~~ (5) Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving the aid within each county.

(b) The total state share for this purpose is the sum of the county shares: *Provided*, That ~~no~~ a county ~~shall~~ may not receive an allowance which is greater than one-third above the computed state average allowance per transportation mile multiplied by the total transportation mileage in the county exclusive of the allowance for the purchase of additional buses.

(c) One half of one percent of the transportation allowance distributed to each county ~~shall be~~ is for the purpose of trips related to academic classroom curriculum and not related to any extracurricular activity. Any remaining funds credited to a county for the purpose of trips related to academic classroom curriculum during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the appropriation for the next fiscal year. The state board may request a county to document the use of funds for trips related to academic classroom curriculum if the board determines that it is necessary.

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

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

~~(1) For current expense, ten percent of the sum of the computed state allocation for professional educators, professional student support personnel and service personnel as determined in sections four, five and eight of this article. Distribution to the counties 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; plus~~

(1) For current expense:

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

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

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

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

(E) Each county's allowance for current expense is 70.25 percent of the county's state average costs per square footage per student for operations and maintenance amount as calculated in paragraph (C) of this subdivision; plus

(2) For professional educator substitutes or current expense, two and five-tenths percent of the computed state allocation for professional educators and professional student support personnel as determined in sections four and eight of this article. Distribution to the counties ~~shall be~~ is made proportional to the number of professional educators and professional student support personnel authorized for the county in compliance with sections four and eight of this article; plus

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

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

§18-9A-10. Foundation allowance to improve instructional programs and instructional technology.

(a) The total allowance to improve instructional programs ~~shall be~~ and instructional technology is the sum of the following:

(1) For instructional improvement, in accordance with county and school electronic strategic improvement plans required by section five, article two-e of this chapter, an amount equal to ten percent of the portion of the increase in the local share amount for the next school year that is due to an increase in assessed values only 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~~ allocated to the counties as follows:

(A) One hundred fifty thousand dollars shall be allocated to each county; and

(B) ~~Distribution~~ Allocation to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

Moneys allocated by ~~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~~ fifty percent of this allocation for the improvement of instructional programs 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~~ the county. Prior to the use of any funds from this subdivision for personnel costs, the county board must receive authorization from the state superintendent. The state superintendent shall require the county board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; (3) sharing of services with adjoining counties and the Regional ~~educational~~ Education 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 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 subdivision 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 twenty percent of the portion of the increase in the local share amount for the next school year that is due to an increase in assessed values only 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~~ allocated to the counties as follows:

(A) Thirty thousand dollars shall be allocated to each county; and

(B) ~~Distribution~~ Allocation to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

~~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 board's strategic technology learning plan. plus~~

This allocation for the improvement of instructional technology programs may also be used for the employment of technology system specialists essential for the technology systems of the schools of the county to be fully functional and readily available when needed by classroom teachers. The amount of this allocation used for the employment of technology system specialists shall be included and justified in the county board's strategic technology learning plan; plus

(3) One percent of the state average per pupil state aid multiplied by the number of students enrolled in dual credit, advanced placement and international baccalaureate courses, as defined by the state board, distributed to the counties proportionate to enrollment in these courses in each county; plus

(4) An amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to January 1, 1994, and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue bonds issued prior to January 1, 1994, shall be paid by the West Virginia Department of Education in accordance with the expenditure schedule approved by the state budget office 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) Notwithstanding the restrictions on the use of funds pursuant to subdivisions (1) and (2), subsection (a) of this section, a county board may:

(1) Utilize up to twenty-five percent of the allocation for the improvement of instructional programs in any school year for school facility and equipment repair, maintenance and improvement or replacement and other current expense priorities and for emergency purposes. The amount of this allocation used for any of these purposes shall be included and justified in the county and school strategic improvement plans or amendments thereto; and

(2) Utilize up to fifty percent of the allocation for improving instructional technology in any school year for school facility and equipment repair, maintenance and improvement or replacement and other current expense priorities and for emergency purposes. The amount of this allocation used for any of these purposes shall be included and justified in the county board's strategic technology learning plan or amendments thereto.

~~(b)~~ (c) When the school improvement bonds secured by funds from the School Building Capital Improvements Fund mature, the State Board of Education shall annually deposit an amount equal to \$24 million 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.

~~(e)~~ (d) Any project funded by the School Building Authority shall be in accordance with a comprehensive educational facility plan which must be approved by the state board and the School Building Authority.

§18-9A-11. Computation of local share; appraisal and assessment of property; valuations for tax increment financing purposes; computations in growth counties; public library support.

(a) On the basis of each county's certificates of valuation as to all classes of property as determined and published by the assessors pursuant to section six, article three, chapter eleven of this code for the next ensuing fiscal year in reliance upon the assessed values annually developed by each county assessor pursuant to articles one-c and three of said chapter, the state board shall for each county compute by application of the maximum levies for general current expense purposes, as defined in section two of this article, the amount of revenue which the levies would produce if levied upon one hundred percent of the assessed value of each of the several classes of property contained in the report or revised report of the value made to it by the Tax Commissioner as follows:

~~(1) For each fiscal year beginning before July 1, 2014, the state board shall first take ninety-five percent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county. For each fiscal year beginning after June 30, 2014,~~

~~the~~ The state board shall first take ninety-six percent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county; and

~~(2) For each fiscal year beginning before July 1, 2014, the state board shall then apply these rates to the assessed taxable value of other property in each classification in the county as determined by the Tax Commissioner and shall deduct therefrom five percent as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. For each fiscal year beginning after June 30, 2014, the~~ The state board shall then apply these rates to the assessed taxable value of other property in each classification in the county as determined by the Tax Commissioner and shall deduct therefrom four percent as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. All of the amount so determined shall be added to the ~~ninety-five or ninety-six percent as applicable~~, of public utility taxes computed as provided in subdivision (1) of this subsection and this total shall be further reduced by the amount due each county assessor's office pursuant to section eight, article one-c, chapter eleven of this code and this amount shall be the local share of the particular county.

As to any estimations or preliminary computations of local share required prior to the report to the Legislature by the Tax Commissioner, the state shall use the most recent projections or estimations that may be available from the Tax Department for that purpose.

(b) It is the intent of the Legislature that the computation of local share for public school support continue to be based upon actual real property values rather than assumed assessed real property values that are based upon an assessment ratio study, and that the annual amount of local share for which a county board of education is responsible continue to be computed without reference to whether the real property assessments in that county were at least fifty-four percent of market value in the prior year as indicated by the assessment ratio study. Accordingly, the effective date of the operation of this section as amended and reenacted during 2014, and the effective date of the operation of the repeal of section two-a of this article and the operation of the repeal of section five-b, article one-c, chapter eleven of this code, all as provided under this enactment, are expressly made retrospective to June 30, 2013.

(c) Whenever in any year a county assessor or a county commission fails or refuses to comply with this section in setting the valuations of property for assessment purposes in any class or classes of property in the county, the State Tax Commissioner shall review the valuations for assessment purposes made by the county assessor and the county commission and shall direct the county assessor and the county commission to make corrections in the valuations as necessary so that they comply with the requirements of chapter eleven of this code and this section and the Tax Commissioner may enter the county and fix the assessments at the required ratios. Refusal of the assessor or the county commission to make the corrections constitutes grounds for removal from office.

(d) For the purposes of any computation made in accordance with this section, in any taxing unit in which tax increment financing is in effect pursuant to article eleven-b, chapter seven of this code, the assessed value of a related private project shall be the base-assessed value as defined in section two of said article.

(e) For purposes of any computation made in accordance with this section, in any county where the county board of education has adopted a resolution choosing to use the Growth County School Facilities Act set forth in section six-f, article eight, chapter eleven of this code, estimated school board revenues generated from application of the regular school board levy rate to new property values, as that term is designated in said section, may not be considered local share funds and shall

be subtracted before the computations in subdivisions (1) and (2), subsection (a) of this section are made.

(f) The Legislature finds that public school systems throughout the state provide support in varying degrees to public libraries through a variety of means including budgeted allocations, excess levy funds and portions of their regular school board levies. A number of public libraries are situated on the campuses of public schools and several are within public school buildings serving both the students and public patrons. To the extent that public schools recognize and choose to avail the resources of public libraries toward developing within their students such legally recognized elements of a thorough and efficient education as literacy, interests in literature, knowledge of government and the world around them and preparation for advanced academic training, work and citizenship, public libraries serve a legitimate school purpose and may do so economically. Therefore, county boards are encouraged to support public libraries within their counties.

§18-9A-25. Effective date of changes during 2017 regular session of the Legislature.

The amendments to sections two, four, five, six-a, seven, nine, ten and eleven of this article during the 2017 regular session of the Legislature shall be effective for the calculations and distribution of state aid for the 2018 fiscal year and thereafter; and the provisions in place before those amendments are only effective for the calculations and distribution of state aid prior to the 2018 fiscal year.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-2. Definitions.

For the purposes of this article, unless a different meaning clearly appears from the context:

(1) 'Authority' means the School Building Authority of West Virginia;

(2) 'Bonds' means bonds issued by the authority pursuant to this article;

(3) 'Construction project' means a project in the furtherance of a facilities plan with a cost greater than \$1 million for the new construction, expansion or major renovation of facilities, buildings and structures for school purposes, including:

(A) The acquisition of land for current or future use in connection with the construction project;

(B) New or substantial upgrading of existing equipment, machinery and furnishings;

(C) Installation of utilities and other similar items related to making the construction project operational.

(D) Construction project does not include such items as books, computers or equipment used for instructional purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course of business improvements; other items which are customarily considered to result in a current or ordinary course of business operating charge or a major improvement project;

(4) 'Cost of project' means the cost of construction, expansion, renovation, repair and safety upgrading of facilities, buildings and structures for school purposes; the cost of land, equipment, machinery, furnishings, installation of utilities and other similar items related to making the project operational; and the cost of financing, interest during construction, professional service fees and all

other charges or expenses necessary, appurtenant or incidental to the foregoing, including the cost of administration of this article;

(5) 'County board' or 'county' means a county board of education as provided in article five of this chapter and includes the West Virginia Schools for the Deaf and the Blind as provided in article seventeen of this chapter when acting with the approval of the West Virginia Board of Education to submit, request and receive an award of funds or services for projects under the provisions of this article.

~~(5)~~ (6) 'Facilities plan' means the ten-year countywide comprehensive educational facilities plan established by a county board in accordance with guidelines adopted by the authority to meet the goals and objectives of this article, or a facilities plan established by the administration of the West Virginia Schools for the Deaf and Blind that:

(A) Addresses the existing school facilities and facility needs of the county, or the Schools for the Deaf and Blind, to provide a thorough and efficient education in accordance with the provisions of this code and policies of the state board;

(B) Best serves the needs of individual students, the general school population and the communities served by the facilities, including, but not limited to, providing for a facility infrastructure that avoids excessive school bus transportation times for students consistent with sound educational policy and within the budgetary constraints for staffing and operating the schools of the county;

(C) Includes the school major improvement plan;

(D) Includes the county board's school access safety plan required by section three, article nine-f of this chapter;

(E) Is updated annually to reflect projects completed, current enrollment projections and new or continuing needs; and

(F) Is approved by the state board and the authority prior to the distribution of state funds pursuant to this article to any county board or other entity applying for funds;

~~(6)~~ (7) 'Project' means a construction project or a major improvement project;

~~(7)~~ (8) 'Region' means the area encompassed within and serviced by a regional educational service agency established pursuant to section twenty-six, article two of this chapter;

~~(8)~~ (9) 'Revenue' or 'revenues' means moneys:

(A) Deposited in the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(B) Deposited in the School Construction Fund pursuant to section thirty, article fifteen, chapter eleven of this code and section eighteen, article twenty-two, chapter twenty-nine of this code;

(C) Deposited in the School Building Debt Service Fund pursuant to section eighteen, article twenty-two, chapter twenty-nine of this code;

(D) Deposited in the School Major Improvement Fund pursuant to section thirty, article fifteen, chapter eleven of this code;

(E) Received, directly or indirectly, from any source for use in any project completed pursuant to this article;

(F) Received by the authority for the purposes of this article; and

(G) Deposited in the Excess Lottery School Building Debt Services Fund pursuant to section eighteen-a, article twenty-two, chapter twenty-nine of this code;:-

~~(9)~~ (10) 'School major improvement plan' means a ten-year school maintenance plan that:

(A) Is prepared by a county board in accordance with the guidelines established by the authority and incorporated in its Countywide Comprehensive Educational Facilities Plan, or is prepared by the state board or the administrative council of an area vocational educational center in accordance with the guidelines if the entities seek funding from the authority for a major improvement project, or is prepared by the administration of the West Virginia Schools for the Deaf and Blind;

(B) Addresses the regularly scheduled maintenance for all school facilities of the county or under the jurisdiction of the entity seeking funding;

(C) Includes a projected repair and replacement schedule for all school facilities of the county or of the entity seeking funding;

(D) Addresses the major improvement needs of each school within the county or under the jurisdiction of the entity seeking funding; and

(E) Is required prior to the distribution of state funds for a major improvement project pursuant to this article to the county board, state board or administrative council; and

~~(10)~~ (11) 'School major improvement project' means a project with a cost greater than \$50 thousand and less than \$1 million for the renovation, expansion, repair and safety upgrading of existing school facilities, buildings and structures, including the substantial repair or upgrading of equipment, machinery, building systems, utilities and other similar items related to the renovation, repair or upgrading in the furtherance of a school major improvement plan. A major improvement project does not include such items as books, computers or equipment used for instructional purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course of business improvements; or other items which are customarily considered to result in a current or ordinary course of business operating charge-;

(12) 'Schools for the Deaf and Blind' or 'West Virginia Schools for the Deaf and Blind' means the Schools for the Deaf and Blind established or continued under article seventeen of this chapter.

§18-9D-3. Powers of authority.

The School Building Authority has the power:

(1) To sue and be sued, plead and be impleaded;

(2) To have a seal and alter the same at pleasure;

(3) To contract to acquire and to acquire, in the name of the authority, by purchase, lease-purchase not to exceed a term of twenty-five years, or otherwise, real property or rights or easements

necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish those purposes;

(4) To acquire, hold and dispose of real and personal property for its corporate purposes;

(5) To make bylaws for the management and rule of its affairs;

(6) To appoint, contract with and employ attorneys, bond counsel, accountants, construction and financial experts, underwriters, financial advisers, trustees, managers, officers and such other employees and agents as may be necessary in the judgment of the authority and to fix their compensation: *Provided*, That contracts entered into by the School Building Authority in connection with the issuance of bonds under this article to provide professional and technical services, including, without limitation, accounting, actuarial, underwriting, consulting, trustee, bond counsel, legal services and contracts relating to the purchase or sale of bonds are subject to the provisions of article three, chapter five-a of this code: *Provided, however*, That notwithstanding any other provisions of this code, any authority of the Attorney General of this state relating to the review of contracts and other documents to effectuate the issuance of bonds under this article shall be exclusively limited to the form of the contract and document: *Provided further*, That the Attorney General of this state shall complete all reviews of contracts and documents relating to the issuance of bonds under this article within ten calendar days of receipt of the contract and document for review;

(7) To make contracts and to execute all instruments necessary or convenient to effectuate the intent of and to exercise the powers granted to it by this article;

(8) To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the authority that its interests will be best served;

(9) To acquire by purchase, eminent domain or otherwise all real property or interests in the property necessary or convenient to accomplish the purposes of this article;

(10) To require proper maintenance and insurance of any project authorized under this section, including flood insurance for any facility within the one hundred year flood plain, at which authority funds are expended;

(11) To charge rent for the use of all or any part of a project or buildings at any time financed, constructed, acquired or improved, in whole or in part, with the revenues of the authority;

(12) To assist the West Virginia Schools for the Deaf and Blind or any county board of education that chooses to acquire land, buildings and capital improvements to existing school buildings and property for use as public school facilities, by lease from a private or public lessor for a term not to exceed twenty-five years with an option to purchase pursuant to an investment contract with the lessor on such terms and conditions as may be determined to be in the best interests of the authority, the State Board of Education and, if applicable, the county board of education, consistent with the purposes of this article, by transferring funds to the State Board of Education as provided in subsection (d), section fifteen of this article for the use of the county board of education;

(13) To accept and expend any gift, grant, contribution, bequest or endowment of money and equipment to, or for the benefit of, the authority or any project under this article, from the State of West Virginia or any other source for any or all of the purposes specified in this article or for any one or more of such purposes as may be specified in connection with the gift, grant, contribution, bequest or endowment;

(14) To enter on any lands and premises for the purpose of making surveys, soundings and examinations;

(15) To contract for architectural, engineering or other professional services considered necessary or economical by the authority to provide consultative or other services to the authority or to any regional educational service agency, the West Virginia Schools for the Deaf and Blind or any county board requesting professional services offered by the authority, to evaluate any facilities plan or any project encompassed in the plan, to inspect existing facilities or any project that has received or may receive funding from the authority or to perform any other service considered by the authority to be necessary or economical. Assistance to the region, school or district may include the development of preapproved systems, plans, designs, models or documents; advice or oversight on any plan or project; or any other service that may be efficiently provided by the authority to regional educational service agencies, the state board, or county boards by the authority or the West Virginia Schools for the Deaf and Blind;

(16) To provide funds on an emergency basis to repair or replace property damaged by fire, flood, wind, storm, earthquake or other natural occurrence, the funds to be made available in accordance with guidelines of the School Building Authority;

(17) To transfer moneys to custodial accounts maintained by the School Building Authority with a state financial institution from the school construction fund and the school improvement fund created in the State Treasury pursuant to the provisions of section six of this article, as necessary to the performance of any contracts executed by the School Building Authority in accordance with the provisions of this article;

(18) To enter into agreements with county boards and persons, firms or corporations to facilitate the development of ~~county board~~ projects and ~~county board~~ facilities plans. The county board participating in an agreement shall pay at least twenty-five percent of the cost of the agreement. Nothing in this section ~~shall be construed to supersede, limit or impair~~ supersedes, limits or impairs the authority of county boards to develop and prepare their projects or plans;

(19) To encourage any project or part thereof to provide opportunities for students to participate in supervised, unpaid work-based learning experiences related to the student's program of study approved by the county board or the administration of the West Virginia Schools for the Deaf and Blind. The work-based learning experience ~~must shall~~ be conducted in accordance with a formal training plan approved by the instructor, the employer and the student, ~~and which sets~~ The experience shall set forth at a minimum the specific skills to be learned, the required documentation of work-based learning experiences, the conditions of the placement, including duration and safety provisions, and provisions for supervision and liability insurance coverage as applicable. Projects involving the new construction and renovation of vocational-technical and adult education facilities should provide opportunities for students to participate in supervised work-based learning experiences, to the extent practical, which meet the requirements of this subdivision. Nothing in this subdivision may be construed to affect registered youth apprenticeship programs or the provisions governing those programs; and

(20) To do all things necessary or convenient to carry out the powers given in this article.

§18-9D-4c. School Building Authority authorized to temporarily finance projects through the issuance of loans, notes or other evidences of indebtedness.

The School Building Authority may by resolution, in accordance with the provisions of this article, temporarily finance the cost of projects and other expenditures permitted under this article for public schools in this state, including, but not limited to, comprehensive high schools, ~~and comprehensive middle schools as defined in this article, in this state through the issuance of~~ and the West Virginia Schools for the Deaf and Blind. The financing may be issued through loans, notes or other evidences of indebtedness, ~~Provided, That the outstanding principal amount of loans, notes or other evidences of indebtedness outstanding at any one time shall~~ which may not exceed \$16 million at any one time. ~~Provided, however, That~~ The principal of, interest and premium if any on, and fees associated with any ~~such~~ temporary financing shall be payable solely from the proceeds of bonds or the sources from which the principal of, interest and premium, if any, on bonds is any bonds are payable under this article. ~~or from the proceeds of bonds~~

§18-9D-4d. Emergency facility and equipment repair or replacement fund for financially distressed counties.

From the funds available to it the School Building Authority shall maintain a reserve fund in the amount of not less than \$600,000 for the purpose of making emergency grants to financially distressed county boards to assist them in making repairs or performing urgent maintenance to facilities or facility related equipment or facility related equipment replacement necessary to maintain the serviceability or structural integrity of school facilities currently in use or necessary for educating the students of the county. The grants shall be made in accordance with guideline established by the school building authority. For the purposes of this section, 'financially distressed county' means a county either in deficit or on the most recently established watch list established by the Department of Education of those counties at-risk of becoming in deficit.

§18-9D-16. Authority to establish guidelines and procedures for facilities and major improvement plans; guidelines for modifications and updates, etc.; guidelines for project evaluation; submission of certified list of projects to be funded; department on-site inspection of facilities; enforcement of required changes or additions to project plans.

(a) The authority shall establish guidelines and procedures to promote the intent and purposes of this article and assure the prudent and resourceful expenditure of state funds for projects under this article including, but not limited to, the following:

(1) Guidelines and procedures for the facilities plans, school major improvement plans and projects submitted in the furtherance of the plans that address, but are not limited to, the following:

(A) All of the elements of the respective plans as defined in section two of this article;

(B) The procedures for a county or the administration of the West Virginia Schools for the Deaf and Blind to submit a preliminary plan, a plan outline or a proposal for a plan to the authority prior to the submission of the facilities plan. The preliminary plan, plan outline or proposal for a plan shall be the basis for a consultation meeting between representatives of the county or the administration of the West Virginia Schools for the Deaf and Blind and members of the authority, including at least one citizen member. ~~which~~ The meeting shall be held promptly following submission of the preliminary plan, plan outline or proposal for a plan to assure understanding of the general goals of this article and the objective criteria by which projects will be evaluated, to discuss ways the plan may be structured to meet those goals, and to assure efficiency and productivity in the project approval process;

(C) The manner, time line and process for the submission of each plan and annual plan updates to the authority;

(D) The requirements for public hearings, comments or other means of providing broad-based input on plans and projects under this article within a reasonable time period as the authority may consider appropriate. The submission of each plan must be accompanied by a synopsis of all comments received and a formal comment by the county board, the state board or the administrative council of an area vocational educational center submitting the plan;

(E) Any project specifications and maintenance specifications considered appropriate by the authority including, but not limited to, such matters as energy efficiency, preferred siting, construction materials, maintenance plan and any other matter related to how the project is to proceed;

(F) A prioritization by the county board, the state board or the administrative council submitting the plan of each project contained in the plan. ~~In prioritizing the projects, the county board, the state board or the administrative council submitting the plan shall make determinations~~ The prioritization shall be determined in accordance with the objective criteria formulated by the School Building Authority in accordance with this section. The priority list is one of the criteria that shall be considered by the authority in deciding how the available funds should be expended;

(G) The objective means to be set forth in the plan and used in evaluating implementation of the overall plan and each project included in the plan. The evaluation ~~must~~ shall measure how the plan addresses the goals of this article and any guidelines adopted under this article, ~~and~~ how each project is in furtherance of the facilities plan and school major improvement plan, as applicable, ~~as well as~~ the importance of the project to the overall success of the facilities plan or school major improvement plan, and the overall goals of the authority; and

(H) Any other matters considered by the authority to be important reflections of how a construction project or a major improvement project ~~or projects~~ will further the overall goals of this article.

(2) Guidelines and procedures which may be adopted by the authority for requiring that a county board modify, update, supplement or otherwise submit changes or additions to an approved facilities plan or for requiring that a county board, the state board or the administrative council of an area vocational educational center modify, update, supplement or otherwise submit changes or additions to an approved school major improvement plan. The authority shall provide reasonable notification and sufficient time for the change or addition as delineated in its guidelines. ~~developed by the authority~~ The guidelines shall require an update of the estimated duration of school bus transportation times for students associated with any construction project under consideration by the authority that includes the closure, consolidation or construction of a school or schools.

(3) Guidelines and procedures for evaluating project proposals that are submitted to the authority that address, but are not limited to, the following:

(A) Any project funded by the authority ~~must~~ shall be in furtherance of the facilities plan or school major improvement plan and in compliance with the guidelines established by the authority;

(B) If a project is to benefit more than one county in the region, the facilities plan ~~must~~ shall state the manner in which the cost and funding of the project will be apportioned among the counties;

(C) If a county board proposes to finance a construction project through a lease with an option to purchase pursuant to an investment contract as described in subsection (f), section fifteen of this article, the specifications for the project must include the term of the lease, the amount of each lease payment, including the payment due upon exercise of the option to purchase, and the terms and conditions of the proposed investment contract; and

(D) The objective criteria for the evaluation of projects which shall include, but ~~are~~ is not limited to, the following:

(i) How the current facilities do not meet and how the plan and any project under the plan ~~meets~~ meet the following:

(I) Student health and safety including, but not limited to, critical health and safety needs;

(II) Economies of scale, including compatibility with similar schools that have achieved the most economical organization, facility use and pupil-teacher ratios;

(III) Reasonable travel time and practical means of addressing other demographic considerations. The authority may not approve a project ~~after July 1, 2008~~ that includes a school closure, consolidation or new construction for which a new bus route will be created for ~~the transportation of students in any of the grade levels prekindergarten through grade five~~ transporting any prekindergarten through fifth grade students to and from any school included in the project, ~~which new bus if the route exceeds by more than fifteen minutes the recommended duration of the one-way school bus transportation~~ duration time for elementary students adopted by the state board ~~as provided in~~ pursuant to section five-d, article two-e of this chapter, unless the county has received the written permission of the state board to create the route in accordance with said section five-d;

(IV) Multicounty and regional planning to achieve the most effective and efficient instructional delivery system;

(V) Curriculum improvement and diversification, including the use of instructional technology, distance learning and access to advanced courses in science, mathematics, language arts and social studies;

(VI) Innovations in education;

(VII) Adequate space for projected student enrollments;

(VIII) The history of efforts taken by the county board to propose or adopt local school bond issues or special levies to the extent Constitutionally permissible; and

(IX) Regularly scheduled preventive maintenance; and

(ii) How the project will assure the prudent and resourceful expenditure of state funds and achieve the purposes of this article for constructing, expanding, renovating or otherwise improving and maintaining school facilities for a thorough and efficient education.

(4) Guidelines and procedures for evaluating projects for funding that address, but are not limited to, the following:

(A) Requiring each county board's facilities plan and school major improvement plan to prioritize all the construction projects or major improvement projects, respectively, within the county. A school major improvement plan submitted by the state board or the administrative council of an area vocational educational center shall prioritize all the school improvement projects contained in the plan. The priority list shall be one of the criteria to be considered by the authority in determining how available funds shall be expended. In prioritizing the projects, the county board, the state board or the administrative council submitting a plan shall make determinations in accordance with the objective criteria formulated by the School Building Authority;

(B) The return to each county submitting a project proposal an explanation of the evaluative factors underlying the decision of the authority to fund or not to fund the project; and

(C) The allocation and expenditure of funds in accordance with this article, subject to the availability of funds.

(b) Prior to final action on approving projects for funding under this article, the authority shall submit a certified list of the projects to the Joint Committee on Government and Finance.

(c) The State Department of Education shall conduct on-site inspections, at least annually, of all facilities which have been funded wholly or in part by moneys from the authority or state board to ensure compliance with the county board's facilities plan and school major improvement plan as related to the facilities; to preserve the physical integrity of the facilities to the extent possible; and to otherwise extend the useful life of the facilities. ~~Provided, That~~ The state board shall submit reports regarding ~~its on-site~~ the inspections of facilities to the authority within thirty days of completion. ~~of the on-site inspections: Provided, however, That~~ The state board shall promulgate rules regarding the on-site inspections and matters relating thereto, in consultation with the authority, ~~as seen as practical and shall submit proposed rules for legislative review. no later than December 1, 1994~~

(d) Based on its on-site inspection or notification by the authority to the state board that the changes or additions to a ~~county's board~~ county board's facilities plan or school major improvement plan ~~required by the authority~~ have not been implemented within the time period prescribed by the authority, the state board shall restrict the use of the necessary funds or otherwise allocate funds from moneys appropriated by the Legislature for those purposes set forth in section nine, article nine-a of this chapter.

§18-9D-22. Eligibility of the West Virginia Schools for the Deaf and Blind to participate in all types of funding administered or distributed by the authority.

(a) The Legislature finds that:

(1) The Legislature's Constitutional obligation to provide a thorough and efficient public education for the children of West Virginia includes providing a thorough and efficient education for the children of West Virginia who are deaf and blind;

(2) The Legislature has endeavored to fulfill this obligation with the creation, maintenance and operation of the West Virginia Schools for the Deaf and Blind, established and continued under article seventeen of this chapter;

(3) The West Virginia Schools for the Deaf and Blind have for generations provided educational services to children from each of West Virginia's fifty-five counties;

(4) The facilities of the West Virginia Schools for the Deaf and Blind are in need of substantial improvements;

(5) The West Virginia Schools for the Deaf and Blind have no local levy which supports their operations, and depend completely upon the appropriations from the state;

(6) The West Virginia Schools for the Deaf and Blind have no borrowing authority nor revenue stream that can serve as a source of servicing debt;

(7) Questions have arisen as to whether or not it is permissible for the School Building Authority to distribute to the West Virginia Schools for the Deaf and Blind financial assistance for the construction and improvement of their facilities; and

(8) The West Virginia Schools for the Deaf and Blind should have access to and be eligible to receive all types of funding provided to county boards by the authority.

(b) Notwithstanding any provision of this code to the contrary:

(1) The West Virginia Schools for the Deaf and Blind are eligible to participate in all funding distributed by the authority; and

(2) The authority may distribute to the West Virginia Schools for the Deaf and Blind funds as it determines to be appropriate.

(c) The authority may not require the contribution of local funds for a project of the West Virginia Schools for the Deaf and Blind, nor penalize the consideration or priority ranking of a project of the schools for lack of local project funds. The state board may apply for funds for education programs under its jurisdiction for projects at the West Virginia Schools for the Deaf and Blind.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2561 – “A Bill to repeal §11-6A-5a of the Code of West Virginia, 1931, as amended; to amend and reenact §11-8-6f and §11-8-12 of said code; to amend and reenact §18-9A-2, §18-9A-4, §18-9A-5, §18-9A-6a, §18-9A-7, §18-9A-9, §18-9A-10 and §18-9A-11 of said code; to amend said code by adding thereto a new section, designated §18-9A-25; to amend and reenact §18-9D-2, §18-9D-3, §18-9D-4c and §18-9D-16 of said code; and to amend said code by adding thereto two new sections, designated §18-9D-4d and §18-9D-22, all relating to public school support; repealing code section pertaining to tax treatment of wind power projects; removing limit on increase in total property tax revenues if the current regular levy rates of the county boards of education were to be imposed; requiring each county board of education to establish its regular levy rates each year up to the statutory maximum levy rates; allowing a county board to change its proposed regular levy rates from the original proposed levy rates in its required statement to the Auditor; deleting required periodic legislative review of definition of ‘net enrollment’; changing term ‘levies for general current expense purposes’ to ‘maximum levies for general current expense purposes’ and modifying the definition to mean ninety percent of the maximum levy rates for county boards of education; determining allowance for fundable professional educators at set ratio, rather than the number employed subject to a limit; providing for determination of allowance for fundable positions in excess of number employed; deleting expired provisions; basing minimum professional instructional personnel required on percent of fundable professional educators or the number employed, whichever is less; providing for prorating professional instructional personnel among participating counties in joint school or program or service; removing penalty for not meeting applicable professional instructional personnel ratio for 2017-2018 school year; deleting expired provisions; deleting required periodic legislative review of density category ratios; determining allowance for fundable service personnel at set ratio, rather than number employed subject to a limit; providing for determination of allowance for fundable positions in excess of number employed; providing for proration of number and allowance of personnel employed in part by state and county funds; adding professional student support personnel allowance to calculation of Teachers Retirement Fund allowance; basing Teachers Retirement Fund allowance on average retirement contribution rate of each county and defining ‘average rate’; allowing limited portion of funds for bus purchases to be

used for facility and equipment repair maintenance and improvement or replacement or other current expense priorities if requested and approved by state superintendent following verification; changing calculation of allowance for current expense from percent allowances for professional and service personnel to county's state average costs per square footage per student for operations and maintenance; basing the allowance to improve instructional programs and instructional technology on the portion of the increase in local share amount for the next school year that is due to an increase in assessed values only; removing authorization for use of instructional improvement funds for implementation and maintenance of the uniform integrated regional computer information system; increasing percentage of allocation for the improvement of instructional programs that can be used to employ school personnel; removing requirement for fully utilizing applicable provisions of allowances for professional and service personnel before using instructional improvement funds for employment; removing restriction limiting use of new instructional improvement funds for employment except for technology system specialists until certain determination made by state superintendent; authorizing use of instructional technology improvement funds for employment of technology system specialists and requiring amount used to be included and justified in strategic technology plan; specifying when certain debt service payments are to be made into School Building Capital Improvement Fund; authorizing use of percentages of allocations for improving instructional programs and improving instructional technology for facility and equipment repair, maintenance and improvement or replacement and other current expense priorities and for emergency purposes; requiring amounts used to be included and justified in respective strategic plans; basing the computation of local share on the maximum levies for general current expense purposes; making the West Virginia Schools for the Deaf and Blind eligible to participate in any and all funding administered or distributed by the West Virginia School Building Authority; and requiring the School Building Authority to maintain a reserve fund for the purpose of making emergency grants to financially distressed county boards for certain purposes."

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. 2601, Relating to municipal policemen's or municipal firemen's pension and relief funds.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On pages three and four, section twenty-seven-b, lines three through five, by striking out the words "felony and, upon conviction thereof, shall be punished by a fine not to exceed \$5,000, by imprisoned in a state correctional facility not more than five years, or by both fine and imprisoned" and inserting in lieu thereof the words "misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail not more than one year, or both fined and confined".

On page four, section twenty-seven-b, line seven, after the word "Board" and the period, by striking out the remainder of the bill.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2601- “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §8-22-27a and §8-22-27b, all relating to administration of municipal pensions; establishing procedures to correct errors in the administration of municipal pensions; making the act of fraud in relation to a record of a municipal pension a misdemeanor; and providing for criminal penalties.”

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. 525**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2601) 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. 2679, Relating to the possession of firearms in parks and park facilities.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

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

“That §20-2-19a of the Code of West Virginia, 1931, as amended, be repealed; that §7-11-15 of said code be amended and reenacted; and that §20-2-5, §20-2-42g and §20-2-42h of said code be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 11. COUNTY PARKS AND RECREATION COMMISSIONS.

§7-11-5. General powers of commission; rules ~~and regulations~~; misdemeanor offenses; park police authorized.

The commission shall have the necessary powers and authority to manage and control all public parks and recreational properties and facilities owned by the county or commission and used as a part of such public parks and recreation system, including the right to promulgate rules and regulations concerning the management and control of such parks and recreational properties and facilities and to enforce any such rules and regulations so promulgated: *Provided, That a commission shall not promulgate or enforce rules which prohibit the possession of firearms in such parks.*

The commission shall also have plenary power and authority to prepare and submit to the county ~~court~~ commission for adoption rules ~~and regulations~~ regulating the use of any parks and recreational properties and facilities under the control of the commission and prohibiting any type of use of or activities in connection with any such properties or facilities, and any such rules, and regulations if so

adopted, shall be duly entered of record in the order book of the county commission. The violation of any such rule and regulation so adopted by the county commission shall constitute a misdemeanor and, any person convicted of any such violation shall be punished by a fine of not less than \$5 nor more than \$100, or by imprisonment in jail for a period not exceeding thirty days, or by both such fine and imprisonment. ~~Justices of the peace~~ The magistrate court of the county shall have concurrent jurisdiction with the circuit court and other courts of record (having criminal jurisdiction) of any misdemeanor offenses arising under this article. The violation of any such rule ~~and regulation~~ which also constitutes the violation of any state law or municipal ordinance may be prosecuted and punished as a violation of such state law or municipal ordinance rather than under the provisions of this section. To enforce any such rules and regulations, to protect and preserve all properties and facilities under the control of the commission and to preserve law and order in connection therewith, the commission shall have plenary power and authority to provide in its bylaws procedures for the appointment, supervision and discharge of one or more park police officers. Whenever any such appointment is made, a copy of the order of appointment shall be ~~filed~~ maintained by the commission for review by members of the public ~~with the county court~~.

In any area under the jurisdiction and control of the commission, or in connection with any properties or facilities under the jurisdiction and control of the commission, or in pursuit of one or more individuals therefrom, any park police officer so appointed shall have all of the power and authority which a regularly appointed deputy sheriff of such county has in enforcing the criminal laws of the state. Notwithstanding any provisions of this code to the contrary, park police officers appointed as aforesaid shall not be required to obtain a state license to carry a weapon, as required by the provisions of section two, article seven, chapter sixty-one of this code. When any such commission has purchased one or more policies of public liability insurance providing the commission and its officers, agents and employees insurance coverage for legal liability of said commission and its officers, agents and employees for bodily injury, personal injury or damage (including, but not limited to, false arrest and false imprisonment) and property damage, and affording said commission and its officers, agents and employees insurance coverage against any and all legal liability arising from, growing out of, by reason of or in any way connected with, any acts or omissions of said commission, or its officers, agents or employees in the performance of their official duties, and so long as the coverage aforesaid remains in full force and effect as to such park police officers, then the bond specified in section five, article seven of said chapter sixty-one shall not be required as to such park police officers.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts; Sunday hunting.

(a) Except as authorized by the director or by law, it is unlawful at any time for any person to:

- (1) Shoot at any wild bird or wild animal unless it is plainly visible;
- (2) Dig out, cut out, 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;
- (3) Use or attempt to use any artificial light or any night vision technology, including image intensification, thermal imaging or active illumination while hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal: *Provided*, That it is lawful to hunt or take coyote, fox, raccoon, opossum or skunk by the use of artificial light or night vision technology. Any person violating

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, take, kill, wound or shoot at wild animals or wild birds from an airplane or other airborne conveyance, a drone or other unmanned aircraft, an automobile or other land conveyance, or from a motor-driven water conveyance;

(5) Use a drone or other unmanned aircraft to hunt, take or kill a wild bird or wild animal, or to use a drone or other unmanned aircraft to drive or herd any wild bird or wild animal for the purposes of hunting, trapping or killing;

(6) Take any beaver or muskrat by any means other than a trap;

(7) Catch, capture, take, hunt or kill by seine, net, bait, trap or snare or like device a bear, wild turkey, ruffed grouse, pheasant or quail;

(8) Intentionally destroy or attempt to destroy the nest or eggs of any wild bird or have in his or her possession the nest or eggs;

(9) Carry an uncased or loaded firearm in the woods of this state or in state parks, state forests, state wildlife management areas or state rail trails with the following permissible exceptions:

(A) A person in possession of a valid license or permit during open firearms hunting season for wild animals and nonmigratory wild birds where hunting is lawful;

(B) A person hunting or taking unprotected species of wild animals, wild birds and migratory wild birds during the open season, in the open fields, open water and open marshes of the state where hunting is lawful;

(C) A person carrying a firearm pursuant to sections six and six-a of this article; ~~or~~

(D) A person carrying a ~~firearm~~ handgun for self-defense who is not prohibited from possessing firearms under state or federal law; or by section seven, article seven, chapter sixty-one of this code;

(E) A person carrying a rifle or shotgun for self-defense who is not prohibited from possessing firearms under state or federal law: *Provided*, That this exception does not apply to an uncased rifle or shotgun carried in state park, state forest, or state wildlife management area recreational facilities and on marked trails within state park or state forest borders.

(10) Have in his or her possession a crossbow with a nocked bolt, or a rifle or shotgun with cartridges that have not been removed or a magazine that has not been detached, in or on any vehicle or conveyance, or its attachments. 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 that between five o'clock post meridian of day one and seven o'clock ante meridian, Eastern Standard Time, of the following day, any unloaded firearm or crossbow may be 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 requirements relative to carrying unloaded firearms are permissible only from eight-thirty o'clock post meridian to five o'clock ante meridian, Eastern Standard Time: *Provided*, That the time periods for carrying unloaded and uncased firearms are extended for one hour after the post meridian times and one hour before the ante meridian times established in this subdivision, if a person is transporting or transferring the firearms to or from a hunting site, campsite, home or other abode;

~~(11) 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 ante meridian 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 ante meridian on that Sunday: *Provided*, That traps previously and legally set may be tended after the hour of five o'clock ante meridian on Sunday and the person tending the traps may carry firearms for the purpose of humanely dispatching trapped animals. Any person violating 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;~~

~~(12)~~(11) Hunt, catch, take, kill, injure or pursue a wild animal or wild bird with the use of a ferret;

~~(13)~~(12) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

~~(14)~~(13) Catch, take, kill or attempt to catch, take or kill any fish by any means other than by rod, line and hooks with natural or artificial lures: *Provided*, That snaring of any species of suckers, carp, fallfish and creek chubs is lawful;

~~(15)~~(14) Employ, hire, induce or persuade, with money, things of value or by any means, any person to hunt, take, catch or kill any wild animal or wild bird except those species in which there is no closed season; or to fish for, catch, take or kill any fish, amphibian or aquatic life that is protected by rule, or the sale of which is otherwise prohibited;

~~(16)~~(15) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds except as permitted by the Migratory Bird Treaty Act, 16 U. S. C. §703, *et seq.*, and its regulations;

~~(17)~~(16) Kill, take, catch, sell, transport or have in his or her possession, living or dead, any wild bird other than a game bird including the plumage, skin or body of any protected bird, irrespective of whether the bird was captured in or out of this state, except the English or European sparrow (*Passer domesticus*), starling (*Sturnus vulgaris*) and cowbird (*Molothrus ater*), which may be killed at any time;

~~(18)~~(17) Use dynamite, explosives or any poison in any waters of the state for the purpose of killing or taking fish. Any person violating 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;

~~(19)~~(18) Have a bow and gun, or have a gun and any arrow, in the fields or woods at the same time;

~~(20)~~(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 sections five-g and forty-two-w of this article;

~~(21)~~(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;

~~(22)~~(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;

~~(23)~~(22) Shoot an arrow across any public highway;

~~(24)~~(23) Permit any dog owned or under his or her control to chase, pursue or follow the tracks of any wild animal or wild bird, day or night, between May 1 and August 15: *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 upon the grounds or lands of another person with his or her written permission, or on public lands at any time. Nonresidents may not train dogs in this state at any time except during the legal small game hunting season. A person training dogs may not have firearms or other implements in his or her possession during the closed season on wild animals and wild birds;

~~(25)~~(24) Conduct or participate in a trial, including a field trial, shoot-to-retrieve field trial, water race or wild hunt: *Provided*, That any person, group of persons, club or organization may hold a trial upon obtaining a permit pursuant to 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 the trial and make the records readily available for inspection by any natural resources police officer upon request;

~~(26)~~(25) Hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during open seasons;

~~(27)~~(26) ~~Hunting~~ Hunt on public lands on Sunday after five o'clock ante meridian ~~is prohibited~~;

~~(28)~~ ~~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 ante meridian: *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 on private lands only with the consent of the land owner in _____ County?~~

~~Yes~~

~~No~~

~~(Place a cross mark in the square opposite your choice.)~~

~~(29)~~(27) Hunt or conduct hunts for a fee when the person is not physically present in the same location as the wildlife being hunted within West Virginia.

(28) Catch, take, kill, or attempt to catch, take or kill any fish by any means within two hundred feet of division personnel engaged in stocking fish in public waters.

(b) Notwithstanding any ballot measure relating to Sunday hunting, it is lawful to hunt throughout the State of West Virginia on private lands on Sundays after the hour of five o'clock ante meridian with the written consent of the private landowner pursuant to section seven, article two of this chapter.

§20-2-42g. Class H nonresident small game hunting license.

A Class H license is a nonresident small game hunting license and entitles the licensee to hunt small game in all counties of the State, except as prohibited by rules of the director or Natural Resources Commission and except when additional licenses, stamps or permits are required, for a period of six consecutive hunting days chosen by the licensee, ~~excluding Sunday in counties closed to Sunday hunting~~. The fee for the license is \$25. This is a base license and does not require the purchase of a prerequisite license to participate in the activities specified in this section, except as noted.

§20-2-42h. Class J nonresident small game shooting preserve license.

A Class J license is a nonresident small game shooting preserve license and entitles the licensee to hunt small game on designated shooting preserves, except as prohibited by rules of the director or Natural Resources Commission and except when additional licenses, stamps or permits are required, for a period of six consecutive hunting days chosen by the licensee, ~~excluding Sunday in counties closed to Sunday hunting~~. The fee for the license is \$10. This is a base license and does not require the purchase of a prerequisite license to participate in the activities specified in this section, except as noted.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2679 – “A Bill to repeal §20-2-19a of the Code of West Virginia, 1931, as amended; to amend and reenact §7-11-5 of said code; and to amend and reenact §20-2-5, §20-2-42g and §20-2-42h, all relating to firearms and hunting generally; eliminating authority for trappers to carry certain firearms on Sundays while checking traps; prohibiting county parks and recreation commissions from promulgating or enforcing rules which prohibit possession of firearms in parks; updating antiquated language; allowing the carrying of an uncased or loaded long firearm in the woods of this state and state parks, state forests, state wildlife management areas or state rail trails; excepting recreation facilities therein from areas where uncased or loaded long guns may be possessed; providing exceptions to the prohibition for self-defense purposes; eliminating local option election regarding to hunting on private land on Sundays; permitting Sunday hunting on private land with written permission of the owner of an authorized agent of the owner; clarifying that hunting on public land on Sundays after five o'clock ante meridian is illegal; superseding ballot measures in elections prior to the effective date of legislation making Sunday hunting on private land lawful with the written permission of the landowner or an authorized agent thereof; creating the misdemeanor offense of catching, taking, or killing of fish within two hundred feet of Division of Natural Resources personnel engaged in stocking fish in public waters; and establishing criminal penalties.”

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. 526**), and there were—yeas 94, nays 5, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Fleischauer, Lane, Pushkin, Pyles and Rowe.

Absent and Not Voting: Kessinger.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2679) 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:

Com. Sub. for H. B. 2683, Relating to West Virginia Insurance Guaranty Association Act.

On motion of Delegate Cowles, the House concurred in the following amendment of the title of the bill by the Senate:

Com. Sub. for H. B. 2683 – “A Bill to amend and reenact §33-26-2, §33-26-3, §33-26-4, §33-26-5, §33-26-8, §33-26-9, §33-26-10, §33-26-11, §33-26-12, §33-26-13, §33-26-14 and §33-26-18 of the Code of West Virginia, 1931, as amended, all relating to West Virginia Insurance Guaranty Association Act; modifying the purpose, scope and construction of act; adding and amending definitions; clarifying and adding powers, duties and rights of association; limiting amount payable for covered claims for deliberate intention, including workers’ compensation claims; limiting amount for covered claim for return of unearned premium; limiting amount association must pay for the obligation of the insolvent insurer; setting time limits for filing claims; specifying when obligation of insurer to defend an insured ceases; subject to limitations, giving association rights, duties and obligations of the insolvent insurer; allowing association to determine order of claims payment; prohibiting payment of dividends during period of deferment; hiring of legal counsel for the defense of covered claims; notification of claimants; setting forth the association’s right to review and contest settlements, releases, compromises, waivers and judgments; specifying when association is not bound by a settlement, release, compromise or waiver; requiring association to establish procedures for requesting financial information from insurers and claimants; setting forth actions association may take where insured or claimant refuses to provide requested financial information; allowing association to intervene as a party as a matter of right before any court; requiring rules of association be subject to legislative approval; requiring notice of claims be filed with the association; setting forth the persons from whom the association may recover all amounts paid by the association on behalf of that person; requiring association and associations in other states be recognized as claimants in the liquidation of an insolvent insurer; requiring person having a claim to exhaust all coverage under the policy; setting forth what constitutes a claim relating to exhaustion of coverage; requiring association be reimbursed for any deductible claim if paid; requiring board of directors to make recommendations to commissioner regarding solvency; allowing board of directors to compile reports on insolvencies; and providing that reports and recommendations of board are not subject to disclosure under the Freedom of Information Act.”

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. 527**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2683) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect July 1, 2017, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2702, Relating to excused absences for personal illness from school.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page two, section four, lines fourteen through seventeen, after the word "family", by changing the colon to a period and striking out the proviso.

On page two, section four, line thirty-one, after the word "and", by striking out the period.

On page two, section four, line thirty-four, by striking out the word "not" and inserting in lieu thereof the word "no".

On page two, section four, after line thirty-five, by inserting a new subsection, designated subsection (b), to read as follows:

"(b) In the case of three total unexcused absences of a student during a school year, the attendance director or assistant may serve notice by written or other means 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, administrative head or other chief administrator may be required."

And, by relettering the remaining subsections.

On page three, section four, line forty-nine, after the word "make" by inserting the word "a".

On page two, section four, by striking out the word "may" and inserting in lieu thereof the word "will".

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2702 – "A Bill to amend and reenact §18-8-4 of the Code of West Virginia, 1931, as amended, relating to documentation of unexcused absences from compulsory school attendance; limiting the excused absences for personal illness or injury in the family to those of student's parent, guardian or custodian; requiring all documentation related to absences be provided to school no later than three days of occurrence; authorizing schools to have discretion whether to give notice in the case of three unexcused absences; giving schools the discretion whether to give said notice by written or other means to a parent after three absences; giving discretion for attendance director or assistant to make a complaint against parent after ten total unexcused absences; and clarifying responsibility of administrative head or other chief administrator of school for meeting; and making other technical clarifications."

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. 528**), and there were—yeas 89, nays 10, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Blair, Byrd, Fluharty, Howell, Lynch, Robinson, Shott, Sobonya, Sponaugle and Upson.

Absent and Not Voting: Kessinger.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2702) passed.

Delegate Cowles moved that the bill take effect July 1, 2017.

On this question, the yeas and nays were taken (**Roll No. 529**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Byrd and Howell.

Absent and Not Voting: Kessinger.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2702) takes effect July 1, 2017.

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, 2017, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2720, Allowing the School Building Authority to transfer funds allocated into the School Construction Fund.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page one, by striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows” and a colon.

“That §18-9D-3 and §18-9D-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows” followed by a colon.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2720 – “A Bill to amend and reenact §18-9D-3 and §18-9D-8 of the Code of West Virginia, 1931, as amended, all relating to the funding of School Building Authority operational costs; and continuing a special revenue account known as the School Building Authority Fund.”

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. 530**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Folk.

Absent and Not Voting: Kessinger.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2720) passed.

Delegate Cowles moved that the bill take effect July 1, 2017.

On this question, the yeas and nays were taken (**Roll No. 531**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger and Nelson.

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. 2720) takes effect July 1, 2017.

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. 2739, Relating to supplemental Medicaid provider reimbursement.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page three, section twenty-five, after line forty-eight, by inserting a new subdivision, designated subdivision four to read as follows:

“(4) Notwithstanding the provisions of subdivision (1) of this subsection, the Department of Health and Human Resources shall, prior to seeking federal approval of any supplemental reimbursement pursuant to this section, attempt to maximize the number of qualified group emergency medical transportation service providers eligible to receive the supplemental reimbursement. These emergency medical transportation service providers would include:

(A) Any not-for-profit emergency medical transport providers not owned by the state or a city, a county, or a city and county;

(B) Any voluntary emergency transportation service providers not owned by the state or a city, a county, or a city and county; and

(C) All other emergency medical transportation service providers licensed pursuant to the provisions of article four-c, chapter sixteen of this code” and a comma.

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. 532**), 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: Kessinger.

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. 2739) 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. 2771, Relating to temporary teaching certificates for Armed Forces spouses.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page five, section two, line ninety-six, after the word "current", by inserting the word "unencumbered".

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. 533**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2771) 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. 2815, Relating to higher education governance.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page ten, section two, line one hundred nineteen, after the word "state" and a semicolon, by inserting the word "and".

On page ten, section two, line one hundred twenty-two, after the word "Administration", by changing the semicolon to a period and striking out the word "and".

On page twelve, section six, line thirty-eight, by striking out the word "A" and inserting in lieu thereof the words "Except for the exempted schools, a".

On page thirteen, section one, line seven, by striking out the word “provide” and a comma.

On page sixteen, section two, line forty-one, by striking out the word “Any” and inserting in lieu thereof the words “An at-large”.

On page seventeen, section four, line thirty-two, after the word “council”, by striking out the comma.

On page eighteen, section four, line forty-five, by striking out the word “Review” and inserting in lieu thereof the words “Except the exempted schools, review”.

On page eighteen, section four, line forty-six, after the word “compact”, by striking out the comma and the words “except the exempted schools”.

On page twenty-eight, section four, after line three hundred ten, by adding a new subsection, designated subsection (d), to read as follows:

“(d) The Higher Education Policy Commission shall examine the question of general revenue appropriations to individual higher education institutions per student, and per credit hour, and by other relevant measures at all higher education institutions, including four-year baccalaureate institutions and the community and technical colleges, and on or before January 1, 2018, the commission shall deliver its report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability. This report shall include a recommendation to the Legislature on a formula for the allocation of general revenue to be appropriated to such institutions that provides for ratable funding across all four-year institutions and community and technical colleges on a ratable basis, by enrolled student, by credit hour or by other relevant measures. On such basis, the commission shall make a recommendation to the Legislature as to the amounts that each such institution should have appropriated to it in the general revenue budget for fiscal year 2019, based upon the total general revenue appropriations that such institutions receive in aggregate in the enacted budget for fiscal year 2018.”

On page twenty-nine, section six, line twelve, after the words “Shepherd University” by striking out the comma and inserting in lieu thereof the word “and”.

On page twenty-nine, section six, line thirteen, by striking out the word “and”.

On page thirty-six, section seven, line fifty-eight, by striking the words “their respective jurisdictions” and inserting in lieu thereof the words “its jurisdiction”.

On page thirty-six, section seven, line sixty, by striking out the words “their respective jurisdictions” and inserting in lieu thereof the words “its jurisdiction”.

On page thirty-seven, section seven, line seventy-eight, by striking out the word “the”.

On page forty, section seven, line one hundred fifty, by striking out the words “their respective jurisdictions” and inserting in lieu thereof the words “its jurisdiction”.

On page forty, section seven, lines one hundred fifty-four and one hundred fifty-five, by striking out the words “their respective jurisdictions” and inserting in lieu thereof the words “its jurisdiction”.

On page forty, after line one hundred fifty-seven, by inserting the following:

“§18B-1F-10. Department of commerce to study and report relating to research and technology parks.

The West Virginia Development Office shall research, investigate and make recommendations relating to advancing research activities, economic development and job creation relating to foundations and private entities, including the I-79 Technology Park, who focus on research and job development and that receive or have received since July 1, 2012, appropriation support from the State of West Virginia. The Development Office shall submit a report of its investigation and findings to the Governor and the Legislature on or before December 31, 2017.”

On page forty-three, section four, line thirty-one, by striking out the word “is” and inserting in lieu thereof the word “are”.

On page forty-three, section four, line thirty-three, by striking out the word “its” and inserting in lieu thereof the words “their respective”.

On page forty-eight, section one, line seven, by striking out the word “Osteopathy” and inserting in lieu thereof the words “Osteopathic Medicine”.

On page forty-nine, section seven, line three, after the word “of”, by striking out the words “state colleges and universities in this state and” and inserting in lieu thereof the words “colleges in this state except”.

On page fifty-five, section four, lines eighty-three and eighty-four, by striking out all of subsection (h).

And, by relettering the remaining subsections.

On page sixty-one, section six, line thirteen, by striking out the word “or” and inserting in lieu thereof the word “and”.

On page seventy-six, section eight, line fifty-seven, by striking out the words “under the jurisdiction of the commission”.

On page seventy-six, section eight, line sixty-six, by striking out the words “under the jurisdiction of the commission”.

On page ninety-seven, section thirteen, after line seven, by inserting a new subsection, designated subsection (b), to read as follows:

“(b) Notwithstanding any provision of this code to the contrary, any acquisition, bequest, donation or construction of new buildings, office space or grounds exceeding \$1 million in appraised value or requiring \$1 million in repairs and renovation or lease payments over the lifetime of the lease, made or accepted by an institution’s research corporation established by article twelve of this chapter or an affiliated foundation of an institution under the jurisdiction of the council, shall be approved by the council.”

And, by relettering the remaining subsections.

And,

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

“That §18B-1-5a and §18B-1-10 of the Code of West Virginia, 1931, as amended, be repealed; that §18B-1A-3 of said code be repealed; that §18B-1B-10 and §18B-1B-13 of said code be repealed; that §18B-2-5 and §18B-2-7 of said code be repealed; that §18B-5-2a of said code be repealed; that §18B-1-2 and §18B-1-6 of said code be amended and reenacted; that §18B-1B-1, §18B-1B-2, §18B-1B-4 and §18B-1B-6 of said code be amended and reenacted; that §18B-1D-2, §18B-1D-4 and §18B-1D-7 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1F-10; that §18B-2A-3 and §18B-2A-4 of said code be amended and reenacted; that §18B-3-1 of said code be amended and reenacted; that §18B-4-7 of said code be amended and reenacted; that §18B-5-4, §18B-5-6, §18B-5-7 and §18B-5-9 of said code be amended and reenacted; that §18B-10-1, §18B-10-1c, §18B-10-8 and §18B-10-16 of said code be amended and reenacted; that §18B-19-1, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-19-7, §18B-19-9, §18B-19-10, §18B-19-11, §18B-19-13 and §18B-19-14 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-19-19, all to read as follows” and a colon.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2815 – “A Bill to repeal §18B-1-5a and 18B-1-10 of the Code of West Virginia, 1931, as amended; to repeal §18B-1A-3 of said code; to repeal §18B-1B-10 and §18B-1B-13 of said code; to repeal §18B-2-5 and §18B-2-7 of said code; to repeal §18B-5-2a of said code; to amend and reenact §18B-1-2 and §18B-1-6 of said code; to amend and reenact §18B-1B-1, §18B-1B-2, §18B-1B-4, and §18B-1B-6 of said code; to amend and reenact §18B-1D-2, §18B-1D-4 and §18B-1D-7 of said code; to amend said code by adding thereto a new section, designated §18B-1F-10; to amend and reenact §18B-2A-3 and §18B-2A-4 of said code; to amend and reenact §18B-3-1 of said code; to amend and reenact §18B-4-7 of said code; to amend and reenact §18B-5-4, §18B-5-6, §18B-5-7 and §18B-5-9 of said code; to amend and reenact §18B-10-1, §18B-10-1c, §18B-10-8 and §18B-10-16 of said code; to amend and reenact §18B-19-1, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-19-7, §18B-19-9, §18B-19-10, §18B-19-11, §18B-19-13 and §18B-19-14 of said code; and to amend said code by adding thereto a new section, designated §18B-19-19, all relating to public education higher education governance generally; defining terms; repealing obsolete provisions of code; clarifying scope of rule-making authority of higher education policy commission and certain institutions of higher education; eliminating outdated language; providing for rule-making procedures; requiring promulgation of rules by commission, council and certain institutions of higher education; providing for shorter time period for commission and council to review and comment on rules proposed by governing boards of institutions of higher education; providing legislative intent; providing for composition of commission; providing for primary responsibility of commission; updating and clarifying powers of commission; limiting authority of commission over certain institutions of higher education; eliminating authority of commission to assess institutions for payment of expenses of commission and for funding of statewide higher education services, obligations, or initiatives; clarifying authority of commission over review and approval of academic programs; repealing and eliminating outdated language; eliminating authority of commission with respect to certain financial and budget reviews and approvals; directing the commission to examine general revenue appropriations of higher education institutions and to report findings to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability with a recommendation to the Legislature on a formula for allocation of general revenue to be appropriated to the institutions; expanding authority of certain governing boards over appointment of president of certain higher education institutions; eliminating requirement for approval by commission of appointment of president for certain institutions of higher education; eliminating jurisdiction of commission relative to the accountability system over certain institutions of higher education;

providing for updated responsibility of commission in development and advancement of public policy agenda and collection of data for certain institutions of higher education; eliminating certain reporting responsibilities for certain institutions of higher education; altering authority of commission over institutional compacts of certain institutions of higher education; eliminating requirement for certain institutions of higher education to prepare an institutional compact for submission to the commission; eliminating application of certain data-based measures on certain institutions of higher education; altering timeframe for updates to institutional compacts; eliminating commission approval of institutional compacts of certain institutions of higher education; providing for a study by the West Virginia Development Office relating to foundations and private entities who focus on research and job development and that receive or have received since July 1, 2012, appropriation support from the State of West Virginia; eliminating authority of chancellor over coordination of policies, purposes and rules of governing boards of certain institutions of higher education; updating powers of governing boards; eliminating requirement of commission approval of master plans for certain institutions of higher education; requiring certain institutions to provide copies of master plan to Legislative Oversight Commission on Educational Accountability; providing that rules of commission and council related to administering a system for the management of personnel matters do not apply to certain institutions of higher education; authorizing governing boards to contract and pay for any supplemental employee benefit; providing for legislative findings and purposes; clarifying authority of certain governing boards to delegate authority to its president; clarifying authority of commission and governing boards of certain institutions of higher education with respect to development of rules for accreditation and determination of minimum standards for conferring degrees; eliminating authority of commission to revoke an institution's authority to confer degrees when governing board or chief executive officer do not provide certain information to commission; eliminating applicability of certain commission and council rules on certain institutions of higher education; requiring certain governing boards to promulgate and adopt rules related to acquisitions and purchases; clarifying authority of certain governing boards over certain purchasing activities; authorizing prepayment by commission, council or governing boards in certain instance; expanding scope of authorized purchasers on certain purchase contracts; updating power of Joint Committee over performance audits of purchasing; updating authority of commission, council and governing boards over purchase card procedures; requiring certain governing boards to establish purchasing card procedures; clarifying authority for state institutions to enter into design-build contracts and other commonly accepted methods of procurement and financing for construction projects; providing that Design-Build Procurement Act does not apply to state institutions of higher education; providing authority to donate equipment, supplies and materials to not for profit entity to promote public welfare; updating certain best practices applicable to ensuring fiscal integrity of institutions of higher education; authorizing additional situation where emergency purchase card use is permitted; authorizing different tuition and fees for online courses; updating time frame for payment of fees by students; authorizing deposit of certain fees into single special revenue account by certain institutions; updating applicability of rule by commission and council for tuition and deferred payment plans; authorizing certain governing board to propose a rule related to tuition and fee deferred payment plans; authorizing certain governing boards to authorize a mandatory auxiliary fee without commission approval; updating tuition and fee increase percentage that requires commission or council approval; updating conditions commission or council are required to consider in determining whether to approve a tuition or fee increase; revising requirements and parameters for certain revenue bonds issued by certain governing boards; updating approvals required for issuance of certain revenue bonds by state institutions of higher education; providing for transfer and deposit of certain fees by certain governing boards into single special revenue account; requiring commission and council to develop system capital development oversight policy and providing content for such policy; requiring each governing board to adopt a campus development plan; updating time frame for reporting to commission and council on campus development plans; eliminating requirement for commission approval of campus development plans of certain governing boards; providing for content of campus development plans; eliminating commission approval over certain capital and maintenance project lists; authorizing certain governing

boards to undertake projects not contained in campus development plan; eliminating certain commission approvals related to capital improvements for certain institutions; authorizing capital improvements to be funded through notes; updating conditions to be met for certain institutions to be responsible for capital project management; updating requirements for capital project management rule to be promulgated and adopted by certain governing boards; providing updated applicability and functions of higher education facilities information system; eliminating certain requirements related to leasing of real property by commission, council, and governing boards; requiring notice to certain local governmental entities and legislators for certain sales and leases of land; updating permitted uses of proceeds from sale, conveyance or other disposal of real property received by commission, council or a governing board; authorizing certain governing boards to enter into lease-purchase agreements in certain instances without commission approval; eliminating requirement of commission approval for certain real estate and construction transactions; providing for the approval by the Council for Community and Technical College Education of acquisitions, bequests, donations, construction of new buildings, repairs, renovations or lease payments over the lifetime of the lease which exceed \$1 million, if made or accepted by the institution's research corporation or an affiliated foundation; providing additional requirements for governing boards to enter into sale lease-back transactions; and requiring certain governing boards to provide certain information to commission."

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. 534**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Kelly and Wagner.

Absent and Not Voting: Kessinger.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2815) 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. 2857, West Virginia Safer Workplaces Act.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page four, section seven, after line four, by inserting a new subdivision, designated subdivision (2), to read as follows:

"(2) Any observer of the collection of urine samples shall be of the same sex as the employee."

And,

By renumbering the remaining subdivisions.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2857 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-3E-1, §21-3E-2, §21-3E-3, §21-3E-4, §21-3E-5, §21-3E-6, §21-3E-7, §21-3E-8, §21-3E-9, §21-3E-10, §21-3E-11, §21-3E-12, §21-3E-13, §21-3E-14, §21-3E-15 and §21-3E-16, all relating to creating West Virginia Safer Workplaces Act; permitting employers to test employees and prospective employees for drugs and alcohol under certain circumstances; providing a short title; defining terms; declaring public policy; providing for exceptions to the applicability of the West Virginia Safer Workplaces Act for employers covered by other drug and alcohol testing statutes; clarifying the right of privacy as defined by the West Virginia Supreme Court is outweighed by the public policy set forth in the West Virginia Safer Workplaces Act if an employer complies with the act; providing for the collection of samples, scheduling of tests and testing procedures; requiring employers to adhere to the accuracy and fairness safeguards of the West Virginia Safer Workplaces Act to qualify for the bar from being subjected to legal claims for acting in good faith on the results of a drug or alcohol test; providing for an employee’s ability to request split sample be tested to challenge a positive test result; requiring employers to pay for certain drug or alcohol tests and transportation expenses, if any; requiring employer to conduct tests during or immediately before or after a regular work period; providing that testing by an employer is worked time for purposes of compensation and benefits for current employees; establishing responsibility for cost of split sample testing; setting forth testing policy requirements; requiring confirmatory tests before disciplinary action may be taken under the West Virginia Safer Workplaces Act; establishing requirements for confirmatory drug tests; providing for disciplinary procedures; addressing disciplinary action for sensitive employees; describing sensitive employees; providing employers who are obligated to perform drug testing under a federal or state mandated drug testing statute will be required to follow whatever additional requirements are mandated by those statutes; providing protection from liability for certain legal claims under certain circumstances; clarifying that no causes of action for certain acts exists under the West Virginia Safer Workplaces Act; addressing potential causes of action related to false positive test results; addressing claims for defamation arising from circumstances covered by the West Virginia Safer Workplaces Act; clarifying employers are not required to adopt a drug and alcohol testing policy or to conduct drug or alcohol tests of employees or prospective employees; providing for confidentiality and exceptions to confidentiality requirement; addressing discipline for positive drug or alcohol tests including but not limited to termination of employment; providing for forfeiture of certain benefits under certain circumstances including unemployment compensation and workers’ compensation benefits; clarifying that the drug and alcohol testing provisions of the West Virginia Safer Workplace Act cannot be used to show intoxication pursuant to section two, article four, chapter twenty-three of this code; requiring employers to provide notice to employees of the potential forfeiture of certain benefits; providing employers waive the right to assert eligibility for benefits is forfeited if notice is not provided; and requiring employers to have written drug and alcohol testing policies and procedures when implementing drug and alcohol testing.”

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. 535**), and there were—yeas 82, nays 17, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Baldwin, Caputo, Diserio, Ferro, Fleischauer, Fluharty, Hornbuckle, Longstreth, Lovejoy, Lynch, Marcum, Pushkin, Pyles, Rodighiero, Rowe, Thompson and Williams.

Absent and Not Voting: Kessinger.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2857) 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. 2897, Raising the amount required for competitive bidding of construction contracts by the state and its subdivisions.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page four, section one, after line seventy-one, by adding a new subsection, designated subsection (i), to read as follows:

“(i) The contracting public entity shall not award a contract pursuant to this section to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees. Any governmental entity may submit to the Division of Purchasing information which identifies vendors that qualify as being in default on a monetary obligation to the entity. The contracting public entity shall take reasonable steps to verify whether the lowest qualified bidder is in default pursuant to this subsection prior to awarding a contract.”

And,

By relettering the remaining subsections.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2897 – “A Bill to amend and reenact §5-22-1 of the Code of West Virginia, 1931, as amended, to amend and reenact §8-16-5 of said code; to amend and reenact §16-12-11 of said code; to amend and reenact §16-13-3 of said code; to amend and reenact §16-13A-7 of said code; to amend and reenact §21-1D-5; and to amend and reenact §21-11-11 of said code, all relating generally to competitive bidding for public construction contracts; defining the term “alternates”; limiting the number of alternates that may be included on any solicitation of bids for government construction contracts; establishing procedures for acceptance of alternate bids and determination of the lowest qualified responsible bidder; providing procedures for the required submission of a list of subcontractors who will perform more than \$25,000 of work on certain projects; providing procedures for the required submission of a drug-free workplace affidavit for any solicitation for a public improvement contract; and providing procedures for the required submission of a contractor’s license number with certain bid documents; prohibiting public construction contracts from being awarded to bidders that are in default on monetary obligations owed to the state or a political subdivision; and exempting competitive bidding requirements on certain contracts for emergency repairs.”

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. 536**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2897) 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. 3018, Adding definition of correctional employee to the list of persons against whom an assault is a felony.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

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

“ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10b. Malicious assault; unlawful assault; battery; and assault on governmental representatives, health care providers, utility workers, law-enforcement officers, correctional employees and emergency medical service personnel; definitions; penalties.

(a) For purposes of this section:

(1) ‘Government representative’ means any officer or employee of the state or a political subdivision thereof, or a person under contract with a state agency or political subdivision thereof.

(2) ‘Health care worker’ means any nurse, nurse practitioner, physician, physician assistant or technician practicing at, and all persons employed by or under contract to a hospital, county or district health department, long-term care facility, physician’s office, clinic or outpatient treatment facility.

(3) ‘Emergency service personnel’ means any paid or volunteer firefighter, emergency medical technician, paramedic, or other emergency services personnel employed by or under contract with an emergency medical service provider or a state agency or political subdivision thereof.

(4) ‘Utility worker’ means any individual employed by a public utility or electric cooperative or under contract to a public utility, electric cooperative or interstate pipeline.

(5) ‘Law-enforcement officer’ has the same definition as this term is defined in W.Va. Code §30-29-1, except for purposes of this section, ‘law-enforcement officer’ shall additionally include those individuals defined as ‘chief executive’ in W.Va. Code §30-29-1.

(6) 'Correctional employee' means any individual employed by the West Virginia Division of Corrections, the West Virginia Regional Jail Authority, and the West Virginia Division of Juvenile Services and an employee of an entity providing services to incarcerated, detained or housed persons pursuant to a contract with such agencies.

(b) *Malicious assault.* — Any person who maliciously shoots, stabs, cuts or wounds or by any means causes bodily injury with intent to maim, disfigure, disable or kill a government representative, health care worker, utility worker, emergency service personnel, correctional employee or law-enforcement officer acting in his or her official capacity, and the person committing the malicious assault knows or has reason to know that the victim is acting in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than three nor more than fifteen years.

(c) *Unlawful assault.* — Any person who unlawfully but not maliciously shoots, stabs, cuts or wounds or by any means causes a government representative, health care worker, utility worker, emergency service personnel, correctional employee or law-enforcement officer acting in his or her official capacity bodily injury with intent to maim, disfigure, disable or kill him or her and the person committing the unlawful assault knows or has reason to know that the victim is acting in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than two nor more than five years.

(d) *Battery.* — Any person who unlawfully, knowingly and intentionally makes physical contact of an insulting or provoking nature with a government representative, health care worker, utility worker, emergency service personnel, correctional employee or law-enforcement officer acting in his or her official capacity and the person committing the battery knows or has reason to know that the victim is acting in his or her official capacity, or unlawfully and intentionally causes physical harm to that person acting in such capacity and the person committing the battery knows or has reason to know that the victim is acting in his or her official capacity, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or confined in jail not less than one month nor more than twelve months or both fined and confined. If any person commits a second such offense, he or she is guilty of a felony and, upon conviction thereof, shall be fined not more than \$1,000 or imprisoned in a state correctional facility not less than one year nor more than three years, or both fined and imprisoned. Any person who commits a third violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not more than \$2,000 or imprisoned in a state correctional facility not less than two years nor more than five years, or both fined and imprisoned.

(e) *Assault.* — Any person who unlawfully attempts to commit a violent injury to the person of a government representative, health care worker, utility worker, emergency service personnel, correctional employee or law-enforcement officer, acting in his or her official capacity and the person committing the battery knows or has reason to know that the victim is acting in his or her official capacity, or unlawfully commits an act which places that person acting in his or her official capacity in reasonable apprehension of immediately receiving a violent injury and the person committing the battery knows or has reason to know that the victim is acting in his or her official capacity, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than twenty-four hours nor more than six months, fined not more than \$200, or both fined and confined.

(f) Any person convicted of any crime set forth in this section who is incarcerated in a facility operated by the West Virginia Division of Corrections or the West Virginia Regional Jail Authority, or is in the custody of the Division of Juvenile Services and is at least eighteen years of age or subject to prosecution as an adult, at the time of committing the offense and whose victim is a correctional employee may not be sentenced in a manner by which the sentence would run concurrent with any

other sentence being served at the time the offense giving rise to the conviction of a crime set forth in this section was committed.”

And,

By amending the title of the bill to read as follows:

H. B. 3018 – “A Bill to amend and reenact §61-2-10b of the Code of West Virginia, 1931, as amended, relating to crimes against the person generally; defining correctional employee; including correctional employees as persons to whom the criminal penalties for malicious assault, unlawful assault, battery and assault in this section apply; requiring certain sentences to be imposed consecutively; and establishing penalties.”

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. 537**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3018) 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. 3093, Establishing Broadband Enhancement and Expansion Policies.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

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

“That §31-15C-1, §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-6, §31-15C-7, §31-15C-8, §31-15C-9, §31-15C-12 and §31-15C-13 of the Code of West Virginia, 1931, as amended, be repealed; that §12-6C-11 of said code be amended and reenacted; that §31-15-8 of said code be amended and reenacted; and that said code be amended by adding thereto a new chapter, designated §31G-1-1, §31G-1-2, §31G-1-3, §31G-1-4, §31G-1-5, §31G-1-6, §31G-1-7, §31G-1-8, §31G-1-9, §31G-1-10, §31G-1-11, §31G-1-12, §31G-1-13; §31G-1-14, §31G-2-1, §31G-2-2, §31G-2-3, §31G-2-4, §31G-2-5, §31G-2-6, §31G-2-7, §31G-2-8, §31G-2-9, §31G-2-10, §31G-2-11, §31G-2-12, §31G-2-13; §31G-2-14, §31G-2-15, §31G-2-16, §31G-2-17, §31G-2-18, §31G-2-19, §31G-2-20, §31G-2-21, §31G-2-22, §31G-2-23, §31G-2-24, §31G-2-25, §31G-2-26, §31G-2-27, §31G-3-1, §31G-3-2, §31G-4-1, §31G-4-2 and §31G-4-3, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

§12-6C-11. Legislative findings; loans for industrial development; availability of funds and interest rates.

(a) The Legislature finds and declares that the citizens of the state benefit from the creation of jobs and businesses within the state; that business and industrial development loan programs provide for economic growth and stimulation within the state; that loans from pools established in the Consolidated Fund will assist in providing the needed capital to assist business and industrial development; and that time constraints relating to business and industrial development projects prohibit duplicative review by both the Board and West Virginia Economic Development Authority Board. The Legislature further finds and declares that an investment in the West Virginia Enterprise Capital Fund, LLC, of moneys in the Consolidated Fund as hereinafter provided will assist in creating jobs and businesses within the state and provide the needed risk capital to assist business and industrial development. This section is enacted in view of these findings.

(b) The West Virginia Board of Treasury Investments shall make available, subject to a liquidity determination, in the form of a revolving loan, up to \$175 million from the Consolidated Fund to loan the West Virginia Economic Development Authority for business or industrial development projects authorized by section seven, article fifteen, chapter thirty-one of this code and to consolidate existing loans authorized to be made to the West Virginia Economic Development Authority pursuant to this section and pursuant to section twenty, article fifteen, chapter thirty-one of this code which authorizes a \$175 million revolving loan and article eighteen-b of said chapter which authorizes a \$50 million investment pool: *Provided*, That the West Virginia Economic Development Authority may not loan more than \$15 million for any one business or industrial development project. The revolving loan authorized by this subsection shall be secured by one note at a variable interest rate equal to the twelve-month average of the board's yield on its cash liquidity pool. The rate shall be set on ~~the first day of~~ July 1 and adjusted annually on the same date. The maximum annual adjustment may not exceed one percent. Monthly payments made by the West Virginia Economic Development Authority to the board shall be calculated on a 120-month amortization. The revolving loan is secured by a security interest that pledges and assigns the cash proceeds of collateral from all loans under this revolving loan pool. The West Virginia Economic Development Authority may also pledge as collateral certain revenue streams from other revolving loan pools which source of funds does not originate from federal sources or from the board.

(c) The outstanding principal balance of the revolving loan from the board to the West Virginia Economic Development Authority may at no time exceed one hundred three percent of the aggregate outstanding principal balance of the business and industrial loans from the West Virginia Economic Development Authority to economic development projects funded from this revolving loan pool. The independent audit of the West Virginia Economic Development Authority financial records shall annually certify that one hundred three percent requirement.

(d) The interest rates and maturity dates on the loans made by the West Virginia Economic Development Authority for business and industrial development projects authorized by section seven, article fifteen, chapter thirty-one of this code shall be at competitive rates and maturities as determined by the West Virginia Economic Development Authority Board.

(e) Any and all outstanding loans made by the West Virginia Board of Treasury Investments, or any predecessor entity, to the West Virginia Economic Development Authority are refundable by proceeds of the revolving loan contained in this section and the board shall make no loans to the West Virginia Economic Development Authority pursuant to section twenty, article fifteen, chapter thirty-one of this code or article eighteen-b of said chapter.

(f) The directors of the board shall bear no fiduciary responsibility with regard to any of the loans contemplated in this section.

(g) Subject to cash availability, the board shall make available to the West Virginia Economic Development Authority, from the Consolidated Fund, a ~~nonresource~~ nonrecourse loan in an amount up to \$25 million, for the purpose of the West Virginia Economic Development Authority making a loan or loans from time to time to the West Virginia Enterprise Advancement Corporation, an affiliated nonprofit corporation of the West Virginia Economic Development Authority. The respective loans authorized by this ~~subsection~~ subsection by the board to the West Virginia Economic Development Authority to the West Virginia Enterprise Advancement Corporation shall each be evidenced by one note and shall each bear interest at the rate of three percent per annum. The proceeds of any and all loans made by the West Virginia Economic Development Authority to the West Virginia Enterprise Advancement Corporation pursuant to this subsection shall be invested by the West Virginia Enterprise Corporation in the West Virginia Enterprise Capital Fund, LLC, the manager of which is the West Virginia Enterprise Advancement Corporation. The loan to West Virginia Economic Development Authority authorized by this subsection shall be nonrevolving, and advances under the loan shall be made at times and in amounts requested or directed by the West Virginia Economic Development Authority, upon reasonable notice to the board. The loan authorized by this subsection is not subject to or included in the limitations set forth in subsection (b) of this section with respect to the \$15 million limitation for any one business or industrial development project and limitation of one hundred three percent of outstanding loans, and may not be included in the revolving fund loan principal balance for purposes of calculating the loan amortization in subsection (b) of this section. The loan authorized by this subsection to the West Virginia Economic Development Authority shall be classified by the board as a long-term fixed income investment, shall bear interest on the outstanding principal balance of the loan at the rate of three percent per annum payable annually on or before June 30 of each year, and the principal of which shall be repaid no later than June 30, 2022, in annual installments due on or before June 30 of each year. The annual installments, which need not be equal shall commence no later than June 30, 2005, in annual principal amounts agreed upon between the board and the West Virginia Economic Development Authority. The loan authorized by this subsection shall be nonrecourse and shall be payable by the West Virginia Economic Development Authority solely from amounts or returns received by the West Virginia Economic Development Authority in respect of the loan authorized by this subsection to the West Virginia Enterprise Advancement Corporation, whether in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of which the board shall have a security interest to secure repayment of the loan to the West Virginia Economic Development Authority authorized by this subsection. Any and all loans from the West Virginia Enterprise Advancement Corporation made pursuant to this subsection shall also bear interest on the outstanding principal balance of the loan at the rate of three percent per annum payable annually on or before June 30 of each year, shall be nonrecourse and shall be payable by the West Virginia Enterprise Advancement Corporation solely from amounts of returns received by the West Virginia Enterprise Advancement Corporation in respect to its investment in the West Virginia Enterprise Capital Fund, LLC, whether in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of which that board shall have a security interest to secure repayment of the loan to the West Virginia Economic Development Authority authorized by this subsection. In the event the amounts or returns received by the West Virginia Enterprise Corporation in respect to its investment in the West Virginia Enterprise Capital Fund, LLC, are not adequate to pay when due the principal or interest installments, or both, with respect to the loan authorized by this subsection by the board to the West Virginia Economic Development Authority, the principal or interest, or both, as the case may be, due on the loan made to the West Virginia Economic Development Authority pursuant to this subsection shall be deferred and any and all past due principal and interest payments shall promptly be paid to the fullest extent possible upon receipt by the West Virginia Enterprise Advancement Corporation of moneys in respect to its investments in the West Virginia Enterprise Capital Fund, LLC. The directors or the board shall

bear no fiduciary responsibility as provided in section thirteen of this article with regard to the loan authorized by this subsection.

(h) Notwithstanding any provision in this code to the contrary, subject to a liquidity determination and cash availability, the board shall make available to the West Virginia Economic Development Authority, from the Consolidated Fund, in the form of a nonrecourse revolving loan, \$50 million, for the purpose of insuring the payment or repayment of all or any part of the principal, the redemption or prepayment premiums or penalties on, and interest on any form of debt instrument entered into by an enterprise, public body or authority of the state with a financial institution, including, but not limited to, banks, insurance companies and other institutions in the business of lending money, as authorized and as set forth in section eight, article fifteen, chapter thirty-one of this code, but only for the purpose of providing insurance on such debt instruments relating solely to the deployment of broadband under said section: *Provided*, That the West Virginia Economic Development Authority may not insure more than \$10 million for any one enterprise, public body or authority of the state in any single calendar year. The loan authorized by this subsection may not be included in the revolving fund loan principal balance for purposes of calculating the loan amortization in subsection (b) of this section. The loan authorized by this subsection shall be classified by the board as a long-term fixed income investment, and shall bear interest on the outstanding principal balance of the loan at a variable interest rate equal to the twelve-month average of the board's yield on its cash liquidity pool. The rate shall be set on July 1, 2017, and adjusted quarterly during each year thereafter. The maximum annual adjustment may not exceed one percent. Quarterly, the West Virginia Economic Development Authority shall make a payment sufficient to pay in full all accrued interests on the loan for the prior quarter. The loan authorized by this subsection is nonrecourse and is payable by the West Virginia Economic Development Authority solely from moneys received by the West Virginia Economic Development Authority in respect to insured debt instruments relating to providing broadband service under section eight, article fifteen, chapter thirty-one of this code. Upon payment in full of any said insured debt instruments, the West Virginia Economic Development Authority shall reduce the outstanding balance of the loan by a like amount. Additionally, quarterly, the West Virginia Economic Development Authority shall determine the outstanding balance of all such insured debt instruments and shall accordingly adjust the outstanding balance of the loan to equal the outstanding obligations of the West Virginia Economic Development Authority for all said insured debt instruments. The loan is hereby secured by a security interest that pledges and assigns the cash proceeds of all collateral securing all insurance agreements entered into by the authority respecting debt instruments relating to the deployment of broadband under said section. In the event moneys received by the West Virginia Economic Development Authority respecting any individual insured debt instrument relating to providing broadband service under said section is insufficient to pay when due the principal or interest installments, or both, with respect to the loan authorized by this subsection by the board to the authority, the principal or interest, or both, as the case may be, due on the loan made to the authority pursuant to this subsection shall be deferred and any and all past-due principal and interest payments shall promptly be paid to the fullest extent possible upon receipt by the authority of all moneys respecting said debt instruments. The directors of the board bear no fiduciary responsibility as provided in section thirteen of this article with regard to the loan authorized by this subsection.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-8. Insurance fund.

(a) There is hereby created an insurance fund which shall be a continuing, nonlapsing, revolving fund that consists of:

(1) Moneys appropriated by the state to the insurance fund;

(2) Premiums, fees and any other amounts received by the authority with respect to financial assistance provided by the authority from the insurance fund;

(3) Upon the satisfaction of any indebtedness or other obligation owed on any property held or acquired by the authority, such proceeds as designated by the authority from the sale, lease or other disposition of such property;

(4) Income from investments made from moneys in the insurance fund; and

(5) Any other moneys transferred to the insurance fund or made available to it for the purposes described under this section, under this article or pursuant to any other provisions of this code.

Subject to the provisions of any outstanding insurance agreements entered into by the authority under this section, the authority may enter into covenants or agreements with respect to the insurance fund, and establish accounts within the insurance fund which may be used to implement the purposes of this article. If the authority elects to establish separate accounts within the insurance fund, the authority may allocate its revenues and receipts among the respective accounts in any manner the authority considers appropriate.

If the authority at any time finds that more money is needed to keep the reserves of the insurance fund at an adequate level, the authority, with the consent of the chairman, shall send a written request to the Legislature for additional funds.

(b) The insurance fund shall be used for the following purposes by the authority to financially assist projects so long as such financial assistance will, as determined by the authority, fulfill the public purposes of this article:

(1) To insure the payment or repayment of all or any part of the principal of, redemption or prepayment premiums or penalties on, and interest on bonds or notes whether issued under ~~the provisions of~~ this article or under the Industrial Development and Commercial Development Bond Act, the West Virginia Hospital Finance Authority Act or, with respect to health care facilities only, article thirty-three, chapter eight of this code;

(2) To insure the payment or repayment of all or any part of the principal of, redemption or prepayment premiums or penalties on, and interest on any instrument executed, obtained or delivered in connection with the issuance and sale of bonds or notes whether under ~~the provisions of~~ this article or under the Industrial Development and Commercial Development Bond Act, the West Virginia Hospital Finance Authority Act or, with respect to health care facilities only, article thirty-three, chapter eight of this code;

(3) To insure the payment or repayment of all or any part of the principal of, prepayment premiums or penalties on, and interest on any form of debt instrument entered into by an enterprise, public body or authority of the state with a financial institution, including, but not limited to, banks, insurance companies and other institutions in the business of lending money, which debt instruments shall include, but not be limited to, instruments relating to loans for working capital and to the refinancing of existing debt: *Provided*, That nothing contained in this subsection or any other provision of this article shall be construed as permitting the authority to insure the refinancing of existing debt except when such insurance will result in the expansion of the enterprise whose debt is to be refinanced or in the creation of new jobs;

(4) To pay or insure the payment of any fees or premiums necessary to obtain insurance, guarantees, letters of credit or other credit support from any person or financial institution in connection with financial assistance provided by the authority under this section; ~~and~~

(5) To pay any and all expenses of the authority, including, but not limited to:

(i) Any and all expenses for administrative, legal, actuarial, and other services related to the operation of the insurance fund; and

(ii) All costs, charges, fees and expenses of the authority related to the authorizing, preparing, printing, selling, issuing and insuring of bonds or notes (including, by way of example, bonds or notes, the proceeds of which are used to refund outstanding bonds or notes) and the funding of reserves; and

(6) To insure, for up to twenty years, the payment or repayment of all or any part of the principal of and interest on any form of debt instrument entered into by an enterprise, public body or authority of the state with a financial institution, including, but not limited to, banks, insurance companies and other institutions in the business of lending money, which debt instruments are to be solely for capital costs relating to:

(i) Providing broadband service, as defined in section one, article one, chapter thirty-one-g of this code, to a household or business located in an unserved area, as defined in section two of said article, or in an area with access to Internet service, by wireline or fixed wireless technology, but that fifteen percent or more of households and businesses in the area are served by Internet service with an actual downstream data rate less than ten megabits per second and an upstream data rate less than one megabit per second, and no part of the area has three or more wireline or fixed wireless broadband service providers; or

(ii) Building a segment of a telecommunications network that links a network operator's core network to a local network plant that serves either an unserved area, as defined in section two, article one, chapter thirty-one-g of this code, or an area in which no more than two wireline providers are operating.

The authority may not insure the payment or repayment of any part of the principal of and interest on any form of debt instrument under this subdivision, unless the participating financial institution provides written certification to the authority that, but for the authority's insuring the debt instrument, the financial institution would not otherwise make the loan based solely on the creditworthiness of the loan applicant: *Provided*, That nothing contained in this subsection or any other provision of this article may be construed as permitting the authority to insure the refinancing of existing debt.

Upon the filing of an application for loan insurance under this subsection, the broadband provider shall cause to be published as a Class II legal advertisement in compliance with article three, chapter fifty-nine of this code, notice of the filing of the application and that the authority may approve the same unless within ten business days after completion of publication a written objection is received by the authority from a person or persons challenging that the proposed broadband project does not satisfy the provisions of this subsection. The publication area for such notice is to be the county or counties in which any portion of the proposed broadband project is to be constructed. The notice shall be in such form as the authority shall direct, and shall include a map of the area or areas to be served by the proposed broadband project. The applicant shall also cause to be mailed by first class, on or before the first day of publication of the notice, a copy of the notice to all known current providers of broadband service within the area proposed to be served. If a challenge under this paragraph is

timely received by the authority, the authority shall advise the Broadband Enhancement Council, established in article one of chapter thirty-one-g of this code, in writing within five business days. The council shall set the matter for hearing on a date within thirty days of receipt of notice from the authority. The Broadband Enhancement Council shall issue a decision on whether the proposed project satisfies the requirements of this subsection or not within thirty days of completion of such hearing. Any party participating in said hearing may appeal the council's decision within thirty days of the issuance of said decision to the Circuit Court of Kanawha County. This provision shall apply to all applicants except to those broadband providers that plan on providing a downstream data rate of at least one gigabyte per second to the end user.

(c) ~~The~~ Except as relating to insured portions of debt instruments under subdivision (6), subsection (b) of this section, the total aggregate amount of insurance from the insurance fund with respect to the insured portions of principal of bonds or notes or other instruments may not exceed at any time an amount equal to five times the balance in the insurance fund.

(d) The authority may, in its sole and absolute discretion, set the premiums and fees to be paid to it for providing financial assistance under this section. The premiums and fees set by the authority shall be payable in the amounts, at the time, and in the manner that the authority, in its sole and absolute discretion, requires. The premiums and fees need not be uniform among transactions, and may vary in amount: (1) Among transactions; and (2) at different stages during the terms of transactions.

(e) The authority may, in its sole and absolute discretion, require the security it believes sufficient in connection with its insuring of the payment or repayment of any bonds, notes, debt or other instruments described in subdivisions (1), (2), (3) and (4), subsection (b) of this section.

(f) The authority may itself approve the form of any insurance agreement entered into under this section or may authorize the chairman or his or her designee to approve the form of any such agreement. Any payment by the authority under an agreement entered into by the authority under this section shall be made at the time and in the manner that the authority, in its sole and absolute discretion, determines.

(g) The obligations of the authority under any insurance agreement entered into pursuant to this article shall not constitute a debt or a pledge of the faith and credit or taxing powers of this state or of any county, municipality or any political subdivision of this state for the payment of any amount due thereunder or pursuant thereto, but the obligations evidenced by such insurance agreement shall be payable solely from the funds pledged for their payment. All such insurance agreements shall contain on the face thereof a statement to the effect that such agreements and the obligations evidenced thereby are not debts of the state or any county, municipality or political subdivision thereof but are payable solely from funds pledged for their payment.

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.

ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.

§31G-1-1. Legislative findings and purpose.

The Legislature finds as follows:

(1) That it is a primary goal of the Governor, the Legislature and the citizens of this state, by the year 2020, to make every municipality, community, and rural area in this state, border to border, accessible to Internet communications through the expansion, extension and general availability of broadband services and technology.

(2) That although broadband access has been extended to many of West Virginia's cities, towns, and other concentrated population areas, some areas of the state, mostly rural, remain unserved.

(3) That the issues which have hindered the provision of broadband access to rural areas of the state especially disadvantage the elderly and low-income households.

(4) That fair and equitable access to twenty-first century technology is essential to maximize the functionality of educational resources and educational facilities that enable our children to receive the best of future teaching and learning is essential to the future development of this state. A quality educational system of the twenty-first century should have access to the best technology tools and processes. Administrators should have the electronic resources to monitor student performance, to manage data, and to communicate effectively. In the classroom, every teacher in every school should be provided with online access to and the ability to deliver the best available educational technology resources to the students of West Virginia. Schools of the twenty-first century require facilities that accommodate changing technologies.

(5) Accordingly, it is the purpose of the Legislature to provide for the development of policies, plans, processes and procedures to be employed and dedicated to extending broadband access to West Virginians, and to their families, by removing restraint on the development of those services and for encouraging and facilitating the construction of the necessary infrastructure to meet their needs and demands.

§31G-1-2. 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) 'Council' means the Broadband Enhancement Council.

(3) 'Downstream data rate' means the transmission speed from the service provider source to the end-user.

(4) 'Internet protocol address' or 'IP address' means a unique string of numbers separated by periods that identifies each computer using the Internet Protocol to communicate over a network.

(5) 'Upstream data rate' means the transmission speed from the end-user to the service provider source.

(6) 'Unserved area' means a community that has no access to broadband service.

§31G-1-3. Broadband Enhancement Council; members of council; administrative support.

(a) The Broadband Enhancement Council is hereby established and continued. The current members, funds, and personnel shall continue in effect and be wholly transferred; except as may be hereinafter provided. With regard to the terms of the public members appointed under subdivision five of subsection (d) of this section, at the next regular meeting of the council following July 1, 2017, the currently serving public members shall draw by lot for the length of their terms, three members to serve for one additional year, three members to serve for two additional years and the last three members to serve for three additional years, with all public members in future to serve for the duration of the term described below.

(b) The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties are considered and held to be, and are hereby determined to be, essential governmental functions and for a public purpose. The council is created under the Department of Commerce for administrative, personnel and technical support services only.

(c) The council shall consist of thirteen voting members, designated as follows:

(1) The Secretary of Commerce or his or her designee;

(2) The Chief Technology Officer or his or her designee;

(3) The Vice Chancellor for Administration of the Higher Education Policy Commission or his or her designee;

(4) The State Superintendent of Schools or his or her designee; and

(5) Nine public members that shall serve three-year terms from the date of their appointment and are appointed by the Governor with the advice and consent of the Senate, as follows:

(i) One member representing users of large amounts of broadband services in this state;

(ii) One member from each congressional district representing rural business users in this state;

(iii) One member from each congressional district representing rural residential users in this state;

(iv) One member representing urban business users in this state; and

(v) One member representing urban residential users in this state.

(6) In addition to the 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.

(d) 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 chair, the vice chair shall serve as chair. The council shall appoint a secretary-treasurer who need not be a member of the council and who, among other tasks or functions designated by the council, shall keep records of its proceedings.

(e) The council may appoint committees or subcommittees to investigate and make recommendations to the full council. Members of these committees or subcommittees need not be members of the council.

(f) Seven voting members of the council constitute a quorum and the affirmative vote of a simple majority of those members present is necessary for any action taken by vote of the council.

(g) The gubernatorial appointed members shall be deemed part-time public officials, and may pursue and engage in another business or occupation or gainful employment. Any person employed by, owning an interest in or otherwise associated with a broadband deployment project, project sponsor or project participant may serve as a council member and is not disqualified from serving as a council member because of a conflict of interest prohibited under 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 section five, article two, chapter six-b of this code and the legislative rules promulgated by the West Virginia Ethics Commission.

(h) No member of the council who serves by virtue of his or her office may receive any compensation or reimbursement of expenses for serving as a member. The public members and members of any committees or subcommittees are entitled to be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of his or her official duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(i) No person is subject to antitrust or unfair competition liability based on membership or participation in the council, which provides an essential governmental function and enjoys state action immunity.

§31G-1-4. Powers and duties of the council generally.

(a) The council shall:

(1) Explore any and all ways to expand access to broadband services, including, but not limited to, middle mile, last mile and wireless applications;

(2) Gather data regarding the various speeds provided to consumers in comparison to what is advertised. The council may request the assistance of the Legislative Auditor in gathering this data;

(3) Explore the potential for increased use of broadband service for the purposes of education, career readiness, workforce preparation and alternative career training;

(4) Explore ways for encouraging state and municipal agencies to expand the development and use of broadband services for the purpose of better serving the public, including audio and video streaming, voice-over Internet protocol, teleconferencing and wireless networking; and

(5) Cooperate and assist in the expansion of electronic instruction and distance education services.

(b) In addition to the powers set forth elsewhere in this article, the council is hereby granted, has and may exercise the powers necessary or appropriate to carry out and effectuate the purpose and intent of this article, as enumerated herein. 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) 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;

(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;

(7) To oversee the use of conduit installed pursuant to section two of article three of this chapter; and to

(8) Perform any and all other activities in furtherance of its purpose.

(c) The council shall exercise its powers and authority to advise and make recommendations to the Legislature on bringing broadband service to unserved and underserved areas, as well as to propose statutory changes that may enhance and expand broadband in the state.

(d) The council shall report to the 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. The council shall also make any other reports as may be required by the Legislature or the Governor.

§31G-1-5. Creation of the Broadband Enhancement Fund.

All moneys collected by the council, which may, in addition to appropriations, include gifts, bequests or donations, shall be deposited in a special revenue account in the State Treasury known as the Broadband Enhancement Fund. The fund shall be administered by and under the control of the Secretary of the Department of 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.

§31G-1-6. Mapping of areas within state.

(a) Based on its analysis of data, broadband demand, and other relevant information, the council shall establish a mapping of broadband services in the state. The council shall publish an annual assessment and map of the status of broadband, including specifically designations of unserved and underserved areas of the state.

(b) To the extent possible, and subject to limitations contained in subsection (f) of this section, the council may additionally establish an interactive public map reflecting estimated downstream data rate and upstream data rate in a particular region, area, community, street or location. Any such mapping may only specify data rates at a particular street address or physical location, and shall not make public the IP address or the name of the specific individual at such location. Such mapping may also contain data concerning capacity, based upon fiber count.

(c) The mapping provided for in this section may be based on information collected or received by the council, including but not limited to, data collected from (1) state and federal agencies or entities that collect data on broadband services; (2) industry provided information; and (3) consumer data provided to the council pursuant to section nine of this article.

(d) Any entity that has received or hereinafter receives state or federal moneys, and which has used those moneys to install infrastructure used for broadband services, shall furnish detailed information concerning the location, type, and extent of such infrastructure to the council for use in mapping.

(e) The mapping and designations provided for under this section may be revised on a continuing basis by the council as warranted by the data and information provided.

(f) In addition to the provisions of section thirteen of this article, the mapping of broadband services may exclude from public accessibility and availability: (1) The location or identity of any critical infrastructure used by public or private entities in furtherance of their internet services; (2) personal name and personal IP addresses connected with particular data rates; and (3) information designated as confidential for public security reasons by either state or federal homeland security agencies: *Provided*, That it shall be duty of the public and private entities to make the council aware of such confidential designation: *Provided, however*, That unless the council determines good cause exists, the actual or estimated upstream and downstream data rates of an area or region of the state shall not be excluded from public or private availability.

§31G-1-7. Retention of outside expert consultant.

(a) In order to assist the council with the highly technical task of categorizing the areas of the state, the council may retain outside expert consultants to assist in the purposes of this article. The experts may assist the council to map the state on the basis of broadband availability, to evaluate and categorize data, to assist in public outreach and education in order to stimulate demand and to provide other support and assistance as necessary to accomplish the purposes of this article.

(b) The retention and contracting of all expert consultants shall be transparent, including specifically, making publicly available any contracts, retention agreements, payments and invoicing for services.

§31G-1-8. Public awareness and education.

In order to implement and carry out the intent of this article, the council may take such actions as it deems necessary or advisable in order to increase awareness of issues concerning broadband services and to educate and inform the public.

§31G-1-9. Collection of data.

(a) In order to ascertain, categorize, analyze, map, and update the status of broadband in the state, as well as to enable the council to make informed policy and legislative recommendations, the

council may establish a voluntary data collection program. The program may include voluntarily submitted data from internet service providers, including any home or region data rate meters utilized by the provider. The program may also utilize and collect voluntarily submitted data rate information submitted by any person reflecting the person's personal data rate at a particular IP address. This personal data rate may be based upon a web-based test or analysis program.

(b) Any and all data collected by the council shall not be deemed public information and is not subject to public release or availability pursuant to chapter twenty-nine-b of this code.

(c) Any data collection program established by the council shall:

(1) Make clear to those providers or persons submitting information that the data rate speed may become public, including specific reference to the person's physical address;

(2) Make clear this is a voluntary data collection program and that submission of information shall be deemed consent to use and make public such data rate information; and

(3) Not include any person's personal web history or search information, or otherwise publicly identify the person's name in connection with an IP address or physical address.

(d) The council may establish guidelines and additional rules governing a data collection program through the legislative rulemaking process, pursuant to the provisions of article three, chapter twenty-nine-a of this code.

§31G-1-10. Pilot Project for cooperatives by political subdivisions.

(a) Notwithstanding any provision in the code to the contrary, the council may create guidelines and recommend to the Legislature a pilot project for no more than three municipalities or counties, either individually or in conjunction with one another, to establish non-profit cooperative associations to provide high-speed internet and broadband services.

(b) Nothing herein shall preclude or prohibit the establishment of a cooperative association by non-political subdivisions outside the purview or authority of the council. It is not a requirement that a cooperative association established under article two of this chapter seek approval or guidance from the council, and such cooperative associations established under article two of this chapter shall not be under the authority of, nor subject to, the council.

§31G-1-11. Voluntary donation and easement programs.

(a) The council shall create guidelines for, and recommend to the Legislature a means of implementing a voluntary donation program to allow for pipeline, railroad, and other similar structures and rights-of-way in the state to be donated to the state for use by public or private entities to facilitate broadband service and availability through placement of fiber.

(b) The council shall create guidelines for, and recommend to the Legislature a means of implementing a program to allow for an easement program to be established to allow public or private entities to facilitate broadband service and availability through placement of fiber.

§31G-1-12. Grants.

In furtherance of the purposes of this article, the council is permitted to seek non-state funding and grants. The council may utilize funding and grants to support the responsibilities, initiatives and projects set forth this article. The council may additionally disburse such monies to fund projects and

initiatives in furtherance of the enhancement and expansion of broadband services in this state, and the other purposes of this article.

§31G-1-13. Protection of proprietary business information.

(a) Broadband deployment information provided to the council or its consultants and other agents, including, but not limited to, physical plant locations, subscriber levels, and market penetration data, constitutes proprietary business information and, along with any other information that constitutes trade secrets, shall be exempt from disclosure under the provisions of chapter twenty-nine-b of this code: *Provided*, That the information is identified as confidential information when submitted to the council.

(b) Trade secrets or proprietary business information obtained by the council from broadband providers and other persons or entities shall be secured and safeguarded by the state. Such information or data shall not be disclosed to the public or to any firm, individual or agency other than officials or authorized employees of the state. Any person who makes any unauthorized disclosure of such confidential information or data is guilty of a misdemeanor and, upon conviction thereof, may be fined not more than \$5,000 or confined in a correctional facility for not more than one year, or both.

(c) The official charged with securing and safeguarding trade secrets and proprietary data for the council is the Secretary of Administration, who is authorized to establish and administer appropriate security measures. The council chair shall designate two additional persons to share the responsibility of securing trade secrets or proprietary information. No person will be allowed access to trade secrets or proprietary information without written approval of a minimum of two of the three authorized persons specified above.

§31G-1-14. Legislative rule-making authority.

In order to implement and carry out the intent of this article, the Secretary of the Department of Commerce, at the direction and recommendation of the council, may propose rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code.

ARTICLE 2. COOPERATIVE ASSOCIATIONS.

§31G-2-1. Definitions.

As used in this article:

(1) 'Cooperative association' or 'association' means any corporation organized under this article. Each association shall also comply with the requisite business corporation provisions of chapter thirty-one-d or thirty-one-f of this code, or the nonprofit corporation provisions of chapter thirty-one-e of this code.

(2) 'Internet services' means providing access to, and presence on, the internet and other services. Data may be transmitted using several technologies, including dial-up, DSL, cable modem, wireless, or dedicated high-speed interconnects.

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

(4) 'Qualified person' means a person who is engaged in the use of internet services, either in an individual capacity or as a business.

(5) 'Qualified activity' means using internet services.

§31G-2-2. Who may organize.

Notwithstanding any provision of this code to the contrary, twenty or more qualified persons engaged in the use of internet services may form a cooperative association, with or without capital stock, under this article.

§31G-2-3. Legislative findings and purposes.

(a) It is the finding of the Legislature that:

(1) West Virginia's cities, towns, and other concentrated population areas, areas of the state, mostly rural, remain unserved or underserved by broadband access; and

(2) The lack of affordable, accessible broadband service in the underserved and unserved areas in this state necessitates consideration of alternative means and methods of providing internet services.

(b) It is the purpose of this article that individuals and businesses be able to form cooperative associations for the purpose of obtaining internet services within their respective regions and communities.

§31G-2-4. Powers.

(a) A cooperative association shall have the following powers:

(1) To engage in any qualified activity in connection with any internet service; or any activity in connection with the purchase, providing or use by its members of internet services; or in the financing, directly, through the association of any qualified activities. All transactions with nonmembers shall be on terms fixed by the association and nonmembers shall not otherwise participate in any benefits derived from such transactions;

(2) To borrow money without limitation as to amount of corporate indebtedness or liability, and to make advance payments and advances to members; to execute, issue, draw, make, accept, endorse and guarantee, without limitation, promissory notes, bills of exchange, drafts, warrants, certificates, mortgages, and any other form of obligation or negotiable or transferable bills of any kind; to become the surety, guarantor, maker, and/or endorser for accommodation or otherwise of bills, notes, securities and other evidences of debt of any association or person, anything in any other statutes or law of this state to the contrary notwithstanding;

(3) To act as the agent or representative of any member or members in any of the above-mentioned activities;

(4) To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership in, and to sell, transfer or pledge, or guarantee the payment of dividends or interest on, or the retirement or redemption of, shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the providing and marketing of any of the products handled by the association;

(5) To establish reserves and to invest the funds thereof in bonds or in such other property as may be provided in the bylaws;

(6) To buy, hold and exercise all privileges of ownership over real or personal property as may be necessary or convenient for the conduct and operation of any of the business of the association, or incidental thereto;

(7) To establish, secure, own and develop patents, trademarks and copyrights; and

(8) To do each and every thing necessary, suitable, or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the subjects herein enumerated, or conducive to or not contrary to the interest or benefit of the association; and to contract accordingly; and, in addition, to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged, and any other rights, powers, and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the purposes of this article.

§31G-2-5. Members.

(a) Under the terms and conditions prescribed in the bylaws adopted by it, a cooperative association may admit as members, or issue common stock to, only qualified persons.

(b) If a member of a nonstock association be other than a natural person, the member may be represented by an individual, associate, officer or manager or member thereof, duly authorized in writing.

(c) One association organized hereunder may become a member or stockholder of any other association or associations organized under this article or similar laws of any state.

§31G-2-6. Articles of incorporation.

Each association formed under this article shall prepare and file articles of incorporation, setting forth:

(1) The name of the association, which shall include the words 'cooperative', 'co-operative', or 'co-op', and words or abbreviations designating a corporation;

(2) The purposes for which it is formed;

(3) The place where its principal business will be transacted;

(4) The period, if any prescribed, for the duration of the corporation;

(5) The number of incorporators which is not less than twenty, the number of directors which is not less than twenty and any number in excess of those minimums, or it may be set forth that the number of directors will be fixed by the bylaws;

(6) If organized without capital stock, whether the property rights and interest of each member are equal or unequal; and if unequal, the general rules applicable to the classes of members whose property rights and interest are determined and fixed; and provision for the admission of new members who may be entitled to share in the property of the association with the old members, in accordance with the general rules. This provision of the articles of incorporation may not be altered, amended or repealed except by the written consent or vote of three fourths of the members;

(7) If organized with capital stock and authorized to issue only one class of stock, the total number of shares of stock which the association has authority to issue, including: (A) The par value of each of the shares; or (B) a statement that all the shares are to be without par value;

(8) If the association is authorized to issue more than one class of stock, the total number of shares of all classes of stock which the association may issue, including: (A) The number of shares of each class that have a par value and the par value of each share by class; (B) the number of shares that are to be without par value; and (C) a statement of the powers, preferences, rights, qualifications, limitations or restrictions that are permitted by section thirteen of this article in respect to a class of stock fixed by the articles of incorporation or by resolution of the board of directors;

(9) The articles shall be signed and filed in accordance with the provisions of the business or nonprofit corporation laws of this state; and

(10) The articles may also contain any provisions managing, defining, limiting or regulating the powers and affairs of the association, the directors, the stockholders or members of the association.

§31G-2-7. Amendments to articles of incorporation.

The articles of incorporation may be altered or amended at any regular meeting or any special meeting called for that purpose. An amendment must first be approved by two thirds of the directors and then adopted by a vote representing a majority of all the members of the association. Amendments to the articles of incorporation, when so adopted, shall be filed in accordance with the provisions of the general corporation laws of this state.

§31G-2-8. Bylaws.

Each association incorporated under this article, must, within thirty days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted by this article. A majority vote of the members or stockholders, or their written assent, is necessary to adopt such bylaws. Each association, under its bylaws, may provide for any or all of the following matters:

(1) The time, place and manner of calling and conducting its meetings;

(2) The number of stockholders or members constituting a quorum;

(3) The right of members or stockholders to vote by proxy or by mail or both; and the conditions, manner, form, and effect of such votes;

(4) The number of directors constituting a quorum; and, if authority therefor is given in the articles of incorporation, the total number of directors;

(5) The qualifications, compensation, duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof;

(6) Penalties for violation of the bylaws;

(7) The amount of entrance, organization and membership fees, if any; the manner and method of collecting the same; and the purposes for which they may be used;

(8) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each

member or stockholder for services rendered by the association to him or her and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign; and

(9) The number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members and of the shares of common stock; the conditions upon which and time when membership of any member shall cease; the automatic suspension of the rights of a member when he or she ceases to be eligible to membership in the association; the mode, manner and effect of the expulsion of a member; the manner of determining the value of a member's interest, and provision for its purchase by the association, at its option, upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his or her membership, or, at the option of the association, the purchase at a price fixed by conclusive appraisal by the board of directors, or at the election of the board, such property interests may be sold at public auction to the association itself, or to any person eligible to membership in such association and the proceeds of such sale paid over to the personal representative of such deceased member, or to the member withdrawing or expelled, as the case may be.

§31G-2-9. General and special meetings.

In its bylaws, each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time; and ten percent of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting: *Provided*, That the bylaws may require instead that such notice may be given as provided by this section, namely, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the principal place of business of the association is located.

§31G-2-10. Directors.

(a) The affairs of the association shall be managed by a board of not less than three directors, elected by the members or stockholders.

(b) The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors be elected either directly or by district delegates elected by the members in that district. The bylaws shall specify the number of directors to be elected by each district, the manner of reapportioning the directors and the method of redistricting the territory covered by the association. The bylaws may provide that primary elections shall be held in each district to elect the directors apportioned to the districts and that the results of all the primary elections may be ratified during the next regular meeting of the association or may be considered final.

(c) The bylaws may provide that one or more directors may be appointed by a public official, commission or by the other directors. These public directors shall represent the interest of the general public in the associations. The public directors need not be members or stockholders of the association, but shall have the same powers and rights as other directors. The directors shall not number more than one fifth of the entire number of directors.

(d) An association may provide a fair remuneration for the time actually spent by its officers and directors in its service and for the service of the members of its executive committee. No director, during the term of his or her office, shall be a party to a contract for profit with the association differing from the contractual terms accorded regular members or holders of common stock of the association.

(e) The bylaws may provide that no director, except the president and secretary, shall occupy a position in the association on regular salary or substantially full-time pay.

(f) The bylaws may provide for an executive committee and may allot to the committee all the functions and powers of the board of directors, subject to the general direction and control of the board.

(g) When a vacancy on the board of directors occurs other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, unless the bylaws provide for an election of directors by district. In that case the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy.

§31G-2-11. Officers.

The directors shall elect from their number a president and one or more vice presidents. They shall also elect a secretary and a treasurer, who need not be directors or members of the association; and they may combine the two latter offices and designate the combined office as secretary-treasurer; or unite both functions and titles in one person. The treasurer may be a bank or any depository, and, as such, shall not be considered an officer, but as a function of the board of directors. In such case, the secretary shall perform the usual accounting duties of the treasurer, except that the funds shall be deposited only as and where authorized by the board of directors.

§31G-2-12. Officers, employees and agents to be bonded.

Every officer, employee and agent handling funds or negotiable instruments or property of or for any association created hereunder shall be required to execute and deliver adequate bonds for the faithful performance of his or her duties and obligations.

§31G-2-13. Stock; membership certificate; voting; liability; limitations on transfer and ownership.

(a) When a member of an association established without capital stock has paid his or her membership fee in full, he or she shall receive a certificate of membership. An association shall have power to issue one or more classes of stock, or one or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value, with such voting powers, full or limited, or without voting powers and in such series, and with such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the articles of incorporation, or in any amendment thereto, or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation or of any amendment thereto.

(b) No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note; but such retention as security shall not affect the member's right to vote.

(c) No member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his or her membership fee or his or her subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

(d) An association in its bylaws may limit the amount of common stock which one member may own. No member or stockholder shall be entitled to more than one vote, regardless of the number of shares of common stock owned by him or her.

(e) Any association organized with stock under this article may issue preferred stock, with or without the right to vote. Such stock may be sold to any person, member or nonmember, and may be redeemable or retireable by the association on such terms and conditions as may be provided for by the articles of incorporation and printed on the face of the certificate. The bylaws shall prohibit the transfer of the common stock of the association to persons who are not qualified persons, or organizations that are not engaged in qualified activities handled by the association, or to persons or organizations that are not members of credit associations financing such products; and such restrictions shall be printed upon every certificate of stock subject thereto.

(f) Other kinds and classes of stock may be issued in compliance with the provisions of the articles of incorporation, the terms of the bylaws, or special resolutions of the board of directors.

(g) The association may, at any time, as specified in the bylaws, except when the debts of the association exceed fifty percent of the assets thereof, buy in or purchase its common stock at the book value thereof, as conclusively determined by the board of directors, and pay for it in cash within one year thereafter.

§31G-2-14. Removal of officer or director.

(a) Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by five percent of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association and, by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person or persons bringing the charges against him or her shall have the same opportunity.

(b) In case the bylaws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by twenty percent of the members residing in the district from which he or she was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director; and by a vote of the majority of the members of that district the director in question shall be removed from office.

§31G-2-15. Referendum.

Upon demand of one third of the entire board of directors, made immediately and so recorded, at the same meeting at which the original motion was passed, any matter of policy that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting; and a special meeting may be called for the purpose.

§31G-2-16. Marketing contract.

The association and its members may take and execute marketing contracts, requiring the members, for any period of time not over five years, to use, receive or provide all or any specified part of an internet service exclusively to or through the association, or any facilities to be created by the association. If they contract a sale to the association, it shall be conclusively held that title to the products, goods and services passes absolutely and unreservedly, except for recorded liens, to the association upon delivery, or at any other specified time if expressly and definitely agreed in such contract. The contract may provide, among other things, that the association may sell or resell the products, goods and services delivered by its members, with or without taking title thereto, and pay over to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest or dividends on stock, not exceeding eight percent per annum, and reserves for retiring the stock, if any; and any other proper reserves; or any other deductions.

§31G-2-17. Remedies for breach of contract.

The bylaws or the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him or her of any provision of the marketing contract regarding the sale or delivery or withholding of internet services, and may further provide that the member will pay all costs, premiums for bonds, expenses and fees, in case the association shall prevail in any action brought by it upon the contract; and any such provisions shall be valid and enforceable in the courts of this state; and such clauses providing for liquidated damages shall be enforceable as such and shall not be regarded as penalties.

In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association may be entitled to a temporary restraining order and preliminary injunction against the member.

In any action upon such marketing agreement, it shall be presumed as between the parties that the landowner, landlord or lessor claiming therein so to be is able to control the delivery of internet services produced on his or her land by tenants or others, whose tenancy or possession or work on such land or the terms of whose tenancy or possession or labor thereon were created or changed after execution by the landowner, landlord or lessor of such marketing agreement; and in such actions the foregoing remedies for nondelivery or breach shall lie and be enforceable against such landowner, landlord or lessor.

§31G-2-18. Purchasing property of other associations, persons, firms or corporations.

Whenever an association, organized under this article with preferred capital stock, shall purchase the stock of any property, or any interest in any property, or any person, firm or corporation or association, it may discharge the obligations so incurred, wholly or in part, by exchanging for the acquired interest shares of its preferred capital stock to an amount which at par value would equal the fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued.

§31G-2-19. Annual reports.

Each association formed under this article shall prepare an annual report on forms provided by and filed with the Secretary of State pursuant to the requirements of section two-a, article one, chapter fifty-nine of this code.

§31G-2-20. Conflicting laws not to apply.

Any provisions of law which are in conflict with this article shall be construed as not applying to the association herein provided for.

§31G-2-21. Interest in other corporations or associations.

An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engaged in qualified activities regarding internet services.

§31G-2-22. Contracts and agreements with other associations.

Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other cooperative corporation, association or associations, formed in this or in any other state, for the cooperative and more economical carrying on of its business or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using, or may separately employ and use, the same personnel, methods, means and agencies for carrying on and conducting their respective business.

§31G-2-23. Rights and remedies apply to similar associations of other states.

Any corporation or association heretofore or hereafter organized under generally similar laws of another state shall be allowed to carry on any proper activities, operations and functions in this state upon compliance with the general regulations applicable to foreign corporations desiring to do business in this state, and all contracts made by or with such associations, which could be made by any association incorporated hereunder, shall be legal and valid and enforceable in this state with all of the remedies set forth in this article.

§31G-2-24. Associations heretofore organized may adopt provisions of article.

Any corporation or association organized in this state under previously existing statutes may, by a majority vote of its stockholders or members, be brought under the provisions of this article by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors to the effect that the corporation or association has, by a majority vote of the stockholders or members, decided to accept the benefits and be bound by the provisions of this article and has authorized all changes accordingly. Articles of incorporation shall be filed as required in section six of this article, except that they shall be signed by the members of the then board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation.

Where any association may be incorporated under this article, all contracts made prior to the date of incorporation, by or on behalf of such association by the promoters thereof in anticipation of its becoming incorporated under the laws of this state, whether or not such contracts be made by or in

the name of some corporation organized elsewhere, and when they would have been valid if entered into subsequent to such date, shall be held valid as if made after such date.

§31G-2-25. Liability as to delivery of products in violation of marketing agreements.

Any person who solicits, persuades or permits any member of any association organized hereunder to breach his or her marketing contract with the association or one association with another, by accepting or receiving such member's products for sale or for auction or for display for sale, contrary to the terms of any marketing agreement of which such person has knowledge or notice, shall be liable to the association aggrieved in a civil suit for damages therefor. Courts of equity shall have jurisdiction to enjoin further breaches of such contract.

§31G-2-26. Associations to be deemed not in restraint of trade.

No association organized under this article and complying with the terms thereof shall be deemed to be a conspiracy or a combination in restraint of trade or an illegal monopoly or an attempt to lessen competition or to fix prices arbitrarily; nor shall the marketing contract and agreements between the association and its members or any agreements authorized in this article be considered illegal as such or in unlawful restraint of trade or as part of a conspiracy or combination to accomplish an improper or illegal purpose.

§31G-2-27. Application of business corporation laws; nonprofit corporation laws.

The provisions of the business corporation laws in chapter thirty-one-d or the nonprofit corporation laws in chapter thirty-one-e of this code and all powers and rights thereunder shall apply to the associations organized under this article and may be used by them, except when the provisions are in conflict with or inconsistent with the express provisions of this article.

ARTICLE 3. CONDUIT INSTALLATION; MICROTRENCHING.

§31G-3-1. Definitions.

'Microtrenching' means a technique of deploying cables, including specifically for broadband networks, using a cutting wheel to cut a trench with smaller dimensions than can be achieved with conventional trench digging equipment; with the trench dimensions being no greater than three inches in width, and a depth between one and two feet.

§31G-3-2. Microtrenching permitted; notification.

(a) A person may perform microtrenching, where such is feasible, to the extent allowed by a permit issued by the appropriate municipality, county or state agency. All microtrenching work performed must be in accordance with the National Electrical Safety Code and other generally accepted safety codes.

(b) A person must install conduit in a way that will readily permit another owner to add length to the microtrenching by connecting its own conduit to the first owner's conduit. Where an owner connects its own conduit to another owner's previously installed conduit, the owner must install conduit that has the same number of pathways or pipes as the previous owner's conduit.

(c) A person must install a vacant conduit of the same size as its own conduit when performing microtrenching operations. Other persons desiring use of conduit in the same area may make use of this vacant conduit upon application to the Broadband Enhancement Council.

(d) When applying for a permit a person must notify the appropriate permitting entity of the intended dates of the start and completion of microtrenching construction. Notification must be made on a form and in a format prescribed by the appropriate permitting entity. No fee shall be charged for such application, as the installation of additional vacant conduit under the provisions of this section shall function in lieu of a fee. The person shall submit the following documents to the appropriate permitting entity:

(1) Proof of insurance; or

(2) An indemnification agreement.

(e) Promptly after completion of microtrenching construction, but no longer than forty calendar days after issuance of the permit for microtrenching, the entity must file a document with the appropriate permitting entity containing the following information:

(1) An 'as-built' drawing of the conduit installed. The 'as-built' drawing will be treated as proprietary and confidential, to the extent permitted by law.

(2) A map showing the street location of the conduit including the side of the street the conduit is on, the beginning and ending points of the conduit, the number of ducts in the conduit, and the number of ducts of excess capacity in the conduit. The map must accurately reflect the addresses of buildings that are passed by the conduit.

ARTICLE 4. MAKE-READY POLE ACCESS.

§31G-4-1. Definitions.

As used in this article, the following terms are defined as follows:

(1) 'Attacher' means any person, corporation, or other entity, or the agents or contractors of such seeking to permanently or temporarily fasten or affix any type of equipment, antenna, line or facility of any kind to a utility pole in the right of way or its adjacent ground space.

(2) 'Attachment Application' means the application made by an Attacher to a Pole Owner for attachment of equipment, antenna, line or facility of any kind to a utility pole. It shall include:

(A) Proof of insurance; or

(B) An indemnification agreement prepared by the Pole Owner.

(3) 'Make Ready Costs' means the costs incurred by an Attacher associated with the transfer of the facilities, antenna, lines or equipment of a Pre-Existing Third Party User, undertaken by an Attacher to enable attachment to the utility pole or similar structure. Make-Ready Costs that are to be paid by an Attacher include, without limitation, all costs and expenses to relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be necessary to accommodate an Attacher's attachment.

(4) 'Pole Owner' means a person, corporation or entity having ownership of a pole or similar structure in the right of way to which utilities, including without limitation, electric and communications facilities, are located or may be located whether such ownership is in fee simple or by franchise.

(5) 'Pre-Existing Third Party User' means the owner of any currently operating facilities, antenna, lines or equipment on a pole or its adjacent ground space in the right of way.

§31G-4-2. Attachment to third party facilities.

(a) Upon approval of an Attachment Application, an Attacher may relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be necessary to accommodate an Attacher's attachment using Pole Owner approved contractors; provided, however, that an Attacher will not effectuate a relocation or alteration of a Pre-Existing Third Party User's facilities that causes or would reasonably be expected to cause a customer outage without first providing forty-five days prior written notice to the Pre-Existing Third Party User, in order to permit the Pre-Existing Third Party User to relocate its facilities on its own.

(b) In the event the Pre-Existing Third Party Users of such other facilities fail to transfer or rearrange their facilities within forty-five days from receipt of notice of relocation or alteration of a Pre-Existing Third Party User's facilities that causes or would reasonably be expected to cause a customer outage, an Attacher may undertake such work.

(c) Within thirty days of the completion of any relocation or alteration, an Attacher shall send notice of the move and as-built reports to the Pre-Existing Third Party User and the owner of all poles or other structures on which such relocations or alterations were made. The as-built reports shall include a unique field label identifier, and an address or coordinates.

(d) Upon receipt of the as-built reports, the Pre-Existing Third Party User and pole or structure owner(s) may conduct an inspection within fourteen days at an Attacher's expense. An Attacher shall pay the actual, reasonable, and documented expenses incurred by the Pre-Existing Third Party User and pole or structure owner for the inspection. If any such relocation or alteration results in the facilities of the Pre-Existing Third Party User on the pole or other structure failing to conform with the applicable safety Pole Owner's standards, the Pre-Existing Third Party User shall, within seven days of the inspection, notify an Attacher of such failure to conform.

(e) In a notice, the Pre-Existing Third Party User may elect to either:

(1) Perform the correction itself and bill the Attacher for the actual, reasonable and documented costs of the correction, or

(2) Instruct the Attacher to correct such conditions at Attacher's expense. Any post-inspection corrections performed by the Attacher must be completed within thirty days of such notification.

(f) As a condition of exercising the ability to relocate, rearrange, or alter a Pre-Existing Third Party User's facilities pursuant to this section, an Attacher shall indemnify, defend and hold harmless the owner or owners of all poles or other structures on which such relocation, rearrangement or alteration takes place, the affiliates of such owner or owners, and the officers, directors and employees of such owner or owners and their affiliates, each being deemed an Indemnatee, from and against all third party damage, loss, claim, demand, suit, liability, penalty or forfeiture of every kind and nature, including, but not limited to, costs and expenses of defending against the same, payment of any settlement or judgment therefor and reasonable attorney's fees, that are actually and reasonably incurred by an Indemnatee, by reason of any claim by an affected Pre-Existing Third Party User or any person or entity claiming through such Pre-Existing Third Party User arising from such relocation, rearrangement or alteration.

(g) All work performed must be in accordance with the National Electrical Safety Code and other generally accepted safety codes.

§31G-4-3. Exceptions.

(a) Notwithstanding any provision of this code to the contrary, the provisions of this article shall not apply to:

(1) Facilities located above the 'Communication Worker Safety Zone' as such term is defined in the National Electrical Safety Code; or

(2) Any electric supply facilities wherever located.

(b) This article does not authorize any activity requiring an electric supply outage.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 3093 – “A Bill to repeal §31-15C-1, §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-6, §31-15C-7, §31-15C-8, §31-15C-9, §31-15C-12 and §31-15C-13 of the Code of West Virginia, 1931, as amended; to amend and reenact §12-6C-11 of said code; to amend and reenact §31-15-8 of said code; and to amend said code by adding thereto a new chapter, designated §31G-1-1, §31G-1-2, §31G-1-3, §31G-1-4, §31G-1-5, §31G-1-6, §31G-1-7, §31G-1-8, §31G-1-9, §31G-1-10, §31G-1-11, §31G-1-12, §31G-1-13, §31G-1-14; §31G-2-1, §31G-2-2, §31G-2-3, §31G-2-4, §31G-2-5, §31G-2-6, §31G-2-7, §31G-2-8, §31G-2-9, §31G-2-10, §31G-2-11, §31G-2-12, §31G-2-13, §31G-2-14, §31G-2-15, §31G-2-16, §31G-2-17, §31G-2-18, §31G-2-19, §31G-2-20, §31G-2-21, §31G-2-22, §31G-2-23, §31G-2-24, §31G-2-25, §31G-2-26, §31G-2-27; §31G-3-1, §31G-3-2; §31G-4-1, §31G-4-2 and §31G-4-3, all relating to broadband services generally; requiring the Board of Treasury Investments make funds available to the West Virginia Economic Development Authority for the purpose of providing loan insurance for commercial loans used for the expansion of broadband service to unserved or underserved areas; establishing limits and conditions on the insuring of loans; establishing interest rates; establishing amortization periods; providing for security interests; providing for responsibilities of the West Virginia Economic Development Authority, the West Virginia Board of Treasury Investments and the Broadband Enhancement Council; providing that the members of the West Virginia Board of Treasury Investments do not have a fiduciary responsibility with regard to the loans; providing for notice for loan insurance; providing for hearings and appeal; establishing Broadband Enhancement and Expansion Policies; re-establishing and continuing the Broadband Enhancement Council; defining terms; revising council powers and duties; directing council to publish an annual assessment and map of broadband in the state; authorizing council to create an interactive map of broadband services; revising terms for retention of expert consultants; authorizing collection of data by council; authorizing creation of guidelines and recommendations to the Legislature for pilot project for municipalities and counties to form non-profit cooperative associations for internet services; authorizing creation of guidelines and recommendations to the Legislature for voluntary pipeline donation program to facilitate broadband services; authorizing creation of guidelines and recommendations to the Legislature for easement program to facilitate broadband services; authorizing council to seek, utilize and dispense non-state funding and grants; providing for legislative rule-making authority; authorizing formation of cooperative associations for internet services; providing for who may organize a cooperative association; defining terms; setting

forth legislative findings and purpose; establishing the powers of such associations; setting forth all conditions, rights and responsibilities of such cooperative associations; declaring that cooperative association not deemed a restraint in trade; providing for the application of corporation laws; providing for microtrenching; defining terms; providing for make-ready pole access; defining terms; setting forth procedure for attaching items to third-party facilities and poles; and providing for exceptions to make-ready pole access.”

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. 538**), and there were—yeas 96, nays 3, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Folk, Lewis and McGeehan.

Absent and Not Voting: Kessinger.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3093) 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 by the Senate in the amendment of the House of Delegates to the amendment of the Senate, and the passage, with further amendment, of

Com. Sub. for S. B. 240, Creating crime of nonconsensual distribution of sexual images.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page one, section twenty-eight-a, subsection (b), after the word “coerce”, by striking out the comma and the words “or profit from”.

The bill, as amended by the House and further amended by the Senate, was then put upon its passage.

On passage of the bill, the yeas and nays were taken (**Roll No. 539**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Bates and Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 240) passed.

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

Miscellaneous Business

The Speaker recognized the Clerk of the House, who presented service pins to the following Members:

5 Year Pins:

Ambler
Arvon
Butler
Cooper
Espinosa
Folk
Hamrick
Lane
Lynch
McGeehan
Sponaule
Westfall

15 Year Pins:

Hamilton
Hartman
Love
Sobonya

25 Year Pins:

Anderson
Pethel

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

Com. Sub. for H. B. 2329, Prohibiting the production, manufacture or possession of fentanyl.

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

Senators Weld, Maynard and Jeffries.

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 Sobonya, Hollen and R. Miller.

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 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

Com. Sub. for H. B. 2579, Increasing the penalties for transporting controlled substances.

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

Senators Weld, Maynard and Jeffries.

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 Sobonya, Hollen and R. Miller.

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 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

Com. Sub. for H. B. 2585, Creating felony crime of conducting financial transactions involving proceeds of criminal activity.

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

Senators Weld, Maynard and Jeffries.

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 Sobonya, Hollen and R. Miller.

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 agreed to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses, as to

S. B. 172, Eliminating salary for Water Development Authority board members.

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

Senators Blair, Smith and Woelfel.

A message from the Senate, by

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

S. B. 554, Relating to false swearing in legislative proceeding.

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

Senators Weld, Clements and Beach.

A message from the Senate, by

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

Com. Sub. for S. B. 224, Repealing requirement for employer's bond for wages and benefits.

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

Senators Swope, Karnes and Ojeda.

A message from, the Senate, by

The Clerk of the Senate requests the return of

Com. Sub. for S. B. 238, Increasing tax credits allowed for rehabilitation of certified historic structures.

At 2:42 p.m., on motion of Delegate Cowles, the House of Delegates recessed until 4:00 p.m.

* * * * *

Afternoon Session

* * * * *

-continued-

The House of Delegates was called to order by the Honorable Tim Armstead, Speaker.

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. 2002, Relating to parental notification of abortions performed on unemancipated minors.

Delegate Cowles moved that the House concur in the following amendment of the bill by the Senate:

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

“ARTICLE 2F. PARENTAL NOTIFICATION OF ABORTIONS PERFORMED ON UNEMANCIPATED MINORS.

§16-2F-1. Legislative findings and intent.

(a) The Legislature finds that immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences of their actions; that the medical, emotional and psychological consequences of abortion are serious and of indeterminate duration, particularly when the patient is immature; that in its current abortion policy as expressed in *Bellotti v. Baird*, 443 U. S. 622 (1979), and *H. L. v. Matheson*, 450 U. S. 398 (1981), and *Hodgson v. Minnesota*, 497 U.S. 417, (1990), the United States Supreme Court ~~clearly relies on physician’s commitment to consider all factors, physical and otherwise, before performing abortions on minors~~ held that notification of a parent with a judicial waiver procedure is Constitutional; that parents ordinarily possess information essential to a physician’s exercise of his or her best medical judgment concerning their child; and that parents who are aware that their minor daughter has had an abortion may better ensure that the minor receives adequate medical attention after her abortion.

(b) The Legislature further finds that parental consultation regarding abortion is usually desirable and in the best interests of the minor.

(c) The Legislature further finds ~~in accordance with the U. S. Supreme Court’s decision in *Bellotti v. Baird*, 443 U. S. 622 (1979), and *H. L. v. Matheson*, 450 U. S. 398 (1981),~~ that there exists important and compelling state interests:

(i) (1) In protecting minors against their own immaturity,

(ii) (2) In fostering the family structure and preserving it as a viable social unit, and

(iii) (3) In protecting the rights of parents to rear their own children in their own household.

(d) It is, therefore, the intent of the Legislature to further these important and compelling state interests by enacting this parental notice provision.

§16-2F-2. Definitions.

For purposes of this article, unless the context in which used clearly requires otherwise:

~~(1) ‘Minor’ means any person under the age of eighteen years who has not graduated from high school.~~

~~(2) ‘Unemancipated minor’ means any minor who is neither married nor who has been emancipated as pursuant to applicable federal law or as provided by section twenty-seven, article seven, chapter forty-nine of this code.~~

~~(3) ‘Actual notice’ means the giving of notice directly, in person or by telephone.~~

~~(4) 'Constructive notice' means the giving of notice by certified mail to the last known address of the parents or legal guardian, return receipt requested.~~

~~(5) 'Abortion' means the use of any instrument, medicine, drug or any other substance or device with intent to terminate the pregnancy of a female known to be pregnant and with intent to cause the expulsion of a fetus other than by live birth: *Provided*, That nothing in this article shall be construed so as to prevent the prescription, sale or transfer of intrauterine contraceptive devices or other contraceptive devices or other generally medically accepted contraceptive devices, instruments, medicines or drugs for a female who is not known to be pregnant and for whom such contraceptive devices, instruments, medicines or drugs were prescribed by a physician solely for contraceptive purposes and not for the purpose of inducing or causing the termination of a known pregnancy.~~

As used in this article:

(1) 'Abortion' means the use of any instrument, medicine, drug or any other substance or device with intent to terminate the pregnancy of a female known to be pregnant and with intent to cause the expulsion of a fetus other than by live birth. This article does not prevent the prescription, sale or transfer of intrauterine contraceptive devices, other contraceptive devices or other generally medically accepted contraceptive devices, instruments, medicines or drugs for a female who is not known to be pregnant and for whom the contraceptive devices, instruments, medicines or drugs were prescribed by a physician solely for contraceptive purposes and not for the purpose of inducing or causing the termination of a known pregnancy.

(2) 'Medical emergency' means the same as that term is defined in section two, article two-m of this chapter.

(3) 'Secretary' means the Secretary of the West Virginia Department of Health and Human Resources.

(4) 'Unemancipated minor' means any person less than eighteen years of age who is not, or has not been, married, who is under the care, custody and control of the person's parent or parents, guardian or court of competent jurisdiction pursuant to applicable federal law or as provided in section twenty-seven, article seven, chapter forty-nine of this code.

§16-2F-3. Parental notification required for abortions performed on unemancipated minors.

~~(a) No physician may perform an abortion upon an unemancipated minor unless such physician has given or caused to be given at least twenty-four hours actual notice to one of the parents or to the legal guardian of the pregnant minor of his intention to perform the abortion, or, if the parent or guardian cannot be found and notified after a reasonable effort to do so, without first having given at least forty-eight hours constructive notice computed from the time of mailing to the parent or to the legal guardian of the minor: *Provided*, That prior to giving the notification required by this section, the physician shall advise the unemancipated minor of the right of petition to the circuit court for waiver of notification: *Provided, however*, That any such notification may be waived by a duly acknowledged writing signed by a parent or the guardian of the minor.~~

~~(b) Upon notification being given to any parent or to the legal guardian of such pregnant minor, the physician shall refer such pregnant minor to a counselor or caseworker of any church or school or of the department of human services or of any other comparable agency for the purpose of arranging or accompanying such pregnant minor in consultation with her parents. Such counselor~~

~~shall thereafter be authorized to monitor the circumstances and the continued relationship of and between such minor and her parents.~~

~~(c) Parental notification required by subsection (a) of this section may be waived by a physician, other than the physician who is to perform the abortion, if such other physician finds that the minor is mature enough to make the abortion decision independently or that notification would not be in the minor's best interest. *Provided*, That such The other physician shall not be associated professionally or financially with the physician proposing to perform the abortion.~~

(a) A physician may not perform an abortion upon an unemancipated minor until notice of the pending abortion as required by this section is complete.

(b) A physician or his or her agent may personally give notice directly, in person, by telephone or by letter to the parent, the guardian or conservator of the unemancipated minor at their usual place of residence and shall be delivered personally by the physician or his or her agent. Upon delivery of the notice, forty-eight hours shall pass until the abortion may be performed.

(c) A physician or his or her agent may provide notice by certified mail addressed to the parent, the guardian or conservator of the unemancipated minor at their usual place of residence, return receipt requested. The delivery shall be sent restricted delivery assuring that the letter is delivered only to the addressee. Time of delivery shall be deemed to occur at twelve o'clock noon on the next day on which regular mail delivery takes place unless upon delivery of the notice, forty-eight hours shall pass until the abortion may be performed.

(d) Notice may be waived if the person entitled to notice certifies in writing that he or she has been notified.

§16-2F-4. Process to obtain waiver of notification.

~~(a) A minor~~ An unemancipated minor who objects to ~~such the~~ notice being given to her parent or legal guardian may petition for a waiver of ~~such the~~ notice to the circuit court of the county in which the ~~minor~~ unemancipated minor resides or in which the abortion is to be performed, or to the judge of either of such courts. ~~Such minor may so petition and proceed in her own right or, at her option, by a next friend.~~

~~(b) Such The~~ petition need not be made in any specific form and shall be sufficient if it fairly sets forth the facts and circumstances of the matter, but shall contain the following information:

(i) The age of the ~~petitioner~~ unemancipated minor and her educational level;

(ii) The county and state in which she resides; and

(iii) A brief statement of ~~petitioner's~~ unemancipated minor's reason or reasons for the desired waiver of notification of the parent or guardian of such ~~minor~~ unemancipated minor.

No such petition shall be dismissed nor shall any hearing thereon be refused because of any defect in the form of the petition.

~~(c) Upon the effective date of this article or as soon thereafter as may be, The Attorney General shall prepare suggested form petitions and accompanying instructions and shall make the same available to the several clerks of the circuit courts. Such The clerks shall see that a sufficient number of such suggested~~ make the form petitions and instructions ~~are~~ available in the clerks office. ~~for the use of any person desiring to use the same for the purposes of this section.~~

(d) ~~All~~ The proceedings held pursuant to this article shall be confidential and the court shall conduct ~~all such~~ the proceedings in camera. The court shall inform the ~~minor petitioner unemancipated minor~~ of her right to be represented by counsel. ~~and that~~ If ~~she~~ the unemancipated minor is without the requisite funds to retain the services of an attorney, ~~that~~ the court will appoint an attorney to represent ~~her~~ the unemancipated minor's interest in the matter. If the ~~minor petitioner unemancipated minor~~ desires the services of an attorney, an attorney shall be appointed to represent ~~such~~ the minor petitioner unemancipated minor, if ~~she~~ the unemancipated minor advises the court under oath or affidavit that ~~she~~ the unemancipated minor is financially unable to retain counsel. ~~Any~~ An attorney appointed to represent ~~such~~ the minor petitioner unemancipated minor shall be appointed and paid for his ~~or her~~ services pursuant to the provisions of article twenty-one, chapter twenty-nine of this code. ~~Provided, That~~ The pay to ~~any such attorney pursuant to such appointment~~ shall not exceed the sum of \$100.

(e) The court shall conduct a hearing upon the petition without delay, but ~~in no event shall the delay~~ may not exceed the next succeeding judicial day. ~~and~~ The court shall render its decision immediately upon its submission and, ~~in any event, an order reflecting the findings of fact and conclusions of law reached by the court and its judgement shall be endorsed by the judge thereof~~ its written order not later than twenty-four hours following such submission and shall be forthwith entered ~~of~~ in the record by the clerk of the court. All testimony, documents, and other evidence, presented to ~~the court, as well as the petition, and any orders entered thereon and all records of whatsoever nature and kind~~ relating to the matter shall be sealed by the clerk and shall not be opened to any person except upon order of the court ~~and, then, only upon a showing of good cause. being shown therefor.~~ A separate order book for the purposes of this article shall be maintained by ~~such~~ the clerk and shall ~~likewise~~ be sealed and not open to inspection by any person save upon order of the court for good cause shown.

(f) Notice as required by section three of this article shall be ordered waived by the court if the court finds either:

(1) That the ~~minor petitioner unemancipated minor~~ is mature and well informed sufficiently to make the decision to proceed with the abortion independently and without the notification or involvement of her parent or legal guardian; or

(2) That notification to the person or persons to whom ~~such~~ the notification would otherwise be required would not be in the best interest of the ~~minor petitioner unemancipated minor~~.

~~(g) If or when the circuit court, or the judge thereof, shall refuse to order the waiver of the notification required by section three of this article, a copy of the petition and all orders entered in the matter and all other documents and papers submitted to the circuit court, may be presented to the Supreme Court of Appeals, or to any justice thereof if such court then be in vacation, and such court or justice if deemed proper, may thereupon order the waiver of notification otherwise required by section three of this article. The Supreme Court of Appeals or justice thereof shall hear and decide the matter without delay and shall enter such orders as such court or justice may deem appropriate.~~

~~(h) If either the circuit court or the Supreme Court of Appeals, or any judge or justice thereof if either of such courts be then in vacation, shall order a waiver of the notification required by section three of this article, any physician to whom a certified copy of said order shall be presented may proceed to perform the abortion to the same extent as if such physician were in compliance with the provisions of said section three and, notwithstanding the fact that no notification is given to either the parent or legal guardian of any such unemancipated minor, any such physician shall not be subject to the penalty provisions which may be prescribed by this article for such failure of notification.~~

(g) A confidential appeal shall be available to any unemancipated minor to whom a court denies an order authorizing an abortion without notification. An order authorizing an abortion without notification may not be appealed. Access to the trial court and the Supreme Court of Appeals shall be given to an unemancipated minor.

~~(i) (h) No~~ Filing fees ~~may be~~ are not required of any unemancipated minor who avails herself of any of the procedures provided by this section.

§16-2F-5. Emergency exception from notification requirements.

(a) The notification requirements of section three of this article do not apply where the attending physician certifies that there is an emergency a need for an abortion to be performed if the continuation of the pregnancy constitutes an immediate threat and grave risk to the life or health of the pregnant minor and the attending physician so certifies in writing setting forth the nature of such threat or risk and the consequences which may be attendant to the continuation of the pregnancy due to a medical emergency. Such writing A description of the medical emergency shall be maintained with the other unemancipated minor's medical records. relating to such minor which are maintained. by the physician and the facility at which such abortion is performed.

(b) If the physician who is to perform the abortion concludes under subsection (a) of this section that a medical emergency exists and that there is insufficient time to provide the notice required by section three of this article, the physician shall make a reasonable effort to inform, in person or by telephone, the parent, managing conservator, or guardian of the unemancipated minor within 24 hours after the time a medical emergency abortion is performed on the minor of:

(1) The performance of the abortion; and

(2) The basis for the physician's determination that a medical emergency existed that required the performance of a medical emergency abortion without fulfilling the requirements of section three.

(c) A physician who performs an abortion under the circumstances described in subsection (a) of this section shall, not later than 48 hours after the abortion is performed, send a written notice that a medical emergency occurred and that the parent, managing conservator, or guardian may contact the physician for more information and medical records, to the last known address of the parent, managing conservator, or guardian by certified mail, restricted delivery, return receipt requested. The physician may rely on last known address information if a reasonable and prudent person, under similar circumstances, would rely on the information as sufficient evidence that the parent, managing conservator, or guardian resides at that address. The physician shall keep in the minor's medical record:

(1) The return receipt from the written notice; or

(2) If the notice was returned as undeliverable, the notice.

(d) A physician who performs an abortion on an unemancipated minor during a medical emergency as described in subsection (a) of this section shall execute for inclusion in the medical record of the minor an affidavit that explains the specific medical emergency that necessitated the immediate abortion.

§16-2F-6. Reporting requirements for physicians.

(a) Any A physician performing an abortion upon an unemancipated minor shall provide the department of health secretary a written report of the procedure within thirty days after having

performed the abortion. ~~The department of health shall provide reporting forms for this purpose to all physicians and public health facilities required to be licensed pursuant to article five-b of this chapter. The following information, in addition to any other information which may be required by the department of health secretary, regarding the minor an unemancipated minor receiving the abortion shall be included in ~~such~~ the reporting form:~~

- (1) Age;
- (2) Educational level;
- (3) Previous pregnancies;
- (4) Previous live births;
- (5) Previous abortions;
- (6) Complications, if any, of the abortion being reported;
- (7) Reason for waiver of notification, ~~of the minor's parent or guardian~~ if such notice was waived; and
- (8) The city and county in which the abortion was performed.

~~(b) Any such~~ The report shall not contain the name, address or other information by which the minor unemancipated minor receiving the abortion may be identified.

§16-2F-8. Penalties.

~~Any person who knowingly performs an abortion upon an unemancipated minor in violation of this article or who knowingly fails to conform to any requirement of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000 or imprisoned in the county jail not more than thirty days, or both fined and imprisoned.~~

(a) Any physician or other licensed medical practitioner who intentionally or recklessly performs or induces an abortion in violation of this article is considered to have acted outside the scope of practice permitted by law or otherwise in breach of the standard of care owed to patients, and is subject to discipline from the applicable licensure board for that conduct, including, but not limited to, loss of professional license to practice.

(b) A person, not subject to subsection (a) of this section, who intentionally or recklessly performs or induces an abortion in violation of this article is considered to have engaged in the unauthorized practice of medicine in violation of section thirteen, article three, chapter thirty of this code, and upon conviction, subject to the penalties contained in that section.

(c) In addition to the penalties set forth in subsections (a) and (b) of this section, a patient may seek any remedy otherwise available to such patient by applicable law.

(d) No penalty may be assessed against any patient upon whom an abortion is performed or induced or attempted to be performed or induced."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2002 – “A Bill to amend and reenact §16-2F-1, §16-2F-2, §16-2F-3, §16-2F-4, §16-2F-5, §16-2F-6 and §16-2F-8 of the Code of West Virginia, 1931, as amended, all relating to parental notification of abortions performed on unemancipated minors; setting out legislative findings; defining terms; clarifying parental notification requirements prior to performing an abortion on an unemancipated minor; modifying waiver language; providing exceptions; providing a judicial process to not permit parental notification; requiring parental notice following abortion due to medical emergency; requiring reporting; providing for disciplinary actions; and modifying penalties.”

On the motion to concur, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered they were taken (**Roll No. 540**), and there were—yeas 75, nays 23, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Atkinson, Baldwin, Barrett, Brewer, Caputo, Diserio, Ellington, E. Evans, Fleischauer, Fluharty, Hornbuckle, Longstreth, Love, Miley, R. Miller, Pethtel, Pushkin, Pyles, Robinson, Rowe, Shott, Storch and Ward.

Absent and Not Voting: Kessinger and Lynch.

So, a majority of the members present and voting having voted in the affirmative, the House concurred in the Senate 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. 541**), and there were—yeas 82, nays 17, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Baldwin, Barrett, Caputo, Diserio, Ellington, E. Evans, Fleischauer, Hornbuckle, Longstreth, Love, Miley, Pethtel, Pushkin, Pyles, Robinson, Rowe and Shott.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2002) 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. 2711, Abolishing regional educational service agencies and providing for the transfer of property and records.

Delegate Cowles moved that the House of Delegates concur in the following amendment of the bill by the Senate, with further amendment:

On page nine, after the article heading, by inserting the following:

“§18-2E-1a. Standards, Assessment assessment and accountability programs; duties of the state board.

(a) ~~In order to further the purpose of this article, on or before the first day of January, one thousand nine hundred ninety-nine, Prior to adoption or revision of academic standards in mathematics, English language arts, science and social studies, the state board shall develop and recommend to the constructively engage with the legislative oversight commission on education accountability as outlined in subsection (b). Prior to adoption of a new statewide summative assessment, the state board shall constructively engage with the legislative oversight commission on education accountability on the an assessment program it intends to adopt to measure the progress of public school students in attaining a high quality education. In addition, to further the purposes of this article, on or before the first day of January, one thousand nine hundred ninety-nine, the~~ Prior to the full implementation of a new accountability system, state board shall develop and recommend to the legislative oversight commission on education accountability an accountability program to help ensure a thorough and efficient system of schools. In developing the standards, assessment program and the accountability program, the state board shall take into consideration recommendations arising from any legislative interim study undertaken at the direction of the joint committee on government and finance and also shall take into consideration any recommendations made by the legislative oversight commission on education accountability.

(b) As part of their on-going responsibility for developing and implementing a program of standards, assessments and a program of accountability, the state board ~~shall perform the following functions:~~

(1) Is prohibited from implementing the Common Core academic standards;

(2) Shall allow West Virginia educators the opportunity to participate in the development of the academic standards;

(3) Shall provide by rule for a cyclical review, by West Virginia educators, of any academic standards that are proposed by the state board;

~~(2) Review~~ (4) Shall review assessment tools, including tests of student performance and measures of school and school system performance, and determine when any improvements or additions are necessary;

~~(3) Consider~~ (5) Shall consider multiple assessments, including, but not limited to, a state testing program developed in conjunction with the state’s professional educators with assistance from such knowledgeable consultants as may be necessary, which may include criterion referenced tests;

(6) Is prohibited from adopting the Smarter Balanced Assessment system or the PARCC assessment system as the statewide summative assessment;

~~(4) Review~~ (7) Shall review all accountability measures, such as the accreditation and personnel evaluation systems and consider any improvements or additions deemed necessary; and

~~(5) Ensure~~ (8) Shall ensure that all statewide assessments of student performance are secure.

(c) The state board shall not adopt any national or regional testing program tied to federal funding, or national or regional academic standards tied to federal funding, without oversight by the legislative oversight commission on education accountability.

On page nine, section five, line nineteen, after the word "Legislature", by inserting the words "as provided in section one, article two-h of this chapter".

On page eleven, section five, line sixty-nine, by striking out the word "Curriculum" and inserting in lieu thereof the words "Academic standards".

On page thirteen, section five, line one hundred one, by striking out the word "nine" and inserting in lieu thereof the word "eight".

On page thirteen, section five, line one hundred one, by striking out the word "ten" and inserting in lieu thereof the word "nine".

On page thirteen, section five, lines one hundred five through one hundred nine, by striking out all of subdivision (3) and inserting in lieu thereof a new subdivision (3), to read as follows:

"(3) In accordance with articles two and two-e, chapter eighteen of this code, the state board shall review or develop, and adopt a college and career readiness assessment to be administered in grade eleven: *Provided*, That the adopted college and career readiness assessment administered in grade eleven counts toward the statewide student assessment and must be used by a significant number of regionally accredited higher education institutions for determining college admissions."

On page thirteen, section five, line one hundred twenty-two, by striking out the word "and".

On page fourteen, section five, line one hundred twenty-five, by changing the period to a semicolon and adding the word "and".

On page fourteen, section five, after line one hundred twenty-five, by inserting four new subdivisions, designated subdivisions (7), (8), (9) and (10), to read as follows:

"(7) The comprehensive statewide student assessment adopted prior to the testing window of the 2017-2018 school year shall continue to be used for at least a total of four consecutive years;

(8) No summative assessment approved by the state board may take more than two percent of a student's instructional time;

(9) No student may be required to complete a greater number of summative assessments than is required by the Every Student Succeeds Act except as otherwise required by this subsection; and

(10) Collection of personal data as part of the assessment process except for what is necessary for the student's instruction, academic and college and career search needs is prohibited."

On page twenty-nine, section five, line five hundred eight, by striking out the words "Providing or recommending to" and inserting in lieu thereof the word "Recommending".

On page twenty-nine, section five, line five hundred thirteen, by striking out the words "Allocating funds" and inserting in lieu thereof the words "Directing educational expertise and support services".

On pages forty through forty-six, by striking out all of section thirteen-c and inserting in lieu thereof a new section thirteen-c, to read as follows:

“§18-5-13c. Educational services cooperatives; purpose; establishment; governance; authorized functions and services.

(a) Pursuant to subsection (g), section thirteen of this article, a county board is authorized to enter into a cooperative agreement with one or more other county boards to establish educational services cooperatives which shall serve as regional units to provide for high quality, cost effective lifelong education programs and services to students, schools, school systems, and communities in accordance with this section. Each educational services cooperative may serve as a regional public multi-service agency to develop, manage, and provide such services or programs as determined by its governing council and as provided in this section or otherwise provided in this code. All references in this code to regional education service agencies or RESA’s mean an educational services cooperative as authorized under this section.

(b) The regional education service agencies previously established by section twenty-six, article two of this chapter and W. Va. 126 C. S. R. 72, filed October 15, 2015, and effective November 16, 2015, shall remain and may continue to operate in accordance with said section and rule unless and until modified by a cooperative agreement entered into by county boards within the boundaries of the agency or dissolved by said county boards: *Provided*, That on July 1, 2018, the regional education service agencies as provided under prior provisions of section twenty-six, article two of this chapter are dissolved. If a regional education service agency is reconfigured pursuant to a cooperative agreement or is dissolved, all property, equipment and records held by the regional education service agency necessary to effectuate the purposes of this section shall be transferred or liquidated and disbursed in accordance with the following priority order: (1) To any successor educational services cooperative substantially covering the same geographical area; (2) to the county boards who were members of the regional education service agency as agreed upon by those counties; or (3) to the state board or to other appropriate entities as provided by law.

(c) An educational services cooperative shall be under the direction and control of a governing council consisting of the following members:

(1) The county superintendent of each county participating in the cooperative agreement;

(2) A member of the board of education from each county participating in the cooperative agreement selected by the county board of education as provided in the bylaws of the governing council of the educational services cooperative; and

(3) The following representatives, if any, to be selected by the educational services cooperative administrator with the consent of the governing council:

(A) Representatives of institutions of higher education and community and technical colleges serving the geographical area covered by the educational services cooperative;

(B) One non-superintendent chief instructional leader employed by a member county;

(C) One school principal employed by a member county;

(D) One teacher employed by a member county; and

(E) Additional members representing business and industry, or other appropriate entities, as the governing council determines fit to meet its responsibilities.

(d) The governing council of an educational services cooperative:

(1) Shall adopt bylaws concerning the appointment and terms of its members, including the authorization of designees by its members, the selection of officers and their terms, the filling of vacancies, the appointment of task forces and study groups, the evaluation of the executive director and staff and any other provisions necessary for the operation of the educational services cooperative. A quorum for governing council meetings shall be a simple majority of the number of members of each governing council;

(2) Shall appoint an individual to serve as the educational services cooperative administrator who shall serve at the will and pleasure of the governing council and shall implement the policies of the governing council;

(3) May employ regular full-time and part-time staff, as necessary, after a majority of the members of a governing council, by vote, verify that such employment is necessary for effective provision of services and to perform services or other projects that may require staff and support services for effective implementation. Staff who are hired into a position that requires a specified certification must maintain the certification for the duration of employment. The governing council is the sole employer of the educational services cooperative's personnel it employs and shall be responsible for any benefit and liability programs necessitated by such employment. Employees of the educational services cooperative are considered state employees for the purposes of participation in the state's public employees' insurance and retirement programs. A recipient of personnel services from the educational services cooperative is not deemed an employer because of the exercise of supervision or control over any personnel services provided;

(4) May purchase, hold, encumber and dispose of real property, in the name of the educational services cooperative, for use as its office or for any educational service provided by the educational services cooperative if a resolution to do so is adopted by a two-thirds vote of the members of the governing council and then approved by three-fourths of the county boards in the educational services cooperative by majority vote of each county board;

(5) Shall operate as Local Educational Agencies (LEA's) for financial purposes, including grants and cooperative purchasing, and collectively as essential agencies responsible for performing service functions to the total community. An educational services cooperative is eligible as an LEA to participate in partnership with or on behalf of any county school system or school in those programs that will accomplish implementation of the strategic plan and/or state education initiative of the system or school, or to further statutory priorities consistent with educational services cooperative operations;

(6) May receive, expend and disburse funds from the state and federal governments, from member counties, or from gifts and grants and may contract with county boards of education, the West Virginia Department of Education, institutions of higher education, persons, companies, or other agencies to implement programs and services at the direction of the council. The state board, department of education, or any member of a county board may request implementation of programs and services by the educational services cooperative. An educational services cooperative may also receive funds from profit-generating enterprises, the funds of which will contribute to the educational services cooperative initiatives. Each educational services cooperative is encouraged to partner with member school systems, particularly those designated as low-performing, and other organizations as appropriate to attract and leverage resources available from federal programs to maximize its capacity for meeting the needs of member schools and school systems. Educational services cooperatives are recognized as eligible LEA's for the purposes of applying, on behalf of school systems, for grant funds consistent with performing regional services and functions and/or supportive of education initiatives of the educational services cooperative;

(7) Upon the request of one or more county boards of education, or by the state board as permitted or contracted, and if directed by law, an educational services cooperative may assume responsibility for one or more functions otherwise performed by one or more county boards of education;

(8) May offer technical assistance, including targeted comprehensive staff development services, or other technical assistance to any member school or school system, and give priority to those schools and school systems that are found to be out of compliance with a state law or federal law;

(9) May serve as repositories of research-based teaching and learning practices, and shall use technology, particularly web-based technology, to ensure maximum access to such practices by public schools in the region and state; and

(10) Shall develop and/or implement any other programs or services as directed by law or the governing council, or requested by individual member counties or groups of member counties subject to available funds. The Legislature expects that the assistance and programs developed and/or implemented by the educational services cooperatives may differ among the schools, counties and educational services cooperatives.

(e) The administrator of each educational services cooperative shall submit annually a plan to the governing council that identifies the programs and services which are suggested for implementation by the educational services cooperative during the following year. The plan shall contain components of long-range planning determined by the governing council. These programs and services may include, but are not limited to, the following areas:

(1) Administrative services;

(2) Curriculum development;

(3) Data processing;

(4) Distance learning and other telecommunication services;

(5) Evaluation and research;

(6) Staff development;

(7) Media and technology centers;

(8) Publication and dissemination of materials;

(9) Pupil personnel services;

(10) Planning;

(11) Secondary, post-secondary, community, adult, and adult vocational education;

(12) Teaching and learning services, including services for students with special talents and special needs;

(13) Employee personnel and employment services;

(14) Vocational rehabilitation;

(15) Health, diagnostic, and child development services and centers;

(16) Leadership or direction in early childhood and family education;

(17) Community services;

(18) Fiscal services and risk management programs;

(19) Legal services;

(20) Technology planning, training, and support services;

(21) Health and safety services;

(22) Student academic challenges;

(23) Cooperative purchasing services; and

(24) Other programs and services as may be provided pursuant to other provisions of this code.

(g) The educational services cooperative administrator, with advice and assistance of the governing council, may select as its fiscal agent one of the county boards of education comprising the educational services cooperative. The county board so selected may maintain a separate bank account or accounts for the receipt and disbursement of all educational services cooperative funds and perform the accounting functions specified in the policies adopted by the state board. A county board of education serving as a fiscal agent may not initiate action, direct the programs or substitute its judgment for that of the educational services cooperative administrator as advised by the governing council. The county board of education may reject an action of the educational services cooperative administrator if sufficient funds are not available, or if it perceives a legal conflict. The educational services cooperative administrator shall make arrangements for an annual audit to be conducted in accordance with the requirements of the OMB Uniform Guidance (2 C. F. R. 200) and the cost of the audit shall be incurred by the educational services cooperative. Prior to making those arrangements, the educational services cooperative administrator must coordinate with the respective fiscal agent to ensure the audit addresses all applicable issues.

(g) Notwithstanding any other provision of this code to the contrary, employees of educational services cooperatives shall be reimbursed for travel, meals and lodging at the same rate as state employees under the travel management office of the Department of Administration.

(h) Notwithstanding any other provision of this code to the contrary, county board members serving on governing councils of educational services cooperatives may receive compensation at a rate not to exceed \$100 per meeting attended, not to exceed fifteen meetings per year. County board members serving on governing councils may be reimbursed for travel at the same rate as state employees under the rules of the travel management office of the Department of Administration. A county board member may not be an employee of an educational services cooperative."

On pages forty-six through fifty-one, by striking out all of section forty-five and inserting in lieu thereof a new section forty-five, to read as follows:

“§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 a 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) One day to be designated by the county board to be used by the employees for preparation for opening school and one day to be designated by the county board to be used by the employees for preparation for closing school: *Provided*, That the school preparation days may be used for the purposes set forth in paragraph (E) of this subdivision at the teacher’s discretion; and

~~(D)~~ (E) 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)~~ (ii) Professional development;

~~(iv)~~ (iii) Teacher-pupil-parent conferences;

~~(v)~~ (iv) Professional meetings;

~~(vi)~~ (v) Making up days when instruction was scheduled but not conducted; and

~~(vii)~~ (vi) At least ~~four~~ six two-hour blocks of time for faculty senate meetings with ~~each a~~ at least one two-hour block of time scheduled in the first month of the employment term, at least one two-hour block of time scheduled in the last month of the employment term and once at least every forty-five instructional days at least one two-hour block of time scheduled in each of the months of October, December, February and April; 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 late arrivals and early dismissals first. Any remaining minutes accrued may be used for instructional minutes or days lost due to inclement weather or emergencies.

(e) If it is not possible to complete one hundred eighty ~~separate~~ instructional days with the current school calendar, 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;

(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 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 chapter eighteen, 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 use of reimagining student instructional days to achieve the one hundred eighty instructional day requirement is strongly encouraged in order to minimize scheduling instructional days too early or late in the school year.

~~(p)~~ (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 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.~~

On page fifty-one, after line one hundred twenty-four, by inserting the following:

“ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

(a) There is established at every public school in this state a faculty senate which is comprised of all permanent, full-time professional educators employed at the school who shall all be voting members. ‘Professional educators’, as used in this section, means ‘professional educators’ as defined in chapter eighteen-a of this code. A quorum of more than one half of the voting members of

the faculty shall be present at any meeting of the faculty senate at which official business is conducted. Prior to the beginning of the instructional term each year, but within the employment term, the principal shall convene a meeting of the faculty senate to elect a chair, vice chair and secretary and discuss matters relevant to the beginning of the school year. The vice chair shall preside at meetings when the chair is absent. Meetings of the faculty senate shall be held during the times provided in accordance with subdivision (12), subsection (b) of this section as determined by the faculty senate. Emergency meetings may be held during noninstructional time at the call of the chair or a majority of the voting members by petition submitted to the chair and vice chair. An agenda of matters to be considered at a scheduled meeting of the faculty senate shall be available to the members at least two employment days prior to the meeting. For emergency meetings the agenda shall be available as soon as possible prior to the meeting. The chair of the faculty senate may appoint such committees as may be desirable to study and submit recommendations to the full faculty senate, but the acts of the faculty senate shall be voted upon by the full body.

(b) In addition to any other powers and duties conferred by law, or authorized by policies adopted by the state or county board or bylaws which may be adopted by the faculty senate not inconsistent with law, the powers and duties listed in this subsection are specifically reserved for the faculty senate. The intent of these provisions is neither to restrict nor to require the activities of every faculty senate to the enumerated items except as otherwise stated. Each faculty senate shall organize its activities as it considers most effective and efficient based on school size, departmental structure and other relevant factors.

(1) Each faculty senate shall control funds allocated to the school from legislative appropriations pursuant to section nine, article nine-a of this chapter. From those funds, each classroom teacher and librarian shall be allotted \$100 for expenditure during the instructional year for academic materials, supplies or equipment which, in the judgment of the teacher or librarian, will assist him or her in providing instruction in his or her assigned academic subjects or shall be returned to the faculty senate: *Provided*, That nothing contained herein prohibits the funds from being used for programs and materials that, in the opinion of the teacher, enhance student behavior, increase academic achievement, improve self-esteem and address the problems of students at risk. The remainder of funds shall be expended for academic materials, supplies or equipment in accordance with a budget approved by the faculty senate. Notwithstanding any other provisions of the law to the contrary, funds not expended in one school year are available for expenditure in the next school year: *Provided, however*, That the amount of county funds budgeted in a fiscal year may not be reduced throughout the year as a result of the faculty appropriations in the same fiscal year for such materials, supplies and equipment. Accounts shall be maintained of the allocations and expenditures of such funds for the purpose of financial audit. Academic materials, supplies or equipment shall be interpreted broadly, but does not include materials, supplies or equipment which will be used in or connected with interscholastic athletic events.

(2) A faculty senate may establish a process for members to interview or otherwise obtain information regarding applicants for classroom teaching vacancies that will enable the faculty senate to submit recommendations regarding employment to the principal. To facilitate the establishment of a process that is timely, effective, consistent among schools and counties, and designed to avoid litigation or grievance, the state board shall promulgate a rule pursuant to article three-b, chapter twenty-nine-a of this code to implement the provisions of this subdivision. The rule may include the following:

(A) A process or alternative processes that a faculty senate may adopt;

(B) If determined necessary, a requirement and procedure for training for principals and faculty senate members or their designees who may participate in interviews and provisions that may provide

for the compensation based on the appropriate daily rate of a classroom teacher who directly participates in the training for periods beyond his or her individual contract;

(C) Time lines that will assure the timely completion of the recommendation or the forfeiture of the right to make a recommendation upon the failure to complete a recommendation within a reasonable time;

(D) The authorization of the faculty senate to delegate the process for making a recommendation to a committee of no less than three members of the faculty senate; and

(E) Such other provisions as the state board determines are necessary or beneficial for the process to be established by the faculty senate.

(3) A faculty senate may nominate teachers for recognition as outstanding teachers under state and local teacher recognition programs and other personnel at the school, including parents, for recognition under other appropriate recognition programs and may establish such programs for operation at the school.

(4) A faculty senate may submit recommendations to the principal regarding the assignment scheduling of secretaries, clerks, aides and paraprofessionals at the school.

(5) A faculty senate may submit recommendations to the principal regarding establishment of the master curriculum schedule for the next ensuing school year.

(6) A faculty senate may establish a process for the review and comment on sabbatical leave requests submitted by employees at the school pursuant to section eleven, article two of this chapter.

(7) Each faculty senate shall elect three faculty representatives to the local school improvement council established pursuant to section two of this article.

(8) Each faculty senate may nominate a member for election to the county staff development council pursuant to section eight, article three, chapter eighteen-a of this code.

(9) Each faculty senate shall have an opportunity to make recommendations on the selection of faculty to serve as mentors for beginning teachers under beginning teacher internship programs at the school.

(10) A faculty senate may solicit, accept and expend any grants, gifts, bequests, donations and any other funds made available to the faculty senate: *Provided*, That the faculty senate shall select a member who has the duty of maintaining a record of all funds received and expended by the faculty senate, which record shall be kept in the school office and is subject to normal auditing procedures.

(11) Any faculty senate may review the evaluation procedure as conducted in their school to ascertain whether the evaluations were conducted in accordance with the written system required pursuant to section twelve, article two, chapter eighteen-a of this code or pursuant to section two, article three-c, chapter eighteen-a of this code, as applicable, and the general intent of this Legislature regarding meaningful performance evaluations of school personnel. If a majority of members of the faculty senate determine that such evaluations were not so conducted, they shall submit a report in writing to the State Board of Education: *Provided*, That nothing herein creates any new right of access to or review of any individual's evaluations.

(12) A local board shall provide to each faculty senate ~~a at least six two-hour block blocks of time for a faculty senate meeting meetings on a day scheduled for the opening of school prior to the beginning of the instructional term and at least four additional two-hour blocks of time during noninstructional days, with each two-hour block of time scheduled once at least every forty five instructional days with at least one two-hour block of time scheduled in the first month of the employment term, one two-hour block of time scheduled in the last month of the employment term and at least one two-hour block of time scheduled in each of the months of October, December, February and April.~~ A faculty senate may meet for an unlimited block of time during noninstructional days to discuss and plan strategies to improve student instruction and to conduct other faculty senate business. A faculty senate meeting scheduled on a noninstructional day shall be considered as part of the purpose for which the noninstructional day is scheduled. This time may be used and determined at the local school level and includes, but is not limited to, faculty senate meetings.

(13) Each faculty senate shall develop a strategic plan to manage the integration of special needs students into the regular classroom at their respective schools and submit the strategic plan to the superintendent of the county board periodically pursuant to guidelines developed by the State Department of Education. Each faculty senate shall encourage the participation of local school improvement councils, parents and the community at large in developing the strategic plan for each school.

Each strategic plan developed by the faculty senate shall include at least: (A) A mission statement; (B) goals; (C) needs; (D) objectives and activities to implement plans relating to each goal; (E) work in progress to implement the strategic plan; (F) guidelines for placing additional staff into integrated classrooms to meet the needs of exceptional needs students without diminishing the services rendered to the other students in integrated classrooms; (G) guidelines for implementation of collaborative planning and instruction; and (H) training for all regular classroom teachers who serve students with exceptional needs in integrated classrooms.”

On page fifty-two, section fourteen, line fifteen, by striking out everything after the period and inserting in lieu thereof the following:

“Educators shall receive uninterrupted time for planning periods each day. Administrators may not require a teacher to use the planning period time allotted to complete duties beyond instructional planning, including, but not limited to, administrative tasks and meetings.”

And,

On page one, by striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

“That §18-2-26a of the Code of West Virginia, 1931, as amended, be repealed; that §18-2-26 of said code be amended and reenacted; that §18-2E-1a and §18-2E-5 of said code be amended and reenacted; that §18-5-13 and §18-5-45 of said code be amended and reenacted; that said code be further amended by adding thereto two new sections designated, §18-5-13b and §18-5-13c; that §18-5A-5 of said code be amended and reenacted; that §18-9A-8a of said code be amended and reenacted; and that §18A-4-14 of said code be amended and reenacted, all to read as follows” and a colon.

Delegate Espinosa moved to amend the Senate amendment on page eleven, by striking out §18-5-45 in its entirety and inserting in lieu thereof the following:

“§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~~ number of minutes as follows:

(i) For early childhood programs as provided in subsection (d) section forty-four of this article;

(ii) For schools with grade levels kindergarten through and including grade five, 315 minutes of instructional time per day;

(iii) For schools with grade levels six through and including grade eight, 330 minutes of instructional time per day; and

(iv) For schools with grade levels nine through and including grade twelve, 345 minutes of instructional time per day.

(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; and

(3) ‘Instruction delivered through alternative methods’ means a plan developed by a county board and approved by the state board for teachers to assign and grade work to be completed by students on days when schools are closed due to inclement weather or other unforeseen circumstances.

(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 or an equivalent amount of instructional time as provided in this section.

(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, subject to the following:

(A) A county board may increase the length of the instructional day as defined in this section by at least thirty minutes per day to ensure that it achieves at least an amount of instructional time equivalent to one hundred and eighty separate instructional days within its school calendar and:

(i) Apply up to five days of this equivalent time to cancel days lost due to necessary school closures;

(ii) Plan within its school calendar and not subject to cancellation and rescheduling as instructional days up to an additional five days or equivalent portions of days, without students present, to be used as determined by the county board exclusively for activities by educators at the school level designed to improve instruction; and

(iii) Apply any additional equivalent time to recover time lost due to late arrivals and early dismissals;

(B) Subject to approval of its plan by the state board, a county board may deliver instruction through alternative methods on up to five days when schools are closed due to inclement weather or other unforeseen circumstances and these days are instructional days notwithstanding the closure of schools; and

(C) The use of equivalent time gained by lengthening the school day to cancel days lost, and the delivery of instruction through alternative methods, both as defined in this section, shall be considered instructional days for the purpose of meeting the 180 separate day requirement and as employment days for the purpose of meeting the 200 day employment term.

(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 and thirtieth instructional day of the school calendar; and

(D) One day to be designated by the county board to be used by the employees for preparation for opening school and one day to be designated by the county board to be used by the employees for preparation for closing school: *Provided*, That the school preparation days may be used for the purposes set forth in paragraph (E) of this subdivision at the teacher's discretion; and

~~(D)~~ (E) 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)~~ (ii) Professional development;

~~(iv)~~ (iii) Teacher-pupil-parent conferences;

~~(v)~~ (iv) Professional meetings;

~~(vi)~~ (v) Making up days when instruction was scheduled but not conducted; and

~~(vii)~~ (vi) At least ~~four~~ six two-hour blocks of time for faculty senate meetings with ~~each a~~ at least one two-hour block of time scheduled in the first month of the employment term, at least one two-hour block of time scheduled in the last month of the employment term and once at least every forty-five instructional days at least one two-hour block of time scheduled in each of the months of October, December, February and April; 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 late arrivals and early dismissals.

(e) If it is not possible to complete one hundred eighty separate instructional days with the current school calendar and the additional five days of instructional time gained by increasing the length of the instructional day as provided in subsection (c) of this section are insufficient to offset the loss of separate instructional days, 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)~~ (1) Holidays;

~~(B)~~ (2) Election day;

~~(C)~~ (3) Saturdays and Sundays; and

(4) The five days or equivalent portions of days planned within the school calendar exclusively for activities by educators at the school level to improve instruction that are gained by increasing the length of the instructional day as provided in subsection (c) of this section.

(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 subject to an emergency or disaster declaration by the Governor and where when the event causing the declaration is substantially related to a reduction the loss of instructional days in the county.

(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 chapter eighteen, 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."~~

On the motion to concur in the amendment of the bill by the Senate, with further amendment by the House, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken **(Roll No. 542)**, and there were—yeas 59, nays 41, absent and not voting none, with the nays being as follows:

Nays: Baldwin, Barrett, Brewer, Canestraro, Caputo, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Folk, Frich, Hartman, Hicks, Hornbuckle, Iaquina, Isner, Kelly, Lewis, Longstreth, Love, Lovejoy, Lynch, Marcum, McGeehan, Miley, R. Miller, Moye, Paynter, Pethtel, Pyles, Queen, Rodighiero, Rohrbach, Rowe, Sponaule, Storch, Thompson, Ward and Williams.

So, a majority of the members present and voting having voted in the affirmative, the House of Delegates concurred in the Senate amendment as amended.

The bill, as amended by the Senate, and further amended by the House of Delegates, was put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 543)**, and there were—yeas 69, nays 31, absent and not voting none, with the nays being as follows:

Nays: Barrett, Butler, Canestraro, Diserio, Eldridge, E. Evans, Ferro, Fluharty, Folk, Hicks, Hornbuckle, Iaquina, Kelly, Lewis, Love, Lynch, Marcum, Martin, McGeehan, Miley, R. Miller, Paynter, Phillips, Pyles, Queen, Rodighiero, Sponaugle, Storch, Thompson, Wagner and Williams.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2711) passed.

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

Com. Sub. for H. B. 2711 – “A Bill to repeal §18-2-26a of the Code of West Virginia, 1931, as amended; to amend and reenact §18-2-26 of said code; to amend and reenact §18-2E-1a and §18-2E-5 of said code; to amend and reenact §18-5-13 and §18-5-45 of said code; to further amend said code by adding thereto two new sections designated §18-5-13b and §18-5-13c; to amend and reenact §18-5A-5 of said code; to amend and reenact §18-9A-8a of said code; and to amend and reenact §18A-4-14 of said code, all relating generally to education; repealing requirement for biennial meetings of county boards by region; providing for dissolving regional educational service agencies by certain date; allowing for modification and dissolving by cooperative agreement before said date; providing for the transfer, liquidation or disbursement of property and records; requiring state board to constructively engage with the legislative oversight commission on education accountability prior to adopting certain standards and prior to adoption of a new statewide summative assessment; requiring certain state board actions before full implementation of a new accountability system; modifying state board prohibitions and duties as part of its on-going responsibility for developing and implementing a program of standards, assessments and a program of accountability; clarifying responsibilities and authority of Legislature and state board with respect to process for improving education and purposes and intent of system of accountability; modifying areas for which the state board is required to adopt high-quality education standards; modifying statewide assessment program; modifying annual performance measures for accreditation; requiring county board use of statewide electronic information system; modifying process for assessing school and school system performance; eliminating office of education performance audits and authorizing employment of experienced education professionals with certain duties; modifying school accreditation and removing authorization for state board intervention in school operations; modifying school system approval and processes for state board intervention; modifying processes for improving capacity; modifying process for building leadership capacity of system during intervention; expanding county board authority for entering into cooperative agreements; establishing the County Superintendents’ Advisory Council; setting forth the council’s authority and responsibilities, including the formation of four geographic quadrants to carry out the work of the council; requiring certain meetings and reports; authorizing county board agreements to establish educational services cooperatives; providing references to regional education service agencies means cooperatives; providing priorities for transfer, liquidation and disbursement of regional education service agency property, equipment and records upon dissolution; providing for governing council of educational services cooperatives; providing for powers and duties; providing for cooperative annual plan and optional programs and services; providing for selection of fiscal agent county board and annual audit; providing for staff and member expenses; providing for member compensation; defining minimum length of instructional day; defining instruction delivered through alternative methods; allowing equivalent instructional time alternative to one hundred eighty separate instructional days; authorizing county board to increase length of instructional day by certain amount and use instructional time gained for certain purposes; authorizing delivery of instruction through alternative methods upon plan approved by state board and counting as instructional and employment days; designating one noninstructional day for teachers as a preparation day for opening school and another for teachers as a preparation day for closing school; allowing teacher preparation days to be used for certain other purposes at teacher’s discretion; increasing number of two-hour blocks for faculty senate meetings from four to six;

removing requirement that faculty senate meetings be held once every forty-five days; modifying requirement for rescheduling days to be used for instruction to reflect instructional time gained by lengthening instructional day; exempting certain days from rescheduling when instructional day lengthened; authorizing decrease of instructional term in county subject to emergency or disaster declaration by Governor; reducing foundation allowance for regional education service agencies; removing requirement for planning period to be within instructional day; requiring educators to receive uninterrupted time for planning periods each day; prohibiting administrators from requiring a teacher to use the planning period time to complete duties beyond instructional planning; and making technical improvements and removing obsolete provisions.”

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. 2402, Relating to abandoned antique vehicles.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page eight, section four, line eighty-three, by striking out “\$7,500” and inserting in lieu thereof “\$9,500”.

On page eight, section four, lines eighty-seven and eighty-eight, by striking out all of subdivision (3) and inserting in lieu thereof a new subdivision, designated subdivision (3), to read as follows:

“(3) This amount will be increased every five years on September 1 of the fifth year based on the U.S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index; and”.

And,

On page eight, section four, after line ninety-four, by inserting a new paragraph, designated paragraph (D), to read as follows:

“(D) The motor vehicle is not claimed by the owner or a lienholder after notice within the time set forth in subsection (d) of 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. 544**), 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: Blair.

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. 2402) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2428, Establishing additional substance abuse treatment facilities.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

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

“That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-53-1, §16-53-2 and §16-53-3, all to read as follows:

ARTICLE 53. ESTABLISHING ADDITIONAL SUBSTANCE ABUSE TREATMENT FACILITIES.

§16-53-1. Establishment of substance abuse treatment facilities.

(a) The Secretary of the Department of Health and Human Resources shall ensure that beds for purposes of providing substance abuse treatment services in existing or newly constructed facilities are made available in locations throughout the state which the Bureau for Behavioral Health and Health Facilities determines to be the highest priority for serving the needs of the citizens of the state.

(b) The secretary shall identify and allocate the beds to privately owned facilities to provide substance abuse treatment services.

(c) These facilities shall:

(1) Give preference to West Virginia residents;

(2) Accept payment from private pay patients, third party payors or patients covered by Medicaid;

(3) Offer long term treatment, based upon need, of up to one year; and

(4) Work closely with the Adult Drug Court Program, provided for in article fifteen, chapter sixty-two of this code.

(d) Any facility subject to the provisions of this article must be licensed by this state to provide addiction and substance abuse services.

§16-53-2. Establishing the Ryan Brown Addiction Prevention and Recovery Fund.

The Ryan Brown Addiction Prevention and Recovery Fund is hereby created in the state treasury as a special revenue account. The fund shall be administered by the Secretary of the Department of Health and Human Resources and shall consist of all moneys made available for the purposes of this article from any source, including, but not limited to, all grants, bequests or transfers from any source, any moneys that may be appropriated and designated for those purposes by the Legislature and all interest or other return earned from investment of the fund, gifts, and all other sums available for deposit to the special revenue account from any source, public or private. 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 the fulfillment of the provisions set forth in article two, chapter eleven-b of this code. Upon the effective date of this section, the attorney general and any public official with custody or control of the proceeds recovered for the state pursuant to settlement agreement dated January 9, 2017, in that certain civil action then pending in Boone County, designated Civil Action No. 12-C-141, shall forthwith transfer, or cause the transfer, of those proceeds into the Ryan Brown Addiction Prevention and Recovery Fund in the manner directed by the state treasurer pursuant to articles one and two, chapter twelve of this code and all other applicable law.

§16-53-3. Rulemaking.

The Secretary of the West Virginia Department of Health and Human Resources shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to effectuate the provisions of this article.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2428 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-53-1, §16-53-2 and §16-53-3, all relating to ensuring additional beds for purposes of providing substance abuse treatment; requiring these beds are made available in locations throughout the state; providing duties of the Secretary of the Department of Health and Human Resources; providing for requirements of facilities accepting funds; requiring facilities be appropriately licensed; creating the Ryan Brown Addiction Prevention and Recovery Fund; providing for administration of fund by the Secretary of the Department of Health and Human Resources; providing what moneys the fund shall consist of; directing the transfer of money recovered on behalf of the state arising out of the settlement of a certain civil action to the fund; and providing for rulemaking.”

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 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Blair.

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. 2428) passed.

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

On this question, the yeas and nays were taken (**Roll No. 546**), 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: Blair.

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. 2428) 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. 2479, Uniform Deployed Parents Custody and Visitation Act.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

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

“That §48-1-233.3, §48-1-233.4 and §48-9-404 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new article, designated §48-31-101, §48-31-102, §48-31-103, §48-31-104, §48-31-105, §48-31-106, §48-31-107, §48-31-201, §48-31-202, §48-31-203, §48-31-204, §48-31-205, §48-31-301, §48-31-302, §48-31-303, §48-31-304, §48-31-305, §48-31-306, §48-31-307, §48-31-308, §48-31-309, §48-31-310, §48-31-401, §48-31-402, §48-31-403, §48-31-404, §48-31-501, §48-31-502 and §48-31-503, all to read as follows:

ARTICLE 31. UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT.

§48-31-101. Short title.

This article may be cited as the Uniform Deployed Parents Custody and Visitation Act.

§48-31-102. Definitions.

In this article:

(1) ‘Adult’ means an individual who has attained eighteen years of age or an emancipated minor.

(2) ‘Caretaking authority’ means the right to live with and care for a child on a day-to-day basis. The term includes physical custody, parenting time, right to access, and visitation.

(3) ‘Child’ means:

(A) An unemancipated individual who has not attained eighteen years of age; or

(B) An adult son or daughter by birth or adoption, or under law of this state other than this article, who is the subject of a court order concerning custodial responsibility.

(4) ‘Close and substantial relationship’ means a relationship in which a significant bond exists between a child and a nonparent.

(5) ‘Court’ means a tribunal, authorized under law of this state other than this article to make, enforce, or modify a decision regarding custodial responsibility.

(6) ‘Custodial responsibility’ has the same meaning as in section two hundred nineteen, article one of this chapter.

(7) ‘Decision-making authority’ means the power to make important decisions regarding a child, including decisions regarding the child’s education, religious training, health care, extracurricular

activities, and travel. The term does not include the power to make decisions that necessarily accompany a grant of caretaking authority.

(8) 'Deploying parent' means a service member, who is deployed or has been notified of impending deployment and is:

(A) A parent of a child under law of this state other than this article; or

(B) An individual who has custodial responsibility for a child under law of this state other than this article;

(9) 'Deployment' means the movement or mobilization of a service member for more than ninety days but less than eighteen months pursuant to uniformed service orders that:

(A) Are designated as unaccompanied;

(B) Do not authorize dependent travel; or

(C) Otherwise do not permit the movement of family members to the location to which the service member is deployed.

(10) 'Family member' means a sibling, aunt, uncle, cousin, step-parent or grandparent of a child or an individual recognized to be in a familial relationship with a child under law of this state other than this article.

(11) 'Limited contact' means the authority of a nonparent to visit a child for a limited time. The term includes authority to take the child to a place other than the residence of the child.

(12) 'Nonparent' means an individual other than a deploying parent or other parent.

(13) 'Other parent' means an individual who, in common with a deploying parent, is:

(A) A parent of a child under law of this state other than this article; or

(B) An individual who has custodial responsibility for a child under law of this state other than this article.

(14) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) 'Return from deployment' means the conclusion of a service member's deployment as specified in uniformed service orders.

(16) 'Service member' means a member of a uniformed service.

(17) 'Sign' means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound or process.

(18) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(19) 'Uniformed service' means:

(A) Active and reserve components of the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States;

(B) The United States Merchant Marine;

(C) The commissioned corps of the United States Public Health Service;

(D) The commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(E) The National Guard of a state.

§48-31-103. Remedies for noncompliance.

In addition to other remedies under law of this state other than this article, if a court finds that a party to a proceeding under this article has acted in bad faith or intentionally failed to comply with this article or a court order issued under this article, the court may assess reasonable attorney's fees and costs against the party and order other appropriate relief.

§48-31-104. Jurisdiction.

(a) A court may issue an order regarding custodial responsibility under this article only if the court has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.

(b) If a court has issued a temporary order regarding custodial responsibility pursuant to this article, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act during the deployment.

(c) If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement pursuant to the provisions of this article, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

(d) If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, the residence of the deploying parent is not changed because of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

(e) This section does not prevent a court from exercising temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.

§48-31-105. Notification required of deploying parent.

(a) Except as otherwise provided in subsection (c) or (d) of this section, a deploying parent shall notify in a record the other parent of a pending deployment not later than seven days after receiving notice of deployment unless reasonably prevented from doing so by the circumstances of service. If

the circumstances of service prevent giving notification within the seven days, the deploying parent shall give the notification as soon as reasonably possible.

(b) Except as otherwise provided in subsection (c) or (d) of this section, each parent shall provide in a record the other parent with a plan for fulfilling that parent's share of custodial responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible after notification of deployment is given under subsection (a) of this section.

(c) If a court order currently in effect prohibits disclosure of the address or contact information of the other parent, notification of deployment under subsection (a) of this section, or notification of a plan for custodial responsibility during deployment under subsection (b) of this section, may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.

(d) Notification in a record under subsection (a) or (b) of this section is not required if the parents are living in the same residence and both parents have actual notice of the deployment or plan.

(e) In a proceeding regarding custodial responsibility, a court may consider the reasonableness of a parent's efforts to comply with this section.

§48-31-106. Duty to notify of change of address.

(a) Except as otherwise provided in subsection (b) of this section, an individual to whom custodial responsibility has been granted during deployment pursuant to the provisions of this article shall notify the deploying parent and any other individual with custodial responsibility of a child of any change of the individual's mailing address or residence until the grant is terminated. The individual shall provide the notice to any court that has issued a custody or child support order concerning the child which is in effect.

(b) If a court order currently in effect prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been granted, a notification under subsection (a) of this section may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been granted.

§48-31-107. General consideration in custody proceeding of parent's military service.

In a proceeding for custodial responsibility of a child of a service member, a court may not consider a parent's past deployment or possible future deployment in itself in determining the best interest of the child but may consider any significant impact on the best interest of the child of the parent's past or possible future deployment.

§48-31-201. Form of agreement addressing custodial responsibility during deployment.

(a) The parents of a child may enter into a temporary agreement under this article granting custodial responsibility during deployment.

(b) An agreement under subsection (a) of this section shall be:

(1) In writing; and

(2) Signed by both parents and any nonparent to whom custodial responsibility is granted.

(c) Subject to subsection (d) of this section, an agreement under subsection (a), if feasible, shall:

(1) Identify the destination, duration, and conditions of the deployment that is the basis for the agreement;

(2) Specify the allocation of caretaking authority among the deploying parent, the other parent, and any nonparent;

(3) Specify any decision-making authority that accompanies a grant of caretaking authority;

(4) Specify any grant of limited contact to a nonparent;

(5) If under the agreement custodial responsibility is shared by the other parent and a nonparent, or by other nonparents, provide a process to resolve any dispute that may arise;

(6) Specify the frequency, duration and means, including electronic means, by which the deploying parent will have contact with the child, any role to be played by the other parent in facilitating the contact, and the allocation of any costs of contact;

(7) Specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available;

(8) Acknowledge that any party's child-support obligation cannot be modified by the agreement, and that changing the terms of the obligation during deployment requires modification in the appropriate court;

(9) Provide that the agreement will terminate according to the procedures specified in this article after the deploying parent returns from deployment; and

(10) If the agreement must be filed pursuant to section two hundred five of this article, specify which parent is required to file the agreement.

(d) The omission of any of the items specified in subsection (c) of this section does not invalidate an agreement under this section.

§48-31-202. Nature of authority created by agreement.

(a) An agreement under this article is temporary and terminates pursuant to the provisions of this article after the deploying parent returns from deployment, unless the agreement has been terminated before that time by court order or modification under section two hundred three of this article. The agreement does not create an independent, continuing right to caretaking authority, decision-making authority or limited contact in an individual to whom custodial responsibility is given.

(b) A nonparent who has caretaking authority, decision-making authority or limited contact by an agreement under this article has standing to enforce the agreement until it has been terminated by court order, by modification under section two hundred three of this article, or under other provisions of this article.

§48-31-203. Modification of agreement.

(a) By mutual consent, the parents of a child may modify an agreement regarding custodial responsibility made pursuant to this article.

(b) If an agreement is modified under subsection (a) of this section before deployment of a deploying parent, the modification shall be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

(c) If an agreement is modified under subsection (a) of this section during deployment of a deploying parent, the modification shall be agreed to in a record by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

§48-31-204. Power of attorney.

A deploying parent, by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility under law of this state other than this article, or if a court order currently in effect prohibits contact between the child and the other parent. The deploying parent may revoke the power of attorney by signing a revocation of the power.

§48-31-205. Filing agreement or power of attorney with court.

An agreement or power of attorney under this article shall be filed within a reasonable time with any court that has entered an order on custodial responsibility or child support that is in effect concerning the child who is the subject of the agreement or power. The case number and heading of the pending case concerning custodial responsibility or child support shall be provided to the court with the agreement or power.

§48-31-301. Proceeding for temporary custody order.

(a) After a deploying parent receives notice of deployment and until the deployment terminates, a court may issue a temporary order granting custodial responsibility unless prohibited by the Service Members Civil Relief Act, 50 U.S.C. §3931 and §3932. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.

(b) At any time after a deploying parent receives notice of deployment, either parent may file a motion regarding custodial responsibility of a child during deployment. The motion shall be filed in a pending proceeding for custodial responsibility in a court with jurisdiction under section one hundred four of this article or, if there is no pending proceeding in a court with jurisdiction under section one hundred four of this article, in a new action for granting custodial responsibility during deployment.

§48-31-302. Expedited hearing.

If a motion to grant custodial responsibility is filed under subsection (b) of section three hundred one of this article before a deploying parent deploys, the court shall conduct an expedited hearing.

§48-31-303. Testimony by electronic means.

In a proceeding under this article, a party or witness who is not reasonably available to appear personally may appear, provide testimony and present evidence by electronic means unless the court finds good cause to require a personal appearance.

§48-31-304. Effect of prior judicial order or agreement.

In a proceeding for a grant of custodial responsibility pursuant to this article, the following rules apply:

(1) A prior judicial order, designating custodial responsibility if there is deployment, is binding on the court unless the circumstances meet the requirements of law of this state other than this article for modifying a judicial order regarding custodial responsibility.

(2) The court shall enforce a prior written agreement between the parents for designating custodial responsibility if there is deployment, including an agreement executed under section two hundred one of this article, unless the court finds that the agreement is contrary to the best interest of the child.

§48-31-305. Grant of caretaking or decision-making authority to nonparent.

(a) On motion of a deploying parent and in accordance with law of this state other than this article, if it is in the best interest of the child, a court may grant caretaking authority to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship.

(b) Unless a grant of caretaking authority to a nonparent under subsection (a) of this section is agreed to by the other parent, the grant is limited to an amount of time not greater than:

(1) The amount of time granted to the deploying parent under a permanent custody order, but the court may add unusual travel time necessary to transport the child; or

(2) In the absence of a permanent custody order that is currently in effect, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, but the court may add unusual travel time necessary to transport the child.

(c) A court may grant part of a deploying parent's decision-making authority, if the deploying parent is unable to exercise that authority, to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship. If a court grants the authority to a nonparent, the court shall specify the decision-making powers granted, including decisions regarding the child's education, religious training, health care, extracurricular activities and travel.

§48-31-306. Grant of limited contact.

On motion of a deploying parent, and in accordance with law of this state other than this article, unless the court finds that the contact would be contrary to the best interest of the child, a court shall grant limited contact to a nonparent who is a family member of the child or an individual with whom the child has a close and substantial relationship.

§48-31-307. Nature of authority created by temporary custody order.

(a) A grant of authority under this article is temporary and terminates under the provisions of this article after the return from deployment of the deploying parent, unless the grant has been terminated before that time by court order. The grant does not create an independent, continuing right to caretaking authority, decision-making authority or limited contact in an individual to whom it is granted.

(b) A nonparent granted caretaking authority, decision-making authority or limited contact under this article may enforce the grant until it is terminated by court order or under other provisions of this article.

§48-31-308. Content of temporary custody order.

(a) An order granting custodial responsibility under this article shall:

(1) Designate the order as temporary; and

(2) Identify to the extent feasible the destination, duration and conditions of the deployment.

(b) If applicable, an order for custodial responsibility under this article shall:

(1) Specify the allocation of caretaking authority, decision-making authority or limited contact among the deploying parent, the other parent, and any nonparent;

(2) If the order divides caretaking or decision-making authority between individuals, or grants caretaking authority to one individual and limited contact to another, provide a process to resolve any dispute that may arise;

(3) Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communications;

(4) Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or otherwise available, unless contrary to the best interest of the child;

(5) Provide for reasonable contact between the deploying parent and the child after return from deployment until the temporary order is terminated, even if the time of contact exceeds the time the deploying parent spent with the child before entry of the temporary order; and

(6) Provide that the order will terminate pursuant to the provisions of this article after the deploying parent returns from deployment.

§48-31-309. Order for child support.

If a court has issued an order granting caretaking authority under this article, or an agreement granting caretaking authority has been executed under section two hundred one of this article, the court may enter a temporary order for child support consistent with law of this state other than this article if the court has jurisdiction under the Uniform Interstate Family Support Act.

§48-31-310. Modifying or terminating grant of custodial responsibility to nonparent.

(a) Except for an order under section three hundred four of this article, except as otherwise provided in subsection (b) of this section, and consistent with the Service Members Civil Relief Act, 50 U.S.C. §3931 and §3932, on motion of a deploying or other parent or any nonparent to whom caretaking authority, decision-making authority, or limited contact has been granted, the court may modify or terminate the grant if the modification or termination is consistent with this article and it is in the best interest of the child. A modification is temporary and terminates pursuant to the provisions of this article after the deploying parent returns from deployment, unless the grant has been terminated before that time by court order.

(b) On motion of a deploying parent, the court shall terminate a grant of limited contact.

§48-31-401. Procedure for terminating temporary grant of custodial responsibility established by agreement.

(a) At any time after return from deployment, a temporary agreement granting custodial responsibility under section two hundred one of this article may be terminated by an agreement to terminate signed by the deploying parent and the other parent.

(b) A temporary agreement under section two hundred one of this article granting custodial responsibility terminates:

(1) If an agreement to terminate under subsection (a) of this section specifies a date for termination, on that date; or

(2) If the agreement to terminate does not specify a date, on the date the agreement to terminate is signed by the deploying parent and the other parent.

(c) In the absence of an agreement under subsection (a) of this section to terminate, a temporary agreement granting custodial responsibility terminates under this article sixty days after the deploying parent gives notice to the other parent that the deploying parent returned from deployment.

(d) If a temporary agreement granting custodial responsibility was filed with a court pursuant to section two hundred five of this article, an agreement to terminate the temporary agreement also shall be filed with that court within a reasonable time after the signing of the agreement. The case number and heading of the case concerning custodial responsibility or child support shall be provided to the court with the agreement to terminate.

§48-31-402. Consent procedure for terminating temporary grant of custodial responsibility established by court order.

At any time after a deploying parent returns from deployment, the deploying parent and the other parent may file with the court an agreement to terminate a temporary order for custodial responsibility. After an agreement has been filed, the court shall issue an order terminating the temporary order effective on the date specified in the agreement. If a date is not specified, the order is effective immediately.

§48-31-403. Visitation before termination of temporary grant of custodial responsibility.

After a deploying parent returns from deployment until a temporary agreement or order for custodial responsibility established under this article is terminated, the court shall issue a temporary order granting the deploying parent reasonable contact with the child unless it is contrary to the best interest of the child, even if the time of contact exceeds the time the deploying parent spent with the child before deployment.

§48-31-404. Termination by operation of law of temporary grant of custodial responsibility established by court order.

(a) If an agreement between the parties to terminate a temporary order for custodial responsibility under this article has not been filed, the order terminates sixty days after the deploying parent gives notice to the other parent and any nonparent granted custodial responsibility that the deploying parent has returned from deployment.

(b) A proceeding seeking to prevent termination of a temporary order for custodial responsibility is governed by law of this state other than this article; *Provided*, That no agreement of the parties made pursuant to the provisions of this article shall be the basis for a modification of the parents' permanent parenting plan made pursuant to section four hundred two, article nine of this chapter.

§48-31-501. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§48-31-502. Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 *et seq.*, but does not modify, limit, or supersede section 101(c) of that Act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. Section 7003(b).

§48-31-503. Savings clause.

This article does not affect the validity of a temporary court order concerning custodial responsibility during deployment which was entered before the effective date of this article.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2479 - “A Bill to repeal §48-1-233.3, §48-1-233.4 and §48-9-404 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §48-31-101, §48-31-102, §48-31-103, §48-31-104, §48-31-105, §48-31-106, §48-31-107, §48-31-201, §48-31-202, §48-31-203, §48-31-204, §48-31-205, §48-31-301, §48-31-302, §48-31-303, §48-31-304, §48-31-305, §48-31-306, §48-31-307, §48-31-308, §48-31-309, §48-31-310, §48-31-401, §48-31-402, §48-31-403, §48-31-404, §48-31-501, §48-31-502 and §48-31-503, all relating to adoption of the Uniform Deployed Parents Custody and Visitation Act; providing a short title; defining terms; providing for enforcement through assessment of attorney fees and costs; defining jurisdiction; providing that the residence of deploying parent is not changed by reason of deployment for purposes of the Uniform Child Custody Jurisdiction and Enforcement Act; providing for emergency jurisdiction; providing notification requirements; providing notification requirements for change of address; establishing procedures to determine matters of child custody and visitation when parents are deployed in military or other national service; requiring notices from deployed parent; providing for out-of-court agreements and establishing minimum requirements therefor; providing that an agreement under this article is temporary and terminates after the deploying parent returns from deployment, unless terminated prior to by court order; a deploying parent, by power of attorney, may delegate all or part of custodial responsibilities to a certain persons under certain circumstances; providing that the power of attorney may be revoked; prohibiting consideration of past or future deployments in determining the best interest of the child; authorizing orders for payment of child support during deployment; providing that a court may issue a temporary order granting custodial responsibilities under certain circumstances; providing that parents may file a motion regarding custodial responsibility of a child during deployment; providing for expediting hearings; providing that testimony and evidence may be accepted by electronic means; providing effect to prior judicial orders or agreements; providing that a court may grant caretaking authority to certain nonparent individuals; providing for a court's grant of limited contact upon motion of a deploying parent; providing requirements for an order granting custodial responsibility; providing that the court may enter a temporary order for child support under certain circumstances; providing for modification and

termination of orders and agreements and the procedures thereof; providing that the court shall issue a temporary order granting the deploying parent reasonable contact with the child under certain circumstances; and giving guidance for interpretation and construction in conjunction with other laws and orders.”

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. 547**), 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: Blair.

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. 2479) 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. 2526, Classifying additional drugs to Schedules I, II, IV and V of controlled substances.

Delegate Cowles moved that the House of Delegates concur in the following amendment of the bill by the Senate, with further amendment:

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

“ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-201. Authority of state Board of Pharmacy; recommendations to Legislature.

(a) The state Board of Pharmacy shall administer the provisions of this chapter. It shall also, on the first day of each regular legislative session, recommend to the Legislature which substances should be added to or deleted from the schedules of controlled substances contained in this article or reschedule therein. The state Board of Pharmacy shall also have the authority between regular legislative sessions, on an emergency basis, to add to or delete from the schedules of controlled substances contained in this article or reschedule such substances based upon the recommendations and approval of the federal food, drug and cosmetic agency, and shall report such actions on the first day of the regular legislative session immediately following said actions.

In making any such recommendation regarding a substance, the state Board of Pharmacy shall consider the following factors:

- (1) The actual or relative potential for abuse;
- (2) The scientific evidence of its pharmacological effect, if known;
- (3) The state of current scientific knowledge regarding the substance;

(4) The history and current pattern of abuse;

(5) The scope, duration and significance of abuse;

(6) The potential of the substance to produce psychic or physiological dependence liability; and

(7) Whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in subsection (a), the state Board of Pharmacy shall make findings with respect to the substance under consideration. If it finds that any substance not already controlled under any schedule has a potential for abuse, it shall recommend to the Legislature that the substance be added to the appropriate schedule. If it finds that any substance already controlled under any schedule should be rescheduled or deleted, it shall so recommend to the Legislature.

(c) If the state Board of Pharmacy designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled or deleted as a controlled substance under federal laws and notice thereof is given to the state Board of Pharmacy, the board shall recommend similar control of such substance to the Legislature, specifically stating that such recommendation is based on federal action and the reasons why the federal government deemed such action necessary and proper.

(e) The authority vested in the board by subsection (a) of this section shall not extend to distilled spirits, wine, malt beverages or tobacco as those terms are defined or used in other chapters of this code nor to any nonnarcotic substance if such substance may under the "Federal Food, Drug and Cosmetic Act" and the law of this state lawfully be sold over the counter without a prescription.

(f) Notwithstanding any provision of this chapter to the contrary, the sale, wholesale, distribution or prescribing of a cannabidiol in a product approved by the Food and Drug Administration is permitted and shall be placed on the schedule as provided for by the Drug Enforcement Administration.

§60A-2-204. Schedule I.

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (for purposes of subdivision (34) of this subsection only, the term isomer includes the optical and geometric isomers):

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl) -4-piperidiny]—phenylacetamide);

(2) Acetylmethadol;

(3) Allylprodine;

- (4) Alphacetylmethadol (except levoalphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);
- (5) Alphameprodine;
- (6) Alphamethadol;
- (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(propanilido) piperidine);
- (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl-4-piperidyl]-phenylpropanamide);
- (9) Benzethidine;
- (10) Betacetylmethadol;
- (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidyl]-N-phenylpropanamide);
- (12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidyl]-N-phenylpropanamide);
- (13) Betameprodine;
- (14) Betamethadol;
- (15) Betaprodine;
- (16) Clonitazene;
- (17) Dextromoramide;
- (18) Diampromide;
- (19) Diethylthiambutene;
- (20) Difenoxin;
- (21) Dimenoxadol;
- (22) Dimepheptanol;
- (23) Dimethylthiambutene;
- (24) Dioxaphetyl butyrate;
- (25) Dipipanone;
- (26) Ethylmethylthiambutene;
- (27) Etonitazene;

(28) Etoxeridine;

(29) Fentanyl analog or derivative, as that term is defined in article one of this chapter: *Provided*, That fentanyl remains a Schedule II substance, as set forth in section two hundred six of this article;

~~(29)~~ (30) Furethidine;

~~(30)~~ (31) Hydroxypethidine;

~~(31)~~ (32) Ketobemidone;

~~(32)~~ (33) Levomoramide;

~~(33)~~ (34) Levophenacymorphan;

~~(34)~~ (35) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4- piperidyl]-N-phenylpropanamide);

~~(35)~~ (36) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl) ethyl-4- piperidiny]—phenylpropanamide);

~~(36)~~ (37) Morpheridine;

~~(37)~~ (38) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

~~(38)~~ (39) Noracymethadol;

~~(39)~~ (40) Norlevorphanol;

~~(40)~~ (41) Normethadone;

~~(41)~~ (42) Norpipanone;

~~(42)~~ (43) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidiny] propanamide);

~~(43)~~ (44) PEPAP(1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

~~(44)~~ (45) Phenadoxone;

~~(45)~~ (46) Phenampromide;

~~(46)~~ (47) Phenomorphan;

~~(47)~~ (48) Phenoperidine;

~~(48)~~ (49) Piritramide;

~~(49)~~ (50) Proheptazine;

~~(50)~~ (51) Properidine;

~~(51)~~ (52) Propiram;

~~(52)~~ (53) Racemoramide;

~~(53)~~ (54) Thiofentanyl (N-phenyl-N-[1-(2-thienyl) ethyl-4- piperidiny]-propanamide);

~~(54)~~ (55) Tilidine;

~~(55)~~ (56) Trimeperidine.

(c) *Opium derivatives*. — Unless specifically excepted or unless listed in another schedule, any of the following opium immediate derivatives, its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Dihydromorphine;

(9) Drotebanol;

(10) Etorphine (except HCl Salt);

(11) Heroin;

(12) Hydromorphenol;

(13) Methyldesorphine;

(14) Methyldihydromorphine;

(15) Morphine methylbromide;

(16) Morphine methylsulfonate;

(17) Morphine-N-Oxide;

(18) Myrophine;

(19) Nicocodeine;

(20) Nicomorphine;

(21) Normorphine;

(22) Pholcodine;

(23) Thebacon.

(d) *Hallucinogenic substances.* — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical, position and geometric isomers):

(1) Alpha-ethyltryptamine; some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(2) 4-bromo-2, 5-dimethoxy-amphetamine; some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo- 2,5-DMA;

(3) 4-bromo-2,5-dimethoxyphenethylamine; some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha- desmethyl DOB; 2C-B, Nexus;

(4)(A) N-(2-Methoxybenzyl)-4-bromo-2, 5-dimethoxyphenethylamine. The substance has the acronym 25B-NBOMe.

(B) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C-NBOMe).

(C) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe).

(5) 2,5-dimethoxyamphetamine; some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA;

(6) 2,5-dimethoxy-4-ethylamphet-amine; some trade or other names: DOET;

(7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7);

(8) 4-methoxyamphetamine; some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA;

(9) 5-methoxy-3, 4-methylenedioxy-amphetamine;

(10) 4-methyl-2,5-dimethoxy-amphetamine; some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; 'DOM'; and 'STP';

(11) 3,4-methylenedioxy amphetamine;

(12) 3,4-methylenedioxymethamphetamine (MDMA);

(13) 3,4-methylenedioxy-N-ethylamphetamine (also known as – ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA);

(14) N-hydroxy-3,4-methylenedioxyamphetamine (also known as – hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and – hydroxy MDA);

(15) 3,4,5-trimethoxy amphetamine;

(16) 5-methoxy-N, N-dimethyltryptamine (5-MeO-DMT);

(17) Alpha-methyltryptamine (other name: AMT);

(18) Bufotenine; some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole;3-(2-dimethylaminoethyl) -5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N- dimethyltryptamine; mappine;

(19) Diethyltryptamine; some trade and other names: N, N-Diethyltryptamine; DET;

(20) Dimethyltryptamine; some trade or other names: DMT;

(21) 5-Methoxy-N, N-diisopropyltryptamine (5-MeO-DIPT);

(22) Ibogaine; some trade and other names: 7-Ethyl-6, 6 Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H- pyrido [1', 2': 1, 2] azepino [5,4-b] indole; Tabernanthe iboga;

(23) Lysergic acid diethylamide;

(24) Marijuana;

(25) Mescaline;

(26) Parahexyl-7374; some trade or other names: 3-Hexyl -1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl;

(27) Peyote; meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, immediate derivative, mixture or preparation of such plant, its seeds or extracts;

(28) N-ethyl-3-piperidyl benzilate;

(29) N-methyl-3-piperidyl benzilate;

(30) Psilocybin;

(31) Psilocyn;

(32) Tetrahydrocannabinols; synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, immediate derivatives and their isomers with similar chemical structure and pharmacological activity such as the following:

delta-1 Cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 Cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3,4 Cis or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered).

(33) Ethylamine analog of phencyclidine; some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(34) Pyrrolidine analog of phencyclidine; some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(35) Thiophene analog of phencyclidine; some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine; TPCP, TCP;

(36) 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some other names: TCPy.

(37) 4-methylmethcathinone (Mephedrone);

(38) 3,4-methylenedioxypropylvalerone (MDPV);

(39) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);

(40) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)

(41) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)

(42) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)

(43) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2)

(44) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4)

(45) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)

(46) 2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C-N)

(47) 2-(2,5-Dimethoxy-

4-(n)-propylphenyl)ethanamine (2C-P)

(48) 3,4-Methylenedioxy-N-methylcathinone (Methylone)

(49) (2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7, its optical isomers, salts and salts of isomers

(50) 5-methoxy-N, N-dimethyltryptamine some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT(5-MeO-DMT)

(51) Alpha-methyltryptamine (other name: AMT)

(52) 5-methoxy-N, N-diisopropyltryptamine (other name: 5-MeO-DIPT)

(53) Synthetic Cannabinoids as follows:

(A) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl) phenol {also known as CP 47,497 and homologues};

(B) rel-2-[(1S,3R)-3-hydroxycyclohexyl] -5-(2-methylnonan-2-yl) phenol {also known as CP 47,497-C8 homolog};

(C) [(6aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7,10,10a-tetrahydrobenzo[c]chromen-1-ol] {also known as HU-210};

(D) (dexanabinol);

(6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol {also known as HU-211};

(E) 1-Pentyl-3-(1-naphthoyl) indole {also known as JWH-018};

(F) 1-Butyl-3-(1-naphthoyl) indole {also known as JWH-073};

(G) (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone {also known as JWH-015};

(H) (1-hexyl-1H-indol-3-yl)-1-naphthalenyl-methanone {also known as JWH-019};

(I) [1-[2-(4-morpholinyl) ethyl] -1H-indol-3-yl]-1-naphthalenyl-methanone {also known as JWH-200};

(J) 1-(1-pentyl-1H-indol-3-yl)-2-(3-hydroxyphenyl)-ethanone {also known as JWH-250};

(K) 2-((1S,2S,5S)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl) -5-(2-methyloctan-2-yl)phenol {also known as CP 55,940};

(L) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) -methanone {also known as JWH-122};

(M) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) -methanone {also known as JWH-398};

(N) (4-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone {also known as RCS-4};

(O) 1-(1-(2-cyclohexylethyl) -1H-indol-3-yl) -2-(2-methoxyphenyl) ethanone {also known as RCS-8};

(P) 1-pentyl-3-[1-(4-methoxynaphthoyl) indole (JWH-081);

(Q) 1-(5-fluoropentyl)-3-(1-naphthoyl) indole (AM2201); and

(R) 1-(5-fluoropentyl)-3-(2-iodobenzoyl) indole (AM694).

(54) Synthetic cannabinoids or any material, compound, mixture or preparation which contains any quantity of the following substances, including their analogues, congeners, homologues, isomers, salts and salts of analogues, congeners, homologues and isomers, as follows:

(A) CP 47,497 AND homologues, 2-[(1R,3S)-3-Hydroxycyclohexyl]-5-(2-methyloctan-2-

YL) phenol);

(B) HU-210, [(6AR,10AR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-Methyloctan-2-YL)-6A,7,10, 10A-tetrahydrobenzo[C] chromen-1-OL];

(C) HU-211, (dexanabinol, (6AS,10AS)-9-(hydroxymethyl)-6,6-Dimethyl-3-(2-methyloctan-2-YL)-6A,7,10,10atetrahydrobenzo [C] chromen-1-OL);

(D) JWH-018, 1-pentyl-3-(1-naphthoyl) indole;

(E) JWH-019, 1-hexyl-3-(1-naphthoyl) indole;

(F) JWH-073, 1-butyl-3-(1-naphthoyl) indole;

(G) JWH-200, (1-(2-morpholin-4-ylethyl) indol-3-yl)- Naphthalen-1-ylmethanone;

(H) JWH-250, 1-pentyl-3-(2-methoxyphenylacetyl) indole.

(55) Synthetic cannabinoids including any material, compound, mixture or preparation that is not listed as a controlled substance in Schedule I through V, is not a federal Food and Drug Administration approved drug or used within legitimate and approved medical research and which contains any quantity of the following substances, their salts, isomers, whether optical positional or geometric, analogues, homologues and salts of isomers, analogues and homologues, unless specifically exempted, whenever the existence of these salts, isomers, analogues, homologues and salts of isomers, analogues and homologues if possible within the specific chemical designation:

(A) Tetrahydrocannabinols meaning tetrahydrocannabinols which are naturally contained in a plant of the genus cannabis as well as synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis or synthetic substances, derivatives and their isomers with analogous chemical structure and or pharmacological activity such as the following:

(i) DELTA-1 CIS OR trans tetrahydrocannabinol and their Optical isomers.

(ii) DELTA-6 CIS OR trans tetrahydrocannabinol and their Optical isomers.

(iii) DELTA-3,4 CIS OR their trans tetrahydrocannabinol and their optical isomers.

(B) Naphthoyl indoles or any compound containing a 3-(1-Naphthoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include the following:

(i) JWH 015;

(ii) JWH 018;

(iii) JWH 019;

(iv) JWH 073;

(v) JWH 081;

(vi) JWH 122;

- (vii) JWH 200;
- (viii) JWH 210;
- (ix) JWH 398;
- (x) AM 2201;
- (xi) WIN 55,212.

(56) Synthetic Phenethylamines (including their optical, positional, and geometric isomers, salts and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers):

(A) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe/ 2C-I-NBOMe);

(B) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe/2C-C-NBOMe);

(C) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe/ 2C-B-NBOMe);

(57) Synthetic Opioids (including their isomers, esters, ethers, salts and salts of isomers, esters and ethers):

(A) N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (acetyl fentanyl);

(B) furanyl fentanyl;

(C) 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (also known as U-47700);

(D) N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, also known as N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide, (butyryl fentanyl);

(E) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, also known as N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide, (beta-hydroxythiofentanyl).

(58) Opioid Receptor Agonist (including its isomers, esters, ethers, salts, and salts of isomers, esters and ethers):

(A) AH-7921 (3,4-dichloro-N-(1dimethylamino)cyclohexylmethyl)(benzamide).

~~(56)~~ (59) Naphylmethylindoles or any compound containing a 1indol-3-yl-(1-naphthyl) methane structure with a substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 175 and JWH 184.

~~(57)~~ (60) Naphthoypyrroles or any compound containing a 3-(1-Naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 147 and JWH 307.

~~(58)~~ (61) Naphthylmethylenes or any compound containing a Naphthylideneindene structure with substitution at the 3-Position of the indene ring whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 176.

~~(59)~~ (62) Phenylacetylindoles or any compound containing a 3-Phenylacetylindole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include the following:

- (A) RCS-8, SR-18 OR BTM-8;
- (B) JWH 250;
- (C) JWH 203;
- (D) JWH 251;
- (E) JWH 302.

~~(60)~~ (63) Cyclohexylphenols or any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with a substitution at the 5-position of the phenolic ring whether or not substituted in the cyclohexyl ring to any extent. This shall include the following:

- (A) CP 47,497 and its homologues and analogs;
- (B) Cannabicyclohexanol;
- (C) CP 55,940.

~~(61)~~ (64) Benzoylindoles or any compound containing a 3-(benzoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include the following:

- (A) AM 694;
- (B) Pravadoline WIN 48,098;
- (C) RCS 4;
- (D) AM 679.

~~(62)~~ (65) [2,3-dihydro-5 methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-DE]-1, 4-benzoxazin-6-YL]-1-naphthalenymethanone. This shall include WIN 55,212-2.

~~(63)~~ (66) Dibenzopyrans or any compound containing a 11-hydroxydelta 8-tetrahydrocannabinol structure with substitution on the 3-pentyl group. This shall include HU-210, HU-211, JWH 051 and JWH 133.

~~(64)~~ (67) Adamantoylindoles or any compound containing a 3-(-1- Adamantoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the adamantoyl ring system to any extent. This shall include AM 1248.

~~(65)~~ (68) Tetramethylcyclopropylindoles or any compound containing A 3-tetramethylcyclopropylindole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropyl ring to any extent. This shall include UR-144 and XLR-11.

~~(66)~~ (69) N-(1-Adamantyl)-1-pentyl-1h-indazole-3-carboxamide. This shall include AKB48.

~~(67)~~ (70) Any other synthetic chemical compound that is a Cannabinoid receptor type 1 agonist as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV and V, not federal Food and Drug Administration approved drug or used within legitimate, approved medical research. Since nomenclature of these substances is not internationally standardized, any immediate precursor or immediate derivative of these substances shall be covered.

~~(68)~~ (71) Tryptamines:

(A) 5- methoxy- N- methyl-N-isopropyltryptamine (5-MeO-MiPT)

(B) 4-hydroxy-N, N-diisopropyltryptamine (4-HO-DiPT)

(C) 4-hydroxy-N-methyl-N-isopropyltryptamine (4-HO-MiPT)

(D) 4-hydroxy-N-methyl-N-ethyltryptamine (4-HO-MET)

(E) 4-acetoxy-N, N-diisopropyltryptamine (4-AcO-DiPT)

(F) 5-methoxy- α -methyltryptamine (5-MeO-AMT)

(G) 4-methoxy-N, N-Dimethyltryptamine (4-MeO-DMT)

(H) 4-hydroxy Diethyltryptamine (4-HO-DET)

(I) 5- methoxy- N, N- diallyltryptamine (5-MeO-DALT)

(J) 4-acetoxy-N, N-Dimethyltryptamine (4-AcO DMT)

(K) 4-hydroxy Diethyltryptamine (4-HO-DET)

(72) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (AB-CHMINACA);

(73) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (AB-PINACA);

(74) [1-(5-fluoropentyl)-1H-indazol-3-yl (naphthalen-1-yl)methanone (THJ-2201);

(75) quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate (PB-22; QUPIC);

(76) quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (5-fluoro-PB-22; 5F-PB-22);

(77) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (AB-FUBINACA);

(78) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (ADB-PINACA); and

(79) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (common names, MAB-CHMINACA and ADB-CHMINACA);

(e) *Depressants*. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone;

(2) Methaqualone.

(f) *Stimulants*. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Aminorex; some other names: aminoxaphen; 2-amino-5- phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

(2) Cathinone; some trade or other names: 2-amino-1-phenyl-1- propanone, alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone;

(3) Fenethylamine;

(4) Methcathinone, its immediate precursors and immediate derivatives, its salts, optical isomers and salts of optical isomers; some other names: (2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1- one; alpha—methylaminopropiophenone; monomethylpropion; 3,4-methylenedioxypropylamphetamine and/or mephedrone; 3,4-methylenedioxypropylamphetamine (MPVD); ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL- 463 and UR1432;

(5) (+-) cis-4-methylaminorex; ((+-) cis-4,5-dihydro-4-methyl- 5-phenyl-2-oxazolamine);

(6) N-ethylamphetamine;

(7) N,N-dimethylamphetamine; also known as N,N-alpha- trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine.

(8) Alpha-pyrrolidinopropiophenone, also known as alpha-PVP, optical isomers, salts and salts of isomers.

(9) Substituted amphetamines:

(A) 2-Fluoroamphetamine

(B) 3-Fluoroamphetamine

(C) 4-Fluoroamphetamine

(D) 2-chloroamphetamine

(E) 3-chloroamphetamine

(F) 4-chloroamphetamine

(G) 2-Fluoromethamphetamine

(H) 3-Fluoromethamphetamine

(I) 4-Fluoromethamphetamine

(J) 4-chloromethamphetamine

(10) 4-methyl-N-ethylcathinone (4-MEC);

(11) 4-methyl-alpha-pyrrolidinopropiophenone (4-MePPP);

(12) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one (butylone);

(13) 2-(methylamino)-1-phenylpentan-1-one (pentedrone);

(14) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one (pentylone);

(15) 4-fluoro-N-methylcathinone (4-FMC);

(16) 3-fluoro-N-methylcathinone (3-FMC);

(17) 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one (naphyrone); and

(18) Alpha-pyrrolidinobutiophenone (α -PBP).

(g) Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers.

(2) N-[1-(2-thienyl) methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.

(3) N-benzylpiperazine, also known as BZP.

(h) The following controlled substances are included in Schedule I:

(1) Synthetic Cathinones or any compound, except bupropion or compounds listed under a different schedule, or compounds used within legitimate and approved medical research, structurally derived from 2- Aminopropan-1-one by substitution at the 1-position with Monocyclic or fused polycyclic ring systems, whether or not the compound is further modified in any of the following ways:

(A) By substitution in the ring system to any extent with Alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl or halide substituents whether or not further substituted in the ring system by one or more other univalent substituents.

(B) By substitution at the 3-Position with an acyclic alkyl substituent.

(C) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or methoxybenzyl groups.

(D) By inclusion of the 2-amino nitrogen atom in a cyclic structure.

(2) Any other synthetic chemical compound that is a Cannabinoid receptor type 1 agonist as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV and V, not federal Food and Drug Administration approved drug or used within legitimate, approved medical research.

§60A-2-206. Schedule II.

(a) Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section.

(b) *Substances, vegetable origin or chemical synthesis.* — Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone and naltrexone, and their respective salts, but including the following:

(A) Raw opium;

(B) Opium extracts;

(C) Opium fluid;

(D) Powdered opium;

(E) Granulated opium;

(F) Tincture of opium;

(G) Codeine;

(H) Dihydroetorphine;

(I) Ethylmorphine;

(J) Etorphine hydrochloride;

(K) Hydrocodone;

(L) Hydromorphone;

(M) Metopon;

(N) Morphine;

(O) Oripavine;

(P) Oxycodone;

(Q) Oxymorphone; and

(R) Thebaine;

(2) Any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (1) of this subsection, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative or preparation of coca leaves (including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine or ecgonine;

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

(c) *Opiates*. — Unless specifically excepted or unless in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(1) Alfentanil;

(2) Alphaprodine;

(3) Anileridine;

(4) Bezitramide;

(5) Bulk dextropropoxyphene (nondosage forms);

(6) Carfentanil;

(7) Dihydrocodeine;

(8) Diphenoxylate;

(9) Fentanyl;

(10) Isomethadone;

- (11) Levo-alpha-acetylmethadol; some other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM;
- (12) Levomethorphan;
- (13) Levorphanol;
- (14) Metazocine;
- (15) Methadone;
- (16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (17) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- (18) Pethidine; (meperidine);
- (19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4- phenylpiperidine;
- (20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (22) Phenazocine;
- (23) Piminodine;
- (24) Racemethorphan;
- (25) Racemorphan;
- (26) Remifentanil;
- (27) Sufentanil; and
- (28) Tapentadol and
- (29) Thiafentanil (4-(methoxycarbonyl)-4-(N-phenmethoxyacetamido)-1-2-(thienyl)ethylpiperidine), including its isomers, esters, ethers, salts and salts of isomers, esters and ethers.

(d) *Stimulants*. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers and salts of its optical isomers;
- (2) Methamphetamine, its salts, isomers and salts of its isomers;
- (3) Methylphenidate;
- (4) Phenmetrazine and its salts; and

(5) Lisdexamfetamine.

(e) *Depressants*. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

(2) Glutethimide;

(3) Pentobarbital;

(4) Phencyclidine;

(5) Secobarbital.

(f) *Hallucinogenic substances*:

Nabilone; [Another name for nabilone: (+-)-trans-3-(1, 1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo [b,d] pyran-9-one].

(g) *Immediate precursors*. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(A) Phenylacetone;

(B) Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;

(2) Immediate precursors to phencyclidine (PCP):

(A) 1-phenylcyclohexylamine; and

(B) 1-piperidinocyclohexanecarbonitrile (PCC).

(3) Immediate precursor to fentanyl: 4-anilino-N-phenethyl-4-piperidine (ANPP).

§60A-2-210. Schedule IV.

(a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) *Narcotic drugs*. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

(c) *Depressants*. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam;
- (2) Barbitol;
- (3) Bromazepam;
- (4) Camazepam;
- (5) Carisoprodol;
- (6) Chloral betaine;
- (7) Chloral hydrate;
- (8) Chlordiazepoxide;
- (9) Clobazam;
- (10) Clonazepam;
- (11) Clorazepate;
- (12) Clotiazepam;
- (13) Cloxazolam;
- (14) Delorazepam;
- (15) Diazepam;
- (16) Dichloralphenazone;
- (17) Estazolam;
- (18) Ethchlorvynol;
- (19) Ethinamate;
- (20) Ethyl loflazepate;
- (21) Fludiazepam;
- (22) Flunitrazepam;

- (23) Flurazepam;
- (24) Fospropofol;
- (25) Halazepam;
- (26) Haloxazolam;
- (27) Ketazolam;
- (28) Loprazolam;
- (29) Lorazepam;
- (30) Lormetazepam;
- (31) Mebutamate;
- (32) Medazepam;
- (33) Meprobamate;
- (34) Methohexital;
- (35) Methylphenobarbital (mephobarbital);
- (36) Midazolam;
- (37) Nimetazepam;
- (38) Nitrazepam;
- (39) Nordiazepam;
- (40) Oxazepam;
- (41) Oxazolam;
- (42) Paraldehyde;
- (43) Petrichloral;
- (44) Phenobarbital;
- (45) Pinazepam;
- (46) Prazepam;
- (47) Quazepam;
- (48) Temazepam;

(49) Tetrazepam;

(50) Triazolam;

(51) Zaleplon;

(52) Zolpidem;

(53) Zopiclone;

(54) Suvorexant ((7R)-4-(5-chloro-1,3-benzoxazol-2-yl)-7-methyl-1,4-diazepan-1-yl) [5-methyl-2-(2H-1,2,3-triazol-2-yl)phenyl]methanone).

(d) Any material, compound, mixture or preparation which contains any quantity of the following substance, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible: Fenfluramine and Dexfenfluramine.

(e) *Stimulants*. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Cathine ((+)-norpseudoephedrine);

(2) Diethylpropion;

(3) Fencamfamin;

(4) Fenproporex;

(5) Mazindol; z

(6) Mefenorex;

(7) Modafinil;

(8) Pemoline (including organometallic complexes and chelates thereof);

(9) Phentermine;

(10) Pipradrol;

(11) Sibutramine;

(12) SPA ((-)-1-dimethylamino-1,2-diphenylethane);

(13) Eluxadolone (5-[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl [(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid):

(f) *Other substances*. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Pentazocine;

(2) Butorphanol;

(3) ~~tramadol—hydrochloride.~~ Tramadol (2-[(dimethylamino)methyl]-1-(3-methoxyphenyl) cyclohexanol).

Amyl nitrite, butyl nitrite, isobutyl nitrite and the other organic nitrites are controlled substances and no product containing these compounds as a significant component shall be possessed, bought or sold other than pursuant to a bona fide prescription or for industrial or manufacturing purposes.

§60A-2-212. Schedule V.

(a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture or preparation containing any of the following narcotic drugs or their salts calculated as the free anhydrous base or alkaloid in limited quantities as set forth below, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) *Stimulants.* — Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Pyrovalerone.

(d) Any compound, mixture or preparation containing as its single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers except products which are for pediatric use primarily intended for administration to children under the age of twelve: *Provided*, That neither the offenses set forth in section four hundred one, article four of this chapter, nor the penalties therein, shall be applicable to ephedrine, pseudoephedrine or phenylpropanolamine which shall be subject to the provisions of article ten of this chapter.

(e) *Depressants*. — Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Ezogabine [N-[2-amino-4-(9-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester];

(2) Lacosamide [(R)-2-acetoamido- N -benzyl-3-methoxy-propionamide];

(3) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid]; and

(4) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide) (also referred to as BRV; UCB-34714; Briviact), including its salts.”

Delegate Cowles moved to amend the amendment of the Senate, on page four, by removing the following language:

“(29) Fentanyl analog or derivative, as that term is defined in article one of this chapter: *Provided*, That fentanyl remains a Schedule II substance, as set forth in section two hundred six of this article” and the semicolon.

And then renumbering the subdivisions accordingly.

The motion to concur in the amendment of the bill by the Senate, with further amendment by the House, was adopted.

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. 548**), 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, Fluharty, McGeehan, Pushkin and Rowe.

Absent and Not Voting: Blair.

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. 2526) 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 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

Com. Sub. for H. B. 2589, Permitting students who are homeschooled or attend private schools to enroll and take classes at the county’s vocational school.

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

Senators Gaunch, Mann and Romano.

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 Blair, Upson and Rodighiero.

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 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

Com. Sub. for H. B. 2631, Relating to time standards for disposition of complaint proceedings.

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

Senators Takubo, Maroney and Palumbo.

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 Hanshaw, Capito and R. Miller.

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

Conference Committee Report Availability

At 5:24 p.m., the Clerk announced availability in his office of the report of the Committee of Conference on Com. Sub. for H. B. 2722, Eliminating the financial limitations on utilizing the design-build program for highway construction.

At 5:25 p.m., the Clerk announced availability in his office of the report of the Committee of Conference on Com. Sub. for H. B. 2721, Removing the cost limitation on projects completed by the Division of Highways.

At 5:26 p.m., on motion of Delegate Cowles, the House of Delegates recessed until 5:45 p.m.

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Evening Session

* * * * *

The House of Delegates was called to order by the Honorable Tim Armstead, Speaker.

Conference Committee Report Availability

At 6:19 p.m., the Clerk announced availability in his office of the reports of the Committees of Conference on Com. Sub. for S. B. 204, Requiring persons appointed to fill vacancy by Governor have same qualifications for vacated office and receive same compensation and expenses, and S. B. 554, Relating to false swearing in legislative proceeding.

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. 2804, Removing chiropractors from the list of medical professions required to obtain continuing education on mental health conditions common to veterans and family members.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page one, section seven-a, line fourteen, after the word "surgery", by inserting the words "as an osteopathic physician and surgeon".

On page one, section seven-a, line fifteen, after the word "licensed", by inserting the words "or certified as an osteopathic".

And,

On page one, section seven-a, line fifteen, after the word "as" by striking out the word "a".

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. 549**), and there were—yeas 93, nays 3, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: Fleischauer, Howell and Statler.

Absent and Not Voting: Diserio, Eldridge, Hamilton and Maynard.

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. 2804) 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. 2869, Providing for paid leave for certain state officers and employees during a declared state of emergency.

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

On page one, by striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

“That §15-5-15a of the Code of West Virginia, 1931, as amended, be repealed; and that that the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-5-15b, all to read as follows” and a colon.

And,

By amending the title of the bill to read as follows:

H. B. 2869 - “A Bill to repeal §15-5-15a of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §15-5-15b, relating to 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.”

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. 2935, Relating to state flood protection planning.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

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

“CHAPTER 4. THE LEGISLATURE.

ARTICLE 15. JOINT LEGISLATIVE COMMITTEE ON FLOODING.

§4-15-1. Establishing a Joint Legislative Committee on Flooding.

(a) The President of the Senate and the Speaker of the House of Delegates shall each appoint five members of their respective houses, at least two of whom shall be members of the minority party, and at least one shall be a member of the Committee on Government Organization, to serve on an interim committee charged with studying flood damage reduction and flood plain management. The President and the Speaker shall each designate a Chair from among the five committee members of their respective houses. This committee shall be known as the ‘Joint Legislative Committee on Flooding’ and shall study all activities relating to flood protection and shall make recommendations to the Joint Committee on Government and Finance, which offer solutions to reduce the reality and threat of future loss of life and property damages associated with flooding.

(b) The expenses of the committee are to be approved by the Joint Committee on Government and Finance and paid from legislative appropriations.

(c) The Chair of the State Resiliency Office, created pursuant to article thirty, chapter twenty-nine of this code, shall report quarterly to the committee, and shall prepare an annual report to the committee no later than December 31 of each year.

(d) The Chairs of the committee shall report annually, each January, to the Joint Committee on Government and Finance, with any proposals or legislation as may be deemed necessary to prevent or reduce the risk of flooding in this state.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 30. STATE RESILIENCY AND FLOOD PROTECTION PLAN ACT.

§29-30-1. Short title; legislative findings; purpose.

(a) This article may be known and cited as the 'Resiliency and Flood Protection Planning Act'.

(b) The West Virginia Legislature finds that:

(1) Flooding has affected each of the fifty-five counties and thirty-two major watersheds within the state;

(2) Over the past fifty-two years, more than two hundred and eighty-two West Virginians have died in floods;

(3) Between January 1996 and January 2017, there have been twenty-seven federal disaster declarations in West Virginia involving flooding; and

(4) In June 2016 much of West Virginia suffered devastating flooding.

(5) Despite the many state and federal flood protection programs and projects, flooding continues to be West Virginia's most common and widespread natural disaster.

(c) It is the purpose of this article to provide a comprehensive and coordinated statewide resiliency and flood protection planning program to save lives, and develop community and economic resiliency plans including, but not limited to, reducing or mitigating flood damage while supporting economic growth and protecting the environment.

§29-30-2. State Resiliency Office.

(a) The State Resiliency Office is hereby created. The office shall be organized within the Development Office in the Department of Commerce as the recipient of disaster recovery and resiliency funds, excluding federal Stafford Act funds, and the coordinating agency of recovery and resiliency efforts, including matching funds for other disaster recovery programs, excluding those funds and efforts under the direct control of the State Coordinating Officer designated by the Governor for a particular event. The State Resiliency Office Board is also established and shall consist of the following eight members: the Secretary of the Department of Commerce or his or her designee; The Director of the Division of Natural Resources or his or her designee; the Secretary of the Department of Environmental Protection or his or her designee; the Executive Director of the State Conservation Agency or his or her designee; the Secretary of the Department of Military Affairs and Public Safety or his or her designee; the Secretary of Transportation or his or her designee; the Adjutant General

of the West Virginia National Guard or his or her designee; and the Director of the Division of Homeland Security and Emergency Management within the Department of Military Affairs and Public Safety or his or her designee.

(b) The Secretary of the Department of Commerce shall be the chair of the State Resiliency Office Board. In the absence of the chair, any member designated by the members present may act as chair.

(c) The board shall meet no less than once each calendar quarter at the time and place designated by the chair. All decisions of the board shall be decided by a majority vote of the members.

(d) The chair shall provide adequate staff from their respective office, to ensure the meetings of the board are properly noticed, meetings of the board are facilitated, board meeting minutes are taken, records and correspondence kept and that reports of the board are produced timely.

§29-30-3. Authority of State Resiliency Office; authority of board.

The State Resiliency Office, through its board may:

(1) Serve as coordinator of all economic and community resiliency planning and implementation efforts, including but not limited to flood protection programs and activities in the state;

(2) Annually review the state flood protection plan and update the plan no less than biannually;

(3) Recommend legislation to reduce or mitigate flood damage;

(4) Report to the Joint Legislative Committee on Flooding at least quarterly;

(5) Catalog, maintain and monitor a listing of current and proposed capital expenditures to reduce or mitigate flood damage or other resiliency efforts;

(6) Coordinate planning of flood projects with federal agencies;

(7) Improve professional management of flood plains;

(8) Provide education and outreach on flooding issues to the citizens of this state;

(9) Establish a single website integrating all agency flood information;

(10) Monitor federal funds and initiatives that become available for disaster recovery and economic and community resiliency;

(11) Pursue additional funds and resources to assist not only with long-term recovery efforts but also long-term community and state-wide resiliency efforts;

(12) Coordinate, integrate and expand planning efforts in the state for hazard mitigation, long-term disaster recovery and economic diversification;

(13) Coordinate long-term disaster recovery efforts in response to disasters as they occur;

(14) Establish and facilitate regular communication between federal, state, local and private sector agencies and organizations to further economic and disaster resilience; and

(15) Take all other actions necessary and proper to effectuate the purposes of this article.

§29-30-4. Reporting to the Joint Legislative Committee on Flooding.

(a) The chair of the board of the State Resiliency Office shall report, at a minimum of quarterly, to the Joint Legislative Committee on Flooding, created pursuant to article fifteen, chapter four of this code, in sufficient detail for the committee to be aware of the activities of the board to assure progress toward reducing and mitigating flood damage within this state while respecting and complying with the Takings Clause of the United States Constitution, the West Virginia Constitution, and related precedential court opinions, and to develop legislative recommendations.

(b) The chair of the council shall submit an annual report to the committee by December 31 of each year, along with any recommended legislation, budget requests and a summary of the activities of the board for the previous year.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2935 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §4-15-1; and to amend said code by adding thereto a new article, designated §29-30-1, §29-30-2, §29-30-3 and §29-30-4, all relating to state flood protection generally; establishing a Joint Legislative Committee on Flooding and providing for duties; establishing the Resiliency and Flood Protection Planning Act; providing legislative findings and purpose; creating the State Resiliency Office within the Development Office in the Department of Commerce; establishing a State Resiliency Office Board; providing certain duties and authorities of the State Resiliency Office; and requiring reporting 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. 550**), 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 (Com. Sub. for H. B. 2935) 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. 3080, Requiring instruction in the Declaration of Independence and the United States Constitution.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page three, section nine, line fifty-nine, by striking out the words “at least three hours of”.

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 551**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Iaquina.

Absent and Not Voting: Criss.

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. 3080) 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, with amendment, and the passage, as amended, of

Com. Sub. for S. B. 333, Requiring all DHHR-licensed facilities access WV Controlled Substances Monitoring Program Database.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page two, section four, subsection (b), subdivision (8), by striking out the words “the first name, last name and middle initial, address and birth date of the person picking up the prescription” and inserting in lieu thereof the words “information about the person picking up the prescription”.

On page eleven, section nine, subsection (a), subdivision (8), by striking out the words “the first name, last name and middle initial, address and birth date of the person picking up the prescription” and inserting in lieu thereof the words “information about the person picking up the prescription”.

And,

By amending the title of the bill to read as follows:

Com. Sub. for S. B. 333 - “A Bill to amend and reenact §60A-9-4, §60A-9-5 and §60A-9-5a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §60A-9-9, all relating to the Controlled Substances Monitoring Program database; requiring reporting instances of an overdose or a suspected overdose to the database; setting out elements to be reported; allowing access to the database to deans of the state’s medical schools or their designees for monitoring prescribing practices of prescribing faculty members, prescribers and residents enrolled in a degree program at the school where the dean serves; allowing access to designated physician reviewers for medical provider employers; providing access to a physician reviewer designated by an employer of medical providers for monitoring prescribing practices of physicians, advance practice registered nurses or physician assistants in their employ; providing access to chief medical officers of a hospital or a physician designated by the chief executive officer of a hospital who does not have a chief medical officer for monitoring prescribing practices of prescribers who have admitting privileges to the hospital; providing that information obtained from accessing the West Virginia Controlled Substances Monitoring Program database shall be documented in a patient’s medical record maintained by a private prescriber or any inpatient facility licensed pursuant to public health; allowing the Board of Pharmacy to require that drugs of concern be reported to the database; clarifying identity information required to be retained by dispensers of

controlled substances regarding persons picking up prescriptions other than the patient; exempting reporting requirements for drugs of concern from criminal penalties; allowing duly authorized agents of the Office of Health Facility Licensure and Certification to access the database for use in certification, licensure and regulation of health facilities; providing that a failure to report drugs of concern may be considered a violation of the practice act of the prescriber and may result in discipline by the appropriate licensing board; providing for rulemaking; requiring the licensing boards to report to the Board of Pharmacy when notified of unusual prescribing habits of a licensee; and making technical corrections.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 552**), 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. 333) 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 a title amendment, and the passage, as amended, of

Com. Sub. for S. B. 606, Relating to minimum wage and maximum hours for employees.

On motion of Delegate Cowles, the House concurred in the following Senate title amendment:

Com. Sub. for S. B. 606 – “A Bill to amend and reenact §21-5C-1 of the Code of West Virginia, 1931, as amended, relating to minimum wage and maximum hour standards for employees by a recreational establishment which does not operate for more than seven months in any calendar year during the preceding calendar year or had average receipts for any six months of the year which were not more than thirty-three and one-third per centum of its average receipts for the other six months of that year; and requiring any such employee is compensated on a salary basis in an annual amount of not less than two thousand eighty times the West Virginia state minimum wage as stated in section two of this article.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 553**), and there were—yeas 54, nays 41, absent and not voting 5, with the yeas and absent and not voting being as follows:

Nays: Baldwin, Barrett, Bates, Boggs, Brewer, Canestraro, Caputo, Dean, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Hamilton, Hicks, Hornbuckle, Iaquina, Isner, Lewis, Longstreth, Love, Lovejoy, Lynch, Marcum, Miley, R. Miller, Moye, Pethtel, Phillips, Pushkin, Pyles, Queen, Rohrbach, Rowe, Sponaule, Storch, Thompson, Wagner, Ward and Williams.

Absent and Not Voting: Blair, Folk, Robinson, Rodighiero and Upson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 606) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2219, Authorizing miscellaneous boards and agencies to promulgate legislative rules.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

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

“ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Commissioner of Agriculture.

(a) The legislative rule filed in the State Register on August 23, 2016, authorized under the authority of section two, article nine, chapter nineteen of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 23, 2016, relating to the Commissioner of Agriculture (animal disease control, 61 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on August 23, 2016, authorized under the authority of section three, article thirty-four, chapter nineteen of this code relating to the Commissioner of Agriculture (dangerous wild animals, 61 CSR 30), is authorized.

(c) The legislative rule filed in the State Register on August 23, 2016, authorized under the authority of section four, article one-c, chapter nineteen of this code, relating to the Commissioner of Agriculture (livestock care standards, 61 CSR 31), is authorized.

(d) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section one, article two-h, chapter nineteen of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 23, 2016, relating to the Commissioner of Agriculture (captive cervid, 61 CSR 34), is authorized with the following amendments:

On page two, subsection 2.10, by striking out “Class II” and inserting in lieu thereof “Class I”;

On page two, by striking out subsection 2.17 and inserting in lieu thereof a new subsection 2.17 to read as follows:

“2.17. Slaughter facility” means a slaughter facility with a valid captive cervid license operating under state or federal inspection that may hold cervids for up to seventy-two (72) hours prior to slaughtering, or a slaughter facility with no captive cervid facility license operating under state or federal inspection that must slaughter all cervids within the operating day of receipt of the animal(s).”;

On page four, by striking out subsection 5.1 and inserting in lieu thereof a new subsection 5.1 to read as follows:

“5.1. An updated inventory record containing birth and death records, and testing results shall be provided biannually: at license renewal on June 30 and by December 31.”;

On page five, paragraph 8.1.a.2, by striking out “white-tailed deer” and inserting in lieu thereof “cervids”;

On page five, paragraph 8.1.a.5, by striking out “white-tailed deer” and inserting in lieu thereof “cervids”;

On page five, subparagraph 8.1.b.3.d., by striking out “Flooring” and inserting in lieu thereof “Flooding”;

On page eight, by striking out all of subsection 10.2 and inserting in lieu thereof a new subsection 10.2 to read as follows:

“10.2. A licensee shall forward a copy of the records of all acquisitions, mortalities by unknown cause, sales or possession transfers to the state veterinarian’s office within fifteen (15) days. Applications to receive or transfer captive cervids shall be made on forms provided by the Department.”;

On page eight, subsection 11.6, after the word “months”, by inserting a comma and the following words: or from an out-of-state captive cervid facility which is located within a fifteen (15) mile radius of a confirmed CWD or TB positive cervid in the last sixty (60) months.”;

On page ten, by striking out subsection 12.2 and inserting in lieu thereof a new subsection 12.2 to read as follows:

“12.2 Any captive cervid that escapes from a captive cervid facility shall be dispatched by the Department or DNR personnel, unless after review by the Commissioner of Agriculture and the West Virginia State Veterinarian it is determined that the escaped captive cervid, after being secured and returned to the premise from which it escaped, does not present a health risk to the public, other captive cervids or wildlife: *Provided*, That all escaped cervids that are sourced from a known, confirmed TB and CWD containment area will be dispatched.”;

On page eleven, subsection 13.6, by striking out the words “if from a captive cervid facility” and inserting in lieu thereof the word “number”;

On page eleven, by un-striking subsection 3.7;

And,

By renumbering the remaining subsection.

“§64-9-2. Board of Architects.

The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section one, article twelve, chapter thirty of this code, modified by the Board of Architects to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 5, 2016, relating to the Board of Architects (registration of architects, 2 CSR 01), is authorized with the following amendments:

On page one, subsection 1.5, by striking out the phrase “fifteen (15)” and inserting in lieu thereof the phrase “ten (10)”.

§64-9-3. Athletic Commission.

(a) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section twenty-four, article five-a, chapter twenty-nine of this code, modified by the Athletic Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 20, 2016, relating to the Athletic Commission (administrative rules of the West Virginia State Athletic Commission, 177 CSR 01), is authorized with the following amendments:

On page four, after subdivision "4.5.g." by striking out the words "No fee for amateurs. —" and inserting in lieu thereof "4.6";

On page four, in the paragraph beginning with the words "No fee for amateurs" after the words "amateur contestant or a" by striking out the word "managers" and inserting in lieu thereof the word "manager";

On page eight, in the section heading "11a. Testing for Older Fighters", by striking out 11.a and inserting in lieu thereof "12";

On page eight, by striking out 11a.1 and inserting in lieu thereof "12.1";

On page nine, by striking out 11a.2 and inserting in lieu thereof "12.2";

On page nine, by striking out 11a.3 and inserting in lieu thereof "12.3";

On page nine, by striking out 11a.3.a and inserting in lieu thereof "12.3.a";

On page nine, by striking out 11a.3.b and inserting in lieu thereof "12.3.b";

On page nine, by striking out 11a.3.c and inserting in lieu thereof "12.3.c";

On page nine, by striking out 11a.4 and inserting in lieu thereof "12.4";

On page nine, after subsection 11a.4 by adding a new subsection to read as follows:

"12.5 The applicant, or by contract, the promoter, shall pay for any medical testing required in this section: *Provided*, That the applicant is responsible to be tested timely pursuant to the applicable rules of the Commission." and by renumbering the remaining sections;

On page eleven, subsection 25.1, by striking out the words "shall neither" and inserting in lieu thereof the words "may not";

On page thirteen, subsection 30.2, by striking out the word "provision" and inserting in lieu thereof the word "section";

On page twenty-one, in the section heading, by striking out "45a" and inserting in lieu thereof "47";

On page twenty-one, by striking out "45a.1" and inserting in lieu thereof "47.1";

On page twenty-one, by striking out "45a.2" and inserting in lieu thereof "47.2";

On page twenty-one, by striking out "45a.2.a" and inserting in lieu thereof "47.2.a";

On page twenty-one, by striking out “45a.2.a.1” and inserting in lieu thereof “47.2.a.1”;

On page twenty-one, by striking out “45a.2.a.2” and inserting in lieu thereof “47.2.a.2”;

On page twenty-one, by striking out “45a.2.a.3” and inserting in lieu thereof “47.2.a.3”;

On page twenty-one, by striking out “45a.2.a.4” and inserting in lieu thereof “47.2.a.4”;

On page twenty-one, by striking out “45a.2.a.5” and inserting in lieu thereof “47.2.a.5”;

On page twenty-one, by striking out “45a.2.b” and inserting in lieu thereof “47.2.b”;

On page twenty-one, by striking out “45a.2.b.1” and inserting in lieu thereof “47.2.b.1”;

On page twenty-one, by striking out “45a.2.b.2” and inserting in lieu thereof “47.2.b.2”;

On page twenty-one, in paragraph 45a.2.a.2, after the words “wear foot pads” by adding the words “or shin guard instep pads”;

On page twenty-one, in paragraph 45a.2.a.2, after the word “Footpads” by adding the words “or shin guard instep pads”;

On page twenty-one, by striking out “45a.2.b.3” and inserting in lieu thereof “47.2.b.3”;

On page twenty-one, by striking out “45a.2.b.4” and inserting in lieu thereof “47.2.b.4”;

On page twenty-two, by striking out “45a.2.c” and inserting in lieu thereof “47.2.c”;

On page twenty-two, by striking out “45a.2.c.1” and inserting in lieu thereof “47.2.c.1”;

On page twenty-two, by striking out “45a.2.c.2” and inserting in lieu thereof “47.2.c.2”;

On page twenty-two, by striking out “45a.2.c.3” and inserting in lieu thereof “47.2.c.3”;

On page twenty-two, by striking out “45a.2.c.4” and inserting in lieu thereof “47.2.c.4”;

On page twenty-two, by striking out “45a.2.c.5” and inserting in lieu thereof “47.2.c.5”;

On page twenty-two, paragraph 45a.2.c.5., after the sentence ending with the words “two (2) minutes’ duration.” by striking out the remainder of the paragraph;

On page twenty-two, after 45a.2.c.5., by adding a new paragraph to read as follows:

“47.2.c.6. An amateur contestant’s fourth and each subsequent amateur bout shall consist of three (3) rounds and three (3) minutes duration.”;

On page twenty-two, by striking out “45a.3” and inserting in lieu thereof “47.3”;

On page twenty-two, by striking out “45a.3.a” and inserting in lieu thereof “47.3.a”;

On page twenty-two, by striking out “45a.3.a.1” and inserting in lieu thereof “47.3.a.1”;

On page twenty-two, by striking out “45a.3.a.2” and inserting in lieu thereof “47.3.a.2”;

On page twenty-two, by striking out “45a.3.a.3” and inserting in lieu thereof “47.3.a.3”;

On page twenty-two, by striking out “45a.3.b” and inserting in lieu thereof “47.3.b”;

On page twenty-two, by striking out “45a.3.b.1” and inserting in lieu thereof “47.3.b.1”;

On page twenty-two, by striking out “45a.3.b.2” and inserting in lieu thereof “47.3.b.2”;

On page twenty-two, by striking out “45a.3.b.3” and inserting in lieu thereof “47.3.b.3”;

On page twenty-two, by striking out “45a.3.b.4” and inserting in lieu thereof “47.3.b.4”;

On page twenty-two, by striking out “45a.3.b.5” and inserting in lieu thereof “47.3.b.5”;

On page twenty-two, by striking out “45a.3.b.6” and inserting in lieu thereof “47.3.b.6”;

On page twenty-two, by striking out “45a.3.b.7” and inserting in lieu thereof “47.3.b.7”;

On page twenty-three, by striking out “45a.3.c” and inserting in lieu thereof “47.3.c”;

On page twenty-three, by striking out “45a.3.c.1” and inserting in lieu thereof “47.3.c.1”;

On page twenty-three, by striking out “45a.3.c.2” and inserting in lieu thereof “47.3.c.2”;

On page twenty-three, by striking out “45a.3.c.3” and inserting in lieu thereof “47.3.c.3” and by renumbering the remaining sections;

On page twenty three, paragraph 45a.3.c.3., after the sentence ending with the words “two (2) minutes duration.” by striking out the remainder of the paragraph;

And,

On page twenty-three, after 45a.3.c.3., by adding a new paragraph to read as follows:

“47.3.c.4. An amateur contestant’s fourth and each subsequent amateur bout shall consist of three (3) rounds and three (3) minutes’ duration.”.

(b) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section twenty-four, article five-a, chapter twenty-nine of this code, modified by the Athletic Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 20, 2016, relating to the Athletic Commission (regulation of mixed martial arts, 177 CSR 02), is authorized.

§64-9-4. Auditor’s Office.

(a) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section ten, article three, chapter twelve of this code, modified by the Auditor’s Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 21, 2016, relating to the Auditor’s Office (standards for requisitions for payment issued by state officers on the Auditor, 155 CSR 01), is authorized with the following amendment:

On page eleven, by striking subdivision 10.1.e in its entirety.

(b) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section nine, article eight, chapter eleven of this code, modified by the Auditor's Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 21, 2016, relating to the Auditor's Office (procedure for local levying bodies to apply for permission to extend time to meet as levying body, 155 CSR 08), is authorized.

§64-9-5. Board of Barbers and Cosmetologists.

(a) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section six, article twenty-seven, chapter thirty of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 25, 2017, relating to the Board of Barbers and Cosmetologists (qualifications, training, examination and certification of instructors in barbering and cosmetology, 3 CSR 02), is authorized.

(b) The legislative rule filed in the State Register on August 19, 2016, authorized under the authority of section six, article twenty-seven, chapter thirty of this code, relating to the Board of Barbers and Cosmetologists (licensing schools of barbering, cosmetology, nail technology and aesthetics, 3 CSR 03), is authorized.

(c) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section six, article twenty-seven, chapter thirty of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 26, 2017, relating to the Board of Barbers and Cosmetologists (operational standards for schools of barbering, cosmetology, hair styling, nail technology and aesthetics, 3 CSR 04), is authorized with the following amendment:

On page three, by striking out all of subdivision 3.1.r. in its entirety;

On page three, subdivision 3.2.d. by striking out the sentence "Theory classes shall be taught at least 12 hours per week.";

And,

On page three, by striking out all of subdivision 3.2.s. in its entirety.

(d) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section six, article twenty-seven, chapter thirty of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 19, 2017, relating to the Board of Barbers and Cosmetologists (operation of barber, beauty, nail and aesthetic shops/salons and schools of barbering and beauty culture, 3 CSR 05), is authorized.

(e) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section six, article twenty-seven, chapter thirty of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 19, 2017, relating to the Board of Barbers and Cosmetologists (schedule of fees, 3 CSR 06), is authorized.

(f) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section six, article twenty-seven, chapter thirty of this code, modified by the Board of

Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 19, 2017, relating to the Board of Barbers and Cosmetologists (continuing education, 3 CSR 11), is authorized with the following amendments:

On page one, subsection 1.1 to read as follows:

Scope. – The legislative rule establishes requirements for continuing education to practice hair styling, barbering, cosmetology, manicuring/nail technology, and aesthetics. All persons licensed by the Board to practice beauty culture must earn a minimum of four (4) hours of continuing education credits annually. Licensees who have been licensed for twenty (20) years or more are exempt from the continuing education requirements but must take a three (3) hour sanitation class every other year.

And;

On page three, subsection 4.4 to read as follows:

4.4 Licensees who have been licensed for twenty (20) years or more are exempt from the continuing education requirements but must take a three (3) hour sanitation class every other year.

(g) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section eight-a, article twenty-seven, chapter thirty of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 19, 2017, relating to the Board of Barbers and Cosmetologists (barber apprenticeship, 3 CSR 13), is authorized.

(h) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section six, article twenty-seven, chapter thirty of this code, relating to the Board of Barbers and Cosmetologists (waxing specialist, 3 CSR 14), is authorized.

§64-9-6. Board of Examiners in Counseling.

(a) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section six, article thirty-one, chapter thirty of this code, modified by the Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 25, 2017, relating to the Board of Examiners in Counseling (licensed professional counselor fees, 27 CSR 02), is authorized.

(b) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section six, article thirty-one, chapter thirty of this code, modified by the Board of Examiners in Counseling to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on January 25, 2017, relating to the Board of Examiners in Counseling (licensed professional counselor license renewal and continuing professional education requirements, 27 CSR 03), is authorized.

(c) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section six, article thirty-one, chapter thirty of this code, modified by the Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 25, 2017, relating to the Board of Examiners in Counseling (marriage and family therapist fees, 27 CSR 09), is authorized.

(d) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section six, article thirty-one, chapter thirty of this code, modified by the Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 25, 2017, relating to the Board of Examiners in Counseling (marriage and family therapist license renewal and continuing professional education requirements, 27 CSR 10), is authorized with the following amendment:

On page four, subdivision 4.1.b. after the words “continuing education” by unstriking the stricken words “on a biennium basis beginning”;

And,

On page four, subdivision 4.1.b. after the words “~~license renewal~~” by unstriking the words “on or after”.

§64-9-7. Dangerous Wild Animal Board.

The legislative rule filed in the State Register on February 11, 2016, authorized under the authority of section three, article thirty-four, chapter nineteen of this code, modified by the Dangerous Wild Animal Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 31, 2016, relating to the Dangerous Wild Animal Board (dangerous wild animals, 74 CSR 01), is authorized.

§64-9-8. Board of Dentistry.

The legislative rule filed in the State Register on July 26, 2016, authorized under the authority of section six, article four, chapter thirty of this code, modified by the Board of Dentistry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 2, 2016, relating to the Board of Dentistry (rule for the West Virginia Board of Dentistry, 5 CSR 01), is authorized with the following amendments:

On page one, by striking out subsection 1.5 and inserting in lieu thereof a new subsection 1.5, to read as follows:

“1.5 Sunset Date – This rule shall terminate and have no further force or effect upon the expiration of 10 years from its effective date.”

And,

On page four, after subsection 4.2, by inserting a new subsection 4.3, to read as follows:

“4.3 Teaching Permits with U.S. Specialty Training. The Board of Dentistry may issue a teaching permit to an applicant trained in foreign dental schools, who possess a certificate of completed dental specialty training from a U.S. or Canadian dental school and who has received U.S. Board certification. The permit shall be issued only upon certification of the dean of a dental school located in this state, that the applicant is a member of the staff at that school. The permits are valid for one year and may be reissued by the Board with a written recommendation of the dental school dean. The holder of the permit may perform all operations which a person licensed to practice dentistry in this state may perform, but only within the confines of the primary location of the dental school, or teaching hospital adjacent to a dental school located within the state and as an adjunct to his or her teaching functions in the dental school.”

§64-9-9. Board of Medicine.

(a) The legislative rule filed in the State Register on July 12, 2016, authorized under the authority of section seven, article three, chapter thirty of this code, modified by the Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 1, 2016, relating to the Board of Medicine (licensing and disciplinary procedures: physicians; podiatrists, 11 CSR 1A), is authorized with the following amendment:

On page one, by deleting subsection 1.5 and inserting a new subsection 1.5, to read as follows:

“1.5 Sunset Date – This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date.”

(b) The legislative rule filed in the State Register on July 12, 2016, authorized under the authority of section three, article three-e, chapter thirty of this code, modified by the Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 1, 2016, relating to the Board of Medicine (licensure, disciplinary and complaint procedures, continuing education, physician assistants, 11 CSR 1B), is authorized with the following amendment:

On page one, by deleting subsection 1.5 and inserting a new subsection 1.5, to read as follows:

“1.5 Sunset Date – This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date.”

(c) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section seven, article three, chapter thirty of this code, modified by the Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2016, relating to the Board of Medicine (dispensing of legend drugs by practitioners, 11 CSR 5), is authorized with the following amendment:

On page one, by deleting subsection 1.5 and inserting a new subsection 1.5, to read as follows:

“1.5 Sunset Date – This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date.”

§64-9-10. Board of Optometry.

The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section six, article eight, chapter thirty of this code, modified by the Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 3, 2016, relating to the Board of Optometry (continuing education, 14 CSR 10), is authorized.

§64-9-11. Board of Osteopathic Medicine.

(a) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section three, article three-e, chapter thirty of this code, modified by the Board of Osteopathic Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 29, 2016, relating to the Board of Osteopathic Medicine (licensing procedures for osteopathic physicians, 24 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on August 29, 2016, authorized under the authority of section three, article three-e, chapter thirty of this code, modified by the Board of Osteopathic Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 29, 2016, relating to the Board of Osteopathic Medicine (osteopathic physician assistants, 24 CSR 02), is authorized.

§64-9-12. Board of Pharmacy.

(a) The legislative rule filed in the State Register on August 18, 2016, authorized under the authority of section seven, article five, chapter thirty of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 19, 2016, relating to the Board of Pharmacy (licensure and practice of pharmacy, 15 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on August 18, 2016, authorized under the authority of section seven, article five, chapter thirty of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 19, 2016, relating to the Board of Pharmacy (mail-order and non-resident pharmacies, 15 CSR 06), is authorized.

(c) The legislative rule effective on May 17, 2015, authorized under the authority of section seven, article five, chapter thirty of this code, relating to the West Virginia Board of Pharmacy (registration of pharmacy technicians, 15 CSR 7), is authorized, with the following amendment:

On page one, by inserting a new subsection 1.5, to read as follows:

“1.5 Sunset Date – This rule shall terminate and have no further force or effect upon the expiration of 10 years from its effective date.”

On page three, subsection 4.1, by striking the phrase “The training program shall, at a minimum contain the following:” and inserting in lieu thereof the phrase “A competency based pharmacy technician education and training program shall, at a minimum contain the following:”

And,

On page five, subsection 4.3, by striking out subdivision (a), and inserting in lieu thereof a new subdivision (a), to read as follows:

“(a) has graduated from a high school or obtained a Certificate of General Educational Development (GED) or its equivalent, or is currently enrolled in a high school competency based pharmacy technician education and training program;”.

(d) The legislative rule filed in the State Register on August 18, 2016, authorized under the authority of section six, article nine, chapter sixty-a of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 19, 2016, relating to the Board of Pharmacy (controlled substances monitoring program, 15 CSR 08), is authorized.

§64-9-13. Board of Physical Therapy.

The legislative rule filed in the State Register on April 22, 2016, authorized under the authority of section six, article twenty, chapter thirty of this code, relating to the Board of Physical Therapy (fees for physical therapist and physical therapist assistant, 16 CSR 04), is authorized.

§64-9-14. Public Service Commission.

The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section three, article two-e, chapter twenty-four of this code, modified by the Public Service Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 13, 2016, relating to the Public Service Commission (telephone conduit occupancy, 150 CSR 37), is authorized.

§64-9-15. Board of Examiners for Registered Professional Nurses.

(a) The legislative rule filed in the State Register on July 29, 2016, authorized under the authority of section four, article seven, chapter thirty of this code, modified by the Board of Examiners for Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 1, 2016, relating to the Board of Examiners for Registered Professional Nurses (requirements for registration and licensure and conduct constituting professional misconduct, 19 CSR 03), is authorized with the following amendments:

On page one, by striking out subsection 1.5 and inserting in lieu thereof a new subsection 1.5, to read as follows:

“1.5 Sunset Date – This rule shall terminate and have no further force or effect upon the expiration of 10 years from its effective date.”

And,

On page sixteen, subsection 14.4, after the words “or other action.” by adding “A licensee whose license has been summarily suspended is entitled to a hearing not less than twenty (20) days after the license was summarily suspended. The licensee may waive his or her right to a hearing on the summary suspension within the twenty (20) day period.”

(b) The legislative rule filed in the State Register on August 2, 2016, authorized under the authority of section four, article seven, chapter thirty of this code, modified by the Board of Examiners for Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 1, 2016, relating to the Board of Examiners for Registered Professional Nurses (limited prescriptive authority for nurses in advanced practice, 19 CSR 08), is authorized with the following amendment:

On page one, by deleting subsection 1.5 and inserting a new subsection 1.5, to read as follows:

“1.5 Sunset Date – This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date.”

§64-9-16. State Board of Sanitarians.

The legislative rule filed in the State Register on August 11, 2016, authorized under the authority of section six, article seventeen, chapter thirty of this code, modified by the State Board of Sanitarians to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 3, 2016, relating to the State Board of Sanitarians (practice of public health sanitation, 20 CSR 04), is authorized.

§64-9-17. Secretary of State.

(a) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section eleven, article two, chapter three of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 17, 2017, relating to the Secretary of State (voter registration at the Division of Motor Vehicles, 153 CSR 03), is authorized.

(b) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section twenty-three-a, article two, chapter three of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 17, 2017, relating to the Secretary of State (voter registration list maintenance by the Secretary of State, 153 CSR 05), is authorized.

§64-9-18. Board of Social Work Examiners.

The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section six, article thirty, chapter thirty of this code, modified by the Board of Social Work Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 27, 2016, relating to the Board of Social Work Examiners (continuing education for social workers and providers, 25 CSR 05), is authorized.

§64-9-19. Board of Speech-Language Pathology and Audiology.

The legislative rule filed in the State Register on August 22, 2016, authorized under the authority of section seven, article thirty-two, chapter thirty of this code, modified by the Board of Speech-Language Pathology and Audiology to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 23, 2017, relating to the Board of Speech-Language Pathology and Audiology (licensure of speech-pathology and audiology, 29 CSR 01), is authorized.

§64-9-20. Treasurer's Office.

(a) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section two, article two, chapter twelve of this code, modified by the Treasurer's Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 21, 2016, relating to the Treasurer's Office (procedures for deposit of moneys with the State Treasurer's Office by state agencies, 112 CSR 04), is authorized.

(b) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section two, article one, chapter twelve of this code, modified by the Treasurer's Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 21, 2016, relating to the Treasurer's Office (selection of state depositories for disbursement accounts through competitive bidding, 112 CSR 06), is authorized.

(c) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section two, article one, chapter twelve of this code, modified by the Treasurer's Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 21, 2016, relating to the Treasurer's Office (selection of state depositories for receipt accounts, 112 CSR 07), is authorized.

(d) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section one, article three, chapter twelve of this code, modified by the Treasurer's Office

to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 21, 2016, relating to the Treasurer's Office (procedures for processing payments from the state treasury, 112 CSR 08), is authorized.

(e) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section six, article three-a, chapter twelve of this code, modified by the Treasurer's Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 21, 2016, relating to the Treasurer's Office (procedure for fees in collections by charge, credit or debit card or by electronic payment, 112 CSR 12), is authorized.

(f) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section six, article three-a, chapter twelve of this code, modified by the Treasurer's Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 21, 2016, relating to the Treasurer's Office (procedures for providing services to political subdivisions, 112 CSR 13), is authorized.

§64-9-21. Board of Veterinary Medicine.

The legislative rule filed in the State Register on June 15, 2016, authorized under the authority of section five, article ten, chapter thirty of this code, modified by the Board of Veterinary Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 28, 2016, relating to the Board of Veterinary Medicine (standards of practice, 26 CSR 04), is authorized with the following amendment:

On page one, by deleting subsection 1.5 and inserting a new subsection 1.5 to read as follows:

"1.5 Sunset Date – This rule shall terminate and have no further force or affect upon the expiration of 10 years from its effective date."

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. 554**), and there were—yeas 93, nays 1, absent and not voting 6, with the yeas and absent and not voting being as follows:

Nays: Walters.

Absent and Not Voting: Blair, Criss, Kelly, Robinson, Rodighiero and Upson.

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. 2219) passed.

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

On this question, the yeas and nays were taken (**Roll No. 555**), 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: Blair, Kelly, Robinson, Rodighiero and Upson.

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. 2219) 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. 2359, Relating to offenses and penalties for practicing osteopathic medicine without a license.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

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

“That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-3-18; that §30-14-12 be amended and reenacted; and that said code be amended by adding thereto a new section, designated §30-14-16, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-18. Combining staff functions with West Virginia Board of Osteopathic Medicine.

The West Virginia Board of Medicine may employ investigators, attorneys, clerks and administrative staff in collaboration with the West Virginia Board of Osteopathic Medicine to share duties and functions between the two boards when it may be efficient and practical for the functioning of the boards. Any sharing of staff or staff resources shall be documented and performed pursuant to the provisions of section nineteen, article one of this chapter.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12. Offenses; penalties.

(a) Each of the following acts ~~shall constitute~~ constitutes a misdemeanor, punishable upon conviction by a fine of not less than \$1,000 nor more than \$10,000:

~~(a) The practice or attempting to practice as an osteopathic physician and surgeon without a license or permit;~~

~~(b) (1) The obtaining of or an attempt to obtain a license or permit to practice in the profession for money or any other thing of value, by fraudulent misrepresentation;~~

~~(c) (2) The making of any willfully false oath or affirmation whenever an oath or affirmation is required by this article; and~~

~~(d) (3) Advertising, practicing or attempting to practice under a name other than one's own.~~

(b) Any person who practices or attempts to practice osteopathic medicine without a license or permit is guilty of a felony and, upon conviction, shall be fined not more than \$10,000, or imprisoned in a correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

§30-14-16. Combining staff functions with West Virginia Board of Medicine.

The West Virginia Board of Osteopathic Medicine may employ investigators, attorneys, clerks and administrative staff in collaboration with the West Virginia Board of Medicine to share duties and functions between the two boards when it may be efficient and practical for the functioning of the boards. Any sharing of staff or staff resources shall be documented and performed pursuant to the provisions of section nineteen, article one of this chapter.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2359 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding a new section, designated §30-3-18; to amend and reenact §30-14-12 of said code; and to amend said code by adding thereto a new section, designated §30-14-16, all relating generally to the West Virginia Medical Practice Act; authorizing the West Virginia Board of Medicine and the West Virginia Board of Osteopathic Medicine to share staff for functions common to both boards; providing offenses and penalties for practicing osteopathic medicine without a license; and creating a felony crime of practicing or attempting to practice osteopathic medicine without a license or permit and providing criminal penalties.”

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. 556**), 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 McGeehan.

Absent and Not Voting: Blair, Criss, Kelly, Robinson, Rodighiero and Upson.

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. 2359) passed.

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

Conference Committee Report Availability

At 7:04 p.m., the Clerk announced availability in his office of the report of the Committee of Conference on Com. Sub. for H. B. 2631, Relating to time standards for disposition of complaint proceedings.

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. 2520, Prohibiting the use of a tanning device by a person under the age of eighteen.

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. 2552, Increasing the pet food registration fee and directing that the additional money be deposited into the West Virginia Spay Neuter Assistance Fund.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page two, section five, line thirty-seven, by striking out "\$100", and inserting in lieu thereof "\$50".

And,

On page three, section five, line forty-five, by striking out "\$70", and inserting in lieu thereof "\$35".

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. 557**), and there were—yeas 84, nays 11, absent and not voting 5, with the nays and absent and not voting being as follows:

Nays: Arvon, Folk, Gearheart, Hill, Householder, Howell, Kessinger, Marcum, McGeehan, Sobonya and Wilson.

Absent and Not Voting: Blair, Kelly, Robinson, Rodighiero and Upson.

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. 2552) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2801, Expiring funds to the unappropriated balance in the State Fund from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund.

On motion of Delegate Cowles, the House of Delegates concurred in the following amendment of the bill by the Senate:

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

"Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated February 8, 2017, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2016, and further included the estimate of revenues for the fiscal year 2017, less net appropriation balances forwarded and regular appropriations for the fiscal year 2017; and

Whereas, The Secretary of the Department of Revenue has submitted a monthly General Revenue Fund Collections Report for the first nine months of fiscal year 2017 as prepared by the State Budget Office; and

Whereas, This report demonstrates that the State of West Virginia has experienced a revenue shortfall of approximately \$79 million for the first nine months of fiscal year 2017, as compared to the monthly revenue estimates for the first nine months of the fiscal year 2017; and

Whereas, Current economic and fiscal trends are anticipated to result in projected year-end revenue deficits, including potential significant shortfalls in Personal Income Tax, Consumers Sales and Use Tax, and Corporation Net Income Tax; and

Whereas, Projected year-end revenue surpluses in various other General Revenue sources will only offset a small portion of these deficits; and

Whereas, The total projected year-end revenue deficit for the General Revenue Fund is estimated at \$192 million; and

Whereas, On November 4, 2016, the Governor issued Executive Order 8-16 which redirected certain revenues pursuant to the terms of SB 419 for fiscal year 2017 of approximately \$25.5 million; and

Whereas, On November 15, 2016, the Governor issued Executive Order 9-16 which directed a spending reduction for General Revenue appropriations for fiscal year 2017 of approximately \$59.8 million; and

Whereas, On December 30, 2016, the remaining balance of \$5,000,000 in the Personal Income Tax Reserve Fund was utilized to ensure timely payment of tax refunds; and

Whereas, The Governor finds that the account balances in the listed accounts exceed that which is necessary for the purposes for which the accounts were established; and

Whereas, The Revenue Shortfall Reserve Fund may be drawn on in the event of a revenue shortfall in lieu of imposing additional reductions in appropriations; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2017, in the Legislative, Senate, fund 0165, fiscal year 2012, organization 2100, appropriation 02100, be decreased by expiring the amount of \$2,000,000, in the Legislative, Senate, fund 0165, fiscal year 2012, organization 2100, appropriation 06400, be decreased by expiring the amount of \$1,000,000, in the Legislative, House of Delegates, fund 0170, fiscal year 2015, organization 2200, appropriation 00500, be decreased by expiring the amount of \$500,000, in the Legislative, House of Delegates, fund 0170, fiscal year 2015, organization 2200, appropriation 02100, be decreased by expiring the amount of \$1,500,000, in the Legislative, Joint Expenses, fund 0175, fiscal year 2015, organization 2300, appropriation 10400, be decreased by expiring the amount of \$500,000, in the Executive, Governor's Office, fund 0101, fiscal year 2005, organization 0100, appropriation 66500, be decreased by expiring the amount of \$2,000,000, in the Executive, Governor's Office – Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 08400, be decreased by expiring the amount of \$800,000, in the Executive, Governor's Office – Civil Contingent Fund, fund 0105, fiscal year 2008, organization 0100, appropriation 11400, be decreased by expiring the amount of \$200,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year

2009, organization 0307, appropriation 13100, be decreased by expiring the amount of \$400,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, appropriation 13100, be decreased by expiring the amount of \$400,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 13100, be decreased by expiring the amount of \$200,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2007, organization 0307, appropriation 81900, be decreased by expiring the amount of \$500,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2008, organization 0307, appropriation 81900, be decreased by expiring the amount of \$500,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2009, organization 0307, appropriation 81900, be decreased by expiring the amount of \$500,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2010, organization 0307, appropriation 81900, be decreased by expiring the amount of \$1,600,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, appropriation 81900, be decreased by expiring the amount of \$1,500,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 81900, be decreased by expiring the amount of \$640,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2014, organization 0307, appropriation 81900, be decreased by expiring the amount of \$628,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2015, organization 0307, appropriation 81900, be decreased by expiring the amount of \$932,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 94100, be decreased by expiring the amount of \$650,000, in the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2011, organization 0402, appropriation 16100, be decreased by expiring the amount of \$150,000, in the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2012, organization 0402, appropriation 16100, be decreased by expiring the amount of \$400,000, in the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2013, organization 0402, appropriation 16100, be decreased by expiring the amount of \$400,000, in the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2014, organization 0402, appropriation 16100, be decreased by expiring the amount of \$150,000, in the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2014, organization 0402, appropriation 88600, be decreased by expiring the amount of \$500,000, in the Department of Health and Human Resources – Office of the Secretary, fund 0400, fiscal year 2015, organization 0501, appropriation 19100, be decreased by expiring the amount of \$40,000, in the Department of Health and Human Resources – Office of the Secretary, fund 0400, fiscal year 2016, organization 0501, appropriation 19100, be decreased by expiring the amount of \$60,000, in the Department of Health and Human Resources, Consolidated Medical Services Fund, fund 0525, fiscal year 2014, organization 0506, appropriation 21900, be decreased by expiring the amount of \$1,000,000, in the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2011, organization 0608, appropriation 09700, be decreased by expiring the amount of \$200,000, in the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 09700, be decreased by expiring the amount of \$200,000, in the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 66100, be decreased by expiring the amount of \$480,000, in the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 67700, be decreased by expiring the amount of \$1,000,000, in the Department of Military Affairs and Public Safety, Division of Justice and Community Services, fund 0546, fiscal year 2014, organization 0620, appropriation 56100, be decreased by expiring the amount of \$500,000, in the Department of Military Affairs and Public Safety,

Division of Juvenile Services, fund 0570, fiscal year 2011, organization 0621, appropriation 75500, be decreased by expiring the amount of \$100,000, in the Department of Revenue, State Budget Office, fund 0595, fiscal year 2009, organization 0703, appropriation 09900, be decreased by expiring the amount of \$80,000, in the Department of Transportation, Aeronautics Commission, fund 0582, fiscal year 2013, organization 0807, appropriation 13000, be decreased by expiring the amount of \$300,000, in the Department of Veterans' Assistance, fund 0456, fiscal year 2013, organization 0613, appropriation 28600, be decreased by expiring the amount of \$200,000, in the Department of Veterans' Assistance, fund 0456, fiscal year 2014, organization 0613, appropriation 28600, be decreased by expiring the amount of \$100,000, in the West Virginia Council for Community and Technical College Education – Control Account, fund 0596, fiscal year 2012, organization 0420, appropriation 66100, be decreased by expiring the amount of \$500,000, in the Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2012, organization 0441, appropriation 09700, be decreased by expiring the amount of \$200,000, in the Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2012, organization 0441, appropriation 66100, be decreased by expiring the amount of \$1,000,000, in the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2017, organization 0701, be decreased by expiring the amount of \$40,404,684.31, in the Department of Revenue, Insurance Commissioner – Insurance Commission Fund, fund 7152, fiscal year 2017, organization 0704, be decreased by expiring the amount of \$20,000,000, in the State Board of Education, fund 3951, fiscal year 2007, organization 0402, appropriation 09900, be decreased by expiring the amount of \$100,000, in the State Board of Education, fund 3951, fiscal year 2008, organization 0402, appropriation 09900, be decreased by expiring the amount of \$300,000, in the State Board of Education, fund 3951, fiscal year 2012, organization 0402, appropriation 09900, be decreased by expiring the amount of \$500,000, in the State Board of Education, fund 3951, fiscal year 2013, organization 0402, appropriation 39600, be decreased by expiring the amount of \$500,000, in the State Board of Education, fund 3951, fiscal year 2014, organization 0402, appropriation 39600, be decreased by expiring the amount of \$500,000, in the State Board of Education, fund 3951, fiscal year 2014, organization 0402, appropriation 93300, be decreased by expiring the amount of \$1,000,000, in the Division of Culture and History – Lottery Education Fund, fund 3534, fiscal year 2003, organization 0432, appropriation 86500, be decreased by expiring the amount of \$150,000, in the Division of Culture and History – Lottery Education Fund, fund 3534, fiscal year 2012, organization 0432, appropriation 62400, be decreased by expiring the amount of \$40,000, in the Library Commission – Lottery Education Fund, fund 3559, fiscal year 2011, organization 0433, appropriation 62500, be decreased by expiring the amount of \$150,000, in the Library Commission – Lottery Education Fund, fund 3559, fiscal year 2012, organization 0433, appropriation 62500, be decreased by expiring the amount of \$250,000, in the Bureau of Senior Services – Lottery Senior Citizens Fund, fund 5405, fiscal year 2011, organization 0508, appropriation 46200, be decreased by expiring the amount of \$150,000, in the Bureau of Senior Services – Lottery Senior Citizens Fund, fund 5405, fiscal year 2012, organization 0508, appropriation 46200, be decreased by expiring the amount of \$350,000, in the Bureau of Senior Services – Lottery Senior Citizens Fund, fund 5405, fiscal year 2013, organization 0508, appropriation 46200, be decreased by expiring the amount of \$550,000, in the West Virginia Development Office, fund 3170, fiscal year 2007, organization 0307, appropriation 92300, be decreased by expiring the amount of \$50,000, in the West Virginia Development Office, fund 3170, fiscal year 2008, organization 0307, appropriation 25300, be decreased by expiring the amount of \$2,500,000, in the West Virginia Development Office, fund 3170, fiscal year 2013, organization 0307, appropriation 09600, be decreased by expiring the amount of \$400,000, in the Division of Corrections – Correctional Units, fund 6283, fiscal year 2010, organization 0608, appropriation 75500, be decreased by expiring the amount of \$1,000,000, in the Office of the Treasurer – Financial Electronic Communication Fund, fund 1345, fiscal year 2017, organization 1300 be decreased by expiring the amount of \$500,000, in the Attorney General, Consumer Protection Recovery Fund, fund 1509, fiscal

year 2017, organization 1500, be decreased by expiring the amount of \$1,000,000, in the Department of Administration, Board of Risk and Insurance Management, Premium Tax Savings Fund, fund 2367, fiscal year 2017, organization 0218, be decreased by expiring the amount of \$2,000,000, in the Department of Administration, Capitol Complex Garage Fund, fund 2461, fiscal year 2017, organization 0211, be decreased by expiring the amount of \$110,467.62, in the Department of Environmental Protection, Dam Safety Rehabilitation Fund, fund 3025, fiscal year 2017, organization 0313, be decreased by expiring the amount of \$184,848.07, in the Department of Health and Human Resources, Healthcare Authority Fund, fund 5375, fiscal year 2017, organization 0507, be decreased by expiring the amount of \$500,000 and in the Public Service Commission, Public Service Commission Fund, fund 8623, fiscal year 2017, organization 0926, be decreased by expiring the amount of \$4,000,000, all to the unappropriated balance of the State Fund, General Revenue, to be available during the fiscal year ending June 30, 2017, all to the unappropriated balance of the State Fund, General Revenue, to be available during the fiscal year ending June 30, 2017.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2801 – “A Bill expiring funds to the unappropriated balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2017, in the amount of \$2,000,000 from the Legislative, Senate, fund 0165, fiscal year 2012, organization 2100, appropriation 02100, in the amount of \$1,000,000 from the Legislative, Senate, fund 0165, fiscal year 2012, organization 2100, appropriation 06400, in the amount of \$500,000 from the Legislative, House of Delegates, fund 0170, fiscal year 2015, organization 2200, appropriation 00500, in the amount of \$1,500,000 from the Legislative, House of Delegates, fund 0170, fiscal year 2015, organization 2200, appropriation 02100, in the amount of \$500,000 from the Legislative, Joint Expenses, fund 0175, fiscal year 2015, organization 2300, appropriation 10400, in the amount of \$2,000,000 from the Executive, Governor’s Office, fund 0101, fiscal year 2005, organization 0100, appropriation 66500, in the amount of \$800,000 from the Executive, Governor’s Office – Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 08400, in the amount of \$200,000 from the Executive, Governor’s Office – Civil Contingent Fund, fund 0105, fiscal year 2008, organization 0100, appropriation 11400, in the amount of \$400,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2009, organization 0307, appropriation 13100, in the amount of \$400,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, appropriation 13100, in the amount of \$200,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 13100, in the amount of \$500,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2007, organization 0307, appropriation 81900, in the amount of \$500,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2008, organization 0307, appropriation 81900, in the amount of \$500,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2009, organization 0307, appropriation 81900, in the amount of \$1,600,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2010, organization 0307, appropriation 81900, in the amount of \$1,500,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, appropriation 81900, in the amount of \$640,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 81900, in the amount of \$628,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2014, organization 0307, appropriation 81900, in the amount of \$932,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2015, organization 0307, appropriation 81900, in the amount of \$650,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 94100, in the

amount of \$150,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2011, organization 0402, appropriation 16100, in the amount of \$400,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2012, organization 0402, appropriation 16100, in the amount of \$400,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2013, organization 0402, appropriation 16100, in the amount of \$150,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2014, organization 0402, appropriation 16100, in the amount of \$500,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2014, organization 0402, appropriation 88600, in the amount of \$40,000 from the Department of Health and Human Resources – Office of the Secretary, fund 0400, fiscal year 2015, organization 0501, appropriation 19100, in the amount of \$60,000 from the Department of Health and Human Resources – Office of the Secretary, fund 0400, fiscal year 2016, organization 0501, appropriation 19100, in the amount of \$1,000,000 from the Department of Health and Human Resources, Consolidated Medical Services Fund, fund 0525, fiscal year 2014, organization 0506, appropriation 21900, in the amount of \$200,000 from the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2011, organization 0608, appropriation 09700, in the amount of \$200,000 from the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 09700, in the amount of \$480,000 from the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 66100, in the amount of \$1,000,000 from the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 67700, in the amount of \$500,000 from the Department of Military Affairs and Public Safety, Division of Justice and Community Services, fund 0546, fiscal year 2014, organization 0620, appropriation 56100, in the amount of \$100,000 from the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2011, organization 0621, appropriation 75500, in the amount of \$80,000 from the Department of Revenue, State Budget Office, fund 0595, fiscal year 2009, organization 0703, appropriation 09900, in the amount of \$300,000 from the Department of Transportation, Aeronautics Commission, fund 0582, fiscal year 2013, organization 0807, appropriation 13000, in the amount of \$200,000 from the Department of Veterans' Assistance, fund 0456, fiscal year 2013, organization 0613, appropriation 28600, in the amount of \$100,000 from the Department of Veterans' Assistance, fund 0456, fiscal year 2014, organization 0613, appropriation 28600, in the amount of \$500,000 from the West Virginia Council for Community and Technical College Education – Control Account, fund 0596, fiscal year 2012, organization 0420, appropriation 66100, in the amount of \$200,000 from the Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2012, organization 0441, appropriation 09700, in the amount of \$1,000,000 from the Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2012, organization 0441, appropriation 66100, in the amount of \$40,404,684.31 from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2017, organization 0701, in the amount of \$20,000,000 from the Department of Revenue, Insurance Commissioner – Insurance Commission Fund, fund 7152, fiscal year 2017, organization 0704, in the amount of \$100,000 from the State Board of Education, fund 3951, fiscal year 2007, organization 0402, appropriation 09900, in the amount of \$300,000 from the State Board of Education, fund 3951, fiscal year 2008, organization 0402, appropriation 09900, in the amount of \$500,000 from the State Board of Education, fund 3951, fiscal year 2012, organization 0402, appropriation 09900, in the amount of \$500,000 from the State Board of Education, fund 3951, fiscal year 2013, organization 0402, appropriation 39600, in the amount of \$500,000 from the State Board of Education, fund 3951, fiscal year 2014, organization 0402, appropriation 39600, in the amount of \$1,000,000 from the State Board of Education, fund 3951, fiscal year 2014, organization 0402, appropriation 93300, in the amount of \$150,000 from the Division

of Culture and History – Lottery Education Fund, fund 3534, fiscal year 2003, organization 0432, appropriation 86500, in the amount of \$40,000 from the Division of Culture and History – Lottery Education Fund, fund 3534, fiscal year 2012, organization 0432, appropriation 62400, in the amount of \$150,000 from the Library Commission – Lottery Education Fund, fund 3559, fiscal year 2011, organization 0433, appropriation 62500, in the amount of \$250,000 from the Library Commission – Lottery Education Fund, fund 3559, fiscal year 2012, organization 0433, appropriation 62500, in the amount of \$150,000 from the Bureau of Senior Services- Lottery Senior Citizens Fund, fund 5405, fiscal year 2011, organization 0508, appropriation 46200, in the amount of \$350,000 from the Bureau of Senior Services – Lottery Senior Citizens Fund, fund 5405, fiscal year 2012, organization 0508, appropriation 46200, in the amount of \$550,000 from the Bureau of Senior Services- Lottery Senior Citizens Fund, fund 5405, fiscal year 2013, organization 0508, appropriation 46200, in the amount of \$50,000 from the West Virginia Development Office, fund 3170, fiscal year 2007, organization 0307, appropriation 92300, in the amount of \$2,500,000 from the West Virginia Development Office, fund 3170, fiscal year 2008, organization 0307, appropriation 25300, in the amount of \$400,000 from the West Virginia Development Office, fund 3170, fiscal year 2013, organization 0307, appropriation 09600, in the amount of \$1,000,000 from the Division of Corrections – Correctional Units, fund 6283, fiscal year 2010, organization 0608, appropriation 75500, in the amount of \$500,000 from the Office of the Treasurer, Financial Electronic Communication Fund, fund 1345, fiscal year 2017, organization 1300, in the amount of \$1,000,000 from the Attorney General, Consumer Protection Recovery Fund, fund 1509, fiscal year 2017, organization 1500, in the amount of \$2,000,000 from the Department of Administration, Board of Risk and Insurance Management, Premium Tax Savings Fund, fund 2367, fiscal year 2017, organization 0218, in the amount of \$110,467.62 from the Department of Administration, Capitol Complex Parking Garage Fund, fund 2461, fiscal year 2017, organization 0211, in the amount of \$184,848.07 from the Department of Environmental Protection, Dam Safety Rehabilitation Fund, fund 3025, fiscal year 2017, organization 0313, in the amount of \$500,000 from the Department of Health and Human Resources, Health Care Authority Fund, fund 5375, fiscal year 2017, organization 0507 and in the amount of \$4,000,000 from the Public Service Commission, Public Service Commission Fund, fund 8623, fiscal year 2017, organization 0926.”

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. 558**), and there were—yeas 91, nays 3, absent and not voting 6, with the yeas and absent and not voting being as follows:

Nays: Gearheart, Hicks and Marcum.

Absent and Not Voting: Blair, Hollen, Kelly, Robinson, Rodighiero and Upson.

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. 2801) passed.

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

On this question, the yeas and nays were taken (**Roll No. 559**), and there were—yeas 90, nays 3, absent and not voting 7, with the yeas and absent and not voting being as follows:

Nays: Folk, Hicks and McGeehan.

Absent and Not Voting: Blair, Hollen, Kelly, R. Miller, Robinson, Rodighiero and Upson.

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. 2801) 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. 3030, Relating to appeals as a matter of right in the West Virginia Supreme Court of Appeals.

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

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

“That §17C-5A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §58-5-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.

§17C-5A-2. Hearing; revocation; review.

(a) Written objections to an order of revocation or suspension under the provisions of section one of this article or section seven, article five of this chapter shall be filed with the Office of Administrative Hearings. Upon the receipt of an objection, the Office of Administrative Hearings shall notify the Commissioner of the Division of Motor Vehicles, who shall stay the imposition of the period of revocation or suspension and afford the person an opportunity to be heard by the Office of Administrative Hearings. The written objection must be filed with Office of Administrative Hearings in person, by registered or certified mail, return receipt requested, or by facsimile transmission or electronic mail within thirty calendar days after receipt of a copy of the order of revocation or suspension or no hearing will be granted: *Provided*, That a successful transmittal sheet shall be necessary for proof of written objection in the case of filing by fax. The hearing shall be before a hearing examiner employed by the Office of Administrative Hearings who shall rule on evidentiary issues. The West Virginia Rules of Evidence shall apply to all proceedings before the hearing examiner. Upon consideration of the designated record, the hearing examiner shall, based on the determination of the facts of the case and applicable law, render a decision affirming, reversing or modifying the action protested. The decision shall contain findings of fact and conclusions of law and shall be provided to all parties by registered or certified mail, return receipt requested, or with a party's written consent, by facsimile or electronic mail.

(b) The hearing shall be held at an office of the Division of Motor Vehicles suitable for hearing purposes located in or near the county in which the arrest was made in this state or at some other suitable place in the county in which the arrest was made if an office of the division is not available. At the discretion of the Office of Administrative Hearings, the hearing may also be held at an office of the Office of Administrative Hearings located in or near the county in which the arrest was made in this state. The Office of Administrative Hearings shall send a notice of hearing to the person whose

driving privileges are at issue and the person's legal counsel if the person is represented by legal counsel, by regular mail, or with the written consent of the person whose driving privileges are at issue or their legal counsel, by facsimile or electronic mail. The Office of Administrative Hearings shall also send a notice of hearing by regular mail, facsimile or electronic mail to the Division of Motor Vehicles, and the Attorney General's Office, if the Attorney General has filed a notice of appearance of counsel on behalf of the Division of Motor Vehicles.

(c) (1) Any hearing shall be held within one hundred eighty days after the date upon which the Office of Administrative Hearings received the timely written objection unless there is a postponement or continuance.

(2) The Office of Administrative Hearings may postpone or continue any hearing on its own motion or upon application by the party whose license is at issue in that hearing or by the commissioner for good cause shown.

(3) The Office of Administrative Hearings may issue subpoenas commanding the appearance of witnesses and subpoenas duces tecum commanding the submission of documents, items or other things. Subpoenas duces tecum shall be returnable on the date of the next scheduled hearing unless otherwise specified. The Office of Administrative hearings shall issue subpoenas and subpoenas duces tecum at the request of a party or the party's legal representative. The party requesting the subpoena shall be responsible for service of the subpoena upon the appropriate individual. Every subpoena or subpoena duces tecum shall be served at least five days before the return date thereof, either by personal service made by a person over eighteen years of age or by registered or certified mail, return receipt requested, and received by the party responsible for serving the subpoena or subpoena duces tecum: *Provided*, That the Division of Motor Vehicles may serve subpoenas to law-enforcement officers through electronic mail to the department of his or her employer. If a person does not obey the subpoena or fails to appear, the party who issued the subpoena to the person may petition the circuit court wherein the action lies for enforcement of the subpoena.

(d) Law-enforcement officers shall be compensated for the time expended in their travel and appearance before the Office of Administrative Hearings by the law-enforcement agency by whom they are employed at their regular rate if they are scheduled to be on duty during said time or at their regular overtime rate if they are scheduled to be off duty during said time.

(e) The principal question at the hearing shall be whether the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or did refuse to submit to the designated secondary chemical test, or did drive a motor vehicle while under the age of twenty-one years with 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.

(f) In the case of a hearing in which a person is accused of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or accused of driving a motor vehicle while under the age of twenty-one years with 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, the Office of Administrative Hearings shall make specific findings as to: (1) Whether the investigating law-enforcement officer had reasonable grounds to believe the person to have been driving while under the influence of alcohol, controlled substances or drugs, or while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or to have been driving a motor vehicle while under the age of twenty-one

years with 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; (2) whether the person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test: *Provided*, That this element shall be waived in cases where no arrest occurred due to driver incapacitation; (3) whether the person committed an offense involving driving under the influence of alcohol, controlled substances or drugs; and (4) whether the tests, if any, were administered in accordance with the provisions of this article and article five of this chapter.

(g) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or did drive a motor vehicle while under the age of twenty-one years with 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, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person and was committed in reckless disregard of the safety of others and if the Office of Administrative Hearings further finds that the influence of alcohol, controlled substances or drugs or the alcohol concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person's license for a period of ten years: *Provided*, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(h) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, the commissioner shall revoke the person's license for a period of five years: *Provided*, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(i) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, the commissioner shall revoke the person's license for a period of two years: *Provided*, That if the license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided, however*, That if the person's license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(j) If the Office of Administrative Hearings finds by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, but less than fifteen hundredths of one percent or

more, by weight, or finds that the person knowingly permitted the person's vehicle to be driven by another person who was under the influence of alcohol, controlled substances or drugs, or knowingly permitted the person's vehicle to be driven by another person who had an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight, the commissioner shall revoke the person's license for a period of six months or a period of fifteen days with an additional one hundred and twenty days of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-a of this article: *Provided*, That any period of participation in the Motor Vehicle Alcohol Test and Lock Program that has been imposed by a court pursuant to section two-b, article five of this chapter shall be credited against any period of participation imposed by the commissioner: *Provided, however*, That a person whose license is revoked for driving while under the influence of drugs is not eligible to participate in the Motor Vehicle Alcohol Test and Lock Program: *Provided, further*, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *And provided further*, That if the person's license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(k)(1) If in addition to finding by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, controlled substance or drugs, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person did drive a motor vehicle while having an alcohol concentration in the person's blood of fifteen hundredths of one percent or more, by weight, the commissioner shall revoke the person's license for a period of forty-five days with an additional two hundred and seventy days of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-a, article five-a, chapter seventeen-c of this code: *Provided*, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided, however*, That if the person's license has previously been suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(2) If a person whose license is revoked pursuant to subdivision (1) of this subsection proves by clear and convincing evidence that they do not own a motor vehicle upon which the alcohol test and lock device may be installed or is otherwise incapable of participating in the Motor Vehicle Alcohol Test and Lock Program, the period of revocation shall be one hundred eighty days: *Provided*, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided, however*, That if the person's license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(l) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with 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, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, and if the Office of Administrative Hearings further finds that the alcohol concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person's license for a period of five years: *Provided*, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten

years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(m) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with 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, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, and if the Office of Administrative Hearings further finds that the alcohol concentration in the blood was a contributing cause to the bodily injury, the commissioner shall revoke the person's license for a period of two years: *Provided*, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided, however*, That if the person's license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(n) If the Office of Administrative Hearings finds by a preponderance of the evidence that the person did drive a motor vehicle while under the age of twenty-one years with 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, the commissioner shall suspend the person's license for a period of sixty days: *Provided*, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article, the period of revocation shall be for one year, or until the person's twenty-first birthday, whichever period is longer.

(o) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did have on or within the motor vehicle another person who has not reached his or her sixteenth birthday, the commissioner shall revoke the person's license for a period of one year: *Provided*, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided, however*, That if the person's license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(p) For purposes of this section, where reference is made to previous suspensions or revocations under this section, the following types of criminal convictions or administrative suspensions or revocations shall also be regarded as suspensions or revocations under this section or section one of this article:

(1) Any administrative revocation under the provisions of the prior enactment of this section for conduct which occurred within the ten years immediately preceding the date of arrest;

(2) Any suspension or revocation on the basis of a conviction under a municipal ordinance of another state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in section two, article five of this chapter for conduct which occurred within the ten years immediately preceding the date of arrest; or

(3) Any revocation under the provisions of section seven, article five of this chapter for conduct which occurred within the ten years immediately preceding the date of arrest.

(q) In the case of a hearing in which a person is accused of refusing to submit to a designated secondary test, the Office of Administrative Hearings shall make specific findings as to: (1) Whether the arresting law-enforcement officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) whether the person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test: *Provided*, That this element shall be waived in cases where no arrest occurred due to driver incapacitation; (3) whether the person committed an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (4) whether the person refused to submit to the secondary test finally designated in the manner provided in section four, article five of this chapter; and (5) whether the person had been given a written statement advising the person that the person's license to operate a motor vehicle in this state would be revoked for at least forty-five days and up to life if the person refused to submit to the test finally designated in the manner provided in said section.

(r) If the Office of Administrative Hearings finds by a preponderance of the evidence that: (1) The investigating officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) whether the person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test: *Provided*, That this element shall be waived in cases where no arrest occurred due to driver incapacitation; (3) the person committed an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (4) the person refused to submit to the secondary test finally designated in the manner provided in section four, article five of this chapter; and (5) the person had been given a written statement advising the person that the person's license to operate a motor vehicle in this state would be revoked for at least forty-five days and up to life if the person refused to submit to the test finally designated, the commissioner shall revoke the person's license to operate a motor vehicle in this state for the periods specified in section seven, article five of this chapter. The revocation period prescribed in this subsection shall run concurrently with any other revocation period ordered under this section or section one of this article arising out of the same occurrence. The revocation period prescribed in this subsection shall run concurrently with any other revocation period ordered under this section or section one of this article arising out of the same occurrence.

(s) If the Office of Administrative Hearings finds to the contrary with respect to the above issues, it shall rescind or modify the commissioner's order and, in the case of modification, the commissioner shall reduce the order of revocation to the appropriate period of revocation under this section or section seven, article five of this chapter. A copy of the Office of Administrative Hearings' final order containing its findings of fact and conclusions of law made and entered following the hearing shall be served upon the person whose license is at issue or upon the person's legal counsel if the person is represented by legal counsel by registered or certified mail, return receipt requested, or by facsimile or by electronic mail if available. The final order shall be served upon the commissioner by electronic mail. During the pendency of any hearing, the revocation of the person's license to operate a motor vehicle in this state shall be stayed.

~~A person whose license is at issue and the commissioner shall be entitled to judicial review as set forth in chapter twenty-nine-a of this code. Neither the commissioner nor the Office of Administrative Hearings may stay enforcement of the order. The court may grant a stay or supersede as of the order only upon motion and hearing, and a finding by the court upon the evidence presented,~~

~~that there is a substantial probability that the appellant shall prevail upon the merits and the appellant will suffer irreparable harm if the order is not stayed: *Provided*, That in no event shall the stay or supersede as of the order exceed one hundred fifty days. The Office of Administrative Hearings may not be made a party to an appeal. The party filing the appeal shall pay the Office of Administrative Hearings for the production and transmission of the certified file copy and the hearing transcript to the court. Notwithstanding the provisions of section four, article five of said chapter, the Office of Administrative Hearings may not be compelled to transmit a certified copy of the file or the transcript of the hearing to the circuit court in less than sixty days. Circuit clerk shall provide a copy of the circuit court's final order on the appeal to the Office of Administrative Hearings by regular mail, by facsimile, or by electronic mail if available.~~

(t) Any person whose license is at issue and the commissioner shall be entitled to appeal such decision as a matter of right by requesting such appeal within thirty days after the date upon which he or she received notice of the final order or written decision of the agency. Such appeal shall be made to the circuit court in the county which the arrest was made. Such hearing on appeal before the circuit court shall be a trial de novo. The Office of Administrative Hearings may not be made a party to an appeal. During any appeal filed pursuant to this subsection, the order revoking or suspending the person's driver's license shall be stayed.

~~(t)~~ (u) In any revocation or suspension pursuant to this section, if the driver whose license is revoked or suspended had not reached the driver's eighteenth birthday at the time of the conduct for which the license is revoked or suspended, the driver's license shall be revoked or suspended until the driver's eighteenth birthday or the applicable statutory period of revocation or suspension prescribed by this section, whichever is longer.

~~(u)~~ (v) Funds for this section's hearing and appeal process may be provided from the Drunk Driving Prevention Fund, as created by section forty-one, article two, chapter fifteen of this code, upon application for the funds to the Commission on Drunk Driving Prevention.

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 5. APPELLATE RELIEF IN SUPREME COURT OF APPEALS.

§58-5-1. Appeal as a matter of right; when appeal lies.

(a) All appeals shall be afforded a full and meaningful review by the Supreme Court of Appeals, and a written decision on the merits shall be issued, as a matter of right.

(b) A party to a civil action may appeal to the Supreme Court of Appeals from a final judgment of any circuit court or from an order of any circuit court constituting a final judgment as to one or more but fewer than all claims or parties upon an express determination by the circuit court that there is no just reason for delay and upon an express direction for the entry of judgment as to such claims or parties.

(c) The defendant in a criminal action may appeal to the Supreme Court of Appeals from a final judgment of any circuit court in which there has been a conviction or which affirms a conviction obtained in an inferior court."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 3030 – “A Bill to amend and reenact §17C-5A-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §58-5-1 of said code, all relating to appeals as a matter of right; providing that parties to decisions of the Office of Administrative Hearings shall be entitled to appeal such decisions as a matter of right; setting time frame for requesting such appeal; specifying court to which appeal is to be made; requiring appeal before circuit court to be trial de novo; specifying that Office of Administrative Hearings is not to be made party to appeal; providing for stay of driver’s license revocation or suspension pending appeal; and providing that all appeals in the West Virginia Supreme Court of Appeals shall be afforded a full and meaningful review and a written decision on the merits.”

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, to take effect from passage, a bill of the House of Delegates, as follows:

H. B. 3103, Making a supplementary appropriation to the Department of Health and Human Resources.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page two, section one, line fourteen, by striking out “2” and inserting in lieu thereof “3”.

On page two, section one, line fifteen, by striking out “8” and inserting in lieu thereof “10”.

And,

On page three, section one, line thirteen, by striking out “17a” and inserting in lieu thereof “23a”.

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. 560**), 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: Blair, Hollen, Kelly, Robinson, Rodighiero and Upson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3103) passed.

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

On this question, the yeas and nays were taken (**Roll No. 561**), 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: Blair, Hollen, Kelly, Robinson, Rodighiero and Upson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3103) 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 concurrence by the Senate in the amendment of the House of Delegates, with further amendment, and the passage, of

Com. Sub. for S. B. 134, Authorizing Bureau of Commerce to promulgate legislative rules.

Delegate Cowles moved that the House of Delegates concur in the following amendment of the bill by the Senate:

On page one, by striking out the article heading and inserting in lieu thereof a new article heading, to read as follows:

“ARTICLE 10. AUTHORIZATION FOR DEPARTMENT OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.”

And,

On page two, section three, by striking out the words “The legislative rule effective on July 1, 2014, authorized under the authority of section four, article six, chapter twenty-two-a of this code, relating to the Board of Coal Mine Health and Safety (rules governing proximity detection systems and haulage safety generally, 36 CSR 57), is authorized, with the amendment set forth below:” and inserting in lieu thereof the following: The Legislature directs the Board of Coal Mine Health and Safety, pursuant to the authority given to the board in section four, article six, chapter twenty-two-a of this code, to promulgate the legislative rule filed in the State Register by the Board of Coal Mine Health and Safety on July 1, 2014, relating to rules governing proximity detection systems and haulage safety generally, (36 CSR 57), with the amendment set forth below” followed by a colon.

And,

By amending the title of the bill to read as follows:

Com. Sub. for S. B. 134 – “A Bill to amend and reenact §64-10-1, §64-10-2 and §64-10-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing certain Department of Commerce legislative rules; authorizing certain agencies to promulgate certain legislative rules as presented to the Legislative Rule-Making Review Committee; authorizing certain agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; repealing certain legislative rules promulgated by certain agencies and boards under the Department of Commerce which are no longer authorized or are obsolete; directing the promulgation rules by certain agencies and boards under the Department of Commerce; authorizing the Division of Natural Resources to promulgate a legislative rule relating to the point system for the revocation of hunting – repeal; authorizing the Division of Natural Resources to promulgate a legislative rule relating to revocation of hunting and fishing licenses; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special waterfowl hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to the commercial sale of wildlife; authorizing the Division of Natural Resources to promulgate a legislative rule relating to miscellaneous permits and licenses; repealing the Division of Natural Resources legislative rule relating to litter control grant program; authorizing the Office of Miners’ Health, Safety and Training to promulgate a legislative rule relating to certification, recertification and training of EMT-Miners and the certification of EMT-M instructors; and directing the Board of Coal Mine Health and Safety to promulgate a legislative rule relating to rules governing proximity detection systems and haulage safety generally.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 562**), and there were—yeas 93, nays 1, absent and not voting 6, with the nays and absent and not voting being as follows:

Nays: Walters.

Absent and Not Voting: Blair, Hollen, Kelly, Robinson, Rodighiero and Upson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 134) passed.

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

On this question, the yeas and nays were taken (**Roll No. 563**), 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: Blair, Hollen, Kelly, Robinson, Rodighiero and Upson.

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. 134) 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 concurrence in the House of Delegates amendment, with a title amendment, and the passage, as amended, of

Com. Sub. for S. B. 441, Establishing Municipal Home Rule Pilot Program.

On motion of Delegate Cowles, the House concurred in the following amendment to the title of the bill by the Senate:

Com. Sub. for S. B. 441 – “A Bill to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating to municipal home rule; establishing the Municipal Home Rule Pilot Program as a permanent program identified as the Municipal Home Rule Program; providing that any ordinance, act, resolution, rule or regulation enacted pursuant to the Municipal Home Rule Pilot Program shall continue until repealed; clarifying the authority of the Municipal Home Rule Board; allowing all municipalities to participate in the Municipal Home Rule Program; requiring certain notice prior to passing of an ordinance; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule or regulation that is contrary to certain laws governing the professional licensing or certification of public employees; providing for petition procedures to protest enacted or amended ordinances; requiring ratification of certain ordinances by the voters in a municipal election; and eliminating the automatic termination of the Municipal Home Rule Pilot Program on July 1, 2019.”

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. 564**), and there were—yeas 88, nays 2, absent and not voting 10, with the nays and absent and not voting being as follows:

Nays: Folk and McGeehan.

Absent and Not Voting: Blair, G. Foster, Hanshaw, Hollen, Kelly, R. Miller, Robinson, Rodighiero, Sobonya and Upson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 441) passed.

On motion of Delegate Cowles, the House then reconsidered the vote on the passage of the bill.

Delegate Howell requested to be excused from voting on the passage of Com. Sub. for S. B. 441 under the provisions of House Rule 49.

The Speaker replied that Delegate Howell may 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. 565**), and there were—yeas 90, nays 3, excused 1, absent and not voting 6, with the nays, excused and absent and voting being as follows:

Nays: Folk, McGeehan and Sobonya.

Excused: Howell.

Absent and Not Voting: Blair, G. Foster, Hanshaw, Robinson, Rodighiero and Upson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 441) 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 by the Senate in the amendment of the House of Delegates, with further amendment, and the adoption, as amended, of

Com. Sub. for S. J. R. 6, Roads to Prosperity Amendment of 2017.

On motion of Delegate Cowles, the House concurred in the following amendment of the joint resolution by the Senate:

On page one, following the Resolved section, by striking out the remainder of the resolution and inserting in lieu thereof the following:

“Roads to Prosperity Amendment of 2017.

(a) The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding in the aggregate \$1.6 billion. The proceeds of said bonds are hereby authorized to be issued and sold over a four-year period in the following amounts:

(1) July 1, 2017, an amount not to exceed \$800 million;

(2) July 1, 2018, an amount not to exceed \$400 million;

(3) July 1, 2019, an amount not to exceed \$200 million; and

(4) July 1, 2020, an amount not to exceed \$200 million.

Any bonds not issued under the provisions of subdivisions (1) through (3), inclusive, of this subsection may be carried forward and issued in any subsequent year before July 1, 2021.

(b) The proceeds of the bonds shall be used and appropriated for the following purposes:

(1) Matching available federal funds for highway and bridge construction in this state; and

(2) General highway and secondary road and bridge construction or improvements in each of the fifty-five counties.

(c) When a bond issue as aforesaid is authorized, the Legislature shall at the same time provide for the collection of an annual state tax which shall be in a sufficient amount to pay the interest on such bonds and the principal thereof as such may accrue within and not exceeding twenty-five years. Such taxes shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and the principal of said bonds becoming due and payable in such year are insufficient therefor. Any interest that accrues on the issued bonds prior to payment shall only be used for the purposes of the bonds.

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 "Roads to Prosperity Amendment of 2017" and the purpose of the proposed amendment is summarized as follows: "To provide for the improvement and construction of safe roads in the state by the issuance of bonds not to exceed \$1.6 billion in the aggregate to be paid for from the State Road Fund and the collection of annual state taxes as provided by the Legislature by general law."

On the motion to concur, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 566**), and there were—yeas 76, nays 20, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: Butler, Deem, Ellington, Fast, Folk, N. Foster, Frich, Gearheart, Hamrick, Hill, Howell, Martin, McGeehan, Moore, Overington, Paynter, Sobonya, Storch, Summers and Wilson.

Absent and Not Voting: Atkinson, G. Foster, Hanshaw and Williams.

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

The resolution, as amended by the House, and further amended by the Senate, was then put upon its adoption.

On the adoption of the resolution, the yeas and nays were taken (**Roll No. 567**), and there were—yeas 84, nays 11, absent and not voting 5, with the nays and absent and not voting being as follows:

Yeas: Ambler, Anderson, Arvon, Baldwin, Barrett, Bates, Blair, Boggs, Brewer, Butler, Byrd, Canestraro, Capito, Caputo, Cooper, Cowles, Dean, Diserio, Eldridge, Ellington, Espinosa, A. Evans, E. Evans, Fast, Ferro, Fleischauer, Fluharty, N. Foster, Frich, Hamilton, Hamrick, Harshbarger, Hartman, Hicks, Higginbotham, Hollen, Hornbuckle, Householder, Howell, Iaquinta, Isner, Kelly,

Lane, Lewis, Longstreth, Love, Lovejoy, Lynch, Marcum, Maynard, Miley, C. Miller, R. Miller, Moore, Moye, Nelson, O'Neal, Overington, Pethtel, Phillips, Pushkin, Pyles, Queen, Robinson, Rodighiero, Rohrbach, C. Romine, R. Romine, Rowan, Rowe, Shott, Sobonya, Sponaugle, Statler, Summers, Sypolt, Thompson, Upson, Wagner, Ward, Westfall, White, Zatezalo and Mr. Speaker, Mr. Armstead.

Nays: Deem, Folk, Gearheart, Hill, Kessinger, Martin, McGeehan, Paynter, Storch, Walters and Wilson.

Absent and Not Voting: Atkinson, Criss, G. Foster, Hanshaw and Williams.

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 S. J. R. 6) adopted, as follows:

Com. Sub. for S. J. R. 6 – “Proposing an amendment to the Constitution of the State of West Virginia, relating to authorizing the Legislature to issue and sell state bonds not exceeding the aggregate amount of \$1.6 billion to be used for improvement and construction of state roads and bridges; numbering and designating such proposed amendment; authorizing a special election on the ratification or rejection of the amendment to take place in 2017, to be set by the Governor; 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 a special election to be held at a date set by the Governor in 2017 and proclaimed in accordance with section three, article eleven, chapter three of the Code of West Virginia, which proposed amendment is to read as follows:

Roads to Prosperity Amendment of 2017.

(a) The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding in the aggregate \$1.6 billion dollars. The proceeds of said bonds are hereby authorized to be issued and sold over a four-year period in the following amounts:

- (1) July 1, 2018, an amount not to exceed \$800 million;
- (2) July 1, 2019, an amount not to exceed \$400 million;
- (3) July 1, 2020, an amount not to exceed \$200 million; and
- (4) July 1, 2021, an amount not to exceed \$200 million.

Any bonds not issued under the provisions of subdivisions (1) through (3), inclusive, of this subsection may be carried forward and issued in any subsequent year before July 1, 2022.

(b) The proceeds of the bonds shall be used and appropriated for the following purposes:

- (1) Matching available federal funds for highway and bridge construction in this state; and
- (2) General highway and secondary road and bridge construction or improvements in each of the fifty-five counties.

(c) Any interest that accrues on the issued bonds prior to payment shall only be used for the purposes of the bonds.

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 "Roads to Prosperity Amendment of 2017" and the purpose of the proposed amendment is summarized as follows: "To provide for the improvement and construction of safe roads in the state."

Delegate Cowles moved that the joint resolution take effect from its passage.

Delegate Cowles 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.

Conference Committee Report Availability

At 7:35 p.m., the Clerk announced availability in his office of the reports of the Committee of Conference on Com. Sub. for H. B. 2329, Prohibiting the production, manufacture or possession of fentanyl, Com. Sub. for H. B. 2579, Increasing the penalties for transporting controlled substances, and Com. Sub. for H. B. 2585, Creating felony crime of conducting financial transactions involving proceeds of criminal activity.

Conference Committee Report

Delegate Walters, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for H. B. 2721, Removing the cost limitation on projects completed by the Division of Highways,

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 Com. Sub. for H. B. 2721 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That the Senate recede from its amendment on page four, section five, lines seventy-six and seventy-seven.

That the Senate recede from its amendment on page seven, section nine, lines sixty and sixty-one.

And the House of Delegates agrees to the amendment of the Senate on page eight, beginning on line sixty-five, by striking out subsection (i).

And,

That both houses recede from their positions as to the title of the bill and agree to the same as follows:

Com. Sub. for H. B. 2721 - “A Bill to amend and reenact §17-27-5 and §17-27-9 of the Code of West Virginia, 1931, as amended, all relating to the public-private transportation facilities act; reducing the cost threshold limitation on projects completed by the Division of Highways that are eligible for funding from the state road fund; and extending the time limitation by which agreements must be made.”

Respectfully submitted,

Ron Walters, *Chair*,
Marty Gearheart,
Mick Bates,
*Conferees on the part
of the House of Delegates.*

Greg Boso, *Chair*,
Chandler Swoope,
Glenn Jeffries,
*Conferees on the part
of the Senate.*

On motion of Delegate Walters, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 568**), 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: Atkinson, Criss, Fleischauer, G. Foster, Hanshaw and Williams.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2721) passed.

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

Delegate Walters, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for H. B. 2722, Eliminating the financial limitations on utilizing the design-build program for highway construction,

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 Com. Sub. for H. B. 2722 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

Both houses might recede from their respective positions as to the amendment of the Senate on page one, section two, lines five through twelve, and agree to the same as follows:

“(b) The Division of Highways may expend no more than \$50 million in each year in the program: *Provided*, That if any of the \$50 million is unused in one year, the remaining amount may be applied to the following year’s amount: *Provided, however*, That the total aggregate amount to be expended may not exceed \$150 million in any one year: *Provided further*, That for fiscal years beginning after June 30, 2017, the Division of Highways may expend no more than \$200 million on any one project: *And provided further*, That for fiscal years beginning after June 30, 2017, the Division of Highways may expend no more than \$400 million in each year in the program: *And provided further*, That for fiscal years beginning after June 30, 2017, if any of the \$400 million is unused in any year, the

remaining amount may be applied to the following year's amount: And provided further, That for fiscal years beginning after June 30, 2017, the total aggregate amount to be expended may not exceed \$500 million in any one year: And provided further, That expenditures made for projects that are necessitated by a declared state of emergency within a county that the Governor has included in a declaration of emergency are not to be included against the expenditure limits provided in this subsection."

That the Senate recede from its position as to the amendment of the Senate on page one, section two, line seventeen.

And,

That both houses recede from their positions as to the title of the bill and agree to the same as follows:

Com. Sub. for H. B. 2722 - "A Bill to amend and reenact §17-2D-2 of the Code of West Virginia, 1931, as amended, relating to highway construction using the design-build program; changing maximum amounts that may be expended for projects using the design-build program for highway construction and making certain exceptions to expenditure limits."

Respectfully submitted,

Ronald N. Walters, *Chair*
Marty Gearheart,
Mick Bates,
Conferees on the part
of the House of Delegates.

Greg Boso, *Chair*
Chandler Swope,
Glenn Jeffries,
Conferees on the part
of the Senate.

On motion of Delegate Walters, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 569**), 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: Atkinson, Criss, Fleischauer, G. Foster, Hanshaw and Williams.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2722) 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 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

Com. Sub. for H. B. 2805, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

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

Senators Sypolt, Boso and Facemire.

On motion of Delegate Cowles the House reconsidered its earlier actions and concurred in the following amendment of the bill by the Senate:

On page seven, section one, by striking out paragraph (116).

On page twenty, section one, by striking out paragraph (466).

On page twenty-one, section one, by striking out paragraph (480).

And

By renumbering the remaining paragraphs.

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. 570**), and there were—yeas 90, nays 2, absent and not voting 8, with the nays and absent and not voting being as follows:

Nays: Anderson and Kelly.

Absent and Not Voting: Atkinson, Blair, Criss, Fleischauer, G. Foster, Hanshaw, Upson and Williams.

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. 2805) passed.

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

On this question, the yeas and nays were taken (**Roll No. 571**), and there were—yeas 91, nays 1, absent and not voting 8, with the nays and absent and not voting being as follows:

Nays: Kelly.

Absent and Not Voting: Atkinson, Blair, Criss, Fleischauer, G. Foster, Hanshaw, Upson and Williams.

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. 2805) takes effect from its passage.

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

Conference Committee Report Availability

At 7:55 p.m., the Clerk announced availability in his office of the report of the Committee of Conference on Com. Sub. for H. B. 2589, Permitting students who are homeschooled or attend private schools to enroll and take classes at the county's vocational school.

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. 2109, Relating to the West Virginia Land Reuse Agency Authorization Act.

Conference Committee Report Availability

At 7:58 p.m., the Clerk announced availability in his office of the reports of the Committee of Conference on S. B. 172, Eliminating salary for Water Development Authority board members.

Messages from the Senate

The House then resumed consideration of Com. Sub. for H. B. 2109.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

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

“That §31-18E-3 and §31-18E-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 18E. WEST VIRGINIA LAND REUSE AGENCY AUTHORIZATION ACT.

§31-18E-3. Definitions.

As used in this article:

- (1) ‘Board’ means the board of directors of a land reuse agency;
- (2) ‘Deconstruct’ means to attempt to remove salvageable pieces of a housing unit prior to or as part of demolition or renovation;
- (3) ‘Financial institution’ means a bank, savings association, operating subsidiary of a bank or savings association, credit union, association licensed to originate mortgage loans or an assignee of a mortgage or note originated by such an institution;
- (4) ‘Land reuse agency’ means a public body established under this article;
- (5) ‘Land reuse jurisdiction’ means: (A) A county or municipality in this state; or (B) two or more municipalities or counties that enter into an intergovernmental cooperation agreement to establish and maintain a land reuse agency;
- (6) ‘Municipal land bank’ means a department or agency of a municipality, or an entity lawfully created by a municipality, engaged in activities designed to address issues related to vacant, abandoned and tax-delinquent real property, including but not limited to, the purchase, rehabilitation, improvement or sale of such properties for the purpose of eliminating blight and returning those properties to productive use.

~~(6)~~ (7) 'Municipality' means a municipality as defined in section two, article one, chapter eight of this code; and

~~(7)~~ (8) 'Real property' means all lands, including improvements and fixtures on them and property of any nature appurtenant to them or used in connection with them and every estate, interest and right, legal or equitable, in them, including terms of years and liens by way of judgment, mortgage or otherwise, and indebtedness secured by the liens.

§31-18E-9. Acquisition of property.

(a) *Title to be held in its name.* – A land reuse agency or municipal land bank shall hold in its own name all real property it acquires.

(b) *Tax exemption.* – (1) Except as set forth in subdivision (2) of this subsection, the real property of a land reuse agency or municipal land bank and its income and operations are exempt from property tax.

(2) Subdivision (1) of this subsection does not apply to real property of a land reuse agency or municipal land bank after the fifth consecutive year in which the real property is continuously leased to a private third party. However, real property continues to be exempt from property taxes if it is leased to a nonprofit or governmental agency at substantially less than fair market value.

(c) *Methods of acquisition.* – A land reuse agency or municipal land bank may acquire real property or interests in real property by any means on terms and conditions and in a manner the land reuse agency considers proper: *Provided*, That a land reuse agency or municipal land bank may not acquire any interest in oil, gas or minerals which have been severed from the realty.

(d) *Acquisitions from municipalities or counties.* – (1) A land reuse agency or municipal land bank may acquire real property by purchase contracts, lease purchase agreements, installment sales contracts and land contracts and may accept transfers from municipalities or counties upon terms and conditions as agreed to by the land reuse agency or municipal land bank and the municipality or county.

(2) A municipality or county may transfer to a land reuse agency or municipal land bank real property and interests in real property of the municipality or county on terms and conditions and according to procedures determined by the municipality or county as long as the real property is located within the jurisdiction of the land reuse agency or municipal land bank.

(3) An urban renewal authority, as defined in section four, article eighteen, chapter sixteen of this code, located within a land reuse jurisdiction established under this article may, with the consent of the local governing body and without a redevelopment contract, convey property to the land reuse agency. A conveyance under this subdivision shall be with fee simple title, free of all liens and encumbrances.

(e) *Maintenance.* – A land reuse agency or municipal land bank shall maintain all of its real property in accordance with the statutes and ordinances of the jurisdiction in which the real property is located.

(f) *Prohibition.* – (1) Subject to the provisions of subdivision (2) of this subsection, a land reuse agency or municipal land bank may not own or hold real property located outside the jurisdictional boundaries of the entities which created the land reuse agency under subsection (c), section four of this article.

(2) A land reuse agency or municipal land bank may be granted authority pursuant to an intergovernmental cooperation agreement with a municipality or county to manage and maintain real property located within the jurisdiction of the municipality or county.

(g) *Acquisition of tax delinquent properties.* – (1) Notwithstanding any other provision of this code to the contrary, if authorized by the land reuse jurisdiction which created a land reuse agency or municipal land bank or otherwise by intergovernmental cooperation agreement, a land reuse agency or municipal land bank may acquire an interest in tax delinquent property through the provisions of chapter eleven-a of this code. Notwithstanding the provisions of section eight, article three, chapter eleven-a of this code, if no person present at the tax sale bids the amount of the taxes, interest and charges due on any unredeemed tract or lot or undivided interest in real estate offered for sale, the sheriff shall, prior to certifying the real estate to the Auditor for disposition pursuant to section forty-four, article three, chapter eleven-a of this code, provide a list of all of said real estate within a land reuse or municipal land bank jurisdiction to the land reuse agency or municipal land bank and the land reuse agency or municipal land bank shall be given an opportunity to purchase the tax lien and pay the taxes, interest and charges due for any unredeemed tract or lot or undivided interest therein as if the land reuse agency or municipal land bank were an individual who purchased the tax lien at the tax sale.

(2) Notwithstanding any other provision of this code to the contrary, if authorized by the land reuse jurisdiction which created a land reuse agency or municipal land bank or otherwise by intergovernmental cooperation agreement, the land reuse agency or municipal land bank shall have the right of first refusal to purchase any tax-delinquent property which is within municipal limits, and has an assessed value of \$25,000 or less or has been condemned: Provided, That the land reuse agency or municipal land bank satisfies the requirements of subdivision (3) of this subsection. A list of properties which meet the criteria of this subdivision shall regularly be compiled by the sheriff of the county, and a land reuse agency or municipal land bank may purchase any qualifying tax-delinquent property for an amount equal to the taxes owed and any related fees before such property is placed for public auction.

(3) When a land reuse agency or municipal land bank exercises a right of first refusal in accordance with subdivision (2) of this section, the land reuse agency or municipal land bank shall, within fifteen days, provide written notice to all owners of real property that is adjacent to the tax-delinquent property. Any such property owner shall have a period of 120 days from the receipt of notice, actual or constructive, to exercise a right to purchase the tax-delinquent property from the land reuse agency or municipal land bank for an amount equal to the amount paid for the property by the land reuse agency or municipal land bank: Provided, That in the event more than one adjacent land owner desires to purchase the tax-delinquent property, it shall be sold to the adjacent property owner offering the highest bid. It is the duty of the adjacent property owner to establish that he or she is the actual owner of property that is adjacent to the tax-delinquent property and all state and local taxes and all fees on his or her adjacent property are current and non-delinquent.

(3) Effective July 1, 2020, the provisions of subdivisions (2) and (3) of this subsection shall sunset and have no further force and effect.

(4) Prior to January 1, 2020, any land reuse agency or municipal land bank which exercises the authority granted by this subsection may submit to the Joint Committee on Government and Finance a report on the entity's activities related to the purchase of tax-delinquent properties and any benefits realized from the authority granted by this subsection."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2109 - “A Bill to amend and reenact §31-18E-3 and §31-18E-9 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Land Reuse Agency Authorization Act; defining the term ‘municipal land bank’; including a municipal land bank as an agency that may acquire property; providing that a land reuse agency or a municipal land bank may have the right of first refusal to buy certain tax delinquent property for taxes owed and any related fees before the tax delinquent property is placed for public auction at tax sales; providing procedures for when a land reuse agency or municipal land bank exercises a first right of refusal to purchase tax-delinquent property; requiring county sheriffs to compile a list of properties meeting certain criteria; granting owners of adjacent real property a right to purchase a tax delinquent property from a land reuse agency or municipal land bank, within 120 days of receiving notice, for an amount equal to the amount paid for the property by the land reuse agency or municipal land bank; providing a three year sunset provision; and authorizing reporting 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. 572**), and there were—yeas 73, nays 23, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: Arvon, Blair, Butler, Cowles, Folk, N. Foster, Frich, Gearheart, Hill, Howell, Iaquina, Kessinger, Martin, McGeehan, Paynter, Sobonya, Statler, Summers, Sypolt, Thompson, Upson, Wagner and Wilson.

Absent and Not Voting: A. Evans, Fleischauer, G. Foster and 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 H. B. 2109) 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. 2637, Relating to employment of retired teachers and prospective employable professional personnel in areas of critical need and shortage.

Conference Committee Report Availability

At 8:00 p.m., the Clerk announced availability in his office of the report of the Committee of Conference on Com. Sub. for S. B. 224, Repealing requirement for employee’s bond for wages and benefits.

Messages from the Senate

The House then resumed consideration of Com. Sub. for H. B. 2637.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page six, section three, lines one hundred nineteen through one hundred twenty-six, by striking out all of subdivision (5) and inserting in lieu thereof a new subdivision, designated subdivision (5), to read as follows:

“(5) Regular employment status for prospective employable professional personnel may be obtained only upon recommendation by the superintendent and approval by the county board following consideration of the qualifications of the candidate in accordance with the applicable provisions of section seven-a, article four of this chapter. Upon board approval, prospective employable professional personnel may be placed into a critical needs position if the job has been posted at least once in accordance with paragraph (B), subdivision (1) of this subsection resulting in no qualified applicants. Employment of the prospective employable professional personnel pursuant to this subsection may occur without the need for additional postings and without the need for additional faculty senate involvement other than the initial faculty senate involvement required in the case of a classroom teaching position pursuant to section seven-a, article four of this chapter.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2637 – “A Bill to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating to employment of retired teachers and prospective employable professional personnel in areas of critical need and shortage; including speech pathologists and school nurses in definition of teacher or substitute teacher for purposes of employment of retired teachers beyond the post-retirement limit; establishing uniform date retirement must become effective to determine status of retirement benefits during employment as critical needs substitute teacher; restating reporting requirement to legislative committees; extending date for expiration of provisions related to employment of retired teacher as substitute teach beyond the post-retirement limit; eliminating requirement that county policy for employment of prospective employable professional personnel be based on areas of critical need and shortage identified by state board; requiring posting of notice of critical need and shortage area positions prior to making offers of employment and options for posting; limiting employment of prospective employable professional personnel to certain candidates at job fair who will commence employment at the next employment term; changing limit on number of prospective employable professional personnel that may be employed to number required to fill positions posted; clarifying action required for prospective employable professional personnel to obtain regular employment status; clarifying that provisions relating to prospective employable professional personnel do not prevent filling posted vacancy at any time in accordance with other provisions; eliminating any requirement for successive postings where there were no qualified applicants in response to the initial posting; clarifying that no additional faculty senate involvement is required after initial faculty senate involvement; and allowing financial incentives for purposes of recruiting professional personnel in critical needs areas and to attract professional personnel in a critical need or shortage area.”

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. 573**), 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: Fleischauer, G. Foster and 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 H. B. 2637) 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. 2708, Relating to a lawful method for a developmentally disabled person to purchase a base hunting license.

Delegate Cowles moved that the House of Delegates concur in the following amendment of the bill by the Senate:

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

“That §20-2-27, §20-2-30a, §20-2-42a, §20-2-42q, §20-2-42s and §20-2-42v of the Code of West Virginia, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §20-3-3a, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

PART II.

LICENSES AND PERMITS.

§20-2-27. Necessity for license; contact information exempted.

~~Except as otherwise provided by law, no resident who has reached his or her fifteenth birthday and who has not reached his or her sixty-fifth birthday before January 1, 2012, and no nonresident shall at any time take, hunt, pursue, trap for, kill or chase any wild animals, wild birds, or fish for, take, kill or catch any fish, amphibians or aquatic life of any kind whatsoever in this state without first having secured a license or permit and then only during the respective open seasons, except that a nonresident who has not reached his or her fifteenth birthday may fish for, take, kill or catch any fish, amphibians or aquatic life of any kind whatsoever in this state without first having secured a license or permit. A person under the age of fifteen years shall not hunt or chase any wild animals or wild birds upon lands of another unless accompanied by a licensed adult.~~

(a) Except as otherwise provided by law, a resident between the ages of fifteen and sixty-five, and all nonresidents, may not hunt or take wildlife of any kind in this state without the requisite license, stamp or permit, and then only during the respective open seasons. A resident who is fourteen or younger may hunt and take wildlife without a license if accompanied by a licensed adult. A resident and nonresident who is fourteen or younger may fish for and take fish, amphibians or aquatic life without a license.

(b) Except as otherwise provided by law, A a resident or nonresident member of any club, organization or association, or persons owning or leasing a game preserve, or fish preserve, plant or pond in this state shall may not hunt or fish therein without first securing a the requisite license, stamp or permit as required by law: *Provided*, That resident landowners or their resident children, or bona fide resident tenants of land, may, without a permit or license, stamp or permit, hunt and fish on their own land during the respective open seasons in accordance with laws and rules applying to such hunting and fishing unless the lands have been designated as a wildlife refuge or preserve.

~~(c) Licenses, stamps and permits shall be of the kinds and classes are set forth in this article and shall be conditioned upon the require payment of the requisite fees established for the licenses and permits.~~

~~(d) The list of names, addresses and other contact information of all licensees compiled and maintained by the division as a result of the sale and issuance of any resident or nonresident license, stamp or permit, as well as any electronic game information or other personal information obtained pursuant to this chapter, is exempt from disclosure by the division under the Freedom of Information Act, chapter twenty-nine-b of this code, and for any other purpose: *Provided*, That the records specified in this section shall be available to all law-enforcement agencies, courts or other governmental entities authorized to request or receive the records.~~

§20-2-30a. Certificate of training; falsifying, altering, forging, counterfeiting or uttering training certificate; modified certificate of training; penalties.

~~(a) Notwithstanding any other provisions of this article, ~~no~~ a base hunting license may not be issued to any person who was born on or after January 1, 1975, unless the person submits to ~~the person authorized to issue hunting licenses~~ a certificate of training as provided in this section or proof of completion of any course which that promotes as a major objective safety in the handling of firearms and of bow and arrows and which course is approved by the hunter education association or the director., ~~or provides a State of West Virginia~~ A resident or nonresident may show a hunting license from the previous hunting season that displays a certification of training, or ~~attests they may attest~~ that a hunter training course has been completed when purchasing a license or stamp online.: *Provided*, That after January 1, 2013, However, a person may be issued a Class AH, Class AHJ, Class AAH and Class AAHJ apprentice hunting and trapping license pursuant to the provisions of section forty-two-y of this article ~~and is exempt from~~ without completing the hunter training requirements set forth herein.~~

~~(b)(1) The director shall establish a course in the safe handling of firearms and of bows and arrows, such as the course approved by the Hunter Education Association. This course shall be given at least once per year in each county in this state and shall be taught by instructors certified by the director. In establishing and conducting this course, the director may cooperate with any reputable association or organization which promotes as a major objective safety in the handling of firearms and of bows and arrows.: *Provided*, That any~~

~~(2) A person holding a Class A-L or AB-L lifetime resident license obtained prior to his or her fifteenth birthday shall be required to obtain a certificate of training as provided in this section before hunting or trapping pursuant to said license. This course of instruction shall be offered without charge, except for materials or ammunition consumed. Upon satisfactory completion of the course, each person instructed in the course shall be issued a certificate of training for the purposes of complying with the requirements of subsection (a) of this section. The certificate shall be in the form prescribed by the director and shall be valid for hunting license application purposes.~~

~~(c) (1) Upon satisfactory completion of this course, any person whose hunting license has been revoked for a violation of the provisions of this chapter may petition the director for a reduction of his or her revocation time. However, under no circumstances may the time be reduced to less than one year.~~

~~(2) Successful completion of this course shall be required to consider the reinstatement of a hunting license of any person whose license has been revoked due to a conviction for negligent shooting of a human being or of livestock under the provisions of section fifty-seven of this article, and who petitions the director for an early reinstatement of his or her hunting privileges. Such a~~

petitioner shall also comply with the other requirements for consideration of reinstatement contained in section thirty-eight of this article.

(d) It is unlawful for any person to falsify, alter, forge, counterfeit or utter a certificate of training. Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000, or confined in jail for a period not to exceed one year, or both fined and imprisoned.

(e) ~~Nothing herein contained shall~~ This section does not mandate that ~~any a~~ county school district ~~in the state be~~ is responsible for implementing hunter safety education programs.

(f) (1) Notwithstanding the provisions of this section, a base hunting license may be issued to any person who has a developmental disability whose disability affects his or her ability to undertake a written test. The developmentally disabled person must attend an on-site hunter training course and must successfully complete all non-written aspects of the course to receive a modified certificate of training to purchase a base hunting license. For purposes of this section, "developmentally disabled" has the same meaning as prescribed in subsection (i), section twenty-eight of this article.

(2) As part of the application process for a license purchased under a modified certificate of training, a person with a developmental disability shall present to the division a written application form furnished by the director and signed by a licensed physician indicating that the person is:

(A) Unable to successfully complete a standard written test administered as part of the hunter training course;

(B) At all times capable of understanding and following directions given by another person; and

(C) Not a danger to himself or herself or others while engaged in hunting with a firearm.

(3) A person with a license purchased under a modified certificate of training may not hunt or trap unless he or she is in possession of all other required documentation and stamps and is accompanied and directly supervised by an adult eighteen years of age or older who either possesses a valid West Virginia hunting license or has the lawful privilege to hunt pursuant to the provisions of this chapter. For purposes of this subsection, "accompanied and directly supervised" means that a person maintains a close visual and verbal contact with, provides adequate direction to and can assume control of the firearm from the developmentally disabled person.

(4) Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, is subject to the punishment and penalties prescribed in section nine, article seven of this chapter.

§20-2-42a. Class A resident hunting and trapping license.

A Class A license is a resident hunting and trapping license and entitles the licensee to hunt and trap all legal species of wild animals and wild birds in all counties of the state, except that the licensee may not hunt deer during the deer archery, crossbow and muzzleloader seasons, or black bear, wild turkey or wild boar during the respective seasons, and except as prohibited by rules of the director or Natural Resources Commission and when additional licenses, stamps or permits are required. It shall be issued only to residents or aliens lawfully residing in the United States who have been domiciled residents of West Virginia for a period of thirty consecutive days or more immediately prior to the date of their application for a license. The fee for the license is \$18. This is a base license and

does not require the purchase of a prerequisite license to participate in the activities specified in this section, except as noted.

§20-2-42q. Class RB resident and Class RRB nonresident archery deer hunting stamp for an additional deer.

The director has the authority to issue a Class RB resident and a Class RRB nonresident archery deer hunting stamp when deemed essential for the proper management of the wildlife resources. This stamp allows the licensee to hunt and take an additional deer during the deer archery or crossbow seasons as designated by the director. The fee for a Class RB stamp is \$20 and the fee for a Class RRB stamp is \$35. The director may promulgate rules in accordance with article three, chapter twenty-nine-a of this code governing the issuance and use of these stamps. These stamps require that the licensee purchase the appropriate base license before participating in the activities specified in this section, except as noted.

§20-2-42s. Class UU nonresident archery deer hunting stamp.

A Class UU stamp is a nonresident archery deer hunting stamp and entitles the licensee to hunt and take deer with a bow during the archery deer season or with a crossbow in the crossbow deer season in all counties of the state, except as prohibited by the rules of the director or Natural Resources Commission. The fee for a Class UU stamp is \$30. The stamp, issued in a form prescribed by the director, shall be in addition to a Class E license. This stamp requires that the licensee purchase the appropriate base license before participating in the activities specified in this section, except as noted.

§20-2-42v. Class BG resident big game stamp.

A Class BG stamp is a resident big game stamp and entitles the Class A licensee to hunt deer during the deer archery, crossbow and muzzleloader seasons, and bear, wild turkey and wild boar during the respective seasons, except as prohibited by rules of the director or Natural Resources Commission: *Provided*, That the licensee possesses all other required permits and/or stamps. The fee for the stamp is \$10. The stamp, issued in a form prescribed by the director, shall be in addition to a Class A license. This stamp requires that the licensee purchase the appropriate base license before participating in the activities specified in this section, except as noted.

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

§20-3-3a. Cabwaylingo Pilot Project and Special Permit.

(a) The director shall establish a two-year pilot project permitting all-terrain vehicles (ATVs) and off-highway recreational vehicles (ORVs) to drive on roads and trails in Cabwaylingo State Forest, as designated and approved by the director. The director may establish special seasons and designate certain campgrounds and tent sites for ATV and ORV users in the forest.

(b) The director may establish a special permit for purchase by the ATV and ORV users for road and trail access, and may close any areas, or parts thereof, to public use. It is unlawful at any time to operate an ATV or ORV on any roads and trails in Cabwaylingo State Forest without the special permit.

(c) The provisions of article fifteen of this chapter shall apply to the division, participants, outfitters and licensees of the Cabwaylingo pilot project, though ORVs may be permitted.

(d) At the conclusion of the two-year pilot project, the Legislative Auditor shall review the pilot project and file a report with the Joint Committee on Government and Finance.”

And,

By amending the title of the bill to read as follows:

Com. Sub for H. B. 2708 – “A Bill to amend §20-2-27, §20-2-30a, §20-2-42a, §20-2-42q, §20-2-42s and §20-2-42v of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §20-3-3a, all relating to licenses and permits generally; exempting certain contact information for hunting and fishing license holders from public disclosure with certain exceptions; clarifying use of crossbows with certain licenses and stamps clarifying license requirements for disabled person; modifying certificate of training requirements for disabled person; providing criminal penalties for violations; creating a special permit for certain vehicles on certain roads and trails in Cabwaylingo State Forest; permitting the director discretion to establish special season and other aspects of two-year pilot project; applying the ATV, UTV and Motorcycle Responsibility Act to the project; requiring Legislative Auditor to review project and file report; and making technical corrections.”

Delegate Cowles then asked and obtained unanimous consent that the motion to concur in the Senate amendments be withdrawn.

At 8:14 p.m., on motion of Delegate Cowles, the House of Delegates recessed for fifteen minutes.

* * * * *

Evening Session

* * * * *

-Continued-

The House of Delegates was called to order by the Honorable Tim Armstead, Speaker.

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. 2303, Increasing criminal penalties for littering.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

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

“ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.

§22-15A-4. Unlawful disposal of litter; civil and criminal penalty; litter control fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.

(a) (1) No person ~~shall~~ may place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter as defined in section two of this article, in or upon any public or private highway, road, street or alley; any private property; any public property; or the waters of the state or within one hundred feet of the waters of this state, except in a proper litter or other solid waste receptacle.

(2) It is unlawful for any person to place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter from a motor vehicle or other conveyance or to perform any act which constitutes a violation of the motor vehicle laws contained in section fourteen, article fourteen, chapter seventeen-c of this code.

(3) If any litter is placed, deposited, dumped, discharged, thrown or caused to be placed, deposited, dumped or thrown from a motor vehicle, boat, airplane or other conveyance, it is prima facie evidence that the owner or the operator of the motor vehicle, boat, airplane or other conveyance intended to violate the provisions of this section.

(4) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter on his or her private property in an amount not exceeding fifty pounds in weight is not subject to the criminal provisions of this section.

~~(4)(5)~~ Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for commercial purposes, in an amount not exceeding one hundred pounds in weight or twenty-seven cubic feet in size, is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than \$100 nor more than ~~\$1,000~~ \$2,500, or in the discretion of the court, sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the court, for not less than eight nor more than ~~sixteen hours~~ one hundred hours, or both. If any person is convicted of the misdemeanor by placing, depositing, dumping or throwing litter in the waters of the state, that person shall be fined \$500 to no more than \$3,000, or in the discretion of the court sentenced to perform community service by cleaning up litter from any waters of the state, as designated by the court, for not less than twenty to no more than one hundred twenty hours, or both.

~~(5)(6)~~ Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for commercial purposes, in an amount greater than one hundred pounds in weight or twenty-seven cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet in size is guilty of a misdemeanor. Upon conviction he or she is subject to a fine of not less than ~~\$1,000~~ \$2,500 nor more than ~~\$2,000~~ \$5,000, or in the discretion of the court, may be sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the court, for not less than sixteen nor more than ~~thirty-two hours~~ two hundred hours, or both. If any person is convicted of the misdemeanor by placing, depositing, dumping or throwing litter in the waters of the state, that person shall be fined \$3,000 to no more than \$5,500, or in the discretion of the court sentenced to perform community service by cleaning up litter from any waters of the state, as designated by the court, for not less than twenty to no more than two hundred twenty hours, or both.

~~(6)(7)~~ Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter in an amount greater than five hundred pounds in weight or two hundred sixteen cubic feet in size or any amount which had been collected for commercial purposes is guilty of a misdemeanor. Upon conviction, the person is ~~subject to a fine~~ shall be fined not less than \$2,500 or not more than \$25,000 or confinement in jail

for not more than one year or both. If any person is convicted of the misdemeanor by placing, depositing, dumping or throwing litter in the waters of the state, that person shall be fined \$3,000 to no more than \$30,000, or confinement in jail for not more than one year or both. In addition, the violator may be guilty of creating or contributing to an open dump as defined in section two, article fifteen, chapter twenty-two of this code and subject to the enforcement provisions of section fifteen of ~~said that~~ article.

~~(7)~~(8) Any person convicted of a second or subsequent violation of this section is subject to double the authorized range of fines and community service for the subsection violated.

~~(8)~~(9) The sentence of litter clean up shall be verified by environmental inspectors from the Department of Environmental Protection. Any defendant receiving the sentence of litter clean up shall provide, within a time to be set by the court, written acknowledgment from an environmental inspector that the sentence has been completed and the litter has been disposed of lawfully.

~~(9)~~(10) Any person who has been found by the court to have willfully failed to comply with the terms of a litter clean-up sentence imposed by the court pursuant to this section is subject to, at the discretion of the court, double the amount of the original fines and community service penalties originally ordered by the court.

~~(10)~~(11) All law-enforcement agencies, officers and environmental inspectors shall enforce compliance with this section within the limits of each agency's statutory authority.

(12) No magistrate or municipal court judge may dismiss an action brought under the provisions of this section without notification to the prosecuting attorney of that county of his or her intention to do so and affording the prosecuting attorney an opportunity to be heard.

~~(11)~~(13) No portion of this section restricts an owner, renter or lessee in the lawful use of his or her own private property or rented or leased property or to prohibit the disposal of any industrial and other wastes into waters of this state in a manner consistent with the provisions of article eleven, chapter twenty-two of this code. But if any owner, renter or lessee, private or otherwise, knowingly permits any ~~such of these~~ materials or substances to be placed, deposited, dumped or thrown in ~~such a~~ location that high water or normal drainage conditions will cause ~~any such these~~ materials or substances to wash into any waters of the state, it is prima facie evidence that the owner, renter or lessee intended to violate the provisions of this section: *Provided*, That if a landowner, renter or lessee, private or otherwise, reports any placing, depositing, dumping or throwing of these substances or materials upon his or her property to the prosecuting attorney, county commission, the Division of Natural Resources or the Department of Environmental Protection, the landowner, renter or lessee will be presumed to not have knowingly permitted the placing, depositing, dumping or throwing of the materials or substances.

(b) Any indication of ownership found in litter ~~shall be~~ is prima facie evidence that the person identified violated the provisions of this section: *Provided*, That no inference may be drawn solely from the presence of any logo, trademark, trade name or other similar mass reproduced things of identifying character appearing on the found litter.

(c) Every person who is convicted of or pleads guilty to disposing of litter in violation of subsection ~~(a)~~ of this section shall pay a civil penalty ~~in the sum of not less than \$200 nor more than \$1,000~~ of \$2,000 as costs for clean-up, investigation and prosecution of the case, in addition to any other court costs that the court is otherwise required by law to impose upon a convicted person.

The clerk of the circuit court, magistrate court or municipal court in which these additional costs are imposed shall, on or before the last day of each month, transmit fifty percent of a civil penalty received pursuant to this section to the State Treasurer for deposit in the State Treasury to the credit of a special revenue fund ~~to be known as the Litter Control Fund which is hereby continued and was~~ transferred to the Department of Environmental Protection. Expenditures for purposes set forth in this section are not authorized from collections but are to be made only in accordance with appropriation and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and designated for other purposes by appropriation of the Legislature.

(d) The remaining fifty percent of each civil penalty collected pursuant to this section shall be transmitted to the county or regional solid waste authority in the county where the litter violation occurred. Moneys shall be expended by the county or regional solid waste authority for the purpose of litter prevention, clean up and enforcement. The county commission shall cooperate with the county or regional solid waste authority serving the respective county to develop a coordinated litter control program pursuant to section eight, article four, chapter twenty-two-c of this code.

(e) The Commissioner of the Division of Motor Vehicles, upon registering a motor vehicle or issuing an operator's or chauffeur's license, shall issue to the owner or licensee, as the case may be, a summary of this section and section fourteen, article fourteen, chapter seventeen-c of the code.

(f) The Commissioner of the Division of Highways shall cause appropriate signs to be placed at the state boundary on each primary and secondary road, and at other locations throughout the state, informing those entering the state of the maximum penalty provided for disposing of litter in violation of subsection (a) of this section.

(g) Any state agency or political subdivision that owns, operates or otherwise controls any public area ~~as may be~~ designated by the secretary by rule promulgated pursuant to subdivision (8), subsection (a), section three of this article shall procure and place litter receptacles at its own expense upon its premises and shall remove and dispose of litter collected in the litter receptacles. After receiving two written warnings from any law-enforcement officer or officers to comply with this subsection or the rules of the secretary, any state agency or political subdivision that fails to place and maintain the litter receptacles upon its premises in violation of this subsection or the rules of the secretary shall be fined \$30 per day of the violation."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2303 – "A Bill to amend and reenact §22-15A-4 of the Code of West Virginia, 1931, as amended, relating to the criminal offense of littering, clarifying that no person may place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter on the private property of another, increasing criminal penalties for littering in an amount not exceeding one hundred pounds in weight or twenty-seven cubic feet in size, increasing criminal penalties for littering in an amount greater than one hundred pounds in weight or twenty-seven cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet in size, modifying the penalties for littering greater than five hundred pounds in weight or two hundred sixteen cubic feet in size or any amount which had been collected for commercial purposes, increasing penalties for second or subsequent violations for littering in an amount not exceeding one hundred pounds in weight or twenty-seven cubic feet in size, increasing penalties for second or subsequent violations for littering

in an amount greater than one hundred pounds in weight or twenty-seven cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet in size and increasing civil penalties for littering, requiring magistrates or municipal court judges to consult with prosecuting attorneys before dismissing charges.”

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. 574**), and there were—yeas 94, nays 4, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Bates, Folk, McGeehan and Wilson.

Absent and Not Voting: Hornbuckle 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. 2303) 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:

Com. Sub. for H. B. 2674, Relating to access to and receipt of certain information regarding a protected person.

On motion of Delegate Cowles, the House concurred in the following amendment of the title of the bill by the Senate:

Com. Sub. for H. B. 2674 – “A Bill to amend and reenact §27-3-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §44A-3-17 and §44A-3-18, all relating to the disclosure of certain confidential information relating to protected persons in guardianship; access to and receipt of certain information regarding a protected person by certain relatives of the protected person; authorizing relatives of a protected person to petition the circuit court for access and information about a protected person; defining “relative”; providing a relative may petition the court for an order granting access to a protected person; setting forth time standards in which to conduct a hearing after a petition is filed; providing for an emergency hearing under particular circumstances; providing for service of a petition upon a guardian and setting time standards for service thereof; providing for the entry of an order by the court following notice and hearing conducted thereon; providing standards for a court to observe and implement in issuing a ruling on a petition; providing the court may award attorney’s fees and costs be paid to a prevailing party; setting forth particular duties for a guardian to provide relatives notice about a protected person’s condition and circumstances; authorizing court to retain jurisdiction; regarding dissemination of information about a protected person to relatives; and providing a guardian method whereby one may be relieved of responsibility for providing information regarding a protected person to a relative.”

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. 575**), 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: Hornbuckle 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. 2674) 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. 2851, Updating fee structure provisions for broker-dealers.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page seven, section three hundred five, after line seventy-seven, by inserting the following:

“§32-4-406. Administration of chapter; operating fund for securities department.

(a) This chapter shall be administered by the Auditor of this state and he or she is hereby designated, and shall be, the commissioner of securities of this state. He or she has the power and authority to appoint or employ such assistants as are necessary for the administration of this chapter.

(b) The Auditor shall set up a special operating fund for the securities division in his or her office. The Auditor shall pay into the fund twenty percent of all fees collected as provided for in this chapter. If, at the end of any fiscal year, the balance in the special operating fund exceeds half of the prior fiscal year's appropriation, the excess shall be transferred to the General Revenue Fund. Provided, That at the end of the 2018 fiscal year, if the balance in the special operating fund exceeds twenty percent of the gross revenues from the special operating fund operations, the auditor may first use the fund to repay any transfers made during the 2017 fiscal year from the Revenue Shortfall Reserve Fund to the West Virginia Enterprise Resource Planning Board created in section one, article six-D, chapter twelve of this code. Provided, however, That at the end of the 2018 fiscal year, after any repayments made out of the special operating fund to the Revenue Shortfall Reserve Fund, any balance in the special operating fund that exceeds half of prior year's appropriation shall be transferred to the General Revenue Fund.

The special operating fund shall be used by the Auditor to fund the operation of the securities division and the general operations of the Auditor's office. The special operating fund shall be appropriated by line item by the Legislature.

(c) Moneys payable for assessments established by section four hundred seven-a of this article shall be collected by the commissioner and deposited into the General Revenue Fund.

(d) It is unlawful for the commissioner or any of his or her officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. No provision of this chapter authorizes the commissioner or any of his or her officers or employees to disclose any information except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of the chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of his or her officers or employees.”

On page one, by striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

“That §32-2-202 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §32-3-305 of said code be amended and reenacted; that §32-2-406 of said code be amended and reenacted; and that §32-4-413 of said code be amended and reenacted, all to read as follows” and a colon.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2851 – “A Bill to amend and reenact §32-2-202 of the Code of West Virginia, 1931, as amended; to amend and reenact §32-3-305 of said code; to amend and reenact §32-2-406 of said code; and to amend and reenact §32-4-413 of said code, all relating to increasing fees assessed by the Auditor’s Securities Division; and changing the threshold at which money in the Auditor’s Security Division’s special revenue fund becomes excess and transfers to the General Revenue Fund for the 2018 fiscal year.”

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. 576**), and there were—yeas 82, nays 17, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Arvon, Barrett, Fast, Folk, N. Foster, Gearheart, Hill, Householder, Howell, Kessinger, Martin, McGeehan, Paynter, Rowe, Statler, Upson and Wilson.

Absent and Not Voting: Marcum.

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. 2851) 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. 3096, Relating to operation and regulation of certain water and sewer utilities owned or operated by political subdivisions of the state.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page seven, section nine, lines seventy-five through eighty-seven, by striking out all of paragraph (G) and inserting in lieu thereof a new paragraph, designated paragraph (G), to read as follows:

“(G) The public service district, or a customer aggrieved by the changed rates or charges who presents to the circuit court a petition signed by at least 750 customers or twenty-five percent of the customers served by the public service district, whichever is fewer, when dissatisfied by the approval,

modification, or rejection by the county commission of the proposed rates, fees and charges under the provisions of this subdivision (2) may file a complaint regarding the rates, fees and charges resulting from the action of, or failure to act by, the county commission in the circuit court of the county in which the county commission sits: *Provided*, That any complaint or petition filed hereunder shall be filed within thirty days of the county commission's final action approving, modifying or rejecting such rates, fees and charges, or the expiration of the forty-five day period from the receipt by the county commission, in writing, of the rates, fees and charges approved by resolution of the board, without final action by the county commission to approve, modify or reject such rates, fees and charges, and the circuit court shall resolve said complaint: *Provided, however*, That the rates, fees and charges so fixed by the county commission, or those adopted by the district upon which the county commission failed to act, shall remain in full force and effect, until set aside, altered or amended by the circuit court in an order to be followed in the future."

On page eighteen, section one, after line one hundred forty-eight, by adding two new subsections, designated subsections (e) and (d), to read as follows:

"(e) The commission shall not have jurisdiction of internet protocol-enabled service or voice-over internet protocol-enabled service. As used in this subsection:

(1) 'Internet protocol-enabled service' means any service, capability, functionality or application provided using internet protocol, or any successor protocol, that enables an end user to send or receive a communication in internet protocol format, or any successor format, regardless of whether the communication is voice, data or video.

(2) 'Voice-over internet protocol service' means any service that:

(i) Enables real-time two-way voice communications that originate or terminate from the user's location using internet protocol or a successor protocol; and

(ii) Uses a broadband connection from the user's location.

(3) The term 'voice-over internet protocol service' includes any service that permits users to receive calls that originate on the public-switched telephone network and to terminate calls on the public-switched telephone network.

(f) Notwithstanding any other provisions of this article, the commission shall not have jurisdiction to review or approve any transaction involving a telephone company otherwise subject to sections twelve and twelve-a, article two, chapter twenty-four of this code if all entities involved in the transaction are under common ownership."

On page thirty, section eleven, after line one hundred twenty-seven, by adding a new subdivision, designated subdivision (8), to read as follows:

"(8) A public service district, or a customer aggrieved by the changed rates or charges who presents to the circuit court a petition signed by at least 750 or twenty-five percent of the customers served by the public service district, whichever is fewer, when dissatisfied by the approval, modification, or rejection by the county commission of the proposed rates, fees and charges under the provisions of this subsection (l) may file a complaint regarding the rates, fees and charges resulting from the action of, or failure to act by, the county commission in the circuit court of the county in which the county commission sits: *Provided*, That any complaint or petition filed hereunder shall be filed within thirty days of the county commission's final action approving, modifying or rejecting such rates, fees and charges, or the expiration of the 45 day period from the receipt by the county commission, in writing, of the rates, fees and charges approved by resolution of the board, without

final action by the county commission to approve, modify or reject such rates, fees and charges, and the circuit court shall resolve said complaint: *Provided, however,* That the rates, fees and charges so fixed by the county commission, or those adopted by the district upon which the county commission failed to act, shall remain in full force and effect, until set aside, altered or amended by the circuit court in an order to be followed in the future.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 3096 – “A Bill to repeal §8-16-19 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-13A-8 and §16-13A-9 of said code; to amend and reenact §24-1-1b of said code; to amend and reenact §24-2-1, §24-2-3, §24-2-4b and §24-2-11 of said code, all relating to the operation and regulation of utilities and services generally; modifying procedures and requirements for the operation and regulation of certain water and sewer utilities owned or operated by political subdivisions of the state; eliminating reference to appeals to the Public Service Commission from actions of municipal boards that are not subject to the jurisdiction of the Public Service Commission; prohibiting Public Service Commission jurisdiction of internet protocol-enabled service and voice-over internet protocol-enabled service; defining the terms ‘internet protocol-enabled service’ and ‘voice-over internet protocol service’; limiting Public Service Commission jurisdiction of certain telephone company transactions; relating to the authority of county commissions to modify proposed rates for certain water and sewer utilities and providing for complaints to be filed with the circuit courts pertaining to rates and charges enacted as proposed, modified or rejected by the county commission; eliminating Public Service Commission authority regarding storm water utilities; providing time limits for the filing of requests for investigations pertaining to political subdivisions providing separate or combined water and/or sewer services and having at least four thousand five hundred customers and annual combined gross revenues of \$3 million or more; clarifying the authority of the Public Service Commission to resolve complaints of customers of water and sewer utilities operated by a political subdivision of the state having at least four thousand five hundred customers and annual combined gross revenues of \$3 million or more; clarifying the jurisdiction of the Public Service Commission relating to rates for municipal water and/or sewer utilities having less than four thousand five hundred customers or annual combined gross revenues of less than \$3 million; revising the notice and procedure provisions for construction projects for political subdivisions of this state providing separate or combined water and/or sewer services and having at least four thousand five hundred customers and annual combined gross revenues of \$3 million or more; and providing procedures for a public service district or a customer satisfying certain requirements to file a complaint in circuit court to contest the action or inaction of a county commission regarding rate proposals and construction projects that are not in the ordinary course of business.”

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. 577**), and there were—yeas 95, nays 5, absent and not voting none, with the nays being as follows:

Nays: Baldwin, Folk, Love, Sponaugle and Upson.

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. 3096) 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. 62, Webster County Veterans Highway.

On motion of Delegate Cowles, the House of Delegates concurred in the following amendment of the resolution by the Senate:

On page one, in the third Whereas clause, line eight, by striking out the word "its" and inserting in lieu thereof the word "their".

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.

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. 63, William B. Burgess Memorial Road.

On motion of Delegate Cowles, the House of Delegates concurred in the following amendment of the resolution by the Senate:

On page one, in the Resolved clause, line fourteen, by striking out the word "William" and inserting in lieu thereof the words "U.S. Army PFC William".

On page one, in the first Further Resolved clause, line seventeen, by striking out the word "William" and inserting in lieu thereof the words "U.S. Army PFC William".

And,

By amending the title of the resolution to read as follows:

H. C. R. 63 – "Requesting the Division of Highways to name a portion of Route 80, known as Wills Creek Road, in Logan County, beginning at latitude 37.730131, longitude -81.873774 and ending at latitude 37.692547, longitude -81.865702, the 'U.S. Army PFC William B. Burgess Memorial Road'."

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.

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:

Com. Sub. for H. C. R. 65, Hobert G. 'Hobie' Underwood Memorial Bridge.

On motion of Delegate Cowles, the House of Delegates concurred in the following amendment of the resolution by the Senate:

On page one, in the second Whereas clause, line eight, after the word "War" by inserting the word "II".

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.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendments, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 68, James Earl Gibson Memorial Road.

On motion of Delegate Cowles, the House of Delegates concurred in the following amendment of the resolution by the Senate:

On page one, in the Resolved clause, line fifteen, by striking out the word "James" and inserting in lieu thereof the words "U.S. Navy PO3 James".

On page one, in the first Further Resolved clause, line eighteen, by striking out the word "James" and inserting in lieu thereof the words "U.S. Navy PO3 James".

And,

By amending the title of the bill to read as follows:

H. C. R. 68 – "Requesting the Division of Highways to name a portion of West Virginia Route 80, near Bruno, beginning at a point, latitude 37.692547, longitude -81.865702, and ending at a point, latitude 37.664654, longitude -81.848732, the 'U.S. Navy PO3 James Earl Gibson Memorial Road'."

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.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendments, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 118, Craddock Brothers Bridge.

On motion of Delegate Cowles, the House of Delegates concurred in the following amendment of the resolution by the Senate:

On page two, in the tenth Whereas clause, line thirty-four, after the word "Brothers", by inserting the word "Veterans".

On page two, in the Resolved clause, line thirty-nine, after the word "Brothers", by inserting the word "Veterans".

On page two, in the first Further Resolved clause, line forty-one, after the word “Brothers”, by inserting the word “Veterans”.

And,

By amending the title of the resolution to read as follows:

H. C. R. 118 – “Requesting the Division of Highways name bridge number 07-33-5.34 (07A057) (38.79415, -81.14055), locally known as the Arnoldsburg Bridge, carrying US 33 over the West Fork of Little Kanawha River in Calhoun County, the ‘Craddock Brothers Veterans Bridge’.”

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.

A message from the Senate, by

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

Com. Sub. for S. B. 116, Authorizing MAPS promulgate legislative rules.

On motion of Delegate Cowles, the House of Delegates concurred in the following title amendment to the bill by the Senate:

Com. Sub. for S. B. 116 - “A Bill to amend and reenact §64-6-1, §64-6-2 and §64-6-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing certain Department of Military Affairs and Public Safety legislative rules; authorizing certain agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain agencies to promulgate legislative rules with various amendments recommended by the Legislature; authorizing the Governor’s Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to law-enforcement training and certification standards; authorizing the State Fire Marshal to promulgate a legislative rule relating to the regulation of fireworks and related explosive material; and directing the Division of Justice and Community Services to promulgate a legislative rule relating to the William R. Laird, IV- Second Chance Driver’s License Program.”

The bill, as amended by the House, and further amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 578**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: 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. 116) passed.

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

On this question, the yeas and nays were taken (**Roll No. 579**), 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. 116) takes effect April 8, 2017.

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 refused to concur in the amendment of the House of Delegates and requested the House to recede from its amendment to

S. B. 444, Establishing Court Advanced Technology Subscription Fund.

On motion of Delegate Cowles, the House of Delegates receded from its amendments.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 580**), and there were—yeas 93, nays 7, absent and not voting none, with the nays being as follows:

Nays: Folk, Gearheart, Howell, Martin, McGeehan, Paynter and Upson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 444) 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 by the Senate in the amendment of the House of Delegates, with further amendment, and the passage, to take effect from passage, as amended, of

Com. Sub. for S. B. 630, Establishing Accessibility and Equity in Public Education Enhancement Act.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page one, after the enacting section, by striking out the article heading.

On pages one through three, by striking out all of section twenty-five.

On page seven, section five, line twenty-seven, after the word “school” and the period, by striking out the remainder of subsection (e).

On page one, by striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

“That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18-5F-1, §18-5F-2, §18-5F-3, §18-5F-4, §18-5F-5 and §18-5F-6, all to read as follows” and a colon.

And,

By amending the title of the bill to read as follows:

Com. Sub. for S. B. 630 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-5F-1, §18-5F-2, §18-5F-3, §18-5F-4, §18-5F-5 and §18-5F-6, all relating to establishing the Accessibility and Equity in Public Education Enhancement Act; setting forth legislative findings and purpose; defining terms; allowing a county board or a multicounty consortium to create a virtual instruction program for one or more schools serving any composition of grades kindergarten through twelve by adopting a policy creating the program; allowing the county board or multicounty consortium after adopting the policy to contract with virtual school providers; delaying participation of eligible students in grades kindergarten through five until after the program has been in operation for one full school year; requiring eligible students to be counted in the net enrollment of the school district for the purposes of calculating and receiving state aid, be subject to the same state assessment requirements as other students in the school district and receive a diploma upon completing the same coursework required of regular public school students in the district; exempting, to a limited extent, certain students, parents and school districts from certain laws and state board policies that pertain to requiring the student to be in a school building receiving instruction for any set period of time; providing that a participating eligible student be considered to be attending a certain school; allowing the eligible student to participate in any cocurricular and extracurricular activities of the school under the same participation requirements imposed on traditional students attending the school; exempting a county board from certain provisions of law or state board rule to the extent any conflict with the delivery of the program; exempting a county board from certain online course restrictions; requiring coursework offered through a program be aligned to certain academic standards; requiring the assessment results of a student be included in the assessment results of the school and the school district in which the student is considered to be enrolled for purposes of accountability; and requiring report to the Legislative Oversight Commission on Education Accountability on all aspects of the program.”

The bill, as amended by the House, and further amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 581**), and there were—yeas 66, nays 34, absent and not voting none, with the nays being as follows:

Nays: Anderson, Baldwin, Barrett, Bates, Boggs, Brewer, Canestraro, Caputo, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Hicks, Hornbuckle, Iaquina, Isner, Kelly, Lewis, Longstreth, Love, Lovejoy, Lynch, Marcum, R. Miller, Moye, Pethtel, Phillips, Pyles, Rodighiero, Rohrbach, Sponaule, Thompson 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. 630) passed.

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

On this question, the yeas and nays were taken (**Roll No. 582**), and there were—yeas 70, nays 30, absent and not voting none, with the nays being as follows:

Nays: Baldwin, Barrett, Bates, Boggs, Brewer, Canestraro, Caputo, Diserio, Eldridge, E. Evans, Ferro, Fluharty, Hicks, Iaquina, Isner, Longstreth, Love, Lovejoy, Lynch, Marcum, Miley, R. Miller, Moye, Pethtel, Pyles, Rodighiero, Rohrbach, Sponaule, Thompson and Williams.

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. 630) 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. 2708, Relating to a lawful method for a developmentally disabled person to purchase a base hunting license, was taken up for further consideration.

On motion of Delegate Cowles, the House of Delegates refused to concur in the Senate amendments 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.

Conference Committee Report

Delegate Hanshaw, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for H. B. 2631, Relating to time standards for disposition of complaint proceedings.

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendment of the Senate to Engrossed Committee Substitute for House Bill No. 2631 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 the amendment on page two, section five, line sixteen, after the word "ruling.", and that the Senate and the House agree to an amendment as follows:

On page two, section five, line sixteen, after the word "ruling." by inserting the following:

"The time period for final ruling shall be tolled for any delay requested or caused by the respondent or by counsel for the respondent and in no event shall a complaint proceeding be dismissed for exceeding the time standards in this section when such overage is the result of procedural delay or obstructive action by the accused or his or her counsel or agents."

That both houses agree to all other amendments of the Senate.

And,

That both houses recede from their respective positions as to the title of the bill and agree to a new title to read as follows:

Com. Sub. for H. B. 2631 - "A Bill to amend and reenact §30-1-5 of the Code of West Virginia, 1931, as amended, relating to time standards for disposition of complaint proceedings; tolling the time periods for delays attributable to the respondent; and prohibiting complaint proceeding from being dismissed for exceeding time standards when overage is result of procedural delay or obstructive action by respondent."

Respectfully submitted,

Roger Hanshaw, Chair
Moore Capito,
Rodney Miller,
*Conferees on the part of the House
of Delegates.*

Tom Takubo, Chair
Mike Maroney,
Corey Palumbo,
Conferees on the part of the Senate.

On motion of Delegate Hanshaw, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 583**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2631) 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 that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2001, Relating to ethics and transparency in government.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

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

“That §6B-2-1, §6B-2-2, §6B-2-2a, §6B-2-3a, §6B-2-4, §6B-2-5, §6B-2-6 and §6B-2-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new chapter, designated §6D-1-1, §6D-1-2, §6D-1-3 and §6D-1-4, all to read as follows:

**CHAPTER 6B. PUBLIC OFFICERS AND EMPLOYEES; ETHICS; CONFLICTS OF INTEREST;
FINANCIAL DISCLOSURE.**

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF
FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES
BEFORE PUBLIC AGENCIES; CODE OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES.**

**§6B-2-1. West Virginia Ethics Commission created; members; appointment, term of office and
oath; compensation and reimbursement for expenses; meetings and quorum.**

(a) The West Virginia Ethics Commission is continued. The members of the commission shall be appointed by the Governor with the advice and consent of the Senate.

(b) No person may be appointed to the commission or continue to serve as a member of the commission who:

(1) Holds elected or appointed office under the government of the United States, the State of West Virginia or any of its political subdivisions;

(2) Is a candidate for any political office;

(3) Is otherwise subject to the provisions of this chapter other than by reason of his or her appointment to or service on the commission; or

(4) Holds any political party office or participates in a campaign relating to a referendum or other ballot issue: *Provided*, That a member may contribute to a political campaign.

(c) Commencing July 1, 2014, the Ethics Commission shall consist of the following nine members, appointed with staggered terms:

(1) One member who served as a member of the West Virginia Legislature;

(2) One member who served as an elected or appointed county official;

(3) One member who served as an elected or appointed municipal official;

(4) One member who served as an elected county school board member;

(5) One member from a rural area; and

(6) Four citizen members.

(d) Any Commission member in office on June 30, 2014, who meets one of the categories for membership set out in subsection (c) of this section, may be reappointed. No more than five members of the Commission shall be of the same political party and no more than ~~four~~ two members shall be from the same ~~congressional~~ state senatorial district.

(e) After the initial staggered terms, the term of office for a Commission member is five years. No member shall serve more than two consecutive full or partial terms. No person may be reappointed to the commission until at least two years have elapsed after the completion of the second consecutive term. A member may continue to serve until a successor has been appointed and qualified.

(f) All appointments shall be made by the Governor in a timely manner so as not to create a vacancy for longer than sixty days.

(g) Each member must be a resident of this state during the appointment term.

(h) Five members of the commission constitutes a quorum.

(i) Each member of the commission shall take and subscribe to the oath or affirmation required pursuant to section five, article IV of the Constitution of West Virginia.

(j) A member may be removed by the Governor for substantial neglect of duty, gross misconduct in office or a violation of this chapter, after written notice and opportunity for reply.

(k) The commission, as appointed on July 1, 2014, shall meet before August 1, 2014, at a time and place to be determined by the Governor, who shall designate a member to preside at that meeting

until a chairperson is elected. At the first meeting, the commission shall elect a chairperson and any other officers as are necessary. The commission shall within ninety days after the first meeting adopt rules for its procedures. The commission may use the rules in place on July 1, 2014, until those rules are amended or revoked.

(l) Members of the commission shall receive the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties: *Provided*, That to be eligible for compensation and expense reimbursement, the member must participate in a meeting or adjudicatory session: *Provided, however*, That the member is not eligible for expense reimbursement if he or she does not attend a meeting or adjudicatory session in person.

(m) The commission shall appoint an executive director to assist the commission in carrying out its functions in accordance with commission rules and with applicable law. The executive director shall be paid a salary fixed by the commission or as otherwise provided by law. The commission shall appoint and discharge counsel and employees and shall fix the compensation of employees and prescribe their duties. Counsel to the commission shall advise the commission on all legal matters and on the instruction of the commission may commence appropriate civil actions: *Provided*, That no counsel shall both advise the commission and act in a representative capacity in any proceeding.

(n) The commission may delegate authority to the chairperson or the executive director to act in the name of the commission between meetings of the commission, except that the commission shall not delegate the power to hold hearings and determine violations to the chairperson or the executive director.

(o) The principal office of the commission shall be in the seat of government, but it or its designated subcommittees may meet and exercise its power at any other place in the state. Meetings of the commission shall be public unless:

(1) They are required to be private by the provisions of this chapter relating to confidentiality; or

(2) They involve discussions of commission personnel, planned or ongoing litigation, and planned or ongoing investigations.

(p) Meetings of the commission shall be upon the call of the chairperson and may be conducted by telephonic or other electronic conferencing means: *Provided*, That ~~telephone or other electronic conferencing, and voting are not permitted~~ when the commission is acting as a hearing board under this article, or when the Probable Cause Review Board meets to receive an oral response as authorized by this article, members may not participate or vote by telephonic means: *Provided, however*, That participation and voting may be permitted if the member attends and participates via video conferencing that allows the witness and the member to observe and communicate with one another. Members shall be given notice of meetings held by telephone or other electronic conferencing in the same manner as meetings at which the members are required to attend in person. Telephone or other electronic conferences shall be electronically recorded and the recordings shall be retained by the commission in accordance with its record retention policy.

§6B-2-2. Same – General powers and duties.

(a) The commission shall propose rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code, to carry out the purposes of this article.

(b) The commission may initiate or receive complaints and make investigations, as provided in section four of this article, and upon complaint by an individual of an alleged violation of this ~~article~~ chapter by a public official or public employee, refer the complaint to the Review Board as provided in section two-a of this article. Any person charged with a violation of this chapter is entitled to the administrative hearing process contained in section four of this article.

(c) The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the commission's duties or exercise of its powers, including its duties and powers of investigation.

(d) The commission shall, in addition to its other duties:

(1) Prescribe forms for reports, statements, notices and other documents required by law;

(2) Prepare and publish manuals and guides explaining the duties of individuals covered by this law; and giving instructions and public information materials to facilitate compliance with, and enforcement of, this act; and

(3) Provide assistance to agencies, officials and employees in administering the provisions of this act.

(e) The commission may:

(1) Prepare reports and studies to advance the purpose of the law;

(2) Contract for any services which cannot satisfactorily be performed by its employees;

(3) Require the Attorney General to provide legal advice without charge to the commission;

(4) Employ additional legal counsel;

(5) Request appropriate agencies of state to provide any professional assistance the commission may require in the discharge of its duties: *Provided*, That the commission shall reimburse any agency other than the Attorney General the cost of providing assistance; and

(6) Share otherwise confidential documents, materials or information with appropriate agencies of state government, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or information.

§6B-2-2a. Probable Cause Review Board.

(a) There is hereby established a Probable Cause Review Board that shall conduct ~~hearings~~ investigations to determine whether there is probable cause to believe that a violation of the West Virginia Governmental Ethics Act has occurred. ~~and, if so, to refer that investigation to the Ethics Commission~~ The Review Board is an autonomous board, not under the direction or control of the Ethics Commission. The Review Board will review complaints received or initiated by the Ethics Commission to make a threshold determination of whether probable cause exists to believe that a violation of the West Virginia Governmental Ethics Act has occurred.

(b) The Governor, by and with the advice and consent of the Senate, shall appoint three persons as members of the Review Board, each of whom shall be a resident and citizen of the state. Each

member of the Review Board shall hold office until his or her successor has been appointed and qualified. At least one member of the board must be an attorney licensed by the State of West Virginia and no more than two members can belong to the same political party. The members of the Review Board shall be appointed for overlapping terms of two years, except that the original appointments shall be for terms of one, two and three years, respectively. Any member whose term expires may be reappointed by the Governor. In the event a Review Board member is unable to complete his or her term, the Governor shall appoint a person with similar qualification to complete that term. Each Review Board member shall receive the same compensation and expense reimbursement as provided to Ethics Commission members pursuant to section one of this article. These and all other costs incurred by the Review Board shall be paid from the budget of the Ethics Commission.

(c) No person may be appointed to the Review Board or continue to serve as a member of the Review Board who holds elected or appointed office under the government of the United States, the State of West Virginia or any of its political subdivisions, or who is a candidate for any of such offices, or who is a registered lobbyist, or who is otherwise subject to the provisions of this chapter other than by reason of his or her appointment to or service on the Review Board. A Review Board member may contribute to a political campaign, but no member shall hold any political party office or participate in a campaign relating to a referendum or other ballot issue.

(d) Members of the Review Board may recuse themselves from a particular case upon their own motion, with the approval of the Review Board, and shall recuse themselves, for good cause shown, upon motion of a party. The remaining members of the Review Board may, by majority vote, select a temporary member to replace a recused member: *Provided*, That the temporary member selected to replace a recused member shall be a person who meets all requirements for appointment provided by subsection (c), section two-a of this article, and whose political affiliation is the same as the recused member.

(e) The Ethics Commission shall propose, for approval by the Review Board, any procedural and interpretative rules governing the operation of the Review Board. The commission shall propose these rules pursuant to article three, chapter twenty-nine-a of the code.

(f) The Ethics Commission shall provide staffing and a location for the Review Board to conduct hearings. The Ethics Commission is authorized to employ and assign the necessary professional and clerical staff to assist the Review Board in the performance of its duties and commission staff shall, as the commission deems appropriate, also serve as staff to the Review Board. All investigations and proceedings of the Review Board are deemed confidential as provided in section four of this article and members of the Review Board are bound to the same confidentiality requirements applicable to the Ethics Commission pursuant to this article.

(g) The Review Board may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the Review Board's duties.

(h) Upon decision by the Review Board that probable cause exists to believe that a violation of this chapter has occurred, commission staff shall send notice to the commission members of the Review Board's finding. After an ethics complaint has been submitted to the Review Board in accordance with section four of this article, the commission may take no further action until it receives the Review Board's probable cause finding.

§6B-2-3a. Complaints.

(a) The commission may commence an investigation, pursuant to section four of this article, on the filing of a complaint duly verified by oath or affirmation, by any person.

(b) The commission may order the executive director to prepare a complaint, upon a majority affirmative vote of its members, if it receives or discovers credible information which, if true, would merit an inquiry into whether a violation of this ~~article~~ chapter has occurred.

(c) (1) No complaint may be accepted or initiated by the commission against a public official or public employee during the sixty days before a primary or general election at which the public official or public employees is a candidate for elective office.

(2) If a complaint is pending against a public official or public employee who is also a candidate for public office, then the commission shall stay the processing of the complaint for the sixty-day time period preceding the primary election or general election, or both, unless the candidate waives the stay in writing. If the commission receives a written waiver of the stay at least sixty days prior to the election, and if the Review Board has not yet ruled whether probable cause exists to believe there has been a violation of the Ethics Act, then the Review Board will process the complaint and make a probable cause determination at least thirty days prior to the election: *Provided, That*, the stay provisions of this subdivision do not apply to complaints which have already been adjudicated by the commission and are pending on appeal.

(3) For purposes of this subsection, any provisions of this chapter setting time periods for initiating a complaint or for performing any other action are considered tolled until after the election at which the public official or public employee candidate stands for elective office.

§6B-2-4. Processing complaints; dismissals; hearings; disposition; judicial review.

(a) Upon the filing of a complaint, the executive director of the commission or his or her designee shall, within three working days, acknowledge the receipt of the complaint by first-class mail unless the complaint was initiated by the commission or the complainant or his or her representative personally filed the complaint with the commission and was given a receipt or other acknowledgment evidencing the filing of the complaint. No political party or officer, employee or agent of a political party acting in his or her official capacity may file a complaint for a violation of this chapter with the commission. Nothing in this section prohibits a private citizen, acting in that capacity, from filing a verified complaint with the commission under this section. Within fourteen days after the receipt of a complaint, the executive director shall refer the complaint to the Review Board created pursuant to section two-a of this article.

(b) Upon the referral of a complaint by the executive director pursuant to subsection (a) of this section, the Review Board shall determine whether the allegations of the complaint, if taken as true, would constitute a violation of law upon which the commission could properly act under the provisions of this chapter. If the complaint is determined by a majority vote of the Review Board to be insufficient in this regard, the Review Board shall dismiss the complaint.

(c) Upon a finding by the Review Board that the complaint is sufficient, the executive director shall give notice of a pending investigation to the complainant, if any, and to the respondent. The notice of investigation shall be mailed to the parties and, in the case of the respondent, shall be mailed as certified mail, return receipt requested, marked 'Addressee only, personal and confidential'. The notice shall describe the conduct of the respondent which is alleged to violate the law and a copy of the complaint shall be appended to the notice mailed to the respondent. Each notice of investigation shall inform the respondent that the purpose of the investigation is to determine whether probable cause exists to believe that a violation of law has occurred which may subject the respondent to administrative sanctions by the commission, criminal prosecution by the state, or civil liability. The notice shall further inform the respondent that he or she has a right to appear before the Review

Board and that he or she may respond in writing to the commission within thirty days after the receipt of the notice, but that no fact or allegation shall be taken as admitted by a failure or refusal to timely respond.

(d) Within the forty-five day period following the mailing of a notice of investigation, the Review Board shall proceed to consider: (1) The allegations raised in the complaint; (2) any timely received written response of the respondent; and (3) any other competent evidence gathered by or submitted to the ~~commission~~ Review Board which has a proper bearing on the issue of probable cause. A respondent may appear before the Review Board and make an oral response to the complaint. The commission shall promulgate rules prescribing the manner in which a respondent may present his or her oral response. The commission and Review Board may ask a respondent to disclose specific amounts received from a source and request other detailed information not otherwise required to be set forth in a statement or report filed under the provisions of this chapter if the information sought is considered to be probative as to the issues raised by a complaint or an investigation initiated by the commission. Any information thus received shall be confidential except as provided by subsection (f) of this section. If a person asked to provide information fails or refuses to furnish the information to the commission or Review Board, the commission or Review Board may exercise ~~its~~ their subpoena power as provided in this chapter and any subpoena issued by the commission or Review Board shall have the same force and effect as a subpoena issued by a circuit court of this state. Enforcement of any subpoena may be had upon application to a circuit court of the county in which the Review Board is conducting an investigation through the issuance of a rule or an attachment against the respondent as in cases of contempt.

(e) Unless consented to by both the respondent and complainant, or unless the commission makes a good cause determination in writing the investigation and a determination as to probable cause shall not exceed eighteen months.

(f) (1) All investigations, complaints, reports, records, proceedings and other information received by the commission or Review Board and related to complaints made to the commission or investigations conducted by the commission or Review Board pursuant to this section, including the identity of the complainant or respondent, are confidential and may not be knowingly and improperly disclosed by any current or former member or employee of the commission or the Review Board except as follows:

(A) Once there has been a finding that probable cause exists to believe that a respondent has violated the provisions of this chapter and the respondent has been served by the commission with a copy of the Review Board's order and the statement of charges prepared pursuant to the provisions of subsection (h) of this section, the complaint and all reports, records, nonprivileged and nondeliberative material introduced at any probable cause hearing held pursuant to the complaint cease to be confidential.

(B) After a finding of probable cause, any subsequent hearing held in the matter for the purpose of receiving evidence or the arguments of the parties or their representatives shall be open to the public and all reports, records and nondeliberative materials introduced into evidence at the hearing, as well as the commission's orders, are not confidential.

(C) The commission may release any information relating to an investigation at any time if the release has been agreed to in writing by the respondent.

(D) The complaint and the identity of the complainant shall be disclosed to a person named as respondent immediately upon the respondent's request.

(E) Where the commission is otherwise required by the provisions of this chapter to disclose information or to proceed in such a manner that disclosure is necessary and required to fulfill those requirements.

(4) (2) If, in a specific case, the commission finds that there is a reasonable likelihood that the dissemination of information or opinion in connection with a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice, the commission shall order that all or a portion of the information communicated to the commission to cause an investigation and all allegations of ethical misconduct or criminal acts contained in a complaint shall be confidential and the person providing the information or filing a complaint shall be bound to confidentiality until further order of the commission.

(g) If the members of the Review Board fail to find probable cause, the proceedings shall be dismissed by the commission in an order signed by the members of the Review Board. Copies of the order of dismissal shall be sent to the complainant and served upon the respondent forthwith. If the Review Board decides by a unanimous vote that there is probable cause to believe that a violation under this chapter has occurred, the members of the Review Board shall sign an order directing the commission staff to prepare a statement of charges and assign the matter for hearing to the commission or a hearing examiner as the commission may subsequently direct. The commission shall then schedule a hearing, to be held within ninety days after the date of the order, to determine the truth or falsity of the charges. The commission's review of the evidence presented shall be de novo. For the purpose of this section, service of process upon the respondent is obtained at the time the respondent or the respondent's agent physically receives the process, regardless of whether the service of process is in person or by certified mail.

(h) At least eighty days prior to the date of the hearing, the commission shall serve the respondent by certified mail, return receipt requested, with the statement of charges and a notice of hearing setting forth the date, time and place for the hearing. The scheduled hearing may be continued only upon a showing of good cause by the respondent or under other circumstances as the commission, by legislative rule, directs.

(i) The commission may sit as a hearing board to adjudicate the case or may permit an assigned hearing examiner employed by the commission to preside at the taking of evidence. The commission shall, by legislative rule, establish the general qualifications for hearing examiners. The legislative rule shall also contain provisions which ensure that the functions of a hearing examiner will be conducted in an impartial manner and describe the circumstances and procedures for disqualification of hearing examiners.

(j) A member of the commission or a hearing examiner presiding at a hearing may:

(1) Administer oaths and affirmations, compel the attendance of witnesses and the production of documents, examine witnesses and parties and otherwise take testimony and establish a record;

(2) Rule on offers of proof and receive relevant evidence;

(3) Take depositions or have depositions taken when the ends of justice will be served;

(4) Regulate the course of the hearing;

(5) Hold conferences for the settlement or simplification of issues by consent of the parties;

(6) Dispose of procedural requests or similar matters;

(7) Accept stipulated agreements;

(8) Take other action authorized by the Ethics Commission consistent with the provisions of this chapter.

(k) With respect to allegations of a violation under this chapter, the complainant has the burden of proof. The West Virginia Rules of Evidence governing proceedings in the courts of this state shall be given like effect in hearings held before the commission or a hearing examiner. The commission shall, by rule, regulate the conduct of hearings so as to provide full procedural due process to a respondent. Hearings before a hearing examiner shall be recorded electronically. When requested by either of the parties, the presiding officer shall order a transcript, verified by oath or affirmation, of each hearing held and so recorded. In the discretion of the commission, a record of the proceedings may be made by a certified court reporter. Unless otherwise ordered by the commission, the cost of preparing a transcript shall be paid by the party requesting the transcript. Upon a showing of indigency, the commission may provide a transcript without charge. Within fifteen days following the hearing, either party may submit to the hearing examiner that party's proposed findings of fact. The hearing examiner shall thereafter prepare his or her own proposed findings of fact and make copies of the findings available to the parties. The hearing examiner shall then submit the entire record to the commission for final decision.

(l) The recording of the hearing or the transcript of testimony, as the case may be, and the exhibits, together with all papers and requests filed in the proceeding, and the proposed findings of fact of the hearing examiner and the parties, constitute the exclusive record for decision by the commission, unless by leave of the commission a party is permitted to submit additional documentary evidence or take and file depositions or otherwise exercise discovery.

(m) The commission shall set a time and place for the hearing of arguments by the complainant and respondent, or their respective representatives, and shall notify the parties thereof. Briefs may be filed by the parties in accordance with procedural rules promulgated by the commission. The commission shall issue a final decision in writing within forty-five days of the receipt of the entire record of a hearing held before a hearing examiner or, in the case of an evidentiary hearing held by the commission acting as a hearing board in lieu of a hearing examiner, within twenty-one days following the close of the evidence.

(n) A decision on the truth or falsity of the charges against the respondent and a decision to impose sanctions must be approved by at least ~~seven~~ six members of the commission.

(o) Members of the commission shall recuse themselves from a particular case upon their own motion with the approval of the commission or for good cause shown upon motion of a party. The remaining members of the commission may, by majority vote, select a temporary member to replace a recused member: *Provided*, That the temporary member selected to replace a recused member shall be a person of the same status or category, provided by subsection ~~(b)~~ (c), section one of this article, as the recused member.

(p) Except for statements made in the course of official duties to explain commission procedures, no member or employee or former member or employee of the commission may make any public or nonpublic comment about any proceeding previously or currently before the commission. Any member or employee or former member or employee of the commission who violates this subsection is subject to the penalties contained in subsection ~~(e)~~ (d), section ten of this article. In addition, violation of this subsection by a current member or employee of the commission is grounds for immediate removal from office or termination of employment.

(q) A complainant may be assisted by a member of the commission staff assigned by the commission after a determination of probable cause.

(r) No employee of the commission assigned to prosecute a complaint may participate in the commission deliberations or communicate with commission members or the public concerning the merits of a complaint.

(s) (1) If the commission finds by clear and convincing evidence that the facts alleged in the complaint are true and constitute a material violation of this ~~article~~ chapter, it may impose one or more of the following sanctions:

(A) Public reprimand;

(B) Cease and desist orders;

(C) Orders of restitution for money, things of value, or services taken or received in violation of this chapter;

(D) Fines not to exceed \$5,000 per violation; or

(E) Reimbursement to the commission for the actual costs of investigating and prosecuting a violation. Any reimbursement ordered by the commission for its costs under this paragraph shall be collected by the commission and deposited into the special revenue account created pursuant to section six, article one of this chapter.

(2) In addition to imposing the above-specified sanctions, the commission may recommend to the appropriate governmental body that a respondent be terminated from employment or removed from office.

(3) The commission may institute civil proceedings in the circuit court of the county in which a violation occurred for the enforcement of sanctions.

(t) At any stage of the proceedings under this section, the commission may enter into a conciliation agreement with a respondent if the agreement is deemed by a majority of the members of the commission to be in the best interest of the state and the respondent. Any conciliation agreement must be disclosed to the public: *Provided*, That negotiations leading to a conciliation agreement, as well as information obtained by the commission during the negotiations, shall remain confidential except as may be otherwise set forth in the agreement.

(u) Decisions of the commission involving the issuance of sanctions may be appealed to the Circuit Court of Kanawha County, only by the respondent and only upon the grounds set forth in section four, article five, chapter twenty-nine-a of this code.

(v) (1) Any person who in good faith files a verified complaint or any person, official or agency who gives credible information resulting in a formal complaint filed by commission staff is immune from any civil liability that otherwise might result by reason of such actions.

(2) If the commission determines, by clear and convincing evidence, that a person filed a complaint or provided information which resulted in an investigation knowing that the material statements in the complaint or the investigation request or the information provided were not true; filed an unsubstantiated complaint or request for an investigation in reckless disregard of the truth or

falsity of the statements contained therein; or filed one or more unsubstantiated complaints which constituted abuse of process, the commission shall:

(A) Order the complainant or informant to reimburse the respondent for his or her reasonable costs;

(B) Order the complainant or informant to reimburse the respondent for his or her reasonable attorney fees; and

(C) Order the complainant or informant to reimburse the commission for the actual costs of its investigation. In addition, the commission may decline to process any further complaints brought by the complainant, the initiator of the investigation or the informant.

(3) The sanctions authorized in this subsection are not exclusive and do not preclude any other remedies or rights of action the respondent may have against the complainant or informant under the law.

(w) (1) If at any stage in the proceedings under this section it appears to a Review Board, a hearing examiner or the commission that there is credible information or evidence that the respondent may have committed a criminal violation, the matter shall be referred to the full commission for its consideration. If, by a vote of two-thirds of the members of the full commission, it is determined that probable cause exists to believe a criminal violation has occurred, the commission shall refer the matter to the appropriate county prosecuting attorney having jurisdiction for a criminal investigation and possible prosecution. Deliberations of the commission with regard to referring a matter for criminal investigation by a prosecuting attorney shall be private and confidential. Notwithstanding any other provision of this article, once a referral for criminal investigation is made under the provisions of this subsection, the ethics proceedings shall be held in abeyance until action on the referred matter is concluded. If the referral of the matter to the prosecuting attorney results in a criminal conviction of the respondent, the commission may resume its investigation or prosecution of the ethics violation, but may not impose a fine as a sanction if a violation is found to have occurred.

(2) If fewer than two-thirds of the full commission determine that a criminal violation has occurred, the commission shall remand the matter to the Review Board, the hearing examiner or the commission itself as a hearing board, as the case may be, for further proceedings under this article.

(x) The provisions of this section shall apply to violations of this chapter occurring after September 30, 1989, and within one year before the filing of a complaint: *Provided*, That the applicable statute of limitations for violations which occur on or after July 1, 2005, is two years after the date on which the alleged violation occurred: *Provided, however*, That the applicable statute of limitations for violations which occur on or after July 1, 2016, is five years after the date on which the alleged violation occurred.

§6B-2-5. Ethical standards for elected and appointed officials and public employees.

(a) *Persons subject to section.* — The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards.

(b) *Use of public office for private gain.* — (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting

in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) Notwithstanding the general prohibition against use of office for private gain, public officials and public employees may use bonus points acquired through participation in frequent traveler programs while traveling on official government business: *Provided*, That the official's or employee's participation in such program, or acquisition of such points, does not result in additional costs to the government.

(3) The Legislature, in enacting this subsection, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Those persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by those persons may have its own inherent prestige, it would be unfair to those individuals and against the best interests of the citizens of this state to deny those persons the right to hold public office or to be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within those categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(4) A public official or public employee may not show favoritism or grant patronage in the employment or working conditions of his or her relative or a person with whom he or she resides: *Provided*, That as used in this subdivision, 'employment or working conditions' shall only apply to government employment: *Provided, however*, That government employment includes only those governmental entities specified in subsection (a) of this section.

(c) *Gifts*. — (1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: *Provided*, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position is subordinate to the soliciting official or employee: *Provided, however*, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement;

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

(F) Gifts that are purely private and personal in nature; or

(G) Gifts from relatives by blood or marriage, or a member of the same household.

(3) The commission shall, through legislative rule promulgated pursuant to chapter twenty-nine-a of this code, establish guidelines for the acceptance of a reasonable honorarium by public officials and elected officials. The rule promulgated shall be consistent with this section. Any elected public official may accept an honorarium only when:

(A) That official is a part-time elected public official;

(B) The fee is not related to the official's public position or duties;

(C) The fee is for services provided by the public official that are related to the public official's regular, nonpublic trade, profession, occupation, hobby or avocation; and

(D) The honorarium is not provided in exchange for any promise or action on the part of the public official.

(4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political contribution as defined by law.

(5) The Governor or his designee may, in the name of the State of West Virginia, accept and receive gifts from any public or private source. Any gift so obtained shall become the property of the state and shall, within thirty days of the receipt thereof, be registered with the commission and the Division of Culture and History.

(6) Upon prior approval of the Joint Committee on Government and Finance, any member of the Legislature may solicit donations for a regional or national legislative organization conference or other legislative organization function to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. Legislative organizations are bipartisan regional or national organizations in which the Joint Committee on Government and Finance authorizes payment of dues or other membership fees for the Legislature's participation and which assist this and other state legislatures and their staff through any of the following:

(A) Advancing the effectiveness, independence and integrity of Legislatures in the states of the United States;

(B) Fostering interstate cooperation and facilitating information exchange among state legislatures;

(C) Representing the states and their Legislatures in the American federal system of government;

(D) Improving the operations and management of state legislatures and the effectiveness of legislators and legislative staff, and to encourage the practice of high standards of conduct by legislators and legislative staff;

(E) Promoting cooperation between state legislatures in the United States and Legislatures in other countries.

The solicitations may only be made in writing. The legislative organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the Legislature may not be used by the legislative member in conjunction with the fund raising or solicitation effort. The legislative organization for which solicitations are being made shall file with the Joint Committee on Government and Finance and with the Secretary of State for publication in the State Register as provided in article two of chapter twenty-nine-a of the code, copies of letters, brochures and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a legislative member shall contain the following disclaimer:

'This solicitation is endorsed by [name of member]. This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. A copy of all solicitations are on file with the West Virginia Legislature's Joint Committee on Government and Finance, and with the Secretary of State and are available for public review.'

(7) Upon written notice to the commission, any member of the Board of Public Works may solicit donations for a regional or national organization conference or other function related to the office of the member to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. The solicitations may only be made in writing. The organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the office of the Board of Public Works member may not be used in conjunction with the fund raising or solicitation effort. The organization for which solicitations are being made shall file with the Joint Committee on Government and Finance, with the Secretary of State for publication in the State Register as provided in article two of chapter twenty-nine-a of the code and with the commission, copies of letters, brochures and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a member of the Board of Public Works shall contain the following disclaimer: 'This solicitation is endorsed by (name of member of Board of Public

Works.) This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. Copies of all solicitations are on file with the West Virginia Legislature's Joint Committee on Government and Finance, with the West Virginia Secretary of State and with the West Virginia Ethics Commission and are available for public review.' Any moneys in excess of those donations needed for the conference or function shall be deposited in the Capitol Dome and Capitol Improvement Fund established in section two, article four of chapter five-a of this code.

(d) *Interests in public contracts.* —

(1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control: *Provided*, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: *Provided, however*, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having a prohibited financial interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is awarded a public contract. A limited interest for the purposes of this subsection is:

(A) An interest which does not exceed \$1,000 in the profits or benefits of the public contract or contracts in a calendar year;

(B) An interest as a creditor of a public employee or official who exercises control over the contract, or a member of his or her immediate family, if the amount is less than \$5,000.

(3) If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this section.

(4) Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

(e) *Confidential information.* — No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

(f) *Prohibited representation.* — No present or former elected or appointed public official or public employee shall, during or after his or her public employment or service, represent a client or act in a

representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation. A staff attorney, accountant or other professional employee who has represented a government agency in a particular matter shall not thereafter represent another client in the same or substantially related matter in which that client's interests are materially adverse to the interests of the government agency, without the consent of the government agency: *Provided*, That this prohibition on representation shall not apply when the client was not directly involved in the particular matter in which the professional employee represented the government agency, but was involved only as a member of a class. The provisions of this subsection shall not apply to legislators who were in office and legislative staff who were employed at the time it originally became effective on July 1, 1989, and those who have since become legislators or legislative staff and those who shall serve hereafter as legislators or legislative staff.

(g) *Limitation on practice before a board, agency, commission or department.* — Except as otherwise provided in section three, four or five, article two, chapter eight-a of this code: (1) No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of one year after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate or propose rules, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

- (A) A contested case involving an administrative sanction, action or refusal to act;
- (B) To support or oppose a proposed rule;
- (C) To support or contest the issuance or denial of a license or permit;
- (D) A rate-making proceeding; and
- (E) To influence the expenditure of public funds.

(2) As used in this subsection, 'represent' includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person: *Provided*, That nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being retained by or employed to represent, assist or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a former public official or employee from representing another state, county, municipal or other governmental entity before the governmental entity in which he or she served or was employed within one year after the termination of his or her employment or service in the entity.

(3) A present or former public official or employee may appear at any time in a representative capacity before the Legislature, a county commission, city or town council or county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution or enactment.

(4) Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity

on behalf of clients before any governmental agency of the state or of county or municipal governments, including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the one year prohibition against appearing in a representative capacity, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption or reducing the time period, but shall decide each application on a case-by-case basis.

(h) *Employment by regulated persons and vendors.* — (1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.

(C) Is a vendor to the agency where the official serves or public employee is employed and the official or public employee, or a subordinate of the official or public employee, exercises authority or control over a public contract with such vendor, including, but not limited to:

(i) Drafting bid specifications or requests for proposals;

(ii) Recommending selection of the vendor;

(iii) Conducting inspections or investigations;

(iv) Approving the method or manner of payment to the vendor;

(v) Providing legal or technical guidance on the formation, implementation or execution of the contract; or

(vi) Taking other nonministerial action which may affect the financial interests of the vendor.

(2) Within the meaning of this section, the term 'employment' includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; 'seek employment' includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and 'subordinate' includes only those agency personnel over whom the public official or public employee has supervisory responsibility.

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition contained in subdivision (1) of this subsection.

(A) The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption, but shall decide each application on a case-by-case basis;

(B) A person adversely affected by the restriction on the purchase of personal property may make such purchase after seeking and obtaining approval from the commission or in good faith reliance upon an official guideline promulgated by the commission, written advisory opinions issued by the commission, or a legislative rule.

(C) The commission may establish exceptions to the personal property purchase restrictions through the adoption of guidelines, advisory opinions or legislative rule.

(4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment.

(5) A full-time public official or full-time public employee may not personally participate in a decision, approval, disapproval, recommendation, rendering advice, investigation, inspection or other substantial exercise of nonministerial administrative discretion involving a vendor with whom he or she is seeking employment or has an agreement concerning future employment.

(6) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

(i) *Members of the Legislature required to vote.* — Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.

(j) *Limitations on voting.* —

(1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

(B) If a public official is employed by a financial institution and his or her primary responsibilities include consumer and commercial lending, the public official may not vote on a matter which directly affects the financial interests of a customer of the financial institution if the public official is directly involved in approving a loan request from the person or business appearing before the governmental body or if the public official has been directly involved in approving a loan for that person or business within the past twelve months: *Provided*, That this limitation only applies if the total amount of the loan or loans exceeds \$15,000.

~~(C) A personnel matter involving the public official's spouse or relative;~~

(C) The employment or working conditions of the public official's relative or person with whom the public official resides.

(D) The appropriations of public moneys or the awarding of a contract to a nonprofit corporation if the public official or an immediate family member is employed by, or a compensated officer or board member of, the nonprofit; Provided, That if the public official or immediate family member is an uncompensated officer or board member of the nonprofit, then the public official shall publicly disclose such relationship prior to a vote on the appropriations of public moneys or award of contract to the nonprofit; Provided, however, That for purposes of this paragraph, public disclosure shall mean disclosure of the public official's, or his or her immediate family member's, relationship to the nonprofit (i) on the agenda item relating to the appropriation or award contract, if known at time of agenda, (ii) by the public official at the meeting prior to the vote, and (iii) in the minutes of the meeting.

~~(H)~~ (2) A public official may vote:

(A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses; or

(B) If the matter affects a publicly traded company when:

(i) The public official, or dependent family members individually or jointly own less than five percent of the issued stock in the publicly traded company and the value of the stocks individually or jointly owned is less than \$10,000; and

(ii) Prior to casting a vote the public official discloses his or her interest in the publicly traded company.

(3) For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue. The recusal shall also be reflected in the meeting minutes.

(k) *Limitations on participation in licensing and rate-making proceedings.* — No public official or employee may participate within the scope of his or her duties as a public official or employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation or association in which the public official or employee or his or her immediate family owns or controls more than ten percent. No public official or public employee may participate within the scope of his or her duties as a public official or public employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or public employee or his or her immediate family, or a partnership, trust, business trust, corporation or association of which the public official or employee, or his or her immediate family, owns or controls more than ten percent, has sold goods or services totaling more than \$1,000 during the preceding year, unless the public official or public employee has filed a written statement acknowledging such sale with the public agency and the statement is entered in any public record of the agency's proceedings. This subsection shall not be construed to require the disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to article three, eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one, chapter thirty of this code.

(l) *Certain compensation prohibited.* — (1) A public employee may not receive additional compensation from another publicly-funded state, county or municipal office or employment for working the same hours, unless:

(A) The public employee's compensation from one public employer is reduced by the amount of compensation received from the other public employer;

(B) The public employee's compensation from one public employer is reduced on a pro rata basis for any work time missed to perform duties for the other public employer;

(C) The public employee uses earned paid vacation, personal or compensatory time or takes unpaid leave from his or her public employment to perform the duties of another public office or employment; or

(D) A part-time public employee who does not have regularly scheduled work hours or a public employee who is authorized by one public employer to make up, outside of regularly scheduled work hours, time missed to perform the duties of another public office or employment maintains time records, verified by the public employee and his or her immediate supervisor at least once every pay period, showing the hours that the public employee did, in fact, work for each public employer. The public employer shall submit these time records to the Ethics Commission on a quarterly basis.

(2) This section does not prohibit a retired public official or public employee from receiving compensation from a publicly-funded office or employment in addition to any retirement benefits to which the retired public official or public employee is entitled.

(m) *Certain expenses prohibited.* — No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by a lobbyist and required by the provisions of this chapter to be reported, or actually paid by any other person.

(n) Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his or her field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of the institution or has been approved by the employee's department supervisor or the president of the institution by which the faculty or staff member is employed.

(o) Except as provided in this section, a person who is a public official or public employee may not solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control. A person who is a public official or public employee may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:

(A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular or other written or printed media; or

(B) The solicitation is limited to the posting of a notice in a communal work area; or

(C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or

(D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

(p) The commission may, by legislative rule promulgated in accordance with chapter twenty-nine-a of this code, define further exemptions from this section as necessary or appropriate.

§6B-2-6. Financial disclosure statement; filing requirements.

(a) The financial disclosure statement shall be filed on February 1 of each calendar year to cover the period of the preceding calendar year, except insofar as may be otherwise provided herein. The following persons must file the financial disclosure statement required by this section with the Ethics Commission:

(1) All elected officials in this state, including, but not limited to, all persons elected statewide, all county elected officials, municipal elected officials in municipalities which have, by ordinance, opted to be covered by the disclosure provisions of this section, all members of the several county or district boards of education and all county or district school board superintendents;

(2) All members of state boards, commissions and agencies appointed by the Governor; and

(3) Secretaries of departments, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads.

A person who is required to file a financial disclosure statement under this section by virtue of becoming an elected or appointed public official whose office is described in subdivision (1), (2) or (3) of this subsection, and who assumes the office less than ten days before a filing date established herein or who assumes the office after the filing date, shall file a financial disclosure statement for the previous twelve months no later than thirty days after the date on which the person assumes the duties of the office, unless the person has filed a financial disclosure statement with the commission during the twelve-month period before he or she assumed office.

(b) A candidate for public office shall file a financial disclosure statement for the previous calendar year with the state Ethics Commission no later than ten days after he or she files a certificate of candidacy but in all circumstances, not later than ten days prior to the election, announcement, unless he or she has previously filed a financial disclosure statement with the state Ethics Commission during for the previous calendar year.

The Ethics Commission shall file a duplicate copy of the financial disclosure statement required in this section in the following offices within ten days of the receipt of the candidate's statement of disclosure:

(1) Municipal candidates in municipalities which have opted, by ordinance, to be covered by the disclosure provisions of this section, in the office of the clerk of the municipality in which the candidate is seeking office;

(2) Legislative candidates in single county districts and candidates for a county office or county school board in the office of the clerk of the county commission of the county in which the candidate is seeking office;

(3) Legislative candidates from multi-county districts and congressional candidates in the office of the clerk of the county commission of the county of the candidate's residence.

After a ninety-day period following any election, the clerks who receive the financial disclosure statements of candidates may destroy or dispose of those statements filed by candidates who were unsuccessful in the election.

(c) No candidate for public office may maintain his or her place on a ballot and no public official may take the oath of office or enter or continue upon his or her duties or receive compensation from public funds unless he or she has filed a financial disclosure statement with the State Ethics Commission as required by the provisions of this section.

(d) The Ethics Commission may, upon request of any person required to file a financial disclosure statement, and for good cause shown, extend the deadline for filing such statement for a reasonable period of time: *Provided*, That no extension of time shall be granted to a candidate who has not filed a financial disclosure statement for the preceding filing period.

(e) No person shall fail to file a statement required by this section.

(f) No person shall knowingly file a materially false statement that is required to be filed under this section.

(g) The Ethics Commission shall publish either on the Internet or by printed document made available to the public, a list of all persons who have violated any Ethics Commission's financial disclosure statement filing deadline.

(h) The Ethics Commission shall, in addition to making all financial disclosure statements available for inspection upon request:

(1) Publish on the internet all financial disclosure statements filed by members of the Legislature and candidates for legislative office, elected members of the executive department and candidates for the offices that constitute the executive department, and members of the Supreme Court of Appeals and candidates for the Supreme Court of Appeals, commencing with those reports filed on or after January 1, 2012; and

(2) Publish on the internet all financial disclosure statements filed by any other person required to file such financial disclosure statements, as the commission determines resources are available to permit the Ethics Commission to make such publication on the internet. The commission shall redact financial disclosure statements published on the internet to exclude from publication personal information such as signatures, home addresses and mobile and home telephone numbers.

§6B-2-10. Violations and penalties.

(a) Any person who violates the provisions of subsection (e), (f) or (g), section five of this article or violates the provisions of subdivision (1), subsection ~~(e)~~ (f), section four of this article is guilty of a misdemeanor and, upon conviction, shall be confined in jail for a period not to exceed six months or shall be fined not more than \$1,000, or both. A member or employee of the commission or the Review Board convicted of violating said subdivision is subject to immediate removal from office or discharge from employment.

(b) Any person who violates the provisions of subsection (f), section six of this article by willfully and knowingly filing a false financial statement or knowingly and willfully concealing a material fact in filing the statement is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000, or confined in jail not more than one year, or both.

(c) Any person who knowingly fails or refuses to file a financial statement required by section six of this article is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) If any commission member or staff knowingly violates subsection ~~(e)~~ (p), section four of this article, such person, upon conviction thereof, shall be guilty of a misdemeanor and, shall be fined not less than \$100 nor more than \$1,000.

(e) Any person who violates the provisions of subdivision (2), subsection ~~(e)~~ (f), section four of this article by knowingly and willfully disclosing any information made confidential by an order of the commission is subject to administrative sanction by the commission as provided in subsection ~~(r)~~ (s) of said section.

(f) Any person who knowingly gives false or misleading material information to the commission or who induces or procures another person to give false or misleading material information to the commission is subject to administrative sanction by the commission as provided in subsection ~~(r)~~ (s), section four of this article.

CHAPTER 6D. PUBLIC CONTRACTS.

ARTICLE 1. DISCLOSURE OF INTERESTED PARTIES.

§6D-1-1. Definitions.

For purposes of this article:

(a) 'Applicable contract' means a contract of a state agency that has an actual or estimated value of at least \$100,000: *Provided*, That this shall include a series of related contracts or orders in which the cumulative total exceeds \$100,000.

(b) 'Business entity' means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership or corporation.

(c) 'Disclosure' shall mean a form prescribed and approved by the Ethics Commission pursuant to section three of this article.

(d) 'Interested party' or 'Interested parties' means: (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors; (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract; and (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency: *Provided*, That subdivision (2) shall be inapplicable if a business entity is a publicly traded company: *Provided, however*, That subdivision (3) shall not include persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.

(e) 'State agency' means a board, commission, office, department, or other agency in the executive, judicial or legislative branch of state government, including publicly funded institutions of higher education: *Provided*, That for purposes of this article, the West Virginia Investment Management Board shall not be deemed a state agency nor subject to the requirements of this article.

§6D-1-2. Disclosure of interested parties to a public contract; supplemental disclosure.

(a) A state agency may not enter into an applicable contract that has been awarded to a business entity unless and until the business entity submits to the state agency a disclosure of interested parties to the applicable contract.

(b) The business entity shall submit the disclosure to the state agency no later than when the contract is submitted to the state agency for signature and approval by the state agency: *Provided*, That this provision does not require submission of a disclosure pursuant to this article as part of a bid for the contract.

(c) Within thirty days following the completion or termination of the applicable contract, the business entity shall submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract.

§6D-1-3. Filing with Ethics Commission.

(a) The disclosure of interested parties must be submitted on a form prescribed and approved by the Ethics Commission that includes:

(1) A list of each interested party to the contract that is known or reasonably anticipated by the contracting business entity; and

(2) The signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.

(b) Not later than the fifteenth day after the date the state agency receives an initial or supplemental disclosure of interested parties required under this section, the state agency shall submit a copy of the disclosure to the Ethics Commission.

(c) The Ethics Commission shall make copies of the disclosures received from state agencies publicly available. To the extent possible under existing technology or upon obtaining sufficient technology, the Ethics Commission shall post copies of the disclosures on the commission's website.

§6D-1-4. Higher Education Compliance.

(a) The provisions of section two and three of this article do not apply to applicable contracts of a state institution of higher education, as defined in section two, article one, chapter eighteen-b, if the state institution of higher education complies with the requirements of this section and has a policy in place that provides as follows:

(1) For business entities that are not registered to do business with the State of West Virginia, at the time of registration of a business entity seeking to enter into an applicable contract with a state institution of higher education, the state institution of higher education requires the business entity to disclose in writing the interested parties of the business entity before any applicable contracts are executed;

(2) For business entities that are already registered to do business with the State of West Virginia, and a business entity is seeking to enter into an applicable contract with a state institution of higher education, the state institution of higher education requires the business entity to disclose in writing the interested parties of the business entity before any applicable contract is executed;

(3) Business entities are required to update any changes to the list of interested parties of the business entity on a periodic basis; and

(4) The disclosures required by this section are made in writing, by an authorized agent under oath and under penalty of perjury.

(b) The state institution of higher education shall provide a report to the ethics commission on or before December 31 of each year listing all business entities that received more than one-hundred thousand dollars from the institution of higher education during the previous fiscal year, with an accompanying list of interested parties provided by each such business entity.

(c) For purposes of this section, the term 'interested parties' shall not include any sub-contractors receiving less than \$50,000 under an applicable contract."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2001- "A Bill to amend and reenact §6B-2-1, §6B-2-2, §6B-2-2a, §6B-2-3a, §6B-2-4, §6B-2-5, §6B-2-6 and §6B-2-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new chapter, designated §6D-1-1, §6D-1-2, §6D-1-3 and §6D-1-4, all relating to ethics and transparency in government generally; providing that no more than two members of the Ethics Commission shall be from the same state senatorial district; providing for the disclosure of interested parties to a government contract with an actual or estimated value of at least \$100,000; defining terms; prohibiting contracting with a state agency unless business entity submits disclosure of interested parties; requiring submission of supplemental disclosure within thirty days of completion or termination of the contract; providing exceptions to the disclosure requirement for certain contracts; requiring the Ethics Commission create disclosure form; specifying contents to be included in the disclosure form; requiring state agencies to submit completed forms to the Ethics Commission; requiring the Ethics Commission to make disclosures publicly available; requiring the Ethics Commission to post disclosures on the commission website when technologically able; providing certain exceptions for state institutions of higher education; providing that state institutions of higher education are excepted if they comply with certain requirements and adopt certain policies; providing that institutions of higher education shall provide the ethics Commission a listing of business entities that received more than one hundred thousand dollars from the institution of higher education; providing a definition of interested parties; authorizing members of the Ethics Commission and members of the Probable Cause Review Board to participate and vote via video conferencing; clarifying and expanding the violations in which a complaint may be referred to the Probable Cause Review Board; clarifying that the Probable Cause Review Board conducts investigations and not hearings to determine probable cause; clarifying and expanding the violations in which a complaint may be initiated by the Ethics Commission; clarifying that the Probable Cause Review Board is the entity to receive evidence bearing on the issue of probable cause; clarifying that the commission and review board may ask a respondent to disclose specific amounts received from a source and request other detailed information; clarifying that both the Ethics Commission and the Probable Cause Review Board have subpoena power; clarifying that confidentiality provisions apply to both the commission and the review board; specifying that at least six members of the Ethics Commission approve of a decision on the truth or falsity of the charges against a respondent and a decision to impose sanctions; clarifying and expanding the violations in which sanctions may be imposed by the Ethics Commission; prohibiting a public official or public employee from showing favoritism or granting patronage in the employment or working conditions of his or her relative or a person with whom he or she resides; eliminating the voting prohibition on personnel matters involving a public official's spouse or relative; prohibiting public officials, except certain members of the Legislature, from voting on the employment or working conditions of the public official's relative or person with whom the public official resides; prohibiting public officials, except certain members of the Legislature, from voting on the appropriation of moneys or award of contract to a nonprofit corporation if the public official or an immediate family member is employed by, or a compensated officer or board member of, the nonprofit; providing that a public official shall publicly disclose his or her relationship prior to the vote if he, she or an immediate family member is an uncompensated officer or board member of

the nonprofit; providing that a public official's recusal shall be reflected in the meeting minutes; clarifying the timeframe in which a candidate for public office must file a financial disclosure statement and providing an exception to filing such a financial disclosure statement if the candidate has previously filed a statement for the previous calendar year; and amending statutory cross-references to reflect proper reference to other statutes."

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. 584**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: Folk.

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. 2001) 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. 2196, Relating to the Secondary Schools Athletic Commission.

Delegate Cowles moved that the House of Delegates concur in the following amendment of the bill by the Senate, with further amendment:

On page one, section twenty-five, line three, after the word "those", by inserting the word "public".

On page two, section twenty-five, line thirty-six, by striking out the word "extracurricular" and inserting in lieu thereof the word "interscholastic".

On page two, section twenty-five, line thirty-eight, after the word "code", by inserting the words "along with students who are enrolled in a registered private or parochial school that does not have interscholastic programs".

On page three, section twenty-five, line forty-six, after the word "home-schooled", by inserting a comma and the words "private or parochial".

On page three, section twenty-five, line fifty-one, after the word "secondary", by inserting a comma and the words "private or parochial".

On page three, section twenty-five, line fifty-two, after the words "home school", by inserting a comma and the words "private or parochial".

On page three, section twenty-five, lines fifty-four and fifty-five, by striking out the words "Reasonable fees may be charged to the student to cover the costs of participation in interscholastic programs." and inserting in lieu thereof the following: Homeschool, private, and parochial school students participating in interscholastic programs shall be required to pay the same amount that public school students pay when participating in these programs."

On page three, section twenty-five, after line fifty-five, by inserting the following: One year following the effective date of this bill, the West Virginia State Board of Education shall determine the additional costs, on a per student basis, of non-enrolled students participating in interscholastic programs, and shall make recommendations to the Legislature how the costs of these non-enrolled students have affected the school aid formula.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2196 – “A Bill to amend and reenact §18-2-25 of the Code of West Virginia, 1931, as amended, relating to the Secondary Schools Athletic Commission; participation by home school, private and parochial school students without an interscholastic program available; providing that the private and parochial schools must be registered; setting forth standards for each nonenrolled student participant to meet; providing that each home school, private or parochial student pay the same fees associated with participation as public school students; and providing that the state board accumulate data as to the costs associated with the nonenrolled students participating in interscholastic activities.”

Delegate Cowles moved to amend the amendment of the Senate, on page one, section twenty-five, line one, by inserting “(a)” before the word “The”.

On page one, section twenty-five, line seven, by inserting “(b)” before the word “The”.

On page two, section twenty-five, line twenty-seven, by inserting “(c)” before the word “The”.

On page two, section, twenty-five, line thirty-five, by inserting “(d)” before the word “Notwithstanding”.

And

On page three, section twenty-five, line forty, after the words “*Provided, That*” by adding a colon and by striking the remainder of subsection one and inserting in lieu thereof the following:

“(A) The home school student’s average test results are within or above the fourth stanine in all subject areas, and;

(B) The private or parochial school students meet the same academic and attendance requirements of public school students.”

Delegate Cowles moved to amend the amendment of the Senate, by striking out the fourth paragraph and inserting in lieu thereof the following:

On page three, section twenty-five, line fifty-one, after the word “secondary”, by inserting the words “private or parochial”.

And

In the last paragraph, on the next to the last line, by striking out the word “legislature” and inserting in lieu thereof “Legislature regarding”.

The motion to concur in the amendment of the bill by the Senate, with further amendment by the House, was adopted.

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. 585**), and there were—yeas 51, nays 48, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Ambler, Anderson, Arvon, Baldwin, Bates, Brewer, Byrd, Canestraro, Caputo, Cooper, Deem, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Hamilton, Hanshaw, Hartman, Hornbuckle, Iaquina, Isner, Lewis, Longstreth, Love, Lovejoy, Lynch, Marcum, Miley, R. Miller, Moye, Pethel, Pushkin, Pyles, Robinson, Rohrbach, R. Romine, Rowan, Sponaule, Storch, Summers, Thompson, Wagner, Westfall, White, Williams and Zatezalo.

Absent and Not Voting: Maynard.

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. 2196) 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 that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

H. B. 2684, Imposing penalties for repeat violations of the prohibition against driving under the influence on a suspended license.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

“ARTICLE 4. VIOLATION OF LICENSE PROVISIONS.

§17B-4-3. Driving while license suspended or revoked; driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of eight hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents.

(a) Except as otherwise provided in subsection (b) or (d) of this section, any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully suspended or revoked by this state or any other jurisdiction is, for the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500; for the second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500; for the third or any subsequent offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than thirty days nor more than ninety days and shall be fined not less than \$150 nor more than \$500.

(b) Any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully revoked for driving under the influence of alcohol, controlled substances or other drugs, or any combination thereof, or for driving while having an alcoholic concentration in his or her blood of eight hundredths of one percent or more, by weight, or for refusing to take a secondary chemical test of blood alcohol content, is, for the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than thirty

days nor more than six months and shall be fined not less than \$100 nor more than \$500; for the second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than six months nor more than one year and shall be fined not less than \$1,000 nor more than \$3,000; for the third or any subsequent offense, the person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than three years and, in addition to the mandatory prison sentence, shall be fined not less than \$3,000 nor more than \$5,000.

(c) Upon receiving a record of the first or subsequent conviction of any person under subsection (b) of this section upon a charge of driving a vehicle while the license of that person was lawfully suspended or revoked, the division shall extend the period of the suspension or revocation for an additional period of six months which may be served concurrently with any other suspension or revocation. Upon receiving a record of the second or subsequent conviction of any person under subsection (a) of this section upon a charge of driving a vehicle while the license of that person was lawfully suspended or revoked, the division shall extend the period of the suspension or revocation for an additional period of ninety days which may be served concurrently with any other suspension or revocation.

(d) Any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully suspended for driving while under the age of twenty-one years with 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 twenty-four hours or shall be fined not less than \$50 nor more than \$500, or both; for the second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than thirty days nor more than six months and shall be fined not less than \$100 nor more than \$500; for the third or any subsequent offense, the person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than three years and fined not less than \$1,000 nor more than \$5,000.

Upon receiving a record of a first or subsequent conviction under this subsection for a charge of driving a vehicle while the license of that person was lawfully suspended or revoked, the division shall extend the period of the suspension or revocation for an additional period of six months which may be served concurrently with any other suspension or revocation.

(e) An order for home detention by the court pursuant to the provisions of article eleven-b, chapter sixty-two of this code may be used as an alternative sentence to any period of incarceration required by this section.”

And,

By amending the title of the bill to read as follows:

H. B. 2684 – “A Bill to amend and reenact §17B-4-3 of the Code of West Virginia, 1931, as amended, relating to imposing enhanced penalties for repeat violations of the prohibition against driving a motor vehicle on any public highway of this state at a time when the privilege to do so has been lawfully suspended for driving while under the age of twenty-one years with 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.”

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. 586**), 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: Robinson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2684) 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. 2704, Prohibiting persons convicted of sexual offenses against children with whom they hold positions of trust from holding certification or license valid in public schools.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page two, section ten, line one, by striking out the words “Beginning January 1, 2002, any” and inserting in lieu thereof the word “Any”.

On page three, section ten, line twenty-six after the words “by the”, by inserting the words “West Virginia”.

On page three, section ten, line twenty-eight, after the word “check”, by inserting a period.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2704 – “A Bill to amend and reenact §18A-3-6 and §18A-3-10 of the Code of West Virginia, 1931, as amended, all relating generally to the licensure or certification of teachers; providing for the automatic revocation of a certificate or license for a teacher convicted of an offense under chapter sixty-one, article eight-d, section five of the code; and permitting the West Virginia Department of Education to require that a licensee be fingerprinted for analysis by the West Virginia State Police for a state criminal history record check through the central abuse registry and by the Federal Bureau of Investigation for a national criminal history record check, when the licensee has lived outside of the state for one year or more since licensure, or when the department or school administrator reasonably believes the licensee has not disclosed a felony conviction, a conviction of an offense under chapter sixty-one, article eight-b of this code, or a conviction of an offense similar to those in chapter sixty-one, article eight-b of this code that have been established under the laws of any other state or the United States.”

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. 587**), 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 (Com. Sub. for H. B. 2704) 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. 21, 1SG Carl J. Crabtree Memorial Road.

On motion of Delegate Cowles, the House of Delegates concurred in the following amendment of the resolution by the Senate:

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

“Whereas, Carl J. Crabtree was born on November 8, 1917, in Branchland, Lincoln County, West Virginia. He was raised and educated in Logan County and worked there until he enlisted in the military on August 27, 1940; and

Whereas, Carl J. Crabtree served in WW II in the 325 Glider Infantry Regiment, 82nd Airborne Division as a First Sergeant; and

Whereas, Carl J. Crabtree was wounded on June 8, 1944, in France and was a prisoner of war; and

Whereas, Carl J. Crabtree’s decorations and citations included the American Defense, American Theater, Good Conduct, Purple Heart, European African Middle Eastern Theater Ribbon with one Bronze Star, Distinguished Unit Badge, Croix De Guerre, Belgium Fourragere and Victory Medal; and

Whereas, Carl J. Crabtree served honorably in the United States Army, ending his active service on May 24, 1946; and

Whereas, Carl J. Crabtree, after returning to Logan County and Rossmore, raised a family and was employed among other occupations in the coal mines; and

Whereas, Carl J. Crabtree died on December 6, 2004, survived by three daughters, Connie Herndon of Switzer, West Virginia, and Janet Cook and Carolyn Greene of Rossmore, West Virginia. He was preceded in death by his wife and a daughter, Patricia Molnar; and

Whereas, Naming a bridge in Logan County in U.S. Army 1SG Carl J. Crabtree’s honor is an appropriate recognition of his contributions to his country, state, community and Logan County; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 23-119/15-0.06 (23A247) (37.81172, -81.99561), locally known as National Guard Armory Bridge, carrying County Route 119/15 over Island Creek in Logan County the ‘U.S. Army 1SG Carl J. Crabtree Memorial Bridge’; and, be it

Further Resolved, That the Division of Highways is requested to have made and be placed signs identifying bridge number 23-119/15-0.06 (23A247) (37.81172, -81.99561), locally known as National Guard Armory Bridge, carrying County Route 119/15 over Island Creek in Logan County the 'U.S. Army 1SG Carl J. Crabtree 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,

By amending the title of the resolution to read as follows:

H. C. R. 21 - "Requesting the Division of Highways to name bridge number 23-119/15-0.06 (23A247) (37.81172, -81.99561), locally known as National Guard Armory Bridge, carrying County Route 119/15 over Island Creek in Logan County the 'U.S. Army 1SG Carl J. Crabtree Memorial Bridge'."

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.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendments, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 35, Arnold Miller Memorial Bridge.

On motion of Delegate Cowles, the House of Delegates concurred in the following amendment of the resolution by the Senate:

On page three, in the Resolved clause, line five, by striking out the words "Arnold Miller" and inserting in lieu thereof the words "U.S. Army PFC Arnold Miller".

On page three, in the first Further Resolved clause, line eight, by striking out the words "Arnold Miller" and inserting in lieu thereof the words "U.S. Army PFC Arnold Miller".

And,

By amending the title of the resolution to read as follows:

H. C. R. 35 – "Requesting the Division of Highways to name bridge number 20-77-83.84 (20A615), (38.19560, -81.47926), locally known as WV.TPK/WV 79, carrying interstate 77/64 over Route 79/3 and Cabin Creek in Kanawha County, the 'U.S. Army PFC Arnold Miller Memorial Bridge'."

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.

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. 58, William C. Campbell Memorial Highway.

On motion of Delegate Cowles, the House of Delegates concurred in the following amendment of the resolution by the Senate:

On page two, in the Resolved clause, line twenty-five, by striking out the word "William" and inserting in lieu thereof the words "U.S. Army CPT William".

On page three, in the first Further Resolved clause, line four, by striking out the word "William" and inserting in lieu thereof the words "U.S. Army CPT William".

And,

By amending the title of the resolution to read as follows:

H. C. R. 58 - "Requesting the Division of Highways to name the section of U.S. Route 60 in Cabell County from the Guyan Golf and Country Club to the Huntington City Limits, the 'U.S. Army CPT William C. Campbell Memorial Highway'."

The resolution, as amended by the Senate, was adopted.

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 amendments, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 73, U. S. Army Air Corps PVT William James Irwin, Memorial Bridge.

On motion of Delegate Cowles, the House of Delegates concurred in the following amendment of the resolution by the Senate:

On page one, line thirteen, by striking out the word "over" and inserting in lieu thereof the words "more than".

On page two, in the Resolved clause, line four, by striking out the words "Bridge Number:" and inserting in lieu thereof the words "bridge number".

On page two, in the Resolved clause, line six, by striking out the words "U S" and inserting in lieu thereof the words "U.S.".

On page two, in the first Further Resolved clause, line nine, by striking out the words "U S" and inserting in lieu thereof the words "U.S.".

And,

By amending the title of the resolution to read as follows:

H. C. R. 73 - "Requesting the Division of Highways that bridge number 42-23-2.73 (42A045) (38.90822, -79.86085), locally known as Southgate Bridge, carrying County Route 23 over Tygart Valley River in Randolph County, West Virginia, be named the 'U.S. Army Air Corps PVT William James Irwin, Memorial Bridge'."

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.

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 the Judiciary and reported with the recommendation that it be adopted), which was read by its title, as follows:

By Delegates Shott, Hanshaw, Overington, Lovejoy, Sobonya, O'Neal, Canestraro, R. Miller and Zatezalo:

H. C. R. 142 - "Requesting the Joint Committee on the Judiciary study certain topic areas prior to the next Regular Session of the Legislature.

Whereas, During the 2017 Regular Session, multiple bills were introduced that warranted consideration by the Judiciary Committee, but, upon review and examination of the law underlying the bill topic, became apparent that further examination and more in depth consideration was necessary;

Whereas, The Legislative interim meetings and time prior to the 2018 Regular Session provide an opportunity for further research, evaluation and comparison with other states, and receipt of information from individuals with expertise in the particular topic area;

Whereas, For the past several years, matters and areas studied during the interims have resulted in more comprehensive, deliberate and focused bills; and

Whereas, The topic areas contained in this resolution are not exclusive nor preclude consideration of other topic areas during the interims, Therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on the Judiciary is hereby requested to study the following matters prior to the beginning of the next regular session:

(1) The procedures, appeal delays, financial impact, efficiencies, and examination of the due process rights to persons appearing before the Office of Administrative Hearings (OAH), along with consideration of alternative means than the current utilization of the office, including the impact upon the drunk driving rates, accidents, and fatalities since creation of the current OAH system;

(2) Consideration of the powers, authority, efficiencies, and financial impact of transferring the Medicaid Fraud Control Unit from the West Virginia Department of Health and Human Resources Office of Inspector General to a different Executive agency or establishing as an independent entity;

(3) The prevalence and impact of cyberbullying upon minors in the age of social media, with specific consideration of emerging case law, potential vagueness or overbreadth of criminal offenses; and a review of other states that have attempted to address the issue within constitutional parameters;

(4) Review of general issues impacting retention and safety of firefighters, including specifically, exposure to chemicals and other substances that are known carcinogens that may lead to future illnesses, including but not limited to, those referenced in House Bill No. 2498;

(5) Review of the current governance structure and efficiencies of the Office of Emergency Services, including specifically, consideration of other surrounding state structures and models; transfer of the Office to a different Executive agency or as independent entity with elevation of Emergency Medical Services Advisory Council; and examination of the dispatch procedures and potential conflicts with regional medical command centers;

(6) Review and consideration of the establishment of a standing committee or office under the purview of the Joint Committee on Government and Finance, as proposed in House Bill 2383; together with consideration of general procedures and efficiencies for redistricting following census years;

(7) Review and consideration of a constitutional amendment, similar in nature to House Joint Resolution 24, relating to education, including specifically, providing for the election of members of the State Board of Education;

(8) Review and consideration of improper public access to personal identifiable information in the records of charitable institutions retained by governmental agencies, including specifically consideration of non-disclosure and redaction of certain information contained within a charitable donor record as contemplated in House Bill 3079;

(9) Review and consideration of the foster care system and procedures in the State, including general review of the system, the legal burdens and obstacles within the current foster care system; the treatment and oversight of children placed in foster care, with specific emphasis on the proposed bill of rights for children in foster care contemplated by House Bill 2088 and proposed bill of rights for foster parents contemplated by House Bill 2089;

(10) Review and consideration of the efficiencies and operation of the Public Defender Services system, including specific emphasis on the impact on panel attorneys; the timely payment to panel attorneys; the rates currently paid; record keeping by panel attorneys; identification of fraud and overbilling by panel attorneys; efficiencies of current voucher system; historic underfunding of Public Defender Services; and potential availability of insurance under the West Virginia Public Employees Insurance Agency;

(11) Examination and consideration of work requirements for applicants for the Supplemental Nutrition Assistance Program (SNAP); along with controls and methods for the detection of fraud; as contemplated by Senate Bill 60, including more general review and consideration of the welfare system in this state, including emphasis on federal guidelines, waivers, and financial eligibility;

(12) Review and examination of campaign finance laws contained in Chapter 3 of the code, with consideration of long-term review, reorganization and revision of the election and campaign finance statutes; including specifically consideration of differences between the state and federal laws as to monetary donation limits, relationship with political party caucuses and political action committees;

(13) Review and examination of the federal regulations relating to drones and other unmanned aircraft systems, with emphasis on the protection of personal privacy, along with lawful restrictions upon the use of such unmanned aircraft systems, as contemplated by House Bill 3005 and Senate Bill 9;

(14) Review and examination of the penalties under our criminal justice laws, with an emphasis on the establishment of a commission to study and make recommendations on the reorganization and revision of penalties and offenses under Chapter 61 of the code, including consideration of capital punishment as a penalty; and, be it

Further Resolved, That the Joint Committee on the Judiciary may consult or act in conjunction with other Joint Standing Committees of the Legislature in consideration of the foregoing topic areas, and any additional topic areas not identified herein, that the Joint Committee may study or examine during an interim meeting; and, be it

Further Resolved, That, following review and study of a topic area, the Joint Committee on the Judiciary may draft and propose legislation for introduction during the 2018 legislative session, and may make such other recommendations to other Joint Standing Committees of the Legislature as warranted or deemed appropriate; and, be it

Further Resolved, That the expenses necessary to conduct the study of these topic areas, along with other later identified topic areas, be paid from legislative appropriations from the Joint Committee on Government and Finance”.

At the respective requests of Delegate Cowles, and by unanimous consent, the resolution (H. C. R. 142) was taken up for immediate consideration and adopted.

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, Chair of the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

H. C. R. 129, Study of the West Virginia Office on Drug Policy,

H. C. R. 130, Feasibility study of selling West Virginia’s state owned mental health facilities,

H. C. R. 131, Study for Preauthorization procedures legislation,

H. C. R. 132, Feasibility study of the creation of an “Advisory Council on Rare Diseases,

H. C. R. 133, Study of tobacco/smoking harm reduction policies,

H. C. R. 134, Feasibility study of dividing the Department of Health and Human Resources,

H. C. R. 135, Study of the structure and duties of the West Virginia Medical Examiner’s Office,

H. C. R. 136, Study of the issues, needs and challenges facing senior citizens,

S. C. R. 33, U. S. Army Ranger SGT Richard E. Arden Memorial Bridge,

S. C. R. 42, Five Champ Brothers Bridge,

And,

S. C. R. 49, Erecting signs in Kanawha County declaring Home of Ralph Maddox 1980 NHPA Hall of Fame,

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

At the request of Delegate Cowles, and by unanimous consent, the resolutions (H. C. R. 129, H. C. R. 130, H. C. R. 131, H. C. R. 132, H. C. R. 133, H. C. R. 134, H. C. R. 135, H. C. R. 136, S. C. R. 33, S. C. R. 42 and S. C. R. 49) were each taken up for immediate consideration, reported by the Clerk and adopted.

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.

At 10:20 p.m., on motion of Delegate Cowles, the House of Delegates recessed for fifteen minutes.

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Evening Session

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-Continued-

Conference Committee Reports

Delegate Sobonya, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for H. B. 2579, Increasing the penalties for transporting controlled substances.

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 Committee Substitute for House Bill 2579 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 the amendment of the Senate striking out everything following the enacting clause and inserting new language, and agree to the same as follows:

“That §60A-4-409 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-409. Prohibited acts – Transportation of controlled substances into state; penalties.

(a) Except as otherwise authorized by the provisions of this code, it ~~shall be~~ is unlawful for any person to transport or cause to be transported into this state a controlled substance with the intent to deliver the same or with the intent to manufacture a controlled substance.

(b) Any person who violates this section with respect to:

(1) A controlled substance classified in Schedule I or II, which is a narcotic drug, shall be guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than fifteen years, or fined not more than \$25,000, or both;

(2) Any other controlled substance classified in Schedule I, II or III shall be guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than five ten years, or fined not more than \$15,000, or both: Provided, That for the substance marihuana, as scheduled in subdivision (24) subsection (d), section two hundred four, article two of this chapter, the penalty, upon conviction of a violation of this subsection, shall be that set forth in subdivision (3) of this subsection.

(3) A substance classified in Schedule IV shall be guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than ~~three~~ five years, or fined not more than \$10,000, or both;

(4) A substance classified in Schedule V shall be guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than \$5,000, or both: *Provided*, That for offenses relating to any substance classified as Schedule V in article ten of this chapter, the penalties established in said article apply.

(c) Notwithstanding the provisions of subsection (b) of this section, any person violating or causing a violation of subsection (a) of this section involving one kilogram or more of heroin, five kilograms or more of cocaine or cocaine base, one hundred grams or more of phencyclidine, ten grams or more of lysergic acid diethylamide, or fifty grams or more of methamphetamine or five hundred grams of a substance or material containing a measurable amount of methamphetamine, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than thirty years.

(d) Notwithstanding the provisions of subsection (b) of this section, any person violating or causing a violation of subsection (a) of this section involving one hundred but fewer than 1000 grams of heroin, not less than five hundred but fewer than 5,000 grams of cocaine or cocaine base, not less than ten but fewer than ninety-nine grams of phencyclidine, not less than one but fewer than ten grams of lysergic acid diethylamide, or not less than five but fewer than fifty grams of methamphetamine or not less than fifty grams but fewer than five hundred grams of a substance or material containing a measurable amount of methamphetamine, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than twenty years.

(e) Notwithstanding the provisions of subsection (b) of this section, any person violating or attempting to violate the provisions of subsection (a) of this section involving not less than ten grams nor more than one hundred grams of heroin, not less than fifty grams nor more than five hundred grams of cocaine or cocaine base, not less than two grams nor more than ten grams of phencyclidine, not less than two hundred micrograms nor more than one gram of lysergic acid diethylamide, or not less than four hundred ninety nine milligrams nor more than five grams of methamphetamine or not less than twenty grams nor more than fifty grams of a substance or material containing a measurable amount of methamphetamine is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than fifteen years.

~~(e)~~(f) The offense established by this section shall be in addition to and a separate and distinct offense from any other offense set forth in this code.”

And,

That both houses recede from their respective positions as to the title of the bill and agree to a new title to read as follows:

Com. Sub. for H. B. 2579- “A Bill to amend and reenact §60A-4-409 of the Code of West Virginia, 1931, as amended, relating to the offense of transporting illegal substances into the state generally; increasing penalties for illegal transportation of controlled substances into the state; clarifying that causing illegal transportation of controlled substances into the state is prohibited; providing for a differing penalty for an offense involving marihuana; and creating enhanced criminal penalties for transporting certain controlled substances into the state based on quantity.”

Respectfully submitted,

Kelli Sobonya, *Chair*
Ray Hollen,
Rodney Miller,
*Conferees on the part
of the House of Delegates.*

Ryan J. Weld, *Chair*
Mark R. Maynard,
Glenn Jeffries,
Conferees on the part of the Senate.

On motion of Delegate Sobonya, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 588**), and there were—yeas 91, nays 8, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Criss, Folk, Hornbuckle, McGeehan, Pushkin, Robinson, Rowe and Sponaugle.

Absent and Not Voting: Upson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2579) passed.

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

Delegate R. Miller, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for H. B. 2585, Creating felony crime of conducting financial transactions involving proceeds of criminal activity.

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 Committee Substitute for House Bill 2585 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That the House agree to the amendment of the Senate to the bill striking out everything after the enacting clause, and that both houses agree to the following amendments to the Senate amendment, as follows:

On page three, section two, line fifteen, by striking out the phrase “a determinate term of”.

And,

On page four, section two, line twenty-one, by striking out the phrase “a determinate term of”.

And,

The House agrees to the Senate title.

Respectfully submitted,

Kelli Sobonya, *Chair*
Ray Hollen,
Rodney Miller,
*Conferees on the part
of the House of Delegates.*

Ryan J. Weld, *Chair*
Mark R. Maynard,
Glenn Jeffries,
*Conferees on the part
of the Senate.*

On motion of Delegate R. Miller, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 589**), 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 (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.

Delegate Hollen, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for H. B. 2329, Prohibiting the production, manufacture or possession of fentanyl.

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 Committee Substitute for House Bill 2329 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 the amendment of the Senate striking out everything following the enacting clause and inserting new language, and agree to the same as follows

“That §60A-1-101 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60A-2-204 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §60A-4-414, all to read as follows:

ARTICLE 1. DEFINITIONS.**§60A-1-101. Definitions.**

As used in this act:

(a) "Administer" means the direct application of a controlled substance whether by injection, inhalation, ingestion or any other means to the body of a patient or research subject by:

(1) A practitioner (or, in his or her presence, by his or her authorized agent); or

(2) The patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman.

(c) "Analogue" means a substance that, in relation to a controlled substance, has a substantially similar chemical structure.

(d) "Bureau" means the "Bureau of Narcotics and Dangerous Drugs, United States Department of Justice" or its successor agency.

(e) "Controlled substance" means a drug, substance or immediate precursor in Schedules I through V of article two of this chapter.

(f) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(g) "Imitation controlled substance" means: (1) A controlled substance which is falsely represented to be a different controlled substance; (2) a drug or substance which is not a controlled substance but which is falsely represented to be a controlled substance; or (3) a controlled substance or other drug or substance or a combination thereof which is shaped, sized, colored, marked, imprinted, numbered, labeled, packaged, distributed or priced so as to cause a reasonable person to believe that it is a controlled substance.

(h) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of: (1) A controlled substance, whether or not there is an agency relationship; (2) a counterfeit substance; or (3) an imitation controlled substance.

(i) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(j) "Dispenser" means a practitioner who dispenses.

(k) "Distribute" means to deliver, other than by administering or dispensing, a controlled substance, a counterfeit substance or an imitation controlled substance.

(l) "Distributor" means a person who distributes.

(m) "Drug" means: (1) Substances recognized as drugs in the official "United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary", or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in subdivision (1), (2) or (3) of this subdivision. It does not include devices or their components, parts or accessories.

(n) "Fentanyl analog or derivative" means any substance which has a chemical structure which is substantially similar to the chemical structure of fentanyl, including any of its salts, isomers, or salts of isomers, including any chemical compound or mixture. For purposes of this chapter, the term "fentanyl derivative or analog" includes any fentanyl analog that is not otherwise scheduled in this chapter.

~~(n)~~ (o) "Immediate derivative" means a substance which is the principal compound or any analogue of the parent compound manufactured from a known controlled substance primarily for use and which has equal or similar pharmacologic activity as the parent compound which is necessary to prevent, curtail or limit manufacture.

~~(o)~~ (p) "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

~~(p)~~ (q) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging or labeling of a controlled substance:

(1) By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice; or

(2) By a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

~~(q)~~ (r) "Marijuana" means all parts of the plant "Cannabis sativa L.", whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, immediate derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, immediate derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

~~(r)~~ (s) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, immediate derivative or preparation of opium or opiate.

(2) Any salt, compound, isomer, immediate derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) of this subdivision, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, immediate derivative or preparation of coca leaves and any salt, compound, isomer, immediate derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

~~(s)~~ (t) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section two hundred one, article two of this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does not include its racemic and levorotatory forms.

~~(t)~~ (u) "Opium poppy" means the plant of the species "Papaver somniferum L.", except its seeds.

~~(u)~~ (v) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

~~(v)~~ (w) "Placebo" means an inert medicament or preparation administered or dispensed for its psychological effect, to satisfy a patient or research subject or to act as a control in experimental series.

~~(w)~~ (x) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

~~(x)~~ (y) "Practitioner" means:

(1) A physician, dentist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

~~(y)~~ (z) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

~~(z)~~ (aa) "State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof and any area subject to the legal authority of the United States of America.

~~(aa)~~ (bb) "Ultimate user" means a person who lawfully possesses a controlled substance for his or her own use or for the use of a member of his or her household or for administering to an animal owned by him or her or by a member of his or her household.

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (for purposes of subdivision (34) of this subsection only, the term isomer includes the optical and geometric isomers):

- (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl) -4-piperidiny]—phenylacetamide);
- (2) Acetylmethadol;
- (3) Allylprodine;
- (4) Alphacetylmethadol (except levoalphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);
- (5) Alphameprodine;
- (6) Alphamethadol;
- (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(— propanilido) piperidine);
- (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl- 4-piperidiny]—phenylpropanamide);
- (9) Benzethidine;
- (10) Betacetylmethadol;
- (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl) -4- piperidiny]-N-phenylpropanamide);
- (12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2- hydroxy-2-phenethyl)-3-methyl-4-piperidiny]-N-phenylpropanamide);
- (13) Betameprodine;
- (14) Betamethadol;
- (15) Betaprodine;
- (16) Clonitazene;
- (17) Dextromoramide;
- (18) Diampromide;
- (19) Diethylthiambutene;
- (20) Difenoxin;

- (21) Dimenoxadol;
- (22) Dimepheptanol;
- (23) Dimethylthiambutene;
- (24) Dioxaphetyl butyrate;
- (25) Dipipanone;
- (26) Ethylmethylthiambutene;
- (27) Etonitazene;
- (28) Etoxeridine;

(29) Fentanyl analog or derivative, as that term is defined in article one of this chapter: *Provided*, That fentanyl and carfentanil remains a Schedule II substance, as set forth in section two hundred six of this article;

- ~~(29)~~ (30) Furethidine;
- ~~(30)~~ (31) Hydroxypethidine;
- ~~(31)~~ (32) Ketobemidone;
- ~~(32)~~ (33) Levomoramide;
- ~~(33)~~ (34) Levophenacymorphan;
- ~~(34)~~ (35) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
- ~~(35)~~ (36) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl) ethyl-4-piperidyl]-phenylpropanamide);
- ~~(36)~~ (37) Morpheridine;
- ~~(37)~~ (38) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- ~~(38)~~ (39) Noracymethadol;
- ~~(39)~~ (40) Norlevorphanol;
- ~~(40)~~ (41) Normethadone;
- ~~(41)~~ (42) Norpipanone;
- ~~(42)~~ (43) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidyl] propanamide);
- ~~(43)~~ (44) PEPAP(1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- ~~(44)~~ (45) Phenadoxone;

- ~~(45)~~ (46) Phenampromide;
- ~~(46)~~ (47) Phenomorphan;
- ~~(47)~~ (48) Phenoperidine;
- ~~(48)~~ (49) Piritramide;
- ~~(49)~~ (50) Proheptazine;
- ~~(50)~~ (51) Properidine;
- ~~(51)~~ (52) Propiram;
- ~~(52)~~ (53) Racemoramide;
- ~~(53)~~ (54) Thiofentanyl (N-phenyl-N-[1-(2-thienyl) ethyl-4- piperidinyl]-propanamide);
- ~~(54)~~ (55) Tilidine;
- ~~(55)~~ (56) Trimeperidine.

(c) *Opium derivatives*. — Unless specifically excepted or unless listed in another schedule, any of the following opium immediate derivatives, its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine (except HCl Salt);
- (11) Heroin;
- (12) Hydromorphanol;
- (13) Methyl-desorphine;

- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine;
- (23) Thebacon.

(d) *Hallucinogenic substances.* — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term “isomer” includes the optical, position and geometric isomers):

(1) Alpha-ethyltryptamine; some trade or other names: etryptamine; Monase; alpha-ethy-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(2) 4-bromo-2, 5-dimethoxy-amphetamine; some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo- 2,5-DMA;

(3) 4-Bromo-2,5-dimethoxyphenethylamine; some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha- desmethyl DOB; 2C-B, Nexus;

(4)(A) N-(2-Methoxybenzyl)-4-bromo-2, 5-dimethoxyphenethylamine. The substance has the acronym 25B-NBOMe.

(B) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C-NBOMe).

(C) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe)

(5) 2,5-dimethoxyamphetamine; some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA;

(6) 2,5-dimethoxy-4-ethylamphet-amine; some trade or other names: DOET;

(7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7);

(8) 4-methoxyamphetamine; some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA;

- (9) 5-methoxy-3,4-methylenedioxy-amphetamine;
- (10) 4-methyl-2,5-dimethoxy-amphetamine; some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP";
- (11) 3,4-methylenedioxy amphetamine;
- (12) 3,4-methylenedioxymethamphetamine (MDMA);
- (13) 3,4-methylenedioxy-N-ethylamphetamine (also known as – ethyl-alpha-methyl-3,4-methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA);
- (14) N-hydroxy-3,4-methylenedioxyamphetamine (also known as – hydroxy-alpha-methyl-3,4-methylenedioxy) phenethylamine, and – hydroxy MDA);
- (15) 3,4,5-trimethoxy amphetamine;
- (15) (16) 5-methoxy-N, N-dimethyltryptamine (5-MeO-DMT);
- (17) Alpha-methyltryptamine (other name: AMT);
- (18) Bufotenine; some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole;3-(2-dimethylaminoethyl) -5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N- dimethyltryptamine; mappine;
- (19) Diethyltryptamine; some trade and other names: N, N-Diethyltryptamine; DET;
- (20) Dimethyltryptamine; some trade or other names: DMT;
- (21) 5-Methoxy-N, N-diisopropyltryptamine (5-MeO-DIPT);
- (22) Ibogaine; some trade and other names: 7-Ethyl-6,6-Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H- pyrido [1', 2': 1, 2] azepino [5,4-b] indole; Tabernanthe iboga;
- (23) Lysergic acid diethylamide;
- (24) Marijuana;
- (25) Mescaline;
- (26) Parahexyl-7374; some trade or other names: 3-Hexyl -1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl;
- (27) Peyote; meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, immediate derivative, mixture or preparation of such plant, its seeds or extracts;
- (28) N-ethyl-3-piperidyl benzilate;
- (29) N-methyl-3-piperidyl benzilate;

(30) Psilocybin;

(31) Psilocyn;

(32) Tetrahydrocannabinols; synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, immediate derivatives and their isomers with similar chemical structure and pharmacological activity such as the following:

delta-1 Cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 Cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3,4 Cis or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered).

(33) Ethylamine analog of phencyclidine; some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(34) Pyrrolidine analog of phencyclidine; some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(35) Thiophene analog of phencyclidine; some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine; TPCP, TCP;

(36) 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some other names: TCPy.

(37) 4-methylmethcathinone (Mephedrone);

(38) 3,4-methylenedioxypropylvalerone (MDPV);

(39) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);

(40) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)

(41) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)

(42) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)

(43) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2)

(44) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4)

(45) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)

(46) 2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C-N)

(47) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P)

(48) 3,4-Methylenedioxy-N-methylcathinone (Methylone)

(49) (2,5-dimethoxy-4-(n)-propyltghiophenethylamine (2C-T-7, itsoptical isomers, salts and salts of isomers

(50) 5-methoxy-N, N-dimethyltryptamine some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT(5-MeO-DMT)

(51) Alpha-methyltryptamine (other name: AMT)

(52) 5-methoxy-N, N-diisopropyltryptamine (other name: 5-MeO-DIPT)

(53) Synthetic Cannabinoids as follows:

(A) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl) phenol {also known as CP 47,497 and homologues};

(B) rel-2-[(1S,3R)-3-hydroxycyclohexyl] -5-(2-methylnonan-2-yl) phenol {also known as CP 47,497-C8 homolog};

(C) [(6aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7,10,10a-tetrahydrobenzo[c]chromen-1-ol]] {also known as HU-210};

(D) (dexanabinol); (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzol[c]chromen-1-ol {also known as HU-211};

(E) 1-Pentyl-3-(1-naphthoyl) indole {also known as JWH-018};

(F) 1-Butyl-3-(1-naphthoyl) indole {also known as JWH-073};

(G) (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone {also known as JWH-015};

(H) (1-hexyl-1H-indol-3-yl)-1-naphthalenyl-methanone {also known as JWH-019};

(I) [1-[2-(4-morpholinyl) ethyl] -1H-indol-3-yl]-1-naphthalenyl-methanone {also known as JWH-200};

(J) 1-(1-pentyl-1H-indol-3-yl)-2-(3-hydroxyphenyl)-ethanone {also known as JWH-250};

(K) 2-((1S,2S,5S)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl) -5-(2-methyloctan-2-yl)phenol {also known as CP 55,940};

(L) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) -methanone {also known as JWH-122};

(M) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) -methanone {also known as JWH-398};

(N) (4-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone {also known as RCS-4};

(O) 1-(1-(2-cyclohexylethyl) -1H-indol-3-yl) -2-(2-methoxyphenyl) ethanone {also known as RCS-8};

(P) 1-pentyl-3-[1-(4-methoxynaphthoyl) indole (JWH-081);

(Q) 1-(5-fluoropentyl)-3-(1-naphthoyl) indole (AM2201); and

(R) 1-(5-fluoropentyl)-3-(2-iodobenzoyl) indole (AM694).

(54) Synthetic cannabinoids or any material, compound, mixture or preparation which contains any quantity of the following substances, including their analogues, congeners, homologues, isomers, salts and salts of analogues, congeners, homologues and isomers, as follows:

(A) CP 47,497 AND homologues, 2-[(1R,3S)-3-Hydroxycyclohexyl]-5-(2-methyloctan-2-YL) phenol);

(B) HU-210, [(6AR,10AR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-Methyloctan-2-YL)-6A,7,10, 10A-tetrahydrobenzo[C] chromen-1-OL];

(C) HU-211, (dexanabinol, (6AS,10AS)-9-(hydroxymethyl)-6,6-Dimethyl-3-(2-methyloctan-2-YL)-6A,7,10,10atetrahydrobenzo [C] chromen-1-OL);

(D) JWH-018, 1-pentyl-3-(1-naphthoyl) indole;

(E) JWH-019, 1-hexyl-3-(1-naphthoyl) indole;

(F) JWH-073, 1-butyl-3-(1-naphthoyl) indole;

(G) JWH-200, (1-(2-morpholin-4-ylethyl) indol-3-yl)- Naphthalen-1-ylmethanone;

(H) JWH-250, 1-pentyl-3-(2-methoxyphenylacetyl) indole.

(55) Synthetic cannabinoids including any material, compound, mixture or preparation that is not listed as a controlled substance in Schedule I through V, is not a federal Food and Drug Administration approved drug or used within legitimate and approved medical research and which contains any quantity of the following substances, their salts, isomers, whether optical positional or geometric, analogues, homologues and salts of isomers, analogues and homologues, unless specifically exempted, whenever the existence of these salts, isomers, analogues, homologues and salts of isomers, analogues and homologues if possible within the specific chemical designation:

(A) Tetrahydrocannabinols meaning tetrahydrocannabinols which are naturally contained in a plant of the genus cannabis as well as synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis or synthetic substances, derivatives and their isomers with analogous chemical structure and or pharmacological activity such as the following:

(i) DELTA-1 CIS OR trans tetrahydrocannabinol and their Optical isomers.

(ii) DELTA-6 CIS OR trans tetrahydrocannabinol and their Optical isomers.

(iii) DELTA-3,4 CIS OR their trans tetrahydrocannabinol and their optical isomers.

(B) Naphthoyl indoles or any compound containing a 3-(1- Naphthoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include the following:

(i) JWH 015;

(ii) JWH 018;

- (iii) JWH 019;
- (iv) JWH 073;
- (v) JWH 081;
- (vi) JWH 122;
- (vii) JWH 200;
- (viii) JWH 210;
- (ix) JWH 398;
- (x) AM 2201;
- (xi) WIN 55,212.

(56) Synthetic Phenethylamines (including their optical, positional, and geometric isomers, salts and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers):

(A) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe/ 2C-I-NBOMe);

(B) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe/2C-C-NBOMe);

(C) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe/ 2C-B-NBOMe);

(57) Synthetic Opioids (including their isomers, esters, ethers, salts and salts of isomers, esters and ethers):

(A) N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (acetyl fentanyl);

(B) furanyl fentanyl;

(C) 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (also known as U-47700);

(D) N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, also known as N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide, (butyryl fentanyl);

(E) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, also known as N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide, (beta-hydroxythiofentanyl).

(58) Opioid Receptor Agonist (including its isomers, esters, ethers, salts, and salts of isomers, esters and ethers):

(A) AH-7921 (3,4-dichloro-N-(1dimethylamino)cyclohexylmethyl]benzamide).

~~(56)~~ (59) Naphylmethylindoles or any compound containing a 1hindo-3-yl-(1-naphthyl) methane structure with a substitution at the nitrogen atom of the indole ring whether or not further substituted

in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 175 and JWH 184.

~~(57)~~ (60) Naphthoylpyrroles or any compound containing a 3-(1-Naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 147 and JWH 307.

~~(58)~~ (61) Naphthylmethylindenes or any compound containing a Naphthylideneindene structure with substitution at the 3- Position of the indene ring whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 176.

~~(59)~~ (62) Phenylacetylindoles or any compound containing a 3- Phenylacetylindole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include the following:

- (A) RCS-8, SR-18 OR BTM-8;
- (B) JWH 250;
- (C) JWH 203;
- (D) JWH 251;
- (E) JWH 302.

~~(60)~~ (63) Cyclohexylphenols or any compound containing a 2-(3- hydroxycyclohexyl) phenol structure with a substitution at the 5-position of the phenolic ring whether or not substituted in the cyclohexyl ring to any extent. This shall include the following:

- (A) CP 47,497 and its homologues and analogs;
- (B) Cannabicyclohexanol;
- (C) CP 55,940.

~~(61)~~ (64) Benzoylindoles or any compound containing a 3-(benzoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include the following:

- (A) AM 694;
- (B) Pravadoline WIN 48,098;
- (C) RCS 4;
- (D) AM 679.

~~(62)~~ (65) [2,3-dihydro-5 methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-DE]-1, 4-benzoxazin-6-YL]-1-naphthalenymethanone. This shall include WIN 55,212-2.

~~(63)~~ (66) Dibenzopyrans or any compound containing a 11-hydroxydelta 8-tetrahydrocannabinol structure with substitution on the 3-pentyl group. This shall include HU-210, HU-211, JWH 051 and JWH 133.

~~(64)~~ (67) Adamantoylindoles or any compound containing a 3-(1- Adamantoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the adamantoyl ring system to any extent. This shall include AM1248.

~~(65)~~ (68) Tetramethylcyclopropylindoles or any compound containing A 3-tetramethylcyclopropylindole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropyl ring to any extent. This shall include UR-144 and XLR-11.

~~(66)~~ (69) N-(1-Adamantyl)-1-pentyl-1h-indazole-3-carboxamide. This shall include AKB48.

~~(67)~~ (70) Any other synthetic chemical compound that is a Cannabinoid receptor type 1 agonist as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV and V, not federal Food and Drug Administration approved drug or used within legitimate, approved medical research. Since nomenclature of these substances is not internationally standardized, any immediate precursor or immediate derivative of these substances shall be covered.

~~(68)~~ (71) Tryptamines:

(A) 5- methoxy-N-methyl-N-isopropyltryptamine (5-MeO-MiPT)

(B) 4-hydroxy-N, N-diisopropyltryptamine (4-HO-DiPT)

(C) 4-hydroxy-N-methyl-N-isopropyltryptamine (4-HO-MiPT)

(D) 4-hydroxy-N-methyl-N-ethyltryptamine (4-HO-MET)

(E) 4-acetoxy-N, N-diisopropyltryptamine (4-AcO-DiPT)

(F) 5-methoxy- α -methyltryptamine (5-MeO-AMT)

(G) 4-methoxy-N, N-Dimethyltryptamine (4-MeO-DMT)

(H) 4-hydroxy Diethyltryptamine (4-HO-DET)

(I) 5- methoxy- N, N- diallyltryptamine (5-MeO-DALT)

(J) 4-acetoxy-N, N-Dimethyltryptamine (4-AcO-DMT)

(K) 4-hydroxy Diethyltryptamine (4-HO-DET)

(72) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (AB-CHMINACA);

(73) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (AB-PINACA);

(74) [1-(5-fluoropentyl)-1H-indazol-3-yl (naphthalen-1-yl)methanone (THJ-2201);

(75) quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate (PB-22; QUPIC);

(76) quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (5-fluoro-PB-22; 5F-PB-22);

(77) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (AB-FUBINACA);

(78) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (ADB-PINACA); and

(79) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (common names, MAB-CHMINACA and ADB-CHMINACA);

(e) *Depressants*. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone;

(2) Methaqualone.

(f) *Stimulants*. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Aminorex; some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

(2) Cathinone; some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone;

(3) Fenethylamine;

(4) Methcathinone, its immediate precursors and immediate derivatives, its salts, optical isomers and salts of optical isomers; some other names: (2-(methylamino)-propiophenone; alpha-

(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-methylaminopropiophenone; monomethylpropion; 3,4-methylenedioxypropionylphenone and/or mephedrone; 3,4-methylenedioxypropionylphenone (MPVD); ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR1432;

(5) (+-) cis-4-methylaminorex; ((+)- cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

(6) N-ethylamphetamine;

(7) N,N-dimethylamphetamine; also known as N,N-alpha-trimethylbenzeneethanamine; N,N-alpha-trimethylphenethylamine.

(8) Alpha-pyrrolidinopropiophenone, also known as alpha-PVP, optical isomers, salts and salts of isomers.

(9) Substituted amphetamines:

- (A) 2-Fluoroamphetamine
- (B) 3-Fluoroamphetamine
- (C) 4-Fluoroamphetamine
- (D) 2-chloroamphetamine
- (E) 3-chloroamphetamine
- (F) 4-chloroamphetamine
- (G) 2-Fluoromethamphetamine
- (H) 3-Fluoromethamphetamine
- (I) 4-Fluoromethamphetamine
- (J) 4-chloromethamphetamine

(10) 4-methyl-N-ethylcathinone (4-MEC);

(11) 4-methyl-alpha-pyrrolidinopropiophenone (4-MePPP);

(12) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one (butylone);

(13) 2-(methylamino)-1-phenylpentan-1-one (pentedrone);

(14) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one (pentylone);

(15) 4-fluoro-N-methylcathinone (4-FMC);

(16) 3-fluoro-N-methylcathinone (3-FMC);

(17) 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one (naphyrone); and

(18) Alpha-pyrrolidinobutiophenone (α -PBP).

(g) Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers.

(2) N-[1-(2-thienyl) methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.

(3) N-benzylpiperazine, also known as BZP.

(h) The following controlled substances are included in Schedule I:

(1) Synthetic Cathinones or any compound, except bupropion or compounds listed under a different schedule, or compounds used within legitimate and approved medical research, structurally derived from 2- Aminopropan-1-one by substitution at the 1-position with Monocyclic or fused polycyclic ring systems, whether or not the compound is further modified in any of the following ways:

(A) By substitution in the ring system to any extent with Alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl or halide Substituents whether or not further substituted in the ring system by one or more other univalent substituents.

(B) By substitution at the 3-Position with an acyclic alkyl substituent.

(C) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or methoxybenzyl groups.

(D) By inclusion of the 2-amino nitrogen atom in a cyclic structure.

(2) Any other synthetic chemical compound that is a Cannabinoid receptor type 1 agonist as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV and V, not Federal Food and Drug Administration approved drug or used within legitimate, approved medical research.

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-414. Unlawful manufacture, delivery, transport into state, or possession of fentanyl.

(a) For purposes of this section,

(1) "Controlled substance" shall have the same meaning as provided in subsection (e), section one hundred one, article one of this chapter.

(2) "Fentanyl" refers to the substance identified in subdivision (9), subsection (c), section two hundred six, article two of this chapter, and any analog or derivative thereof.

(b) Any person who violates the provisions of subsection (a), section four hundred one of this article or section four hundred nine of this article in which fentanyl is a controlled substance involved in the offense, either alone or in combination with another controlled substance, shall be guilty of a felony, and upon conviction thereof, shall be punished in accordance with the following:

(1) If the net weight of fentanyl involved in the offense is less than one gram, such person shall be imprisoned in a correctional facility not less than two nor more than ten years.

(2) If the net weight of fentanyl involved in the offense is one gram or more but less than five grams, such person shall be imprisoned in a correctional facility not less than three nor more than fifteen years.

(3) If the net weight of fentanyl involved in the offense is five grams or more, such person shall be imprisoned in a correctional facility not less than four nor more than twenty years.

And,

That both houses recede from their respective positions as to the title of the bill and agree to a new title to read as follows:

Com. Sub. for H. B. 2329 - “A Bill to amend and reenact §60A-1-101 of the Code of West Virginia, 1931, as amended; to amend and reenact §60A-2-204 of said code; and to amend said code by adding thereto a new section, designated §60A-4-414, all relating to prohibiting the unlawful production, manufacture or possession of fentanyl and fentanyl analogs and derivatives; defining a fentanyl analog or derivative; classifying a fentanyl analog or derivative as a Schedule I drug; classifying additional drugs to Schedules I of uniform controlled substances act; creating a felony offense and imposing criminal penalties for the unlawful manufacture, delivery, possession with intent to manufacture or deliver, and transport into state of fentanyl; defining terms; establishing increased penalties for manufacturing, delivering, possessing with intent to manufacture or deliver, and transporting into state with intent to deliver or manufacture in which fentanyl is a controlled substance involved in the offense; and providing for penalties based upon weight.”

Respectfully submitted,

Kelli Sobonya, *Chair*,
Ray Hollen,
Rodney Miller,
*Conferees on the part
of the House of Delegates.*

Ryan J. Weld, *Chair*,
Mark R. Maynard,
Glenn Jeffries,
*Conferees on the part
of the Senate.*

On motion of Delegate Hollen, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 590**), 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 (Com. Sub. for H. B. 2329) passed.

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

Delegate Blair, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for H. B. 2589, Permitting students who are homeschooled or attend private schools to enroll and take classes at the county’s vocational school.

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 the Committee Substitute for House Bill 2589 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses agree with the Senate’s amendment, except that it be further amended on page one, section fifteen-g, line three, after the word “counties”, by changing the period to a colon and by inserting the following:

Provided, that such students will be treated equally for admission purposes with applicants enrolled in public school.

Saira Blair, *Chair*,
Jill Upson,
(*Did not sign.*)
Ralph Rodighiero,
*Conferees on the part of the
House of Delegates.*

Ed Gaunch, *Chair*,
Kenny Mann,
Mike Romano,
Conferees on the part of the Senate.

Delegate Blair moved that the report of the Committee of Conference be adopted.

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

The yeas and nays having been ordered, they were taken (**Roll No. 591**), and there were—yeas 65, nays 35, absent and not voting none, with the nays being as follows:

Nays: Ambler, Baldwin, Bates, Boggs, Canestraro, Caputo, Cooper, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Hamilton, Harshbarger, Hartman, Hornbuckle, Iaquina, Isner, Longstreth, Love, Lovejoy, Lynch, Marcum, Maynard, R. Miller, Moye, Pethtel, Pyles, Rodighiero, Rohrbach, Sponaule, Thompson, Wagner and Westfall.

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 592**), and there were—yeas 78, nays 22, absent and not voting none, with the nays being as follows:

Nays: Baldwin, Canestraro, Cooper, Diserio, E. Evans, Ferro, Fleischauer, Iaquina, Isner, Longstreth, Love, Lovejoy, Lynch, Marcum, R. Miller, Moye, Pethtel, Pyles, Rohrbach, Thompson, Wagner 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. 2589) passed.

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

At 10:37 p.m., on motion of Delegate Cowles, the House of Delegates recessed until 11:00 p.m.

* * * * *

Evening Session

* * * * *

-Continued-

The House was called to order by the Honorable Tim Armstead, Speaker.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2781, Requiring a person desiring to vote to present documentation identifying the voter to one of the poll clerks.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

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

“That §3-2-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-11. Registration in conjunction with driver licensing.

(a) The Division of Motor Vehicles or other division or department that may be established by law to perform motor vehicle driver licensing services shall obtain, as an integral and simultaneous part of every process of application for the issuance, renewal or change of address of a motor vehicle driver's license or official identification card pursuant to the provisions of article two, chapter seventeen-b of this code, when the division's regional offices are open for regular business, the following information from each qualified registrant:

- (1) Full name, including first, middle, last and any premarital names;
- (2) Date of birth;
- (3) Residence address and mailing address, if different;
- (4) The applicant's electronic signature;
- (5) Telephone number, if available;
- (6) Email address, if available;
- (7) Political party membership, if any;
- (8) Driver's license number and last four digits of social security number;
- (9) A notation that the applicant has attested that he or she meets all voter eligibility requirements, including United States citizenship;
- (10) Whether the applicant affirmatively declined to become registered to vote during the transaction with the Division of Motor Vehicles;
- (11) Date of application; and
- (12) Any other information specified in rules adopted to implement this section.

(b) Unless the applicant affirmatively declines to become registered to vote or update their voter registration during the transaction with the Division of Motor Vehicles, the Division of Motor Vehicles shall release all of the information obtained pursuant to subsection (a) of this section, to the Secretary of State, who shall forward the information to the county clerk for the relevant county to process the newly registered voter or updated information for the already-registered voter pursuant to law. ~~Notwithstanding any other provision of this code to the contrary, if the applicant affirmatively declines to become registered to vote, the Division of Motor Vehicles is required to release the first name, middle name, last name, premarital name, if applicable, complete residence address, complete date of birth of an applicant and the applicant's electronic signature, entered in the division's records for driver license or nonoperator identification purposes to the Secretary of State in order to facilitate any future attempt of the applicant to register to vote online, along with the notation that the applicant affirmatively declined to become registered at that time.~~ The Division of Motor Vehicles shall notify that applicant that by submitting his or her signature, the applicant grants written consent for the submission of the information obtained and required to be submitted to the Secretary of State pursuant to this section.

(c) Information regarding a person's failure to sign the voter registration application is confidential and may not be used for any purpose other than to determine voter registration.

(d) A qualified voter who submits the required information or update to his or her voter registration, pursuant to the provisions of subsection (a) of this section, in person at a driver licensing facility at the time of applying for, obtaining, renewing or transferring his or her driver's license or official identification card and who presents identification and proof of age at that time is not required to make his or her first vote in person or to again present identification in order to make that registration valid.

(e) A qualified voter who submits by mail or by delivery by a third party an application for registration on the form used in conjunction with driver licensing is required to make his or her first vote in person and present identification as required for other mail registration in accordance with the provisions of subsection (g), section ten of this article. If the applicant has been previously registered in the jurisdiction and the application is for a change of address, change of name, change of political party affiliation or other correction, the presentation of identification and first vote in person is not required.

(f) An application for voter registration submitted pursuant to the provisions of this section updates a previous voter registration by the applicant and authorizes the cancellation of registration in any other county or state in which the applicant was previously registered.

(g) A change of address from one residence to another within the same county which is submitted for driver licensing or nonoperator's identification purposes in accordance with applicable law serves as a notice of change of address for voter registration purposes if requested by the applicant after notice and written consent of the applicant.

(h) Completed applications for voter registration or change of address for voting purposes received by an office providing driver licensing services shall be forwarded to the Secretary of State within five days of receipt unless other means are available for a more expedited transmission. The Secretary of State shall remove and file any forms which have not been signed by the applicant and shall forward completed, signed applications to the clerk of the appropriate county commission within five days of receipt.

(i) Voter registration application forms containing voter information which are returned to a driver licensing office unsigned shall be collected by the Division of Motor Vehicles, submitted to the

Secretary of State and maintained by the Secretary of State's office according to the retention policy adopted by the Secretary of State.

(j) The Secretary of State shall establish procedures to protect the confidentiality of the information obtained from the Division of Motor Vehicles, including any information otherwise required to be confidential by other provisions of this code.

(k) A person registered to vote pursuant to this section may cancel his or her voter registration at any time by any method available to any other registered voter.

(l) This section shall not be construed as requiring the Division of Motor Vehicles to determine eligibility for voter registration and voting.

(m) The changes made to this section during the 2016 Regular Legislative Session shall become effective on July 1, ~~2017-2019~~, and any costs associated therewith shall be paid by the Division of Motor Vehicles. If the Division of Motor Vehicles is unable to meet the requirements of this section by February 1, ~~2017-2019~~, it shall make a presentation to the Joint Committee on Government and Finance explaining any resources necessary to meet the requirements or any changes to the code that it recommends immediately prior to the ~~2017-2019~~ Regular Legislative Session: Provided, That the Division of Motor Vehicles shall report to the Joint Committee on Government and Finance by January 1, 2018 with a full and complete list of all infrastructure they require to achieve the purposes of this section.

(n) The Secretary of State shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code in order to implement the requirements of this section."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2781 – "A Bill to amend and reenact §3-2-11 of the Code of West Virginia, 1931, as amended, relating to voting procedures; removing requirement that Division of Motor Vehicles forward certain information of persons who decline to become registered to vote to Secretary of State; amending the effective date for voter registration procedures passed in 2016 and 2017 legislative sessions to July 1, 2019; requiring Division of Motor Vehicles to make presentation to Joint Committee on Government and Finance if unable to meet requirements of section by February 1, 2019; and requiring Division of Motor Vehicles shall report to the Joint Committee on Government and Finance by January 1, 2018, with full and complete list of all infrastructure they require to achieve certain purposes."

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. 593**), and there were—yeas 94, nays 2, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: Cooper and Eldridge.

Absent and Not Voting: Phillips, Sponaugle, Westfall and White.

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. 2781) passed.

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

On this question, the yeas and nays were taken (**Roll No. 594**), and there were—yeas 97, nays 1, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Cooper.

Absent and Not Voting: Phillips and Sponaule.

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. 2781) 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 concurrence in the House of Delegates amendment, with a title amendment, and the passage, as amended, of

Com. Sub. for H. B. 2648, Increasing penalties for manufacturing or transportation of a controlled substance in the presence of a minor.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with amendment, and the passage, as amended, of

Com. Sub. for S. B. 220, Relating to offenses and penalties under Uniform Controlled Substances Act.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

On page one, by striking out everything 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 §60A-4-414, to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-414. Drug delivery resulting in death; failure to render aid.

(a) Any person who knowingly and willfully delivers a controlled substance or counterfeit controlled substance in violation of the provisions of section four hundred one, article four of this chapter for an illicit purpose and the use, ingestion or consumption of the controlled substance or counterfeit controlled substance alone or in combination with one or more other controlled substances, proximately causes the death of a person using, ingesting or consuming the controlled substance, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than three nor more than fifteen years.

(b) Any person who, while engaged in the illegal use of a controlled substance with another, who knowingly fails to seek medical assistance for such other person when the other person suffers an overdose of the controlled substance or suffers a significant adverse physical reaction to the controlled substance and the overdose or adverse physical reaction proximately causes the death of

the other person, is guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one year nor more than five years.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for S. B. 220 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-4-414, relating generally to offenses and penalties under the Uniform Controlled Substances Act; creating the felony offense of delivering controlled substances or counterfeit controlled substances for an illicit purpose resulting in the death of another person and providing criminal penalties therefor; creating the criminal offense of failing to seek necessary medical attention for another while jointly engaged in illegal use of controlled substances where death ensues; and providing criminal penalties therefor.”

The bill, as amended by the House, and further amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 595**), and there were—yeas 73, nays 27, absent and not voting none, with the nays being as follows:

Nays: Ambler, Arvon, Cooper, Cowles, Fast, Folk, N. Foster, Harshbarger, Hill, Hornbuckle, Howell, Isner, Kelly, Lane, Lynch, McGeehan, Moore, Moye, Paynter, Pushkin, Pyles, Rowe, Sponaule, Statler, Wagner, Walters and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 220) 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. 2620, West Virginia Drug Overdose Monitoring Act.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

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

“That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-5T-1, §16-5T-2, §16-5T-3, §16-5T-4 and §16-5T-5, all to read as follows:

ARTICLE 5T. OFFICE OF DRUG CONTROL POLICY.

§16-5T-1. Short title.

This article shall be referred to as the West Virginia Drug Control Policy Act.

16-5T-2. Office of Drug Control Policy.

(a) The Office of Drug Control Policy is created within the Department of Health and Human Resources under the direction of the Secretary and supervision of the State Health Officer.

(b) The Office of Drug Control Policy shall create a state drug control policy in coordination with the bureaus of the Department and other state agencies. This policy shall include all programs which are related to the prevention, treatment and reduction of substance abuse use disorder.

(c) The Office of Drug Control Policy shall:

(1) Develop a strategic plan to reduce the prevalence of drug and alcohol abuse and smoking by at least ten percent by July 1, 2018;

(2) Monitor, coordinate and oversee the collection of data and issues related to drug, alcohol and tobacco access, substance use disorder policies and smoking cessation and prevention and their impact on state and local programs;

(3) Make policy recommendations to executive branch agencies that work with alcohol and substance use disorder issues, and smoking cessation and prevention to ensure the greatest efficiency and consistency in practices will be applied to all efforts undertaken by the administration;

(4) Identify existing resources and prevention activities in each community that advocate or implement emerging best practice and evidence-based programs for the full substance use disorder continuum of drug and alcohol abuse education and prevention, including smoking cessation or prevention, early intervention, treatment and recovery;

(5) Encourage coordination among public and private, state and local, agencies, organizations and service providers and monitor related programs;

(6) Act as the referral source of information, using existing information clearinghouse resources within the Department for Health and Human Resources, relating to emerging best practice and evidence-based substance use disorder prevention, cessation, treatment and recovery programs, and youth tobacco access, smoking cessation and prevention. The Office of Drug Control Policy will identify gaps in information referral sources;

(7) Apply for grant opportunities for existing programs;

(8) Observe programs in other states;

(9) Make recommendations and provide training, technical assistance and consultation to local service providers;

(10) Review existing research on programs related to substance use disorder prevention and treatment and smoking cessation and prevention and provide for an examination of the prescribing and treatment history, including court-ordered treatment or treatment within the criminal justice system, of persons in the state who suffered fatal or nonfatal opiate overdoses;

(11) Establish a mechanism to coordinate the distribution of funds to support any local prevention, treatment and education program based on the strategic plan that could encourage smoking cessation and prevention through efficient, effective and research-based strategies;

(12) Establish a mechanism to coordinate the distribution of funds to support a local program based on the strategic plan that could encourage substance use prevention, early intervention, treatment and recovery through efficient, effective and research-based strategies;

(13) Oversee a school-based initiative that links schools with community-based agencies and health departments to implement school-based anti-drug and anti-tobacco programs;

(14) Coordinate media campaigns designed to demonstrate the negative impact of substance use disorder, smoking and the increased risk of tobacco addiction and the development of other diseases;

(15) Review Drug Enforcement Agency and the West Virginia scheduling of controlled substances and recommend changes that should be made based on data analysis;

(16) Develop recommendations to improve communication between health care providers and their patients about the risks and benefits of opioid therapy for acute pain, improve the safety and effectiveness of pain treatment and reduce the risks associated with long-term opioid therapy, including opioid use disorder and overdose;

(17) Develop and implement a program, in accordance with the provisions of section three of this article, to collect data on fatal and nonfatal drug overdoses, caused by abuse and misuse of prescription and illicit drugs from law enforcement agencies, emergency medical services, health care facilities and the Office of the Chief Medical Examiner;

(18) Develop and implement a program that requires the collection of data on the dispensing and use of an opioid antagonist from law enforcement agencies, emergency medical services, health care facilities, the Office of the Chief Medical Examiner and other entities as required by the office;

(19) Develop a program that provides assessment of persons who have been administered an opioid antagonist; and

(20) Report semi-annually to the Joint Committee on Health on the status of the Office of Drug Control Policy.

(d) Notwithstanding any other provision of this code to the contrary, and to facilitate the collection of data and issues, the Office of Drug Control Policy may exchange necessary data and information with the bureaus within the Department, the Department of Military Affairs and Public Safety, the Department of Administration, the Administrator of Courts, the Poison Control Center, and the Board of Pharmacy. The data and information may include, but is not be limited to: data from the Controlled Substance Monitoring Program; the all-payer claims database; the criminal offender record information database; and the court activity record information;

(e) Prior to July 1, 2018, the office shall develop a plan to expand the number of treatment beds in locations throughout the state which the office determines to be the highest priority for serving the needs of the citizens of the state.

§16-5T-3. Reporting system requirements; implementation; central repository requirement.

(a) The Office of Drug Control Policy shall implement a program in which a central repository is established and maintained that shall contain information required by this article. In implementing this program, the office shall consult with all affected entities, including law-enforcement agencies, health care providers, emergency response providers, pharmacies and medical examiners.

(b) The program authorized by subsection (a) of this section shall be designed to minimize inconvenience to all entities maintaining possession of the relevant information while effectuating the collection and storage of the required information. The Office of Drug Control Policy shall allow reporting of the required information by electronic data transfer where feasible, and where not feasible, on reporting forms promulgated by the Office of Drug Control Policy. The information required to be submitted by the provisions of this article shall be required to be filed no more frequently than on a quarterly basis.

§16-5T-4. Entities required to report; required information.

(a) To fulfill the purposes of this article, the following information shall be reported to the Office of Drug Control Policy:

(1) An emergency medical or law-enforcement response to a suspected or reported overdose, or a response in which an overdose is identified by the responders;

(2) Medical treatment for an overdose;

(3) The dispensation or provision of an opioid antagonist; and

(4) Death attributed to overdose or “drug poisoning”.

(b) The following entities shall be required to report information contained in subsection (a) of this section:

(1) Pharmacies operating in the state;

(2) Health care providers;

(3) Medical examiners;

(4) Law-enforcement agencies, including prosecuting attorneys, state, county and local police departments; and

(5) Emergency response providers.

§16-5T-5. Promulgation of rules.

The Secretary of the Department of Health and Human Resources may propose rules for promulgation in accordance with article three, chapter twenty-nine-a of this code to implement the provisions of this section. The Legislature finds that for the purposes of section fifteen, article three, chapter twenty-nine-a of this code, an emergency exists requiring the promulgation of emergency rules to preserve the public peace, health, safety or welfare and to prevent substantial harm to the public interest.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2620 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-5T-1, §16-5T-2, §16-5T-3, §16-5T-4 and §16-5T-5, all relating to the West Virginia Drug Control Policy Act; creating the Office of Drug Control Policy within the Department of Health and Human Resources; requiring the office to develop a state drug control

policy and a strategic plan; requiring the office to coordinate with other entities; setting forth duties of the office; requiring the coordination of funding; requiring data sharing; requiring the office to develop a plan to add treatment beds; required reporting; requiring the office to create a central repository of drug overdose information in West Virginia; establishing the program and purpose; establishing the reporting system requirements; establishing responsibility of entities to report information; setting forth information required to be reported and the agencies which are affected; providing for data collection and reporting; and providing for rule-making authority and emergency rule-making authority.”

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. 596**), and there were—yeas 96, nays 4, absent and not voting none, with the nays being as follows:

Nays: Cooper, Fast, Folk and McGeehan.

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. 2620) 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. 3022, Relating to the reporting of fraud, misappropriation of moneys, and other violations of law to the commission on special investigations.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

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

“That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-1-16, that said code be amended by adding thereto a new section, designated §8-9-4, and that said code be amended by adding thereto a new section, designated 30-1-5a, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-16. Reporting of fraud and misappropriation of funds.

(a) Whenever a county commission, or any of a county’s boards, committees, or any other entities of any kind or nature authorized in this chapter, obtains information that an employee, officer or member of the county commission, or any of a county’s boards, committees, or any other entities of any kind or nature authorized in this chapter may have misappropriated funds, engaged in fraud, or otherwise violated a law relating to the public trust, the county commission, or the county’s board,

committee, or other entity authorized in this chapter shall timely report such information or allegation in writing to the County Prosecutor's office.

(b) The reporting of such information under subsection (a) of this section shall not prevent, relieve or replace a report to a law-enforcement agency, if appropriate or warranted.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 9. PROCEEDINGS OF GOVERNING BODIES.

§8-9-4. Reporting of fraud and misappropriation of funds.

(a) Whenever a governing body of a municipality, or any of a municipality's boards, committees, or any other entities of any kind or nature authorized in this chapter, obtains information that an employee, officer or member of municipality, or any of a municipality's boards, committees, or any other entities of any kind or nature authorized in this chapter may have misappropriated funds, engaged in fraud, or otherwise violated a law relating to the public trust, municipality, or any of a municipality's board, committee, or any other entity authorized in this chapter shall timely report such information or allegation in writing to the County Prosecutor's office.

(b) The reporting of such information under subsection (a) of this section shall not prevent, relieve or replace a report to a law-enforcement agency, if appropriate or warranted.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

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

§30-1-5a. Reporting of fraud and misappropriation of funds.

(a) Whenever a board referred to in this chapter obtains information that an employee, officer or member of the board may have misappropriated funds, engaged in fraud, or otherwise violated a law relating to the public trust, the board shall timely report such information or allegation in writing to the Commission on Special Investigations, established in article five, chapter four of this code.

(b) The reporting of such information under subsection (a) of this section shall not prevent, relieve or replace a report to a law-enforcement agency, if appropriate or warranted."

And,

By amending the title of the bill to read as follows:

H. B. 3022 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-12-15a; to amend said code by adding thereto a new section, designated §8-9-4; and to amend said code by adding thereto a new section, designated §30-1-5a, all relating to the reporting of fraud, misappropriation of moneys, and other violations of law to the commission on special investigations; requiring reporting when a county commission, or any of a county's boards, committees, or certain other county entities obtain certain information regarding misappropriation, fraud or violations of law; requiring reporting when a municipality, or any of a municipality's boards, committees, or certain other municipal entities obtain certain information regarding misappropriation, fraud or violations of law; requiring reporting when certain professional and occupational boards of the state obtain certain information regarding misappropriation, fraud or violations of law; and

clarifying that the reporting requirements do not prevent, relieve or replace a report to law-enforcement where appropriate or warranted.”

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. 597**), and there were—yeas 98, nays 2, absent and not voting none, with the nays being as follows:

Nays: Cooper and Marcum.

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.

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

H. B. 3022 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-1-16; to amend said code by adding thereto a new section, designated §8-9-4; and to amend said code by adding thereto a new section, designated §30-1-5a, all relating to the reporting of fraud, misappropriation of moneys, and other violations of law relating to the public trust to the commission on special investigations; requiring reporting when a county commission, or any of a county's boards, committees, or certain other county entities obtain certain information regarding misappropriation, fraud or violations of law relating to the public trust; requiring reporting when a municipality, or any of a municipality's boards, committees, or certain other municipal entities obtain certain information regarding misappropriation, fraud or violations of law relating to the public trust; requiring reporting when certain professional and occupational boards of the state obtain certain information regarding misappropriation, fraud or violations of law relating to the public trust; and clarifying that the reporting requirements do not prevent, relieve or replace a report to law-enforcement where appropriate or warranted.”

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

Conference Committee Reports

Delegate Hanshaw, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for S. B. 204, Requiring persons appointed to fill vacancy by Governor have same qualifications for vacated office and receive same compensation and expenses,

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendment of the House to Engrossed Committee Substitute for Senate Bill No. 204 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 the amendment of the House, striking out everything after the enacting clause, and agree to the same as follows:

That §5-1-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. THE GOVERNOR.**§5-1-22. Vacancies in offices filled by appointment of Governor; Senate action; bond requirements; filling vacancies in other appointive offices.**

(a) In case of a vacancy, during the recess of the Senate, in any office, which vacancy the Governor is authorized to fill by and with the advice and consent of the Senate, the Governor shall, by appointment within ninety days, fill such vacancy until the next meeting of the Senate, when the Governor shall submit to the Senate a nomination to fill such vacancy and, upon confirmation of such nomination by the Senate, by a vote of a majority of all the members elected to the Senate, taken by yeas and nays, the person so nominated and confirmed shall hold said office during the remainder of the term for which his or her predecessor in office was appointed, and until his or her successor shall be appointed and qualified. No person whose nomination for office has been rejected by the Senate shall again be nominated for the same office during the session in which his or her nomination was so rejected, unless at the request of the Senate, nor shall ~~he~~ the person be appointed to the same office during the recess of the Senate. No appointee who resigns from any such office prior to confirmation, or whose name has not been submitted for confirmation while the Senate is in session, shall be eligible, during the recess of the Senate, to hold any office the nomination for which must be confirmed by the Senate.

(b) Any person appointed to temporarily fill a vacancy shall possess the qualifications required by law for that vacant position, and may only remain in the vacated position for a maximum of ninety days.

(c) If an employee of a state agency is temporarily appointed to fill a vacancy, the employee may fill such vacancy without resigning from the position he or she ordinarily holds: *Provided*, That the employee's compensation shall be the greater of:

(1) The employee's regular salary in his or her usual position; or

(2) The salary for the office the employee temporarily fills.

(d) If a vacancy is temporarily filled by a person not otherwise employed by any agency of the State of West Virginia, then that person shall be compensated at a rate no greater than that of the salary for the office that person temporarily fills.

(e) The bond, if any, required by law to be given by any officer so temporarily appointed by the Governor, shall be in such penalty as is required by law of the incumbent of such office.

(f) Any vacancy in any other office filled by appointment, or in any office hereafter created to be filled by appointment, shall be filled by the same person, court or body authorized to make appointment to such office for the full term thereof.

And,

That both houses recede from their respective positions as to the title of the bill and agree to the same as follows:

Com. Sub. for S. B. 204 – “A Bill to amend and reenact §5-1-22 of the Code of West Virginia, 1931, as amended, relating to filling vacancies in offices by appointment of the Governor; requiring certain appointments be made within ninety days; authorizing temporary appointments; and providing requirements for persons appointed temporarily to fill vacancies.”

Respectfully submitted,

Greg Boso, *Chair*,
Ed Gaunch,
Douglas Facemire,
Conferees on the part of the Senate.

Roger Hanshaw, *Chair*,
Mark Zatezalo,
Phil Isner,
*Conferees on the part of
the House of Delegates.*

On motion of Delegate Hanshaw, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 598**), and there were—yeas 97, nays 3, absent and not voting none, with the nays being as follows:

Nays: Cooper, Kelly and Marcum.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 204) passed.

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

Delegate Hanshaw, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for S. B. 224, Repealing requirement for employer's bond for wages and benefits,

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 House to Engrossed Committee Substitute for Senate Bill 224 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 the amendment of the Senate, striking everything after the enacting clause, and agree to the same as follows:

That §21-5-14 and §21-5-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-14. Employee's bond for wages and benefits.

(a) Bond required. — With the exception of those who have been doing business in this state actively and actually engaged in construction work, or the severance, production or transportation of minerals for at least ~~five consecutive years~~ one year next preceding the posting of the bond required by this section, every employer, person, firm or corporation engaged in or about to engage in construction work, or the severance, production or transportation (excluding railroads and water transporters) of minerals, shall, prior to engaging in any construction work, or the severance, production or transportation of minerals, furnish a bond on a form prescribed by the commissioner, payable to the State of West Virginia, with the condition that the person, firm or corporation pay the

wages and fringe benefits of his or her or its employees when due. The amount of the bond shall be equal to the total of the employer's gross payroll for four weeks at full capacity or production, plus fifteen percent of the said total of employer's gross payroll for four weeks at full capacity or production. The amount of the bond shall increase or decrease as the employer's payroll increases or decreases: Provided, That the amount of the bond shall not be decreased, except with the commissioner's approval and determination that there are not outstanding claims against the bond: Provided, however, That if the employer, person, firm or corporation meets one of the following, then such employer, person, firm or corporation shall be exempt from the requirements of this subsection:

(1) Has been in business in another state for at least five years;

(2) Has at least \$100,000 in assets; or

(3) Is a subsidiary of a parent company that has been in business for at least five years.

(b) *Waiver.* — The commissioner shall waive the posting of any bond required by subsection (a) of this section upon his or her determination that an employer is of sufficient financial responsibility to pay wages and fringe benefits. The commissioner shall promulgate rules and regulations according to the provisions of chapter twenty-nine-a of this code which prescribe standards for the granting of such waivers.

(c) *Form of bond; filing in office of circuit clerk.* — The bond may include, with the approval of the commissioner, surety bonding, collateral bonding (including cash and securities), letters of credit, establishment of an escrow account or a combination of these methods. The commissioner shall accept an irrevocable letter of credit in lieu of any other bonding requirement. If collateral bonding is used, the employer may deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, or of the federal land bank, or of the homeowner's 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 state. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The commissioner shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the State Treasurer whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which such deposit is made. The employer making the deposit shall be entitled from time to time to receive from the State Treasurer, upon the written approval of the commissioner, 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 herein specified having value equal to or greater than the sum of the bond. The commissioner shall cause a copy of the bond to be filed in the office of the clerk of the county commission of the county wherein the person, firm or corporation is doing business to be available for public inspection.

(d) *Employee cause of action.* — Notwithstanding any other provision in this article, any employee, whose wages and fringe benefits are secured by the bond, as specified in subsection (c) of this section, has a direct cause of action against the bond for wages and fringe benefits that are due and unpaid.

(e) *Action of commissioner.* — Any employee having wages and fringe benefits unpaid may inform the commissioner of the claim for unpaid wages and fringe benefits and request certification thereof. If the commissioner, upon notice to the employer and investigation, finds that such wages and fringe benefits or a portion thereof are unpaid, he or she shall make demand of such employer for the payment of such wages and fringe benefits. If payment for such wages and fringe benefits is not forthcoming within the time specified by the commissioner, not to exceed thirty days, the

commissioner shall certify such claim or portion thereof, and forward the certification to the bonding company or the State Treasurer, who shall provide payment to the affected employee within fourteen days of receipt of such certification. The bonding company, or any person, firm or corporation posting a bond, thereafter shall have the right to proceed against a defaulting employer for that part of the claim the employee paid. The procedure specified herein shall not be construed to preclude other actions by the commissioner or employee to seek enforcement of the provisions of this article by any civil proceedings for the payment of wages and fringe benefits or by criminal proceedings as may be determined appropriate.

(f) *Posting and reporting by employer.* — With the exception of those exempt under subsection (a) of this section, any employer who is engaged in construction work or the severance, production or transportation (excluding railroad and water transporters) of minerals shall post the following in a place accessible to his or her or its employees:

(1) A copy of the bond or other evidence of surety specifying the number of employees covered as provided under subsection (a) of this section, or notification that the posting of a bond has been waived by the commissioner; and

(2) A copy of the notice in the form prescribed by the commissioner regarding the duties of employers under this section. During the first ~~two years~~ year that any person, firm or corporation is doing business in this state in construction work, or in the severance, production or transportation of minerals, such person, firm or corporation shall on or before February 1, May, August and November of each calendar year file with the department a verified statement of the number of employees, or a copy of the quarterly report filed with the Bureau of Employment Programs showing the accurate number of employees, unless the commissioner waives the filing of the report upon his or her determination that the person, firm or corporation is of sufficient stability that the reporting is unnecessary.

(g) *Termination of bond.* — The bond may be terminated, with the approval of the commissioner, after an employer submits a statement, under oath or affirmation lawfully administered, to the commissioner that the following has occurred: The employer has ceased doing business and all wages and fringe benefits have been paid, or the employer has been doing business in this state for at least ~~five consecutive years~~ one year and has paid all wages and fringe benefits. The approval of the commissioner will be granted only after the commissioner has determined that the wages and fringe benefits of all employees have been paid. The bond may also be terminated upon a determination by the commissioner that an employer is of sufficient financial responsibility to pay wages and fringe benefits.

§21-5-15. Violations; cease and desist orders and appeals therefrom; criminal penalties.

(a) Any person, firm or corporation who knowingly and willfully fails to provide and maintain an adequate bond as required by section fourteen of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$200 nor more than \$5,000, or imprisoned in the county jail not more than one month, or both fined and imprisoned.

(b) Any person, firm or corporation who knowingly, willfully and fraudulently disposes of or relocates assets with intent to deprive employees of their wages and fringe benefits is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$30,000

\$60,000, or imprisoned in the penitentiary state correctional facility not less than one nor more than three years, or both fined and imprisoned.

(c) (1) At any time the commissioner determines that a person, firm or corporation has not provided or maintained an adequate bond, as required by section fourteen of this article, the commissioner shall issue a cease and desist order which is to be issued and posted requiring that said person, firm or corporation either post an adequate bond or cease further operations in this state within a period specified by the commissioner; which period shall be not less than five nor more than fourteen days. The cease and desist order may be issued by the commissioner at his or her own instance or at his or her direction, with or without application to or the approval of any other officer, agent, department or employee of the state or application to any court for approval thereof. Any person, firm or corporation who continues to engage in construction work or the severance, production or transportation of minerals without an approved bond after such specified period shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$30,000, or imprisoned in the penitentiary not less than one nor more than three years, or both fined and imprisoned. Any cease and desist order issued by the commissioner pursuant to this subsection may be directed by the commissioner to the sheriff of the county wherein the business activity of which the order is the subject, or to any officer or employee of the department, commanding such sheriff, officer or employee to serve such order upon the business in question within seventy-two hours and to make proper return thereof.

(2) Any other provision of law to the contrary notwithstanding, any person against whom a cease and desist order has been directed shall be entitled to judicial review thereof by filing a verified petition taking an appeal therefrom within fifteen days from the date of service of such order. Such verified petition shall be filed in the circuit court of the county wherein service of the order was completed, at the option of the petitioner, or, in the circuit court of Kanawha County, West Virginia. If the appeal is not perfected within such fifteen day period, the cease and desist order shall be final and shall not thereafter be subject to judicial review. No appeal shall be deemed to have been perfected except upon the filing with the clerk of the circuit court of the county wherein the appeal is taken, of a bond or other security to be approved by the court, in an amount of not less than the amount of the bond otherwise required to be posted under the provisions of section fourteen of this article. The person so filing a petition of appeal shall cause a copy of the petition and bond or other posted security to be served upon the commissioner by certified mail, return receipt requested, within seven days after the date upon which the petition for appeal is filed.

(d) Any person who threatens any officer, agent or employee of the department or other person authorized to assist the commissioner in the performance of his or her duties under any provision of section fourteen of this article or of this section or who shall interfere with or attempt to prevent any such officer, agent, employee or other person in the performance of such duties shall be guilty of a felony, and, upon conviction thereof, shall be fined in an amount of not less than \$1,000 nor more than \$3,000 or imprisoned in the penitentiary not less than one nor more than three years, or both such fine and imprisonment.

And,

That both houses recede from their respective positions as to the title of the bill and agree to the same as follows:

Com. Sub. for S. B. 224 – “A Bill to amend and reenact §21-5-14 and §21-5-15 of the Code of West Virginia, 1931, as amended, relating to the requirement of a bond for wages and benefits for certain designated employers, persons, firms, or corporations generally; lowering period of time for the requirement that certain designated employers, persons, firms or corporations shall furnish a

bond for wages and benefits to at least one year; providing exemptions for employers, persons, firms, or corporations who have been in business in another state for at least five years, employers, persons, firms or corporations who have at least \$100,000 in assets or employers, persons, firms, or corporations who are a subsidiary of a parent company that has been in business for at least five years; lowering period of time in which a person, firm or corporation is required to file a statement or copy with the Bureau of Employment Programs; lowering period of time employer must have been doing business in order to terminate bond; increasing the maximum criminal fine for any person, firm or corporation who knowingly, willfully and fraudulently disposes of or relocates assets with the intent to deprive employees of their wages and fringe benefits from \$30,000 to \$60,000; and making corrections to current code.”

Respectfully submitted,

Chandler Swope, *Chair*
Robert L. Karnes,
Richard Ojeda,
Conferees on the part of the Senate.

Roger Hanshaw, *Chair*,
Geoff Foster,
Barbara Fleischauer,
*Conferees on the part of the House
of Delegates.*

On motion of Delegate Hanshaw, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 599**), and there were—yeas 63, nays 37, absent and not voting none, with the nays being as follows:

Nays: Baldwin, Barrett, Bates, Brewer, Byrd, Canestraro, Caputo, Cooper, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Hicks, Hornbuckle, Iaquina, Isner, Kelly, Longstreth, Love, Lovejoy, Lynch, Marcum, Miley, R. Miller, Moye, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Sponaule, Thompson, Wagner 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. 224) passed.

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

Delegate Capito, from the Committee of Conference on matters of disagreement between the two houses, as to

S. B. 554, Relating to false swearing in legislative proceeding,

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 House to Engrossed Senate Bill 554 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That the House of Delegates recede from its amendments to the bill.

Respectfully submitted,

Ryan Weld, *Chair*,
Charles H. Clements,
Robert D. Beach,
Conferees on the part of the Senate.

Moore Capito, *Chair*,
Charlotte R. Lane,
Barbara Fleischauer,
*Conferees on the part of the
House of Delegates.*

On motion of Delegate Capito, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 600**), and there were—yeas 97, nays 3, absent and not voting none, with the nays being as follows:

Nays: Cooper, Kelly and Marcum.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 554) passed.

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

Delegate Criss, from the Committee of Conference on matters of disagreement between the two houses, as to

S. B. 172, Eliminating salary for Water Development Authority board members,

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendment of the House to Engrossed Senate Bill 172 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses agree to the House amendment to the bill on page two, section four;

And,

That the Senate and House agree to an amendment on page two, section four, line thirty-six, after the word “board”, by striking out “in a manner consistent with guidelines of the travel management office of the Department of Administration.” and inserting in lieu thereof the following:

“in the following manner: Each board member who lives more than fifty miles from the location where the meetings are held may receive the sum of one hundred thirty-one dollars per day as per diem allowance for any day on which such a meeting is held. Each board member who lives fifty miles or fewer from the location where the meetings are held may receive the sum of fifty-five dollars per day as the per diem allowance. In addition, each board member may be reimbursed for overnight commuting expenses at the mileage rate equal to the amount paid by the travel management office of the Department of Administration for the most direct usually traveled route, if travel is by private automobile, or for actual transportation costs for direct route travel, if travel is by public carrier, or for any combination of the means of transportation actually used, plus the costs of necessary taxi or limousine service, tolls and parking fees in connection with the travel: *Provided*, That the total of this per diem allowance plus travel expense for a daily commuting board member may not exceed one hundred thirty-one dollars per day. The amount for mileage paid pursuant to this subsection may

change from time to time in accordance with changes in the level of reimbursement by the travel management office.”

And,

That both houses agree to a new title, to read as follows:

S. B. 172 – “A Bill to amend and reenact §22C-1-4 of the Code of West Virginia, 1931, as amended, relating to the Water Development Authority; eliminating the salary for appointed board members effective July 1, 2017; authorizing appointed board members receive same compensation for attending official meetings or engaging in official duties at rate not to exceed amount paid to members of Legislature for interim duties as recommended by Citizens Legislative Compensation Commission and authorized by law; permitting reimbursement for reasonable and necessary expenses actually incurred in the performance of duties as member of board; providing manner in which expenses may be reimbursed; setting per diem allowances; permitting board members to be reimbursed for overnight commuting expenses; setting manner for calculating reimbursement rates; setting cap on per diem allowance and travel expenses for daily commuting board member; and permitting amount for mileage paid to change from time to time under certain conditions.”

Respectfully submitted,

Craig Blair, *Chair*,
Randy Smith,
Mike Woelfel,
Conferees on the part of the Senate.

Vernon Criss, *Chair*,
Martin Atkinson, III,
John Williams,
*Conferees on the part of the House
of Delegates.*

On motion of Delegate Criss, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 601**), and there were—yeas 96, nays 4, absent and not voting none, with the nays being as follows:

Nays: Cooper, Eldridge, Kelly and Marcum.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 172) passed.

Delegate Cowles moved that the bill take effect July 1, 2017.

On this question, the yeas and nays were taken (**Roll No. 602**), and there were—yeas 95, nays 5, absent and not voting none, with the nays being as follows:

Nays: Cooper, Eldridge, Isner, Kelly and Marcum.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 172) takes effect July 1, 2017.

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, of

Com. Sub. for S. B. 76, Creating WV Second Chance for Employment Act.

On motion of Delegate Cowles, the House concurred in the following amendment of the bill by the Senate:

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

“That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §61-11B-1, §61-11B-2, §61-11B-3, §61-11B-4, and §61-11B-5, all to read as follows:

ARTICLE 11B. CRIMINAL OFFENSE REDUCTION.

§61-11B-1. Legislative Intent.

It is the Legislature’s intention in enacting this article to establish a procedure whereby individuals convicted of certain criminal offenses may, pursuant to the provisions of this article, obtain a reduced offense of conviction. In enacting this article, it is also the Legislature’s intent to improve the employment possibilities of certain persons while allowing the public notice of their actual conduct and prior transgressions without further penalty or diminution of employment opportunities.

§61-11B-2. Definitions.

(a) As used in this article, the following words and phrases shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(1) ‘Criminal offense reduction’ means the reduction of a qualifying felony offense to a misdemeanor offense pursuant to this article.

(2) ‘Excluded offense’ means:

(A) An offense which involves the infliction of serious physical injury;

(B) A sexual offense, including, but not limited to, a violation of the felony provisions of article eight, eight-b, eight-c, or eight-d of this chapter;

(C) An offense which involves the use or exhibition of a deadly weapon or dangerous instrument;

(D) A felony violation of the provisions of section nine, article two of this chapter;

(E) A felony violation of the provisions of section twenty-eight, article two of this chapter;

(F) A felony violation of article four, chapter seventeen-b of this code; or

(G) A felony, the facts and circumstances of which the circuit court finds to be inconsistent with the purposes of this article.

(3) 'Non-violent felony' means a felony conviction in a circuit court of this state, which the circuit court finds is not (i) an excluded offense as defined in subdivision (2) of this article, and (ii) which does not involve violence or potential violence to another person or the public.

(4) 'Petitioner' means a person who has filed a petition seeking a criminal offense reduction under the provisions of this article.

(5) 'Qualifying felony offense' means a non-violent felony offense that is not excluded from relief under this article.

(6) 'Reduced misdemeanor' means a legal status representing that a person previously convicted of a non-violent qualifying felony has successfully petitioned a circuit court to have the felony conviction reduced to the status of a misdemeanor.

(7) 'Requisite time period' means ten years after completion of any sentence or period of supervision or probation, whichever is later during which time there has been no commission and conviction for a violation of law by the petitioner other than for a minor traffic offense.

§61-11B-3. Criminal Offense Reduction.

(a) Subject to the limitations and procedures set forth in this article, a person convicted of a non-violent felony offense may seek a criminal offense reduction by petition to the circuit court. If granted, the petitioner's felony conviction shall be vacated and the petitioner's status will thereafter be designated on all records relating to the offense as a 'reduced misdemeanor.' The petitioner's criminal record shall also reflect that he or she be granted such legal status as is associated with being convicted of a misdemeanor and, except as provided by the provisions of this article, the person shall not be deemed to have been convicted of a felony for any legal purpose or restriction.

(b) Notwithstanding any provision of law to the contrary, the reduced misdemeanor provided for under this article may not be expunged as part of this petition or by subsequent legal proceeding or petition.

(c) There shall be no entitlement to a criminal offense reduction and the granting of the petition shall remain in the discretion of the circuit court.

(d) Nothing in the section may be construed to allow a person obtaining relief pursuant to this article to be eligible for reinstatement of any retirement or employment benefit which he or she lost or forfeited due to the felony conviction or convictions vacated and reduced to the status of a misdemeanor.

§61-11B-4. Petition for reduction.

(a) A person seeking a criminal offense reduction under this article shall file with the circuit court a petition, in a form and manner set forth by the West Virginia Supreme Court of Appeals.

(b) Any person filing a petition pursuant to the provisions of this article shall pay the filing fee set by the provisions of subdivision (1), subsection (a), section eleven, article one, chapter fifty-nine of this code: *Provided*, That in addition to the fee required by the provisions of this subsection a petitioner shall pay a fee of \$100 which shall be deposited into a non-appropriated special revenue account within the State Treasurer's office to be known as the West Virginia State Police Criminal History Account, said fee to be used to offset costs to the State Police for actions to facilitate the operation of this article.

(c) Each petition for criminal offense reduction filed pursuant to this section shall be verified under oath and include the following information:

(1) Petitioner's current name and all other legal names or aliases by which the petitioner has been known at any time;

(2) All of petitioner's addresses from the date of the offense for which a criminal offense reduction order is sought to the date of the filing of the petition;

(3) Petitioner's date of birth and social security number;

(4) Petitioner's date of arrest, the court of jurisdiction and criminal case number;

(5) The offense or offenses with which petitioner was charged and of which petitioner was convicted and the statutory citations therefor.

(6) The names of any victim or victims, or where there are no identifiable victims such shall be stated;

(7) Whether there is any current order for restitution, protection, restraining order or other no contact order prohibiting the petitioner from contacting the victims or whether there has ever been a prior order for restitution, protection or restraining order prohibiting the petitioner from contacting the victim. If there is such a current order, petitioner shall attach a copy of that order to his or her petition;

(8) The court's disposition of the matter and sentence imposed;

(9) The reasons a criminal offense reduction is sought, such as, but not limited to, employment or licensure purposes, and arguments in support thereof;

(10) The date upon which he or she completed any sentence or period of supervision or probation;

(11) An express averment by the petitioner that he or she has neither committed nor been convicted of a violation of law;

(12) The action the petitioner has taken since the time of the offense or offenses toward personal rehabilitation, including treatment, work or other personal history that demonstrates rehabilitation;

(13) Whether petitioner has ever been granted criminal offense reduction, expungement or similar relief regarding a criminal conviction by any court in this state, any other state or by any federal court; and

(14) Any supporting documents, sworn statements, affidavits or other information supporting the petition to reduce criminal offense.

(d) A copy of the petition, with any supporting documentation, shall be served by petitioner pursuant to the West Virginia Rules of Civil Procedure upon the Superintendent of the State Police; the prosecuting attorney of the county of conviction; the chief of police or other executive head of the municipal police department wherein the offense was committed; the chief law-enforcement officer of any other law-enforcement agency which participated in the arrest of the petitioner; the circuit court of conviction, if the petition is filed in another circuit; the superintendent or warden of any state correctional facility in which the petitioner was imprisoned; and any state and local government agencies the records of which would be affected by the proposed criminal offense reduction.

(e) The prosecuting attorney of the county in which the petition is filed shall serve by first class mail the petition for criminal offense reduction, accompanying documentation and any proposed criminal offense reduction order to any identified victims.

(f) Upon receipt of a petition for criminal offense reduction, the Superintendent of the State Police; the prosecuting attorney of the county of conviction; the chief of police or other executive head of the municipal police department wherein the offense was committed; the chief law-enforcement officer of any other law-enforcement agency which participated in the arrest of the petitioner; the superintendent or warden of any institution in which the petitioner was confined; the circuit court of conviction, if the petition is filed in another circuit; any state and local government agencies the records of which would be affected by the proposed criminal offense reduction and any interested individual or agency that desires to oppose the criminal offense reduction shall, within thirty days of receipt of the petition, file a notice of opposition with the court with supporting documentation and sworn statements setting forth the reasons for resisting the petition for criminal offense reduction. A copy of any notice of opposition with supporting documentation and sworn statements shall be served upon the petitioner or his or her counsel in accordance with West Virginia Rules of Civil Procedure. The petitioner may file a reply no later than fifteen days after service of any notice of opposition to the petition for criminal offense reduction.

(g) The burden of proof shall be on the petitioner to prove by clear and convincing evidence that:

(1) The conviction or convictions for which criminal offense reduction is sought are qualifying offenses and are the only convictions against petitioner;

(2) That the requisite time period has passed since the conviction or convictions or end of the completion of any sentence of incarceration or probation;

(3) That the petitioner has neither committed nor been convicted of a violation of law in the preceding ten years;

(4) That petitioner has no criminal charges pending against him or her;

(5) That the criminal offense reduction is consistent with the public welfare;

(6) That petitioner has, by his or her behavior since the conviction or convictions, evidenced that he or she has been rehabilitated and has remained law-abiding; and

(7) Any other matter deemed appropriate or necessary by the court to make a determination regarding the petition for criminal offense reduction.

(h) Within one hundred eighty days of the filing of a petition for criminal offense reduction or as soon thereafter as is practicable the circuit court shall:

(1) Summarily grant the petition;

(2) Set the matter for hearing; or

(3) Summarily deny the petition, if the court determines that the petition is insufficient, or based upon supporting documentation and sworn statements filed in opposition to the petition, the court determines that the petitioner, as a matter of law, is not entitled to reduction.

(i) If the court sets the matter for hearing, all interested parties who have filed a notice of opposition shall be notified. At the hearing, the court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with any law-enforcement authority, the institution of confinement, if any, and parole authority or other agency which was in any way involved with the petitioner's arrest, conviction, sentence and post-conviction supervision, including any record of arrest or conviction in any other state or federal court. The court may hear testimony of witnesses and evidence of any other matter the court deems proper and relevant to its determination regarding the petition. The court shall enter an order reflecting its ruling on the petition for criminal offense reduction with appropriate findings of fact and conclusions of law.

(j) If the court grants the petition for criminal offense reduction, it shall order any records in the custody of the court, and of any other agency or official, including law-enforcement records, to reflect reduction of the felony offense to the status of reduced misdemeanor. Every agency with records relating to the arrest, charge or other matters arising out of the arrest or conviction that is ordered to reflect the criminal offense reduction in its records shall certify to the court within ninety days of the entry of the criminal offense reduction order that the required reduction has been completed: *Provided*, That upon inquiry by a prospective employer or on an application for employment, credit or other type of application, he or she shall disclose the existence of the reduced misdemeanor and acknowledgement of the prior conviction if asked about prior convictions or crimes.

(k) Upon granting of criminal offense reduction, the person whose felony offense has been reduced under the provisions of this article shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit or other type of application that he or she has a felony conviction.

§61-11B-5. Employer protections.

(a) A cause of action may not be brought against an employer, general contractor, premises owner, or other third party solely based on the employer, general contractor, premises owner, or other third party employing a person or independent contractor who has been convicted of a nonviolent, non-sexual offense or a person who has had his or her conviction reduced pursuant to this article.

(b) In a negligent hiring action against an employer, general contractor, premises owner, or other third party for the acts of an employee or independent contractor that is based on a theory of liability other than that described by subsection (a) of the section, the fact that the employee or independent contractor was convicted of a nonviolent, non-sexual offense or had his or her conviction reduced pursuant to this article before the employee or independent contractor's employment or contractual obligation with the employer, general contractor, premises owner, or other third party, as applicable, may not be introduced into evidence.

(c) This section does not preclude any existing cause of action for failure of an employer or other person to provide adequate supervision of an employee or independent contractor, except that the fact that the employee or independent contractor has been convicted of a nonviolent, non-sexual criminal offense or had his or her conviction reduced pursuant to this article may be introduced into evidence in the suit only if the employer:

(1) Knew of the conviction or was grossly negligent in not knowing of the conviction or reduced offense; and

(2) The conviction or reduced offense was directly related to the nature of the employee's or independent contractor's work and the conduct that gave rise to the alleged injury that is the basis of the suit.

(d) This section shall not be interpreted as implying a cause of action exists for negligent hiring of a person based upon his or her criminal record in factual situations not covered by the provisions of this section.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for S. B. 76 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-11B-1, §61-11B-2, §61-11B-3, §61-11B-4, and §61-11B-5, all relating to establishment of a criminal offense reduction program; creating the criminal offense classification of reduced misdemeanor; setting forth legislative intent; setting forth definitions; allowing persons convicted of certain criminal felony offenses to petition under specified circumstances for reduction of the felony to misdemeanor status; setting forth limitations; providing for reduced offense status to be reflected on criminal records; expressly providing that reduction of felony offense means person shall not be deemed as being convicted of a felony for certain legal purposes or restrictions; clarifying that a reduced misdemeanor may not be expunged; clarifying that criminal offense reduction is in the discretion of the circuit court; establishing procedures for petition to the court; requiring payment of a filing fee when filing petition; directing a fee be paid to the State Police to offset costs associated with facilitating the purposes of this article; setting forth information to be included on the petition; providing for notification of petition to certain persons; requiring prosecuting attorney to contact identified victims; providing for notice of opposition to the petition by certain persons; establishing burden and standard of proof for petitions; providing for a hearing and setting forth procedures; providing for entry of an order by the court; authorizing court to enter an order directing certain records to reflect reduction of a felony offense to the status of reduced misdemeanor; requiring certification of compliance to the court; and providing for disclosure requirements; and granting employers limited civil immunity for hiring of convicted felons and persons in reduced misdemeanor status and exceptions thereto.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 603**), and there were—yeas 92, nays 8, absent and not voting none, with the nays being as follows:

Nays: Speaker Armstead, Cooper, Cowles, Fast, G. Foster, Gearheart, Howell and Kelly.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 76) passed.

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

Messages from the Senate

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. 2526, Classifying additional drugs to Schedules I, II, IV and V of controlled substances,

A message from the Senate, by

The Clerk of the Senate, announced concurrence by the Senate in the title amendment of the House of Delegates to the amendment of the Senate, and the passage, as amended, of

Com. Sub. for H. B. 2711, Abolishing regional educational service agencies and providing for the transfer of property and records.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had receded from its amendments to, and passed,

Com. Sub. for H. B. 2555, Relating to tax credits for apprenticeship training in construction trades,

Com. Sub. for H. B. 2561, Relating to public school support,

And,

Com. Sub. for H. B. 2731, Clarifying civil actions heard in circuit court,

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 August 1, 2017, of

Com. Sub. for S. B. 40, Requiring inclusion of protocols for response to after-school emergencies in school crisis response plans.

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

Com. Sub. for S. B. 187, Providing for confidentiality of patients' medical records,

S. B. 235, Relating to motorcycle registration renewal,

Com. Sub. for S. B. 239, Limiting use of wages by employers and labor organizations for political activities,

Com. Sub. for S. B. 255, Relating generally to filling vacancies in elected office.

Com. Sub. for S. B. 339, Creating Legislative Coalition on Chronic Pain Management,

Com. Sub. for S. B. 345, Allowing certain hunting and trapping on private lands on Sundays,

Com. Sub. for S. B. 360, Creating Legislative Coalition on Diabetes Management,

Com. Sub. for S. B. 388, Relating to dangerous weapons,

Com. Sub. for S. B. 402, Relating to covenants not to compete between physicians and hospitals,

S. B. 490, Clarifying standard of liability for officers of corporation,

Com. Sub. for S. B. 535, Reorganizing Division of Tourism,

S. B. 547, Modifying fees paid to Secretary of State,

S. B. 578, Relating generally to copies of health care records furnished to patients,

Com. Sub. for S. B. 602, Creating uniform system of recording and indexing fictitious names used by sole proprietors,

Com. Sub. for S. B. 622, Relating generally to tax procedures and administration,

Com. Sub. for S. B. 631, Prosecuting violations of municipal building code,

Com. Sub. for S. B. 656, Relating to Student Data Accessibility, Transparency and Accountability Act,

S. B. 686, Exempting facilities governed by DHHR that provide direct patient care,

And,

S. B. 691, Relating to off-road vehicles.

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. 523, Converting to biweekly pay cycle for state employees,

And,

S. B. 687, Relating generally to coal mining, safety and environmental protection.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the title amendment of the House of Delegates and the passage, as amended, to take effect July 1, 2017, of

Com. Sub. for S. B. 486, Relating to health care provider taxes.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendments of the House of Delegates to, and the passage, as amended, with its House of Delegates amended title, of

S. B. 174, Exempting transportation of household goods from PSC jurisdiction.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the adoption, as amended, of

S. C. R. 28, U. S. Army SPC4 Randall W. Arbogast Memorial Road.

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. 2846, Including high school students participating in a competency based pharmacy technician education and training program as persons qualifying to be a pharmacy technician trainee.

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the reports of the Committee of Conference on, and the passage, as amended by said reports, in the passage of

Com. Sub. for H. B. 2329, Prohibiting the production, manufacture or possession of fentanyl,

Com. Sub. for H. B. 2447, Renaming the Court of Claims the State Claims Commission,

Com. Sub. for H. B. 2579, Increasing the penalties for transporting controlled substances,

Com. Sub. for H. B. 2585, Creating felony crime of conducting financial transactions involving proceeds of criminal activity,

Com. Sub. for H. B. 2589, Permitting students who are homeschooled or attend private schools to enroll and take classes at the county's vocational school,

Com. Sub. for H. B. 2631, Relating to time standards for disposition of complaint proceedings,

Com. Sub. for H. B. 2721, Removing the cost limitation on projects completed by the Division of Highways,

And,

Com. Sub. for H. B. 2722, Eliminating the financial limitations on utilizing the design-build program for highway construction.

Miscellaneous Business

Delegate Hollen asked and obtained unanimous consent that the remarks of Delegate Frich regarding the amendment offered by Delegates Fluharty, Storch, Ferro and Canestraro to Com. Sub. for S. B. 437, on March 28, be printed in the Appendix to the Journal.

Delegate Caputo asked and obtained unanimous consent that the remarks of Delegate Love regarding the introduction of Jim Bowen, be printed in the Appendix to the Journal.

Delegate Nelson noted to the Clerk that he was absent on today when the votes were taken on Roll Nos. 523, 524, 530 and 531, and that had he been present, he would have voted "Yea" thereon.

Delegate Criss noted to the Clerk that he was absent on today when the vote was taken on Roll No. 551, and that had he been present, he would have voted "Yea" thereon.

At 11:58 p.m., the House of Delegates adjourned until 12:15 a.m., Sunday, April 9, 2017.

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470

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