

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-THIRD LEGISLATURE  
REGULAR SESSION, 2018  
FIFTY-EIGHTH DAY

---

Charleston, West Virginia, Thursday, March 8, 2018

The Senate met at 11:31 a.m.

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

Prayer was offered by Pastor David Clark, Belle Church of the Nazarene, Belle, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Sue Cline, a senator from the ninth district.

Pending the reading of the Journal of Wednesday, March 7, 2018,

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

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senator Maroney as to the introduction of Cooper Blair, an eighth grade student at Our Lady of Peace School, were ordered printed in the Appendix to the Journal.

The Senate then proceeded to the third order of business.

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

**Eng. Com. Sub. for Senate Bill 36**, Relating generally to DNA testing.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 51**, Relating to domestic relations.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page six, section two hundred six, line eight, after the words “have a” by inserting the word “meaningful”;

On page seven, section two hundred six, after line forty, by inserting a new subsection, designated subsection (b), to read as follows:

(b) The court shall not consider the allocation of custodial responsibility arising from temporary arrangements after separation, whether those arrangements are consensual or by court order.;

And by relettering the remaining subsections;

And,

By striking out the title and substituting therefore a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 51**—A Bill to amend and reenact §48-6-301 of the Code of West Virginia, 1931, as amended; and to amend and reenact §48-9-205 and §48-9-206 of said code, all relating to domestic relations; removing language related to child support from code section governing the awarding of spousal support and separate maintenance; directing court to consider certain factors to decide amount and duration of spousal support and separate maintenance; removing the 24-month time frame for a description of the allocation of caretaking and other parenting responsibilities performed from the matters contained in permanent parenting plan; clarifying that the court may accommodate the preferences of a child 14 years of age and older if the court determines it is in the best interests of the child; directing court to allocate custodial responsibility so that custodial time spent with each parent achieves certain objectives; and directing courts to consider which parent will encourage and accept a positive relationship between child and other parent and which parent is more likely to keep other parent involved in child’s life and activities.

On motion of Senator Ferns, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for S. B. 51) and requested the House of Delegates to recede therefrom.

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

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 282**, Exempting State Conservation Committee from Purchasing Division requirements for contracts related to flood recovery.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

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

**ARTICLE 3. PURCHASING DIVISION.****§5A-3-3. Powers and duties of Director of Purchasing.**

The director, under the direction and supervision of the secretary, is the executive officer of the Purchasing Division and has the power and duty to:

- (1) Direct the activities and employees of the Purchasing Division;
- (2) Ensure that the purchase of or contract for commodities and services are based, whenever possible, on competitive bid;
- (3) Purchase or contract for, in the name of the state, the commodities, services, and printing required by the spending units of the state government;
- (4) Apply and enforce standard specifications established in accordance with §5A-3-5 of this code as hereinafter provided;
- (5) Transfer to or between spending units or sell commodities that are surplus, obsolete, or unused as hereinafter provided;
- (6) Have charge of central storerooms for the supply of spending units as the director considers advisable;
- (7) Establish and maintain a laboratory for the testing of commodities and make use of existing facilities in state institutions for that purpose as hereinafter provided as the director considers advisable;
- (8) Suspend the right and privilege of a vendor to bid on state purchases when the director has evidence that the vendor has violated any of the provisions of the purchasing law or the rules and regulations of the director;
- (9) Examine the provisions and terms of every contract entered into for and on behalf of the State of West Virginia that impose any obligation upon the state to pay any sums of money for commodities or services and approve the contract as to such provisions and terms; and the duty of examination and approval herein set forth does not supersede the responsibility and duty of the Attorney General to approve the contracts as to form: *Provided*, That the provisions of this subdivision do not apply in any respect whatever to construction or repair contracts entered into by the Division of Highways of the Department of Transportation or to construction or reclamation contracts entered into by the Department of Environmental Protection: *Provided, however*, That the provisions of this subdivision do not apply in any respect whatsoever to contracts entered into by the University of West Virginia Board of Trustees or by the board of directors of the state college system, except to the extent that such boards request the facilities and services of the director under the provisions of this subdivision: *Provided further*, That the provisions of this subdivision do not apply to the West Virginia State Police and the West Virginia Office of Laboratory Services: *And provided further*, That the provisions of this subdivision do not apply to joint funding agreements with the United States Geological Survey;
- (10) Assure that the specifications and descriptions in all solicitations are prepared so as to provide all potential suppliers-vendors who can meet the requirements of the state an opportunity to bid and to assure that the specifications and descriptions do not favor a particular brand or

vendor. If the director determines that any such specifications or descriptions as written favor a particular brand or vendor or if it is decided, either before or after the bids are opened, that a commodity or service having different specifications or quality or in different quantity can be bought, the director may rewrite the solicitation and the matter shall be rebid; and

(11) Issue a notice to cease and desist to a spending unit when the director has credible evidence that a spending unit has violated competitive bidding or other requirements established by this article and the rules promulgated hereunder. Failure to abide by the notice may result in penalties set forth in §5A-3-17 of this code.;

And,

By striking out the title and substituting therefore a new title, to read as follows:

**Eng. Senate Bill 282**—A Bill to amend and reenact §5A-3-3 of the Code of West Virginia, 1931, as amended, relating to exempting joint funding agreements with the United States Geological Survey from purchasing requirements.

On motion of Senator Ferns, the Senate refused to concur in the foregoing House amendments to the bill (Eng. S. B. 282) and requested the House of Delegates to recede therefrom.

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

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

**Eng. Senate Bill 298**, Authorizing county assessors make separate entries in landbooks when real property is partly used for exempt and partly for nonexempt purposes.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page one, section two, line seven, by striking out the word “exclusively” and inserting in lieu thereof the words “primarily and immediately”;

And,

On page one, section two, line ten, by striking out the word “exclusively” and inserting in lieu thereof the words “primarily and immediately”.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 298, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard,

Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 298) passed with its title.

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

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 299**, Relating to mandatory insurance coverage for medical foods for amino acid-based formulas.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

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

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE, AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.**

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

**§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan, and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.**

(a) The agency shall establish a group hospital and surgical insurance plan or plans, a group prescription drug insurance plan or plans, a group major medical insurance plan or plans and a group life and accidental death insurance plan or plans for those employees herein made eligible and establish and promulgate rules for the administration of these plans subject to the limitations contained in this article. These plans shall include:

(1) Coverages and benefits for x-ray and laboratory services in connection with mammograms when medically appropriate and consistent with current guidelines from the United States Preventive Services Task Force; pap smears, either conventional or liquid-based cytology, whichever is medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists; and a test for the human papilloma virus (HPV) when medically appropriate and consistent with current guidelines from either the United States Preventive Services Task Force

or The American College of Obstetricians and Gynecologists, when performed for cancer screening or diagnostic services on a woman age 18 or over;

(2) Annual checkups for prostate cancer in men age 50 and over;

(3) Annual screening for kidney disease as determined to be medically necessary by a physician using any combination of blood pressure testing, urine albumin or urine protein testing, and serum creatinine testing as recommended by the National Kidney Foundation;

(4) For plans that include maternity benefits, coverage for inpatient care in a duly licensed healthcare facility for a mother and her newly born infant for the length of time which the attending physician considers medically necessary for the mother or her newly born child. No plan may deny payment for a mother or her newborn child prior to 48 hours following a vaginal delivery or prior to 96 hours following a caesarean section delivery if the attending physician considers discharge medically inappropriate;

(5) For plans which provide coverages for post-delivery care to a mother and her newly born child in the home, coverage for inpatient care following childbirth as provided in subdivision (4) of this subsection if inpatient care is determined to be medically necessary by the attending physician. These plans may include, among other things, medicines, medical equipment, prosthetic appliances, and any other inpatient and outpatient services and expenses considered appropriate and desirable by the agency; and

(6) Coverage for treatment of serious mental illness:

(A) The coverage does not include custodial care, residential care, or schooling. For purposes of this section, "serious mental illness" means an illness included in the American Psychiatric Association's diagnostic and statistical manual of mental disorders, as periodically revised, under the diagnostic categories or subclassifications of: (i) Schizophrenia and other psychotic disorders; (ii) bipolar disorders; (iii) depressive disorders; (iv) substance-related disorders with the exception of caffeine-related disorders and nicotine-related disorders; (v) anxiety disorders; and (vi) anorexia and bulimia. With regard to a covered individual who has not yet attained the age of 19 years, "serious mental illness" also includes attention deficit hyperactivity disorder, separation anxiety disorder, and conduct disorder.

(B) Notwithstanding any other provision in this section to the contrary, if the agency demonstrates that its total costs for the treatment of mental illness for any plan exceeds two percent of the total costs for such plan in any experience period, then the agency may apply whatever additional cost-containment measures may be necessary in order to maintain costs below two percent of the total costs for the plan for the next experience period. These measures may include, but are not limited to, limitations on inpatient and outpatient benefits.

(C) The agency shall not discriminate between medical-surgical benefits and mental health benefits in the administration of its plan. With regard to both medical-surgical and mental health benefits, it may make determinations of medical necessity and appropriateness and it may use recognized healthcare quality and cost management tools including, but not limited to, limitations on inpatient and outpatient benefits, utilization review, implementation of cost-containment measures, preauthorization for certain treatments, setting coverage levels, setting maximum number of visits within certain time periods, using capitated benefit arrangements, using fee-for-service arrangements, using third-party administrators, using provider networks, and using patient cost sharing in the form of copayments, deductibles, and coinsurance.

(7) Coverage for general anesthesia for dental procedures and associated outpatient hospital or ambulatory facility charges provided by appropriately licensed healthcare individuals in conjunction with dental care if the covered person is:

(A) Seven years of age or younger or is developmentally disabled and is an individual for whom a successful result cannot be expected from dental care provided under local anesthesia because of a physical, intellectual, or other medically compromising condition of the individual and for whom a superior result can be expected from dental care provided under general anesthesia.

(B) A child who is 12 years of age or younger with documented phobias or with documented mental illness and with dental needs of such magnitude that treatment should not be delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of teeth, or other increased oral or dental morbidity and for whom a successful result cannot be expected from dental care provided under local anesthesia because of such condition and for whom a superior result can be expected from dental care provided under general anesthesia.

(8) (A) Any plan issued or renewed on or after January 1, 2012, shall include coverage for diagnosis, evaluation, and treatment of autism spectrum disorder in individuals ages 18 months to 18 years. To be eligible for coverage and benefits under this subdivision, the individual must be diagnosed with autism spectrum disorder at age eight or younger. Such plan shall provide coverage for treatments that are medically necessary and ordered or prescribed by a licensed physician or licensed psychologist and in accordance with a treatment plan developed from a comprehensive evaluation by a certified behavior analyst for an individual diagnosed with autism spectrum disorder.

(B) The coverage shall include, but not be limited to, applied behavior analysis which shall be provided or supervised by a certified behavior analyst. The annual maximum benefit for applied behavior analysis required by this subdivision shall be in an amount not to exceed \$30,000 per individual for three consecutive years from the date treatment commences. At the conclusion of the third year, coverage for applied behavior analysis required by this subdivision shall be in an amount not to exceed \$2,000 per month, until the individual reaches 18 years of age, as long as the treatment is medically necessary and in accordance with a treatment plan developed by a certified behavior analyst pursuant to a comprehensive evaluation or reevaluation of the individual. This subdivision does not limit, replace or affect any obligation to provide services to an individual under the Individuals with Disabilities Education Act, 20 U. S. C. §1400 *et seq.*, as amended from time to time or other publicly funded programs. Nothing in this subdivision requires reimbursement for services provided by public school personnel.

(C) The certified behavior analyst shall file progress reports with the agency semiannually. In order for treatment to continue, the agency must receive objective evidence or a clinically supportable statement of expectation that:

(i) The individual's condition is improving in response to treatment;

(ii) A maximum improvement is yet to be attained; and

(iii) There is an expectation that the anticipated improvement is attainable in a reasonable and generally predictable period of time.

(D) On or before January 1 each year, the agency shall file an annual report with the Joint Committee on Government and Finance describing its implementation of the coverage provided pursuant to this subdivision. The report shall include, but not be limited to, the number of individuals in the plan utilizing the coverage required by this subdivision, the fiscal and administrative impact of the implementation and any recommendations the agency may have as to changes in law or policy related to the coverage provided under this subdivision. In addition, the agency shall provide such other information as required by the Joint Committee on Government and Finance as it may request.

(E) For purposes of this subdivision, the term:

(i) "Applied behavior analysis" means the design, implementation and evaluation of environmental modifications using behavioral stimuli and consequences in order to produce socially significant improvement in human behavior and includes the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

(ii) "Autism spectrum disorder" means any pervasive developmental disorder including autistic disorder, Asperger's Syndrome, Rett Syndrome, childhood disintegrative disorder, or Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

(iii) "Certified behavior analyst" means an individual who is certified by the Behavior Analyst Certification Board or certified by a similar nationally recognized organization.

(iv) "Objective evidence" means standardized patient assessment instruments, outcome measurements tools, or measurable assessments of functional outcome. Use of objective measures at the beginning of treatment, during, and after treatment is recommended to quantify progress and support justifications for continued treatment. The tools are not required but their use will enhance the justification for continued treatment.

(F) To the extent that the application of this subdivision for autism spectrum disorder causes an increase of at least one percent of actual total costs of coverage for the plan year, the agency may apply additional cost containment measures.

(G) To the extent that the provisions of this subdivision require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of insurance plans offered by the Public Employees Insurance Agency.

(9) For plans that include maternity benefits, coverage for the same maternity benefits for all individuals participating in or receiving coverage under plans that are issued or renewed on or after January 1, 2014: *Provided*, That to the extent that the provisions of this subdivision require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of a health benefit plan when the plan is offered in this state.

(10) (A) A policy, plan, or contract that is issued or renewed on or after January 1, 2019, and that is subject to this section, shall provide coverage, through the age of 20, for amino acid-based formula for the treatment of severe protein-allergic conditions or impaired absorption of nutrients

caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder by a physician licensed to practice in this state pursuant to either §30-3-1 et seq. or §30-14-1 et seq. of this code:

(i) Immunoglobulin E and Nonimmunoglobulin E-medicated allergies to multiple food proteins;

(ii) Severe food protein-induced enterocolitis syndrome;

(iii) Eosinophilic disorders as evidenced by the results of a biopsy; and

(iv) Impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length and motility of the gastrointestinal tract (short bowel).

(B) The coverage required by paragraph (A) of this subdivision shall include medical foods for home use for which a physician has issued a prescription and has declared them to be medically necessary, regardless of methodology of delivery.

(C) For purposes of this subdivision, “medically necessary foods” or “medical foods” shall mean prescription amino acid-based elemental formulas obtained through a pharmacy. *Provided*, That these foods are specifically designated and manufactured for the treatment of severe allergic conditions or short bowel.

(D) The provisions of this subdivision shall not apply to persons with an intolerance for lactose or soy.

(b) The agency shall, with full authorization, make available to each eligible employee, at full cost to the employee, the opportunity to purchase optional group life and accidental death insurance as established under the rules of the agency. In addition, each employee is entitled to have his or her spouse and dependents, as defined by the rules of the agency, included in the optional coverage, at full cost to the employee, for each eligible dependent.

(c) The finance board may cause to be separately rated for claims experience purposes:

(1) All employees of the State of West Virginia;

(2) All teaching and professional employees of state public institutions of higher education and county boards of education;

(3) All nonteaching employees of the Higher Education Policy Commission, West Virginia Council for Community and Technical College Education and county boards of education; or

(4) Any other categorization which would ensure the stability of the overall program.

(d) The agency shall maintain the medical and prescription drug coverage for Medicare-eligible retirees by providing coverage through one of the existing plans or by enrolling the Medicare-eligible retired employees into a Medicare-specific plan, including, but not limited to, the Medicare/Advantage Prescription Drug Plan. If a Medicare-specific plan is no longer available or advantageous for the agency and the retirees, the retirees remain eligible for coverage through the agency.

**§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance, and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.**

(a) The director is hereby given exclusive authorization to execute such contract or contracts as are necessary to carry out the provisions of this article and to provide the plan or plans of group hospital and surgical insurance coverage, group major medical insurance coverage, group prescription drug insurance coverage, and group life and accidental death insurance coverage selected in accordance with the provisions of this article, such contract or contracts to be executed with one or more agencies, corporations, insurance companies or service organizations licensed to sell group hospital and surgical insurance, group major medical insurance, group prescription drug insurance and group life and accidental death insurance in this state.

(b) The group hospital or surgical insurance coverage and group major medical insurance coverage herein provided shall include coverages and benefits for x-ray and laboratory services in connection with mammogram and pap smears when performed for cancer screening or diagnostic services and annual checkups for prostate cancer in men age 50 and over. Such benefits shall include, but not be limited to, the following:

(1) Mammograms when medically appropriate and consistent with the current guidelines from the United States Preventive Services Task Force;

(2) A pap smear, either conventional or liquid-based cytology, whichever is medically appropriate and consistent with the current guidelines from the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists, for women age 18 and over;

(3) A test for the human papilloma virus (HPV) for women age 18 or over, when medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists for women age 18 and over;

(4) A checkup for prostate cancer annually for men age 50 or over; and

(5) Annual screening for kidney disease as determined to be medically necessary by a physician using any combination of blood pressure testing, urine albumin or urine protein testing, and serum creatinine testing as recommended by the National Kidney Foundation.

(6) Coverage for general anesthesia for dental procedures and associated outpatient hospital or ambulatory facility charges provided by appropriately licensed healthcare individuals in conjunction with dental care if the covered person is:

(A) Seven years of age or younger or is developmentally disabled and is either an individual for whom a successful result cannot be expected from dental care provided under local anesthesia because of a physical, intellectual, or other medically compromising condition of the individual and for whom a superior result can be expected from dental care provided under general anesthesia; or

(B) A child who is 12 years of age or younger with documented phobias, or with documented mental illness, and with dental needs of such magnitude that treatment should not be delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of teeth or other increased oral or dental morbidity and for whom a successful result cannot be expected from dental care provided under local anesthesia because of such condition and for whom a superior result can be expected from dental care provided under general anesthesia.

(7) (A) A policy, plan, or contract that is issued or renewed on or after January 1, 2019, and that is subject to this section, shall provide coverage, through the age of 20, for amino acid-based formula for the treatment of severe protein-allergic conditions or impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder by a physician licensed to practice in this state pursuant to either §30-3-1 et seq. or §30-14-1 et seq. of this code:

(i) Immunoglobulin E and Nonimmunoglobulin E-medicated allergies to multiple food proteins;

(ii) Severe food protein-induced enterocolitis syndrome;

(iii) Eosinophilic disorders as evidenced by the results of a biopsy; and

(iv) Impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length and motility of the gastrointestinal tract (short bowel).

(B) The coverage required by paragraph (A) of this subdivision shall include medical foods for home use for which a physician has issued a prescription and has declared them to be medically necessary, regardless of methodology of delivery.

(C) For purposes of this subdivision, “medically necessary foods” or “medical foods” shall mean prescription amino acid-based elemental formulas obtained through a pharmacy: *Provided*, That these foods are specifically designated and manufactured for the treatment of severe allergic conditions or short bowel.

(D) The provisions of this subdivision shall not apply to persons with an intolerance for lactose or soy.

(c) The group life and accidental death insurance herein provided shall be in the amount of \$10,000 for every employee. The amount of the group life and accidental death insurance to which an employee would otherwise be entitled shall be reduced to \$5,000 upon such employee attaining age sixty-five.

(d) All of the insurance coverage to be provided for under this article may be included in one or more similar contracts issued by the same or different carriers.

(e) The provisions of §5A-3-1 et seq. of this code, relating to the Division of Purchasing of the Department of Finance and Administration, shall not apply to any contracts for any insurance coverage or professional services authorized to be executed under the provisions of this article. Before entering into any contract for any insurance coverage, as authorized in this article, the director shall invite competent bids from all qualified and licensed insurance companies or carriers, who may wish to offer plans for the insurance coverage desired: *Provided*, That the director shall negotiate and contract directly with healthcare providers and other entities,

organizations and vendors in order to secure competitive premiums, prices and other financial advantages. The director shall deal directly with insurers or healthcare providers and other entities, organizations and vendors in presenting specifications and receiving quotations for bid purposes. No commission or finder's fee, or any combination thereof, shall be paid to any individual or agent; but this shall not preclude an underwriting insurance company or companies, at their own expense, from appointing a licensed resident agent, within this state, to service the companies' contracts awarded under the provisions of this article. Commissions reasonably related to actual service rendered for the agent or agents may be paid by the underwriting company or companies: *Provided, however,* That in no event shall payment be made to any agent or agents when no actual services are rendered or performed. The director shall award the contract or contracts on a competitive basis. In awarding the contract or contracts the director shall take into account the experience of the offering agency, corporation, insurance company, or service organization in the group hospital and surgical insurance field, group major medical insurance field, group prescription drug field, and group life and accidental death insurance field, and its facilities for the handling of claims. In evaluating these factors, the director may employ the services of impartial, professional insurance analysts or actuaries or both. Any contract executed by the director with a selected carrier shall be a contract to govern all eligible employees subject to the provisions of this article. Nothing contained in this article shall prohibit any insurance carrier from soliciting employees covered hereunder to purchase additional hospital and surgical, major medical or life and accidental death insurance coverage.

(f) The director may authorize the carrier with whom a primary contract is executed to reinsure portions of the contract with other carriers which elect to be a reinsurer and who are legally qualified to enter into a reinsurance agreement under the laws of this state.

(g) Each employee who is covered under any contract or contracts shall receive a statement of benefits to which the employee, his or her spouse and his or her dependents are entitled under the contract, setting forth the information as to whom the benefits are payable, to whom claims shall be submitted and a summary of the provisions of the contract or contracts as they affect the employee, his or her spouse and his or her dependents.

(h) The director may at the end of any contract period discontinue any contract or contracts it has executed with any carrier and replace the same with a contract or contracts with any other carrier or carriers meeting the requirements of this article.

(i) The director shall provide by contract or contracts entered into under the provisions of this article the cost for coverage of children's immunization services from birth through age sixteen years to provide immunization against the following illnesses: Diphtheria, polio, mumps, measles, rubella, tetanus, hepatitis-b, hemophilia influenzae-b, and whooping cough. Additional immunizations may be required by the Commissioner of the Bureau for Public Health for public health purposes. Any contract entered into to cover these services shall require that all costs associated with immunization, including the cost of the vaccine, if incurred by the healthcare provider, and all costs of vaccine administration be exempt from any deductible, per visit charge and/or copayment provisions which may be in force in these policies or contracts. This section does not require that other healthcare services provided at the time of immunization be exempt from any deductible and/or copayment provisions.

### **CHAPTER 33. INSURANCE.**

#### **ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.**

**§33-15-4p. Coverage for amino acid-based formulas.**

(a) A policy, plan, or contract that is issued or renewed on or after January 1, 2019, and that is subject to this article shall provide coverage, through the age of 20, for amino acid-based formula for the treatment of severe protein-allergic conditions or impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder by a physician licensed to practice in this state pursuant to either §30-3-1 et seq. or §30-14-1 et seq. of this code:

(1) Immunoglobulin E and Nonimmunoglobulin E-medicated allergies to multiple food proteins;

(2) Severe food protein-induced enterocolitis syndrome;

(3) Eosinophilic disorders as evidenced by the results of a biopsy; and

(4) Impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length and motility of the gastrointestinal tract (short bowel).

(b) The coverage required by subsection (a) of this section shall include medical foods for home use for which a physician has issued a prescription and has declared them to be medically necessary, regardless of methodology of delivery.

(c) For purposes of this section, “medically necessary foods” or “medical foods” shall mean prescription amino acid-based elemental formulas obtained through a pharmacy: *Provided*, That these foods are specifically designated and manufactured for the treatment of severe allergic conditions or short bowel.

(d) The provisions of this section shall not apply to persons with an intolerance for lactose or soy.

**ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.****§33-16-3bb. Coverage for amino acid-based formulas.**

(a) A policy, plan, or contract that is issued or renewed on or after January 1, 2019, and that is subject to this article shall provide coverage, through the age of 20, for amino acid-based formula for the treatment of severe protein-allergic conditions or impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder by a physician licensed to practice in this state pursuant to either §30-3-1 et seq. or §30-14-1 et seq. of this code:

(1) Immunoglobulin E and Nonimmunoglobulin E-medicated allergies to multiple food proteins;

(2) Severe food protein-induced enterocolitis syndrome;

(3) Eosinophilic disorders as evidenced by the results of a biopsy; and

(4) Impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length and motility of the gastrointestinal tract (short bowel).

(b) The coverage required by subsection (a) of this section shall include medical foods for home use for which a physician has issued a prescription and has declared them to be medically necessary, regardless of methodology of delivery.

(c) For purposes of this section, “medically necessary foods” or “medical foods” shall mean prescription amino acid-based elemental formulas obtained through a pharmacy: *Provided*, That these foods are specifically designated and manufactured for the treatment of severe allergic conditions or short bowel.

(d) The provisions of this section shall not apply to persons with an intolerance for lactose or soy.

## **ARTICLE 24. HOSPITAL MEDICAL AND DENTAL CORPORATIONS.**

### **§33-24-7q. Coverage for amino acid-based formulas.**

(a) A policy, plan, or contract that is issued or renewed on or after January 1, 2019, and that is subject to this article shall provide coverage, through the age of 20, for amino acid-based formula for the treatment of severe protein-allergic conditions or impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder by a physician licensed to practice in this state pursuant to either §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code:

(1) Immunoglobulin E and Nonimmunoglobulin E-medicated allergies to multiple food proteins;

(2) Severe food protein-induced enterocolitis syndrome;

(3) Eosinophilic disorders as evidenced by the results of a biopsy; and

(4) Impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length and motility of the gastrointestinal tract (short bowel).

(b) The coverage required by subsection (a) of this section shall include medical foods for home use for which a physician has issued a prescription and has declared them to be medically necessary, regardless of methodology of delivery.

(c) For purposes of this section, “medically necessary foods” or “medical foods” shall mean prescription amino acid-based elemental formulas obtained through a pharmacy: *Provided*, That these foods are specifically designated and manufactured for the treatment of severe allergic conditions or short bowel.

(d) The provisions of this section shall not apply to persons with an intolerance for lactose or soy.

## **ARTICLE 25. HEALTHCARE CORPORATION.**

**§33-25-8n. Coverage for amino acid-based formulas.**

(a) A policy, plan, or contract that is issued or renewed on or after January 1, 2019, and that is subject to this article shall provide coverage, through the age of 20, for amino acid-based formula for the treatment of severe protein-allergic conditions or impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder by a physician licensed to practice in this state pursuant to either §30-3-1 et seq. or §30-14-1 et seq. of this code:

(1) Immunoglobulin E and Nonimmunoglobulin E-medicated allergies to multiple food proteins;

(2) Severe food protein-induced enterocolitis syndrome;

(3) Eosinophilic disorders as evidenced by the results of a biopsy; and

(4) Impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length and motility of the gastrointestinal tract (short bowel).

(b) The coverage required by subsection (a) of this section shall include medical foods for home use for which a physician has issued a prescription and has declared them to be medically necessary, regardless of methodology of delivery.

(c) For purposes of this section, “medically necessary foods” or “medical foods” shall mean prescription amino acid-based elemental formulas obtained through a pharmacy: *Provided*, That these foods are specifically designated and manufactured for the treatment of severe allergic conditions or short bowel.

(d) The provisions of this section shall not apply to persons with an intolerance for lactose or soy.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.****§33-25A-8p. Coverage for amino acid-based formulas.**

(a) A policy, plan, or contract that is issued or renewed on or after January 1, 2019, and that is subject to this article shall provide coverage, through the age of 20, for amino acid-based formula for the treatment of severe protein-allergic conditions or impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder by a physician licensed to practice in this state pursuant to either §30-3-1 et seq. or §30-14-1 et seq. of this code:

(1) Immunoglobulin E and Nonimmunoglobulin E-medicated allergies to multiple food proteins;

(2) Severe food protein-induced enterocolitis syndrome;

(3) Eosinophilic disorders as evidenced by the results of a biopsy; and

(4) Impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length and motility of the gastrointestinal tract (short bowel).

(b) The coverage required by subsection (a) of this section shall include medical foods for home use for which a physician has issued a prescription and has declared them to be medically necessary, regardless of methodology of delivery.

(c) For purposes of this section, “medically necessary foods” or “medical foods” shall mean prescription amino acid-based elemental formulas obtained through a pharmacy: *Provided*, That these foods are specifically designated and manufactured for the treatment of severe allergic conditions or short bowel.

(d) The provisions of this section shall not apply to persons with an intolerance for lactose or soy.;

And,

By striking out the title and substituting therefore a new title, to read as follows:

**Eng. Senate Bill 299**—A Bill to amend and reenact §5-16-7 and §5-16-9 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-15-4p; to amend said code by adding thereto a new section, designated §33-16-3bb; to amend said code by adding thereto a new section, designated §33-24-7q; to amend said code by adding thereto a new section, designated §33-25-8n; and to amend said code by adding thereto a new section, designated §33-25A-8p, all relating to mandatory insurance coverage, up to the age of 20, for certain medical foods for amino acid-based formulas; providing a list of diagnosed conditions for which insurance coverage should extend; providing that coverage extends to medically necessary foods for home use when prescribed by a physician; defining terms; and providing for exclusions from such coverage.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 299, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 299) passed with its House of Delegates amended title.

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

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 347**, Relating to operation of motorboats.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page two, section eleven, line twenty-three, by striking out the word "principle" and inserting in lieu thereof the word "principal";

On page two, section twelve, line one, by striking out the word "principle" and inserting in lieu thereof the word "principal";

On page four, section twelve, line forty-seven, by striking out the word "principle" and inserting in lieu thereof the word "principal";

And,

On page ten, section fourteen, line five, by striking out the word "principle" and inserting in lieu thereof the word "principal".

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Committee Substitute for Senate Bill 347, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 347) passed with its title.

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

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

**Eng. Com. Sub. for Senate Bill 359**, Authorizing Supreme Court establish curricula for mental hygiene commissioners and certain magistrates.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 461**, Extending time to file petition for motor fuel excise tax refund.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On pages one through five, by striking out all of section nine;

On page six, section thirty-one, lines nine and ten, by striking out “§11-14C-9(c)” and inserting in lieu thereof “§11-14C-9(c)(15)”;

On page seven, section thirty-one, line thirty-eight, by striking out “§11-14C-9(c) or §11-14C-9(d)” and inserting in lieu thereof “§11-14C-9(c)(15)”;

On page seven, section thirty-one, lines forty-one and forty-two, after “§11-14C-9(c)(6) of this code” by striking out the comma and inserting in lieu thereof the word “and”;

On page seven, section thirty-one, line forty-four, after the words “June 30” by changing the period to a colon and inserting the following proviso: Provided further, That a petition for refund under §11-14C-9(d)(10) of this code shall be filed with the commissioner on or before the last day of January, April, July and October for purchases of motor fuel during the immediately preceding calendar quarter.;

On page seven, section thirty-one, line forty-seven, by striking out “§33-10-14” and inserting in lieu thereof “§11-10-14”;

And,

By striking out the title and substituting therefore a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 461**—A Bill to amend and reenact §11-14C-31 of the Code of West Virginia, 1931, as amended, relating to petitions for refunds of motor fuel excise tax by certain taxpayers; extending time periods for certain taxpayers to file petition for refunds; and maintaining current time period to file petition for refunds of taxes paid on motor fuel sold for certain purposes.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 461, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 461) passed with its House of Delegates amended title.

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

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 465**, Relating to mandated reporting of child abuse and neglect.

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

**Eng. Com. Sub. for Senate Bill 475**, Industrial Hemp Development Act.

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

**Eng. Senate Bill 479**, Establishing local government monitoring by Auditor.

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

**Eng. Com. Sub. for Senate Bill 500**, Authorizing City of White Sulphur Springs to expend principal and interest from special interest-bearing fund.

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

**Eng. Com. Sub. for Senate Bill 543**, Relating to confidentiality of medical records.

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

**Eng. Com. Sub. for Senate Bill 555**, Providing immunity from civil liability for qualified directors of certain governmental and nonprofit entities.

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

**Eng. Com. Sub. for Senate Bill 574**, Relating to crime of misrepresentation of military honors.

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

**Eng. Com. Sub. for Senate Bill 575**, Approving additional beds for intermediate care facilities.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

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

“(3) Add beds in an intermediate care facility for individuals with an intellectual disability, except that prohibition does not apply to an intermediate care facility for individuals with intellectual disabilities beds approved under the Kanawha County circuit court order of August 3, 1989, civil action number MISC-81-585 issued in the case of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d 232 (1981) including the 24 beds provided in §16-2D-8(b)(24) of this code; and”.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Senate Bill 575, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 575) passed with its title.

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

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 576**, Relating to Patient Injury Compensation Fund.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page four, section one-a, line seventy, by striking out the word “of” and inserting in lieu thereof the word “or”;

On page five, section eleven, line fifteen, by striking out the words “on and”;

On page five, section eleven, line sixteen, after “\$280” by changing the semicolon to a comma and inserting the words “of which \$10 shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code;”;

On page nine, section twenty-eight-a, line thirty-three, by striking out “§11-1-11(a)(3)” and inserting in lieu thereof “§59-1-11(a)(4)”;

On page nine, section twenty-eight-a, line thirty-four, by striking out “§11-1-11(a)(4)” and inserting in lieu thereof “§59-1-11(a)(5)”;

And,

On page ten, section twenty-eight-a, line forty-six, after “§29-12D-1” by inserting the words “et seq.”.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 576, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 576) passed with its title.

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

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

**Eng. Com. Sub. for Senate Bill 582**, Allowing candidate for political party executive committee serve as election official.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page one, section twenty-eight, line eleven, after the word “committee” by inserting the words “or delegate to the national convention of a political party”;

On page one, section twenty-eight, lines twelve and thirteen, by striking out all of subsection (4) and inserting in lieu thereof a new subsection, designated subsection (4), to read as follows:

“(4) May not be the parent, child, sibling, or spouse of a candidate on the ballot for any office, other than for district, county, or state political party executive committee or delegate to the national convention of a political party, or an official write-in candidate for any office, other than for district, county, or state political party executive committee or delegate to the national convention of a political party, in the precinct where the official serves;”;

And,

By striking out the title and substituting therefore a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 582**—A Bill to amend and reenact §3-1-28 of the Code of West Virginia, 1931, as amended, relating to eligibility to be appointed or serve as an election official; and permitting candidates for district, county, or state political party executive committee or delegate to the national convention of a political party, and permitting the parent, child, sibling, or spouse of such a candidate, to serve as election officials.

On motion of Senator Ferns, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for S. B. 582) and requested the House of Delegates to recede therefrom.

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

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

**Eng. Senate Bill 584**, Finding certain claims against state to be moral obligations of state.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page ten, section one, subsection (f), subdivision (206), by striking out “Mazaska” and inserting in lieu thereof “Mazeska”;

On page ten, section one, subsection (f), subdivision (210), after the word “Kenneth” by inserting the words “McGee and”;

On page thirteen, section one, subsection (f), subdivision (274), by striking out “\$115.00” and inserting in lieu thereof “\$442.98”;

On page fifteen, section one, subsection (f), subdivision (335), by striking out “\$220.69” and inserting in lieu thereof “\$239.76”;

And,

On page seventeen, section one, after subsection (k), by inserting a new subsection, designated subsection (l), to read as follows:

*(l) Claim against the Public Service Commission of West Virginia:*

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Pullman Power, LLC.....\$204,176.95

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 584, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, and Carmichael (Mr. President)—32.

The nays were: Woelfel—1.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 584) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, and Carmichael (Mr. President)—32.

The nays were: Woelfel—1.

Absent: Mann—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 584) takes effect from passage.

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

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

**Eng. Com. Sub. for Senate Bill 589**, Relating to issuance of personalized plates for antique motor vehicles.

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

**Eng. Com. Sub. for Senate Bill 590**, Providing special license plate for curing childhood cancer.

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

**Eng. Com. Sub. for Senate Bill 616**, Establishing maximum gross weight for certain wood-bearing trucks.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

On page three, section eleven, line fifty-eight, after the word "The" by inserting the word "maximum".

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Senate Bill 616, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, and Carmichael (Mr. President)—31.

The nays were: Drennan and Woelfel—2.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 616) passed with its title.

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

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

**Eng. Senate Bill 626**, Relating generally to coal mining.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

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

### **ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.**

#### **§22-3-9. Permit application requirements and contents.**

(a) The surface mining permit application shall contain:

(1) The names and addresses of: (A) The permit applicant; (B) the owner of record of the property, surface, and mineral to be mined; (C) the holders of record of any leasehold interest in the property; (D) any purchaser of record of the property under a real estate contract; (E) the

operator, if different from the applicant; and (F) if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent;

(2) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area: *Provided*, That all residents living on property contiguous to the proposed permit area shall be notified by the applicant, by registered or certified mail, of such application on or before the first day of publication of the notice provided for in §22-3-9(a)(6) of this code;

(3) A statement of any current surface mining permits held by the applicant in the state and the permit number and each pending application;

(4) If the applicant is a partnership, corporation, association, or other business entity, the following where applicable: The names and addresses of every officer, partner, resident agent, director or person performing a function similar to a director, together with the names and addresses of any person owning of record 10 percent or more of any class of voting stock of the applicant; and a list of all names under which the applicant, officer, director, partner, or principal shareholder previously operated a surface mining operation in the United States within the five-year period preceding the date of submission of the application;

(5) A statement of whether the applicant, or any officer, partner, director, principal shareholder of the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant, has ever been an officer, partner, director, or principal shareholder in a company which has ever held a federal or state mining permit which in the five-year period prior to the date of submission of the application has been permanently suspended or revoked or has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;

(6) A copy of the applicant's advertisement to be published in a newspaper of general circulation in the locality of the proposed permit area at least once a week for four successive weeks on a form and in a manner prescribed by the secretary, which manner may be electronic. The advertisement shall contain, in abbreviated form, the information required by this section including the ownership and map of the tract location and boundaries of the proposed site so that the proposed operation is readily locatable by local residents, the location of the office of the ~~division~~ department where the application is available for public inspection, and stating that written protests will be accepted by the ~~director~~ secretary until a certain date which is at least 30 days after the last publication of the applicant's advertisement;

(7) A description of the type and method of surface mining operation that exists or is proposed, the engineering techniques used or proposed, and the equipment used or proposed to be used;

(8) The anticipated starting and termination dates of each phase of the surface mining operation and the number of acres of land to be affected;

(9) A description of the legal documents upon which the applicant's legal right to enter and conduct surface mining operations on the proposed permit area is based and whether that right is the subject of pending court litigation: *Provided*, That nothing in this article may be construed as vesting in the ~~director~~ secretary the jurisdiction to adjudicate property-rights disputes;

(10) The name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged;

(11) A determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the ~~director~~ secretary of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area, and particularly upon water availability: *Provided*, That this determination is not required until ~~such~~ the time as hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency or, if existing and in the possession of the applicant, from the applicant: *Provided, however*, That the permit application shall not be approved until the information is available and is incorporated into the application;

(12) Accurate maps to an appropriate scale clearly showing: (A) The land to be affected as of the date of application; (B) the area of land within the permit area upon which the applicant has the legal right to enter and conduct surface mining operations; and (C) all types of information set forth on enlarged topographical maps of the United States geological survey of a scale of 1:24,000 or larger, including all man-made features and significant known archaeological sites existing on the date of application. In addition to other things specified by the ~~director~~ secretary, the map shall show the boundary lines and names of present owners of record of all surface areas abutting the proposed permit area and the location of all structures within 1,000 feet of the proposed permit area;

(13) Cross-section maps or plans of the proposed affected area, including the actual area to be mined, prepared by, or under the direction of, and certified by a person approved by the ~~director~~ secretary, showing pertinent elevation and location of test borings or core samplings, where required by the ~~director~~ secretary, and depicting the following information: (A) The nature and depth of the various strata or overburden; (B) the location of subsurface water, if encountered, and its quality; (C) the nature and thickness of any coal or rider seams above the seam to be mined; (D) the nature of the stratum immediately beneath the coal seam to be mined; (E) all mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; (F) existing or previous surface mining limits; (G) the location and extent of known workings of any underground mines, including mine openings to the surface; (H) the location of any significant aquifers; (I) the estimated elevation of the water table; (J) the location of spoil, waste, or refuse areas and topsoil preservation areas; (K) the location of all impoundments for waste or erosion control; (L) any settling or water treatment facility or drainage system; (M) constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and (N) adequate profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan;

(14) A statement of the result of test borings or core samples from the permit area, including: (A) Logs of the drill holes; (B) the thickness of the coal seam to be mined and analysis of the chemical and physical properties of the coal; (C) the sulfur content of any coal seam; (D) chemical analysis of potentially acid or toxic forming sections of the overburden; and (E) chemical analysis of the stratum lying immediately underneath the coal to be mined: *Provided*, That the provisions of this subdivision may be waived by the ~~director~~ secretary with respect to the specific application by a written determination that such requirements are unnecessary;

(15) For those lands in the permit application which a reconnaissance inspection suggests may be prime farmlands, a soil survey shall be made or obtained according to standards

established by the ~~secretary~~ Commissioner of Agriculture in order to confirm the exact location of ~~such~~ the prime farmlands;

(16) A reclamation plan as presented in §22-3-10 of this code;

(17) Information pertaining to coal seams, test borings, core samplings, or soil samples as required by this section shall be made available to any person with an interest who is or may be adversely affected: *Provided*, That information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding mineral or elemental content which is potentially toxic to the environment, shall be kept confidential and not made a matter of public record;

(18) When requested by the ~~director~~ secretary, the climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges; and

(19) Other information that may be required by rules reasonably necessary to effectuate the purposes of this article.

(b) If the ~~director~~ secretary finds that the probable total annual production at all locations of any coal surface mining operator will not exceed 300,000 tons, the determination of probable hydrologic consequences including the engineering analyses and designs necessary as required by this article or rules promulgated thereunder; the development of cross-section maps and plans as required by this article or rules promulgated thereunder; the geologic drilling and statement of results of test borings and core samplings as required by this article or rules promulgated thereunder; preblast surveys required by this article or rules promulgated thereunder; the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by this article or rules promulgated thereunder; and the collection of archaeological and historical information required by this article and rules promulgated thereunder and any other archaeological and historical information required by the federal Department of the Interior and the preparation of plans that may be necessitated thereby shall, upon the written request of the operator, be performed by a qualified public or private laboratory designated by the ~~director~~ secretary and a reasonable cost of the preparation of ~~such~~ the determination and statement shall be assumed by the ~~division~~ department from funds provided by the United States Department of the Interior pursuant to the federal Surface Mining Control and Reclamation Act of 1977, as amended.

(c) Before the first publication of the applicant's advertisement as provided in this section, each applicant for a surface mining permit shall file, except for that information pertaining to the coal seam itself, a copy of the application for public inspection in the nearest office of the ~~division~~ department as specified in the applicant's advertisement.

(d) Each applicant for a permit shall be required to submit to the ~~director~~ secretary as a part of the permit application a certificate issued by an insurance company authorized to do business in this state covering the surface mining operation for which the permit is sought, or evidence that the applicant has satisfied state self-insurance requirements. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled to compensation under the applicable provisions of state law. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

(e) Each applicant for a surface mining permit shall submit to the ~~director~~ secretary as part of the permit application a blasting plan where explosives are to be used, which shall outline the procedures and standards by which the operator will meet the provisions of the blasting performance standards.

(f) The applicant shall file, as part of the permit application, a schedule listing all notices of violation, bond forfeitures, permit revocations, cessation orders, or permanent suspension orders resulting from a violation of the federal Surface Mining Control and Reclamation Act of 1977, as amended, this article or any law or regulation of the United States or any department or agency of any state pertaining to air or environmental protection received by the applicant in connection with any surface mining operation during the three-year period prior to the date of application, and indicating the final resolution of any notice of violation, forfeiture, revocation, cessation, or permanent suspension.

(g) Within five working days of receipt of an application for a permit, the ~~director~~ secretary shall notify the operator in writing, stating whether the application is administratively complete and whether the operator's advertisement may be published. If the application is not administratively complete, the ~~director~~ secretary shall state in writing why the application is not administratively complete.

**§22-3-20. Public notice; written objections; public hearings; informal conferences.**

(a) At the time of submission of an application for a surface mining permit or a significant revision of an existing permit pursuant to the provisions of this article, the applicant shall submit to the department a copy of the required advertisement for public notice on a form and in a manner prescribed by the secretary, which manner may be electronic. At the time of submission, the applicant shall place the advertisement in a local newspaper of general circulation in the county of the proposed surface-mining operation at least once a week for four consecutive weeks. The secretary shall notify various appropriate federal and state agencies as well as local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality in which the proposed surface mining operation will take place, notifying them of the operator's intention to mine on a particularly described tract of land and indicating the application number and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies, authorities, or companies may submit written comments within a reasonable period established by the secretary on the mining application with respect to the effect of the proposed operation on the environment which is within their area of responsibility. ~~Such~~ The comments shall be immediately transmitted by the secretary to the applicant and to the appropriate office of the department. The secretary shall provide the name and address of each applicant to the Commissioner of the Division of Labor who shall, within 15 days from receipt, notify the secretary as to the applicant's compliance, if necessary, pursuant to §21-5-14 of this code.

(b) Any person having an interest which is or may be adversely affected, or the officer or head of any federal, state, or local governmental agency, has the right to file written objections to the proposed initial or revised permit application for a surface mining operation with the secretary within 30 days after the last publication of the advertisement required in §22-3-20(a) of this code. ~~Such~~ The objections shall be immediately transmitted to the applicant by the secretary and shall be made available to the public. If written objections are filed and an informal conference requested within 30 days of the last publication of the above notice, the secretary shall then hold a conference in the locality of the proposed mining within a reasonable time after the close of the public comment period. Those requesting the conference shall be notified and the date, time, and

location of the informal conference shall also be advertised by the secretary in a newspaper of general circulation in the locality on a form and in a manner prescribed by the secretary, which manner may be electronic, at least two weeks prior to the scheduled conference date. The secretary may arrange with the applicant, upon request by any party to the conference proceeding, access to the proposed mining area for the purpose of gathering information relevant to the proceeding. An electronic or stenographic record shall be made of the conference proceeding unless waived by all parties. The record shall be maintained and shall be accessible to the parties at their respective expense until final release of the applicant's bond or other security posted in lieu thereof. The secretary's authorized agent shall preside over the conference. In the event all parties requesting the informal conference stipulate agreement prior to the conference and withdraw their request, a conference need not be held.

## ARTICLE 11. WATER POLLUTION CONTROL ACT.

### **§22-11-7a. Certification agreements; required provisions; ~~effective date.~~**

(a) Any applicant for the water quality certification that seeks certification of activities covered by the United States Army Corps of Engineers permits issued in accordance with 33 U.S.C. §1344 and 33 C.F.R. Parts 323 or 330 ~~for use at or in conjunction with a surface coal mining operation as defined in section three, article three of this chapter, certification may be issued subject to the following conditions:~~ may be issued a certification in accordance with the legislative rules entitled Rules for Individual State Certification of Activities Requiring a Federal Permit, 47 C.S.R. 5A.

~~(1) If the applicant's surface coal mining operation will not impact waters of the state designated as national resource waters and streams where trout naturally reproduce and will not impact wetlands of the state in a manner inconsistent with all applicable state or federal standards as the case may be, as required by the federal Clean Water Act, and if the watershed above the toe of the farthest downstream permanent structure authorized pursuant to the United States Army Corps of Engineers permits issued in accordance with 33 U.S.C. §1344 and 33 C.F.R. Parts 323 or 330 is less than two hundred fifty acres, then the director may issue a water quality certification pursuant to the requirements of this section. If the watershed above the toe of the farthest downstream permanent structure impacted is equal to or greater than two hundred fifty acres, the director shall require that mitigation be undertaken. Additionally, the director may require mitigation for temporary impacts to waters of the state as specified in subdivision (2) of this subsection.~~

~~(2) If the watershed above the toe of the farthest downstream permanent structure authorized pursuant to the United States Army Corps of Engineers permits issued in accordance with 33 U.S.C. §1344 and 33 C.F.R. Parts 323 or 330 is greater than or equal to two hundred fifty acres and all other necessary requirements are met consistent with this section, the director shall further condition a water quality certification on a requirement that the applicant mitigate the expected water quality impacts under the following conditions:~~

~~(A) The water quality certification may require mitigation at a ratio appropriate to the type of waters impacted, consistent with state or federal standards as required by the federal Clean Water Act, for the types and locations of waters impacted;~~

~~(B) The Director may accept mitigation on the permitted area, mitigation off the permitted area, mitigation banking of waters of the state, or any combination thereof, or any other mitigation measure acceptable to the Director; and~~

~~(C) The Director shall provide credit for any mitigation that is a required component of the permit issued by the United States Army Corps of Engineers pursuant to 33 U.S.C. §1344 to the extent that it satisfies required mitigation pursuant to this section.~~

~~(D) Upon completion of the work required by an agreement to conduct operations authorized by this subsection the surface coal mining operation shall obtain a certification from a registered professional engineer that all mitigation work specified in the agreement has been completed in accordance with the conditions of the water quality certification. The director shall promptly review the certification and provide to the surface coal mining operation with notice that all mitigation work has been successfully completed, or that further mitigation work is necessary to meet the conditions imposed by the water quality certification. The mitigation amount may not exceed \$200,000 per acre of stream disturbed above the toe of the farthest downstream permanent structure. Those moneys shall be deposited in the stream restoration fund under the jurisdiction of the Division of Environmental Protection and any expenditures from this fund after June 30, 1998, shall not be authorized from collections but shall only be authorized by appropriation by the Legislature. Additionally, the expenditures are only authorized in those counties where the activity leading to the mitigation occurred or in those counties adjacent to the counties where the activity leading to the mitigation occurred. The Director shall by December 31, of each year provide a report to the Joint Committee on Government and Finance on receipts and expenditures from the stream restoration fund, the number of acreage reclaimed by the Division through the use of these funds and the effectiveness of achieving stream restoration through the payment of the mitigation amounts into the fund in lieu of reclamation by the certificate holder.~~

~~(3) The Director shall confer with representatives of the surface coal mining industry and representatives of environmental organizations with an interest in water quality in developing a manual of approval options for mitigation on permitted areas, mitigation off permitted areas and mitigation involving banking of waters of the state.~~

~~(4) (1) The proposed surface coal mining operation activity shall comply with all applicable state and federal laws, rules, and regulations.~~

~~(5) (2) The ~~director~~ secretary shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code, for the purpose of implementing the provisions of this section which rules shall include, but not be limited to, the following:~~

~~(A) Establishing all necessary operational and performance requirements for ~~an operator~~ a person undertaking activities covered by this section;~~

~~(B) Modifying the provisions of this section, when necessary and appropriate to bring the provisions of this section into compliance with state or federal law or regulation; and~~

~~(C) Establishing the specific operational requirements for ~~mining operations~~ the activity consistent with this section appropriate to protect the waters of this state during and following ~~mining operations~~ the activity.~~

~~(b) The Joint Committee on Government and Finance may undertake or facilitate a study of the impact of mountaintop mining and valley fills upon the State of West Virginia.~~

~~(1) To facilitate the study, the Joint Committee on Government and Finance is further authorized to coordinate with and seek funding from appropriate federal agencies to facilitate the study including, but not limited to: The federal Environmental Protection Agency, Army Corps of~~

Engineers, Office of Surface Mining Reclamation and Enforcement, and the Fish and Wildlife Service.

(2) In order to facilitate the research, the Joint Committee on Government and Finance shall appoint a council to coordinate and direct the research. The composition of the council shall be determined by the joint committee, but shall include representatives from the various interested parties as determined solely by the joint committee.

## **CHAPTER 22A. MINERS' HEALTH, SAFETY, AND TRAINING.**

### **ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY, AND TRAINING; ADMINISTRATION; ENFORCEMENT.**

#### **§22A-1-36. Mandatory safety programs; penalties.**

(a) The director, in consultation with the state Board of Coal Mine Health and Safety, shall promulgate rules in accordance with §29A-1-1 *et seq.* of this code, detailing the requirements for mine safety programs to be established by coal operators, as provided in §22A-1-36(b) of this code. The rules may require different types of safety programs to be developed, depending upon the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine, or any other factor deemed relevant by the director.

(b) Within six months of the date when the rules required in §22A-1-36(a) of this code become final, each operator shall develop and submit to the director a comprehensive mine safety program for each mine, in accordance with such rules. Each employee of the mine shall be afforded an opportunity to review and submit comments to the director regarding the modification or revision of such program, prior to submission of such program to the director. Upon submission of such program the director has ~~ninety~~ 90 days to approve, reject, or modify such program. If the program is rejected, the director shall give the operator a reasonable time to correct and resubmit such program. ~~Each program which is approved shall be reviewed, at least annually, by the director.~~ An up-to-date copy of each program shall be placed on file in the office and further copies shall be made available to the miners of each mine and their representatives. Each operator shall undertake all efforts necessary to assure total compliance with the appropriate safety program at each mine and shall fully implement all portions of such program. Once approved, a comprehensive mine safety program shall not be subject to annual review by the director: *Provided*, That a program may be subject to annual review by the director after a fatality or serious accident involving bodily harm has occurred, or, if the operator has shown a pattern of mine safety violations as defined by §22A-1-15(2) of this code, such a finding shall also warrant annual review by the director. The director shall promulgate emergency rules in order to comply with this subsection.

(c) Any person violating any provision of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000, or imprisoned in the county jail for not more than six months, or both fined and imprisoned.

#### **§22A-1-42. Surface ground control plan; automated external defibrillator.**

(a) The MSHA-approved surface ground control plan shall serve as the state-approved plan, and the operator, upon approval by MSHA, shall provide a copy of the MSHA-approved surface ground control plan to the director.

(b) Automated external defibrillators (AEDs) shall be required on all surface mining operations. The director shall promulgate emergency rules in order to comply with this section of code, giving special consideration to the climate sensitive nature of AEDs.

## **ARTICLE 2. UNDERGROUND MINES.**

### **VENTILATION**

#### **§22A-2-2. Submittal of detailed ventilation plan to director.**

(a) A mine operator shall submit a detailed ventilation plan and any addenda to the director for review and comment. The mine operator shall review the plan with the director and address concerns to the extent practicable. The operator shall deliver to the miners' representative employed by the operator at the mine, if any, a copy of the operator's proposed annual ventilation plan at least 10 days prior to the date of submission. The miners' representative, if any, shall be afforded the opportunity to submit written comments to the operator prior to such submission; in addition, the miners' representative, if any, may submit written comments to the director. The director shall submit any concern that is not addressed to the United States Department of Labor - Mine Safety and Health Administration (MSHA) through comments to the plan. The mine operator shall provide a copy of the plan to the director 10 days prior to the submittal of the plan to MSHA. The MSHA-approved plan shall serve as the state-approved plan: *Provided*, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in state code or code of state rules.

(b) The operator shall give the director a copy of the MSHA-approved plan and any addenda as soon as the operator receives the approval.

(c) In the event of an unforeseen situation requiring immediate action on a plan revision, the operator shall submit the proposed revision to the director and the miners' representative, if any, employed by the operator at the mine when the proposed revision is submitted to MSHA. The director shall work with the operator to review and comment on the proposed plan revision to MSHA as quickly as possible.

(d) Upon approval by MSHA, the plan is enforceable by the director. The approved plan and all revisions and addenda thereto shall be posted on the mine bulletin board and made available for inspection by the miners at that mine for the period of time that they are in effect.

#### **§22A-2-3. Fans.**

(a) The ventilation of mines, the systems for which extend for more than 200 feet underground, and which are opened after the effective date of this article, shall be produced by a mechanically operated fan or mechanically operated fans. Ventilation by means of a furnace is prohibited in any mine. The fan or fans shall be kept in continuous operation, unless written permission to do otherwise be granted by the director. In case of interruption to a ventilating fan or its machinery whereby the ventilation of the mine is interrupted, immediate action shall be taken by the mine operator or the operator's management personnel, in all mines, to cut off the power and withdraw the men from the face regions or other areas of the mine affected. If ventilation is restored in 15 minutes, the face regions and other places in the affected areas where gas (methane) is likely to accumulate, shall be reexamined by a certified person; and if found free of explosive gas, power may be restored and work resumed. If ventilation is not restored in 15 minutes, all underground employees shall be removed from the mine, all power shall be cut off in a timely manner, and the

underground employees shall not return until ventilation is restored and the mine examined by certified persons, mine examiners, or other persons holding a certificate to make preshift examination. If ventilation is restored to the mine before miners reach the surface, the miners may return to underground working areas only after an examination of the areas is made by a certified person and the areas are determined to be safe.

(b) All main fans installed after the effective date of this article shall be located on the surface in fireproof housings offset not less than 15 feet from the nearest side of the mine opening, equipped with fireproof air ducts, provided with explosion doors or a weak wall, and operated from an independent power circuit. In lieu of the requirements for the location of fans and pressure-relief facilities, a fan may be directly in front of, or over a mine opening: *Provided*, That such opening is not in direct line with possible forces coming out of the mine if an explosion occurs: *Provided, however*, That there is another opening having a weak wall stopping or explosion doors that would be in direct line with forces coming out of the mine. All main fans shall be provided with pressure-recording gauges or water gauges. A daily inspection shall be made of all main fans and machinery connected therewith by a certified electrician and a record kept of the same in a book prescribed for this purpose or by adequate facilities provided to permanently record the performance of the main fans and to give warning of an interruption to a fan.

(c) Auxiliary fans and tubing shall be permitted to be used in lieu of or in conjunction with line brattice to provide adequate ventilation to the working faces: *Provided*, That auxiliary fans be so located and operated to avoid recirculation of air at any time. Auxiliary fans shall be approved and maintained as permissible.

(d) If the auxiliary fan is stopped or fails, the electrical equipment in the place shall be stopped and the power disconnected at the power source until ventilation in the working place is restored. During such stoppage, the ventilation shall be, by means of the primary air current conducted into the place, in a manner to prevent accumulation of methane.

(e) In places where auxiliary fans and tubing are used, the ventilation between shifts, weekends, and idle shifts shall be provided to face areas with line brattice or the equivalent to prevent accumulation of methane.

(f) The director may require that when continuous mine equipment is being used, all face ventilating systems using auxiliary fans and tubing shall be provided with machine-mounted diffuser fans, and such fans shall be continuously operated during mining operations.

(g) In the event of a fire or explosion in any coal mine, the ventilating fan or fans shall not intentionally be started, stopped, speed increased or decreased or the direction of the air current changed without the approval of the general mine foreman, and, if he or she is not immediately available, a representative of the Office of Miners' Health, Safety, and Training. A duly authorized representative of the employees should be consulted if practical under the circumstances.

(h) The MSHA-approved plan relating to fans shall serve as the state-approved plan: *Provided*, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in state code or code of state rules.

#### **§22A-2-4. Ventilation of mines in general.**

(a) The operator or mine foreman of every coal mine, whether worked by shaft, slope, or drift, shall provide and hereafter maintain for every such mine adequate ventilation. In all mines the

quantity of air passing through the last open crosscut between the intake and return in any pair or set of entries shall be not less than 9,000 cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. All working faces in a working section between the intake and return airway entries shall be ventilated with a minimum quantity of 3,000 cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. The quantity of air reaching the last crosscut in pillar sections may be less than 9,000 cubic feet of air per minute if at least 9,000 cubic feet of air per minute is being delivered to the intake of the pillar line. The air current shall under any conditions have a sufficient volume and velocity to reduce and carry away smoke from blasting and any flammable or harmful gases. The operator shall provide to the safety committee access to anemometers and smoke tubes while performing their duties. All active underground working places in a mine shall be ventilated by a current of air containing not less than 19 and five-tenths percent of oxygen, not more than five-tenths percent of carbon dioxide, and no harmful quantities of other noxious or poisonous gases.

(b) Airflow shall be maintained in all intake and return air courses of a mine and, where multiple fans are used, neutral areas created by pressure equalization between main fans shall not be permitted. Production activities in working faces shall cease while tubing, line brattice or other ventilation devices are being installed in by the machine operator.

(c) Properly installed and adequately maintained line brattice or other approved devices shall be continuously used from the last open crosscut of an entry or room of each working section to provide adequate ventilation to the working faces for the miners and to remove flammable, explosive and noxious gases, dust, and explosive fumes. When damaged by falls or otherwise, such line brattice or other devices shall be repaired immediately.

(d) Brattice cloth used underground shall be of flame-resistant material. The space between the line brattice or other approved device and the rib shall be large enough to permit the flow of a sufficient volume and velocity of air to keep the working face clear of flammable, explosive and noxious gases, dust, and explosive fumes.

(e) Each working unit newly developed in virgin coal hereafter, shall be ventilated by a separate split of air: *Provided*, That in areas already under development and in areas where physical conditions prevent compliance with this provision, the director may grant temporary relief from compliance until such time as physical conditions make compliance possible. The quantity of air reaching the last crosscut shall not be less than 9,000 cubic feet of air per minute and shall under any condition have sufficient volume and velocity to reduce and carry away smoke and flammable or harmful gases from each working face in the section.

(f) As working places advance, crosscuts for air shall be made not more than 105 feet apart. Where necessary to render harmless and carry away noxious or flammable gases, line brattice or other approved methods of ventilation shall be used so as to properly ventilate the face. All crosscuts between the main intake and return airways not required for passage of air and equipment shall be closed with stoppings substantially built with incombustible or fire-resistant material so as to keep working places well ventilated. In mines where it becomes necessary to provide larger pillars for adequate roof support, working places shall not be driven more than 200 feet without providing a connection that will allow the free flow of air currents. In such cases, a minimum of 12,000 cubic feet of air a minute shall be delivered to the last open crosscut and as much more as is necessary to dilute and render harmless and carry away flammable and noxious gases.

(g) In special instances for the construction of sidetracks, haulageways, airways, or openings in shaft bottom or slope bottom layouts where the size and strength of pillars is important, the director may issue a permit approving greater distances. The permit shall specify the conditions under which such places may be driven.

(h) In all mines a system of bleeder openings on air courses, designed to provide positive movement of air through and/or around abandoned or caved areas, sufficient to prevent dangerous accumulation of gas in such areas, and to minimize the effect of variations in atmospheric pressure shall be made a part of pillar recovery plans projected after July 1, 1971.

(i) If a bleeder return is closed as a result of roof falls or water during pillar recovery operations, pillar operations may continue without reopening the bleeder return if at least 20,000 cubic feet of air per minute is delivered to the intake of the pillar line.

(j) No operator or mine foreman shall permit any person to work where he or she is unable to maintain the quantity and quality of the air current as heretofore required: *Provided*, That such provisions shall not prohibit the employment of men to make place of employment safe.

(k) The ventilation of any mine shall be so arranged by means of air locks, overcasts or undercasts, that the use of doors on passageways where men or equipment travel may be kept to a minimum. Where doors are used in a mine, they shall be erected in pairs so as to provide a ventilated air lock unless the doors are operated mechanically.

(l) A crosscut shall be provided at or near the face of each entry or room before such places are abandoned.

(m) Overcasts or undercasts shall be constructed of incombustible material and maintained in good condition.

(n) After January 1, 1987, all run through check curtains shall be substantially constructed of translucent material, except that where belting material has to be used because of high velocity, there shall be a window of translucent material at least 30 inches square or one-half the height of the coal seam, whichever is less.

(o) The MSHA-approved plan shall serve as the state-approved plan: *Provided*, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in state code or code of state rules.

#### **§22A-2-4a. Use of belt air.**

(a) *Definitions.* — For purposes of this section, “belt air” means the use of a belt conveyor entry as an intake air course to ventilate the working sections of a mine or areas where mechanized mining equipment is being installed or removed.

(b) Upon the effective date of the enactment of this section, belt air may not be used to ventilate the working sections of a mine or areas where mechanized mining equipment is being installed or removed: *Provided*, That if an alternative method of ventilation will at all times guarantee no less than the same measure of protection afforded the miners of an underground mine by the foregoing or if the application of the foregoing to an underground mine will result in a diminution of safety to the miners in the mine, the director may approve the interim use of belt air pursuant to the following: The MSHA-approved plan for use of belt air shall serve as the state-

approved plan: *Provided*, That the MSHA-approved plan shall contain all provisions of state mining law as set forth in state code or code of state rules.

~~(1) For those operators using belt air pursuant to a ventilation plan approved by the director in accordance with the provisions of section two of this article prior to the effective date of the enactment of this section, the director shall cause an inspection to be made of the mine ventilation system and ventilation equipment. The director may allow the continued use of belt air in that mine if he or she determines that: (i) The use meets the minimum requirements of 30 CFR 75.350(b); and (ii) the use, as set forth in the ventilation plan and as inspected, will at all times guarantee no less than the same measure of protection afforded the miners of the mine if belt air were not used, or that the prohibition of the use of belt air in the mine will result in a diminution of safety to the miners in the mine.~~

~~(2) For those operators submitting on or after the effective date of the enactment of this section, a ventilation plan proposing the use of belt air to the director pursuant to section two of this article, the director shall immediately upon receipt of the plan give notice of the plan to the representative of the miners in that mine and cause any investigation to be made that the director considers appropriate: *Provided*, That the investigation shall include a review of any comments on the plan submitted by the representative of miners in the mine. Upon receiving the report of the investigation, the director shall make findings of fact and issue a written decision, incorporating in the decision his or her findings and an order approving or denying the use of belt air pursuant to the terms of the ventilation plan. To approve the use of belt air pursuant to a ventilation plan, the director shall, at a minimum, determine that: (i) The operator's proposed use of belt air meets the minimum requirements of 30 CFR 75.350(b); and (ii) approval of the proposed use of belt air will at all times guarantee no less than the same measure of protection afforded the miners of the mine if belt air were not used, or that the prohibition of the use of belt air in the mine will result in a diminution of safety to the miners in the mine.~~

~~(3) The interim use of belt air shall be accurately reflected in operator's plan of ventilation, as approved by the director in accordance with the provisions of section two of this article.~~

~~(c) Upon completion of the independent scientific and engineering review concerning the use of belt air and the composition and fire retardant properties of belt materials in underground coal mining by the technical study panel created pursuant to the provisions of 30 U. S. C. §963 and the Secretary of the United States Department of Labor's corresponding report to Congress pursuant to the review, the Board of Coal Mine Health and Safety shall, within thirty days of the Secretary of Labor's report to Congress, provide the Governor with its recommendations, if any, for the enactment, repeal or amendment of any statute or rule which would enhance the safe ventilation of underground mines and the health and safety of miners: *Provided*, That at least sixty days after the Secretary of Labor's report to Congress, the Board of Coal Mine Health, Safety and Training shall promulgate emergency rules regulating the use of belt air in light of that report: *Provided, however*, That the provisions of subsections (a) and (b) of this section shall expire and no longer have any force and effect upon the filing of such emergency rules.~~

#### **§22A-2-5. Unused and abandoned parts of mine.**

(a) In any mine, all workings which are abandoned after July 1, 1971, shall be sealed or ventilated. If the workings are sealed, the sealing shall be done with incombustible material in a manner prescribed by the director and one or more of the seals of every sealed area shall be fitted with a pipe and cap or valve to permit the sampling of gases and measuring of hydrostatic

pressure behind the seals. For the purpose of this section, working within a panel shall not be considered to be abandoned until the panel is abandoned.

(b) Air that has passed through an abandoned area or an area which is inaccessible or unsafe for inspection shall not be used to ventilate any working place in any working mine, unless permission is granted by the director with unanimous agreement of the technical and mine safety review committee. Air that has been used to ventilate seals shall not be used to ventilate any working place in any working mine. Air which has been used to ventilate an area from which the pillars have been removed shall not be used to ventilate any working place in a mine, except that the air, if it does not contain 0.25 volume percent or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries. Before sealed areas, temporary or permanent, are reopened, the director shall be notified.

(c) On or after the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, a professional engineer registered with the Board of Registration for Professional Engineers pursuant to §30-13-1 *et seq.* of this code shall certify the design of all new seals as meeting the criteria established by the director. Every seal design shall have the professional engineer's certificate and signature, in addition to his or her seal, in the following form:

"I the undersigned, do hereby certify that this seal design is, to the best of my knowledge, in accordance with all applicable requirements under state and federal law, rules and regulations.

\_\_\_\_\_ P.E."

(d) On or after the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, the director shall approve the construction of all new seals in accordance with rules authorized in this section. The construction shall also be:

(1) Certified by the mine foreman-fire boss of the mine as being in accordance with the design certified by a professional engineer pursuant to 22A-2-5(c) of this code; and

(2) (A) Constructed of solid concrete blocks and in accordance with the other provisions of 30 CFR 75.335(a)(1); or

(B) Constructed in a manner that the director has approved as having the capability to withstand pressure equal to or greater than a seal constructed in accordance with the provisions of 30 CFR 75.335(a)(1).

(e) On or after the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, the operator shall inspect the physical condition of all seals and measure the atmosphere behind all seals in accordance with protocols developed by the Board of Coal Mine Health and Safety, pursuant to rules authorized in this section and consistent with a mine-specific atmospheric measurement plan submitted to and approved by the director. The atmospheric measurements shall include, but not be limited to, the methane and oxygen concentrations and the barometric pressure. The atmospheric measurements also shall be recorded with ink or indelible pencil in a book kept for that purpose on the surface at a location designated by the operator. The protocols shall specify appropriate methods for inspecting the physical condition of seals, measuring the mine atmosphere in sealed workings, and inerting the mine atmosphere behind the seals, where appropriate.

(f) (1) In all mines containing workings sealed using seals constructed in accordance with the provisions of 30 CFR 75.335(a)(2) which are constructed: (A) Of cementitious foam blocks; or (B) with methods or materials that the Board of Coal Mine Health and Safety determines do not provide an adequate level of protection to miners, the operator shall, pursuant to a plan submitted to and approved by the director, remediate the seals by either enhancing the seals or constructing new seals in place of or immediately outby the seals. After being remediated, all seals must have the capability to withstand pressure equal to or greater than a seal constructed in accordance with the provisions of 30 CFR 75.335(a)(1). The design, development, submission and implementation of the remediation plan is the responsibility of the operator of each mine. Pursuant to rules authorized in this section, the Board of Coal Mine Health and Safety shall specify appropriate methods of enhancing the seals.

(2) Notwithstanding any provision of this code to the contrary, if the director determines that any seal described in §22A-2-5(f)(1) of this code is incapable of being remediated in a safe and effective manner, the mine foreman-fire boss shall, at least once every 24 hours, inspect the physical condition of the seal and measure the atmosphere behind the seal. The daily inspections and measurements shall otherwise be performed in accordance with the protocols and atmospheric measurement plan established pursuant to §22A-2-5(e) of this code.

(g) Upon the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, second mining of lower coal on retreat, also known as bottom mining, shall not be permitted in workings that will be sealed unless an operator has first submitted and received approval by the director of a remediation plan that sets forth measures that will be taken to mitigate the effects of remnant ramps and other conditions created by bottom mining on retreat which can increase the force of explosions originating in and emanating out of workings that have been bottom mined. The director shall require that certification in a manner similar to that set forth in §22A-2-5(c) of this code shall be obtained by the operator from a professional engineer and the mine foreman-fire boss for the plan design and plan implementation, respectively.

(h) No later than 60 days after the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, the Board of Coal Mine Health and Safety shall develop and promulgate rules pursuant to the provisions of §22A-6-4 of this code to implement and enforce the provisions of this section.

(i) Upon the issuance of mandatory health and safety standards relating to the sealing of abandoned areas in underground coal mines by the Secretary of the United States Department of Labor pursuant to 30 U. S. C. §811, as amended by section 10 of the federal Mine Improvement and New Emergency Response Act of 2006, the director, working in consultation with the Board of Coal Mine Health and Safety, shall, within 30 days, provide the Governor with his or her recommendations, if any, for the enactment, repeal, or amendment of any statute or rules which would enhance the safe sealing of abandoned mine workings and the health and safety of miners.

(j) The MSHA-approved plan for seals shall serve as the state-approved plan: *Provided, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in this code or code of state rules.*

## ROOF – FACE – RIBS

**§22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.**

(a) Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revisions thereof suitable to the roof conditions and mining systems of each coal mine and approved by the director shall be adopted and set out in printed form before new operations. The safety committee of the miners of each mine where such committee exists shall be afforded the opportunity to review and submit comments and recommendations to the director and operator concerning the development, modification, or revision of such roof control plans. The plan shall show the type of support and spacing approved by the director. Such plan shall be reviewed periodically, at least every six months by the director, taking into consideration any falls of roof or rib or inadequacy of support of roof or ribs. A copy of the plan shall be furnished to the director or his or her authorized representative and shall be available to the miners and their representatives. The MSHA-approved roof control plan shall serve as the state-approved plan: Provided, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in this code or code of state rules.

(b) The operator, in accordance with the approved plan, shall provide at or near each working face and at such other locations in the coal mine, as the director may prescribe, an ample supply of suitable materials of proper size with which to secure the roof thereof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof bolt holes are being drilled, roof bolts are being installed, and in such other circumstances as may be appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or supported. When overhangs or brows occur along rib lines they shall be promptly removed. All sections shall be maintained as near as possible on center. Except in the case of recovery work, supports knocked out shall be replaced promptly. Apprentice miners shall not be permitted to set temporary supports on a working section without the direct immediate supervision of a certified miner.

(c) The operator of a mine has primary responsibility to prevent injuries and deaths resulting from working under unsupported roof. Every operator shall require that no person may proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners.

(d) The immediate supervisor of any area in which unsupported roof is located shall not direct or knowingly permit any person to proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners.

(e) No miner shall proceed beyond the last permanent support in violation of a direct or standing order of an operator, a foreman or an assistant foreman, unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miner.

(f) The immediate supervisor of each miner who will be engaged in any activity involving the securing of roof or rib during a shift shall, at the onset of any such shift, orally review those parts of the roof control plan relevant to the type of mining and roof control to be pursued by such miner.

(g) Any action taken against a miner due, in whole or in part, to his or her refusal to work under unsupported roof, where such work would constitute a violation of this section, is prohibited as an

act of discrimination pursuant to §22A-1-22 of this code. Upon a finding of discrimination by the appeals board pursuant to §22A-1-22(b) of this code, the miner shall be awarded by the appeals board all reliefs available pursuant to §22A-1-22(b) and §22A-1-22(c) of this code.

**§22A-2-26. Roof support; specific requirements.**

(a) *Generally.* — The method of mining followed in any coal mine shall may not expose the miner to unusual dangers from roof falls, and the MSHA-approved plan shall serve as the state-approved plan: Provided, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in this code or code of state rules.

(b) *Roadways, intersections, and arches.* — The width of roadways shall not exceed 16 feet unless additional support is added cross sectional. During the development of intersections, the roof between the tangents of the arches in the entry or room shall be supported with artificial roof supports prior to the development of such intersections. All areas where the arch is broken shall be considered as having unsupported roof and such roof should have artificial roof supports installed prior to any other work being performed in the area.

(c) *Examinations and corrections.* — Where miners are exposed to danger from falls of-roof, face and ribs, the operator shall examine and test the roof, face and ribs before any work or machine is started, and as frequently thereafter as may be necessary to insure safety. When dangerous conditions are found, they shall be corrected immediately. A probe or probes for methane detectors shall be provided on each working section other than longwall sections and sections mined solely with continuous miners with integral roof bolters.

(d) *Roof bolt recovery.* — Roof bolts shall not be recovered where complete extraction of pillars is attempted, where adjacent to clay veins or at the locations of other irregularities, whether natural or otherwise, that induce abnormal hazards. Where roof bolt recovery is permitted, it shall be conducted only in accordance with methods prescribed in the approved roof control plan, and shall be conducted by experienced miners and only where adequate temporary support is provided.

**TRANSPORTATION**

**§22A-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.**

(a) Use of haulage roads and equipment along with signals and inspection shall meet standards established by the U. S. Mine Safety and Health Administration. The roadbed, rails, joints, switches, frogs, and other elements of all haulage roads shall be constructed, installed, and maintained in a manner consistent with speed and type of haulage operations being conducted to ensure safe operation. Where transportation of personnel is exclusively by rail, track shall be maintained to within 1,500 feet of the nearest working face, except that when any section is fully developed and being prepared for retreating, then the track shall be maintained to within 1,500 feet of that retreat mining section if a rubber tired vehicle is readily available: *Provided, That in any case where such track is maintained to within a distance of more than 500 feet and not more than 1,500 feet of the nearest working face, a self-propelled, rubber-tired vehicle capable of transporting an injured worker shall be readily available.*

(b) Track switches, except room and entry development switches, shall be provided with properly installed throws, bridle bars and guard rails; switch throws and stands, where possible, shall be placed on the clearance side.

(c) Haulage roads on entries shall have a continuous, unobstructed clearance of at least 24 inches from the farthest projection of any moving equipment on the clearance side.

(d) On haulage roads where trolley lines are used, the clearance shall be on the side opposite the trolley lines.

(e) On the trolley wire or "tight" side, there shall be at least 12 inches of clearance from the farthest projection of any moving equipment.

(f) Warning lights or reflective signs or tapes shall be installed along haulage roads at locations of abrupt or sudden changes in the overhead clearance.

(g) The clearance space on all haulage roads shall be kept free of loose rock, coal, supplies, or other material: *Provided*, That not more than 24 inches need be kept free of such obstructions.

(h) Ample clearance shall be provided at all points where supplies are loaded or unloaded along haulage roads or conveyors which in no event shall be less than 24 inches.

(i) Shelter holes shall be provided along haulage entries. Such shelter holes shall be spaced not more than 105 feet apart, except when variances are authorized by the director with unanimous agreement of the Mine Safety and Technical Review Committee. Shelter holes shall be on the side of the entry opposite the trolley wire except that shelter holes may be on the trolley wire and feeder wire side if the trolley wire and feeder wire are guarded in a manner approved by the director. The MSHA-approved plan shall serve as the state-approved plan governing the use of shelters: *Provided*, That the MSHA-approved plan shall comply with all other provisions of state mining law as set forth in state code or code of state rules.

(j) Shelter holes shall be at least five feet in depth, not more than four feet in width and as high as the traveling space, unless the director with unanimous agreement of the Mine Safety and Technical Review Committee grants a waiver. Room necks and crosscuts may be used as shelter holes even though their width exceeds four feet.

(k) Shelter holes shall be kept clear of refuse and other obstructions.

(l) Shelter holes shall be provided at switch throws and manually operated permanent doors.

(m) No steam locomotive shall be used in mines where miners are actually employed in the extraction of coal, but this shall not prevent operation of a steam locomotive through any tunnel haulway or part of a mine that is not in actual operation and producing coal.

(n) Underground equipment powered by internal combustion engines using petroleum products, alcohol, or any other compound shall not be used in a coal mine, unless the equipment is diesel-powered equipment approved, operated and maintained as provided in §22A-2-1 *et seq.* of this code.

(o) Locomotives, personnel carriers, mine cars, supply cars, shuttle cars, and all other haulage equipment shall be maintained in a safe operating condition. Each locomotive, personnel carrier,

barrier tractor. and other related equipment shall be equipped with a suitable lifting jack and handle. An audible warning device and headlights shall be provided on each locomotive and each shuttle car. All other mobile equipment, using the face areas of the mine, shall be provided with a conspicuous light or other approved device so as to reduce the possibility of collision.

(p) No persons other than those necessary to operate a trip or car shall ride on any loaded car or on the outside of any car. Where pusher locomotives are not used, the locomotive operator shall have an assistant to assist him or her in his or her duties.

(q) The pushing of trips, except for switching purposes, is prohibited on main haulage roads: *Provided*, That nothing herein shall prohibit the use of a pusher locomotive to assist the locomotive pulling a trip. Motormen and trip riders shall use care in handling locomotives and cars. It shall be their duty to see that there is a conspicuous light on the front and rear of each trip or train of cars when in motion: *Provided, however*, That trip lights need not be used on cars being shifted to and from loading machines, or on cars being handled at loading heads during gathering operations at working faces. No person, other than the motorman and brakeman, should ride on a locomotive unless authorized by the mine foreman, and then only when safe riding facilities are provided. An empty car or cars shall be used to provide a safe distance between the locomotive and the material car when rail, pipe, or long timbers are being hauled. A safe clearance shall be maintained between the end car or trips placed on side tracks and moving traffic. On haulage roads the clearance point shall be marked with an approved device.

(r) No motorman, trip rider, or brakeman shall get on or off cars, trips, or locomotives while they are in motion, except that a trip rider or brakeman may get on or off the rear end of a slowly moving trip or the stirrup of a slowly moving locomotive to throw a switch, align a derail, or open or close a door.

(s) Flying or running switches and riding on the front bumper of a car or locomotive are prohibited. Back poling shall be prohibited except with precaution to the nearest turning point (not over 80 feet), or when going up extremely steep grades and then only at slow speed. The operator of a shuttle car shall face in the direction of travel except during the loading operation when he or she shall face the loading machine.

(t) (1) A system of signals, methods, or devices shall be used to provide protection for trips, locomotives, and other equipment coming out onto tracks used by other equipment.

(2) In any coal mine where more than 350 tons of coal are produced on any shift in each 24-hour period, a dispatcher shall be on duty when there are movements of track equipment underground, including time when there is no production of coal. Such traffic shall move only at the direction of the dispatcher.

(3) The dispatcher's only duty shall be to direct traffic: *Provided*, That the dispatcher's duties may also include those of the responsible person required by §22A-2-42 of this code: *Provided, however*, That the dispatcher may perform other duties which do not interfere with his or her dispatching responsibilities and do not require him or her to leave the dispatcher's station except as approved by the Mine Safety and Technical Review Committee.

(4) Any dispatcher's station shall be on the surface.

(5) All self-propelled track equipment shall be equipped with two-way communications.

(u) Motormen shall inspect locomotives, and report any mechanical defects found to the proper supervisor before a locomotive is put in operation.

(v) A locomotive following another trip shall maintain a distance of at least 300 feet from the rear end of the trip ahead, unless such locomotive is coupled to the trip ahead.

(w) Positive stop blocks or derails shall be installed on all tracks near the top and at landings of shafts, slopes, and surface inclines. Positive-acting stop blocks or derails shall be used where necessary to protect persons from danger of runaway haulage equipment.

(x) Shuttle cars shall not be altered by the addition of sideboards so as to inhibit the view of the operator: *Provided*, That the addition of or use of sideboards on shuttle cars shall be permitted if the shuttle car is equipped with cameras: *Provided, however*, That shuttle cars with sideboards as manufactured by an equipment manufacturer shall be permitted to be used without the use of cameras if permitted by the director.

(y) Mining equipment shall not be parked within 15 feet of a check curtain or fly curtain.

(z) All self-propelled track haulage equipment shall be equipped with an emergency stop switch, self-centering valves, or other devices designed to de-energize the traction motor circuit in the event of an emergency. All track-mounted trolley equipment shall be equipped with trolley pole swing limiters or other means approved by the Mine Safety and Technical Review Committee to restrict movement of the trolley pole when it is disengaged from the trolley wire. Battery powered mobile equipment shall have the operating controls clearly marked to distinguish the forward and reverse positions.

#### **§22A-2-55. Protective equipment and clothing.**

(a) Welders and helpers shall use proper shields or goggles to protect their eyes. All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles or other eye hazards.

(b) Employees engaged in haulage operations and all other persons employed around moving equipment on the surface and underground shall wear snug-fitting clothing.

(c) Protective gloves shall be worn when material which may injure hands is handled, but gloves with gauntleted cuffs shall not be worn around moving equipment.

(d) Safety hats and safety-toed shoes shall be worn by all persons while in or around a mine: *Provided*, That metatarsal guards are not required to be worn by persons when working in those areas of underground mine workings which average less than 48 inches in height as measured from the floor to the roof of the underground mine workings.

(e) Approved eye protection shall be worn by all persons while being transported in open-type man trips.

(f) (1) A self-contained self-rescue device approved by the director shall be worn by each person underground or kept within his or her immediate reach and the device shall be provided by the operator. The self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. Each operator shall train each miner in the use of the device and refresher

training courses for all underground employees shall be held once each quarter. Quarters shall be based on a calendar year.

(2) In addition to the requirements of §22A-2-55(f)(1) of this code, the operator shall also provide caches of additional self-contained self-rescue devices throughout the mine in accordance with a plan approved by the director. Each additional self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. The total number of additional self-contained self-rescue devices, the total number of storage caches and the placement of each cache throughout the mine shall be established by rule pursuant to §22A-2-55(i) of this code. A luminescent sign with the words "SELF-CONTAINED SELF-RESCUER" or "SELF-CONTAINED SELF-RESCUERS" shall be conspicuously posted at each cache and luminescent direction signs shall be posted leading to each cache. Lifeline cords or other similar device, with reflective material at 25-foot intervals, shall be attached to each cache from the last open crosscut to the surface. The operator shall conduct weekly inspections of each cache and each lifeline cord or other similar device to ensure operability.

(3) Any person ~~that~~ who, without the authorization of the operator or the director, knowingly removes or attempts to remove any self-contained self-rescue device or lifeline cord from the mine or mine site with the intent to permanently deprive the operator of the device or lifeline cord or knowingly tampers with or attempts to tamper with the device or lifeline cord ~~shall be~~ 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 10 years, or fined not less than \$10,000 nor more than \$100,000, or both imprisoned and fined.

(g) The MSHA-approved emergency response plan (ERP) shall serve as the state-approved plan governing the storage of self-contained self-rescuers (SCSR). At a minimum, three one-hour SCSRs shall be available for everyone reasonably likely to be on the working section at any given time. The director may issue a special assessment pursuant to §22A-1-21 of this code for failure to comply with this subsection.

~~(g)~~ (h) (1) A wireless emergency communication device approved by the director and provided by the operator shall be worn by each person underground: *Provided*, That if a miner's wireless emergency communications device shall malfunction or cease to operate then such miner shall be assigned to be in sight or sound of a certified miner until such time an operating device shall be delivered. The wireless emergency communication device shall, at a minimum, be capable of receiving emergency communications from the surface at any location throughout the mine. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine any and all equipment necessary to transmit emergency communications from the surface to each wireless emergency communication device at any location throughout the mine.

(2) Any person ~~that~~ who, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless emergency communication device or related equipment from the mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment ~~shall be~~ 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 10 years, or fined not less than \$10,000 nor more than \$100,000, or both imprisoned and fined.

~~(h)~~ (i) (1) A wireless tracking device approved by the director and provided by the operator shall be worn by each person underground. In the event of an accident or other emergency, the

tracking device shall, at a minimum, be capable of providing real-time monitoring of the physical location of each person underground: *Provided*, That no person shall discharge or discriminate against any miner based on information gathered by a wireless tracking device during nonemergency monitoring. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine all equipment necessary to provide real-time emergency monitoring of the physical location of each person underground.

(2) The MSHA-approved ERP shall serve as the state-approved plan: *Provided*, That the MSHA-approved plan shall comply with all other provisions of state mining law as set forth in state code or the code of state rules.

~~(3)~~ (2) Any person ~~that~~ who, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless tracking device or related equipment, approved by the director, from a mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment ~~shall be~~ 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 10 years, or fined not less than \$10,000 nor more than \$100,000, or both imprisoned and fined.

~~(i)~~ (j) The director ~~may~~ shall promulgate emergency and legislative rules to implement and enforce this section pursuant to the provisions of §29A-3-1 *et seq.* of this code.

## **ARTICLE 2A. USE OF DIESEL-POWERED EQUIPMENT IN UNDERGROUND COAL MINES.**

### **PART X. EXISTING RULES TO BE REVISED.**

#### **§22A-2A-1001. Existing state rules to be revised.**

Unless otherwise revised, By by August 31, ~~2017~~ 2018, the director shall revise state rules promulgated pursuant to the authority of this chapter as follows:

(1) To reflect the abolishment of the West Virginia Diesel Equipment Commission and transfer of duties and responsibilities to the director, pursuant to §22A-2A-301 of this code;

(2) To reflect that a mine operator shall be permitted to replace a filter or catalyst of the same make and model without contacting the Office of Miners' Health, Safety, and Training;

(3) To reflect that ASE certified diesel mechanics shall make repairs and adjustments to diesel fuel injection systems, engine timing, or exhaust emissions control and conditioning systems;

(4) To permit a mine operator to dispose of used intake air filters, exhaust diesel particulate matter filters, and engine oil filters in their original containers or other suitable enclosed containers and to remove them from the underground mine to the surface no less than once in a 24-hour period;

(5) To require that records of emissions tests, 200-hour maintenance tests, and repairs shall be countersigned once each week by the certified mine electrician or mine foreman, that scheduled maintenance and an independent analysis of engine oil occur at 200 hours of engine operation, and that diagnostic testing of engine operation occur at 200 hours;

(6) To remove the requirement that a portable carbon monoxide (CO) sampling device be installed into the untreated exhaust gas coupling provided in the operator's cab;

(7) To modify the time and duration for which the CO sampler must be started to measure and record CO levels from every minute for five minutes to every 30 seconds for 90 seconds;

(8) To modify the alternative condition by which equipment fails under 196 C. S. R. §1-21, to omit the reference to the average CO reading for untreated exhaust gas is greater than twice the baseline; ~~and~~

(9) To remove the requirement for eight hours of annual diesel equipment operator refresher training separate from that required by MSHA regulations; and

(10) To permit the use of diesel generators in underground mines so long as the generator is vented directly to the return and at least one person is present within sight and sound of the generator: *Provided*, That all current state rules and statutes relating to the use of diesel-powered equipment and electricity generation remain in force.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Senate Bill 626, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 626) passed with its title.

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

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

**Eng. Senate Bill 631**, Relating generally to one-call system.

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

**Eng. Com. Sub. for House Bill 3005**, Relating to regulation of unmanned aircraft systems.

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

**Eng. Com. Sub. for House Bill 4015**, Relating to the management and continuous inventory of vehicles owned, leased, operated, or acquired by the state and its agencies.

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

**Eng. Com. Sub. for House Bill 4368**, Relating to voluntary assignments of wages by state employees who have been overpaid.

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

**Eng. House Bill 4434**, Clarifying provisions relating to candidates unaffiliated with a political party as it relates to certificates of announcement.

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

**Eng. Com. Sub. for House Bill 4473**, Relating to use of state funds for advertising to promote a public official or government office.

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

**Eng. Com. Sub. for House Bill 4478**, Authorizing public schools to distribute excess food to students.

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

**Eng. Com. Sub. for House Bill 4502**, Adding the crimes of murder and armed robbery to the list of offenses for which a prosecutor may apply for an order authorizing interception.

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

**Eng. Com. Sub. for House Bill 4509**, Relating to the establishment of substance abuse treatment facilities.

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

**Com. Sub. for House Concurrent Resolution 11**—Requesting the Division of Highways to name the bridge number 20-61-13.51 (20A817), locally known as New Chesapeake Bridge, carrying WV Route 61 over Fields Creek in Kanawha County, the “Charleston Police Capt. Jerry D. Hill Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

**House Concurrent Resolution 21**—Requesting the Division of Highways name bridge number 03-85/24-0.01 (03A167), on County Route 85, locally known as Clinton Camp Road Bridge, carrying CR 85/24 over Pond Fork in Boone County, the “U. S. Marine Corps PFC Randall Carl Phelps Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

**House Concurrent Resolution 39**—Requesting the Joint Committee on Government and Finance to study the sustainability of the state’s current system of higher education and how the state can better support the public institutions of higher education.

Referred to the Committee on Education; and then to the Committee on Rules.

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

**Com. Sub. for House Concurrent Resolution 40**—Requesting the Division of Highways to name bridge number 41-1-12.89 (41A006), locally known as “Artie Bridge”, carrying County Route 1 over Clear Fork in Raleigh County, the “U. S. Air Force SMSgt Billie E. ‘Bunky’ Hodge Memorial Bridge”.

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

The question being on the adoption of the resolution, the same was put and prevailed.

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

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

**House Concurrent Resolution 44**—Requesting the Division of Highways to name bridge number 23-7-3.44 (23A374), locally known as New Gore Fork Bridge, carrying County Route 7 over Gore Fork Creek in Logan County, the “U. S. Army PFC Clayton Collins Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

**Com. Sub. for House Concurrent Resolution 53**—Requesting the Division of Highways to name bridge number 25-79-140.37 NB & SB (25A147, 25A148), locally known as Little Creek Road Overpass, carrying Interstate 79 over County Route 76 in Marion County, the “Pastor Robert L. “Bob” Barker Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

**Com. Sub. for House Concurrent Resolution 54**—Requesting the Division of Highways to name County Route 5/5, known as Jordan Creek Road, from its intersection with U.S. Route 119, to its intersection with County Route 5/3, known as Wills Creek Road, in Kanawha County, the “U. S. Army SPC Thurman “Duwayne” Young Memorial Road”.

Referred to the Committee on Transportation and Infrastructure.

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

**House Concurrent Resolution 56**—Requesting the Joint Committee on Government and Finance study the Public Employees Insurance Agency and potential alternative methods to control healthcare costs.

Referred to the Committee on Rules.

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

**Com. Sub. for House Concurrent Resolution 67**—Requesting the Division of Highways to name the road from the beginning of Sand Creek Road on County Route 10/15 at the bend of the Guyandotte River and State Route 10 running one-half mile on Sand Creek Road in Lincoln County, the “U. S. Army CPL Wilson B. Lambert, Jr. Memorial Road”.

Referred to the Committee on Transportation and Infrastructure.

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

**House Concurrent Resolution 71**—Requesting that the Division of Highways name bridge number 50-37-22.70 (50A076) (38.16807, -82.37858), locally known as East Lynn Bridge, carrying WV 37 over the East Fork of Twelvepole Creek in Wayne County, the “U. S. Army CPL Lee Roy Young Memorial Bridge.”

Referred to the Committee on Transportation and Infrastructure.

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

**Com. Sub. for House Concurrent Resolution 76**—Requesting the Division of Highways to name bridge number 20-77/1-0.70 (20A237), locally known as Lower Fields Creek Bridge, carrying County Route 71/1 over Fields Creek in Kanawha County, the “U. S. Marine Corps LCpl Michael Linn Cooper Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

**Com. Sub. for House Concurrent Resolution 85**—Requesting the legislatures and departments of transportation of Maryland, Pennsylvania, and Virginia to endorse and pursue the construction of a new four-lane, limited access highway, extending Interstate Highway 99 from its present terminus at Bedford, Pennsylvania to Covington, Virginia.

Referred to the Committee on Transportation and Infrastructure.

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

**House Concurrent Resolution 93**—Requesting the Joint Committee on Government and Finance study exempting state employees from the payment of state income tax.

Referred to the Committee on Finance; and then to the Committee on Rules.

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

**House Concurrent Resolution 94**—Requesting the Joint Committee on Government and Finance to conduct a study comparing West Virginia's asbestos rules with those in other states and the federal government and determine whether simplified and less restrictive rules could also be effective.

Referred to the Committee on Rules.

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

**House Concurrent Resolution 99**—Requesting the Joint Committee on Government and Finance to study the feasibility and propriety of requiring liability insurance or other means of security on certain motorboats and personal watercraft in this state.

Referred to the Committee on Rules.

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

**House Concurrent Resolution 101**—Requesting the Governor's Task Force on Public Employee Insurance Agency Stability to review means and methods of including medical facilities in those out-of-state counties that border West Virginia as part of the in-network coverage for PEIA members.

Referred to the Committee on Rules.

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

**House Concurrent Resolution 102**—Requesting the Division of Highways name bridge number 20-60-36.23 (20A160), locally known as US 60 Cedar Grove Overpass 3565 Bridge,

carrying US 60 over County Route 81, Kanawha County, the “U. S. Army PFC Earl Russell Cobb, SPC4 Carl Bradford Goodson, and SSGT George T. Saunders, Jr., Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

The Senate proceeded to the fourth order of business.

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4002**, Providing that all delegates shall be elected from one hundred single districts following the United States Census in 2020.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 7, 2018;

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4002) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

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

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

## **ARTICLE 2. APPORTIONMENT OF REPRESENTATION.**

### **§1-2-2c. Redistricting.**

Upon the reapportionment and redistricting of the Legislature following the United States Census in 2020 and in each subsequent reapportionment and redistricting, the House of Delegates shall be composed of one hundred single member districts, with apportionment to meet constitutional standards.

The bill (Eng. Com. Sub. for H. B. 4002), as amended, was then ordered to third reading.

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

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 4486**, Relating to persons required to obtain a license to engage in the business of currency exchange.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 7, 2017;

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bill (Eng. H. B. 4486) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a second time, and ordered to third reading.

The Senate proceeded to the sixth order of business.

Senators Plymale, Boso, and Cline offered the following resolution:

**Senate Concurrent Resolution 54**—Requesting the Joint Committee on Government and Finance study the effect of new vehicle and load configurations and vehicles with increased gross weights and sizes on roads and related infrastructure in West Virginia.

Whereas, The increased capacity and ability of modern vehicles to transport commodities and products, together with increased economic pressures to reduce industry transportation costs and increased environmental pressures to lower carbon dioxide emissions, create economic incentives to increase the loads vehicles may transport; and

Whereas, Increasing the types of vehicles, weight of vehicles, and types of loading and trucking configurations permitted on roads would increase economic development opportunities in West Virginia; and

Whereas, Excessive weights of vehicles can result in the deterioration of roads and bridges, creating significant costs in lost road and bridge use and life; and

Whereas, Certain vehicle types, vehicle configurations, load configurations, and other factors can alleviate or avoid damaging effect on infrastructure from increased vehicle and load weights; and

Whereas, The West Virginia Department of Transportation and Division of Highways, the West Virginia Department of Commerce, private industry, including manufacturers of commodities or products, and the engineering community, including the College of Information Technology and Engineering at Marshall University and the Statler College of Engineering and Mineral Resources at West Virginia University, should be encouraged to cooperate and to study the effect various trucking configurations and weights have on West Virginia's road system; and

Whereas, Such study should include an analysis of which vehicle and load configurations and weights may be utilized with minimal consequence to West Virginia's infrastructure while

permitting industry to transport commodities and products in the most economical ways; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the effect of new vehicle and load configurations and vehicles with increased gross weights and sizes on roads and related infrastructure in West Virginia; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance enlist the assistance of the West Virginia Department of Transportation and Division of Highways, private industry, the West Virginia Department of Commerce, and West Virginia schools with engineering programs; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2019, 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.

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

The question being on the adoption of the resolution, the same was put and prevailed.

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

Senators Plymale, Boso, and Cline offered the following resolution:

**Senate Concurrent Resolution 55**—Urging the Congress of the United States to pass a law permitting West Virginia to increase the weight of vehicles permitted to operate on interstate highways so that West Virginia may implement a pilot program to study various vehicle configurations and weights.

Whereas, Federal law currently imposes vehicle weight limitations on vehicles that operate on the National System of Interstate and Defense Highways, The Dwight D. Eisenhower System of Interstate and Defense Highways, hereafter “Interstate Highways”; and

Whereas, The maximum gross weight typically allowed by any State for vehicles using the Interstate Highways is twenty thousand pounds carried on one axle, a tandem axle weight of thirty-four thousand pounds, and an overall maximum gross weight by formula; and

Whereas, Federal law also contains many exceptions to such weight limits; and

Whereas, The increased capacity and ability of modern vehicles to transport commodities and products, together with increased economic pressures to reduce industry transportation costs and increased environmental pressures to lower carbon dioxide emissions, create economic incentives to increase the loads vehicles may transport; and

Whereas, Increasing the types of vehicles, weight of vehicles, and types of loading and trucking configurations permitted on roads would increase economic efficiencies; and

Whereas, Excessive weights of vehicles can result in the deterioration of roads and bridges, creating significant costs in lost road and bridge use and life; and

Whereas, Certain vehicle types, vehicle configurations, load configurations, and other factors can alleviate or avoid damaging effect on infrastructure from increased vehicle and load weights; and

Whereas, The West Virginia Legislature is directing the West Virginia Department of Transportation and Division of Highways, the West Virginia Department of Commerce, private industry, including manufacturers of commodities or products, and the engineering community, including the College of Information Technology and Engineering at Marshall University and the Statler College of Engineering and Mineral Resources at West Virginia University, to cooperate and study the effect various trucking configurations and weights have on West Virginia's entire road system, including Interstate Highways; and

Whereas, Such study would include an analysis of which vehicle and load configurations and weights may be utilized with minimal consequence to West Virginia's infrastructure, including Interstate Highways, while permitting industry to transport commodities and products in the most economical ways; and

Whereas, In order to complete such a study and pilot program, West Virginia needs permission from the Congress of the United States to increase the weight of vehicles permitted to operate on Interstate Highways; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature urges the Congress of the United States to pass legislation permitting West Virginia to increase the weight of vehicles permitted to operate on Interstate Highways so that West Virginia may implement a pilot program to study various vehicle configurations and weights; and, be it

*Further Resolved,* That the Legislature urges the President of the United States to sign such legislation; and, be it

*Further Resolved,* That the Clerk of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the United States Senate, and to each Senator and Representative from West Virginia in the Congress of the United States.

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

The question being on the adoption of the resolution, the same was put and prevailed.

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

Senators Stollings, Beach, and Plymale offered the following resolution:

**Senate Concurrent Resolution 56**—Requesting the Division of Highways rename bridge number 23-10-9.00, currently known as the PFC Franklin L. Conn Memorial Bridge, carrying State Route 10 near the town of Man in Logan County, the “PFC Franklin L. Conn and SGM Bill Jeffrey Memorial Bridge”.

Whereas, Bill Edward Jeffrey was born to Elmer and Rosalyn Jeffrey on May 5, 1945, in Logan, West Virginia; and

Whereas, Bill Edward Jeffrey was inducted into the United States Army on November 6, 1959, and retired on the effective date of August 31, 1988, after rising to the rank of Sergeant Major; and

Whereas, Sergeant Major Jeffrey entered the United States Army Special Operations Command as the G4 Chief of Logistics serving their mission around the world for 13 years. He also served two tours of duty in Vietnam; and

Whereas, Sergeant Major Jeffrey was awarded the Legion of Merit with one bronze oak leaf cluster, Bronze Star Medal with letter “V” device, Meritorious Service Medal with one bronze oak leaf cluster, Army Commendation Medal with one bronze oak leaf cluster, Good Conduct Medal, 8th award, National Defense Service Medal, the Vietnam Service Medal; Army Service Ribbon, Overseas Service Ribbon with numeral four, Republic of Vietnam Campaign Ribbon with Device (1960), and Marksman Badge with Carbine Bar with Rifle Bar; and

Whereas, Sergeant Major Jeffrey also had many outside interests and was a world-famous softball pitcher, coach, and organizer. He had a sports stadium named after him in Amsterdam, Holland; and

Whereas, Sergeant Major Jeffrey passed away on April 4, 2015, and was survived by his wife, Robin Jeffrey, and a multitude of family and friends who will never forget him; and

Whereas, Sergeant Major Jeffrey was also a devoted friend of fellow serviceman, Private First Class Franklin L. Conn, who was killed in action while these friends were serving in the Army in Vietnam; and

Whereas, The West Virginia Legislature has, in its 2010 Regular Session, already passed HCR 24 requesting the Division of Highways to name a bridge in Logan County in honor of PFC Conn; and

Whereas, The community of Man, West Virginia, and the families of these valiant men have all requested that these two friends be honored jointly; and

Whereas, It is fitting that an enduring memorial be established to commemorate Private First Class Franklin L. Conn and Sergeant Major Bill Jeffrey, their service to our state and country, and their strong friendship; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to rename bridge number 23-10-9.00, currently known as the PFC Franklin L. Conn Memorial Bridge, carrying State Route 10 near the town of Man in Logan County, the “PFC Franklin L. Conn and SGM Bill Jeffrey Memorial Bridge”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “PFC Franklin L. Conn and SGM Bill Jeffrey Memorial Bridge”; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways.

Which, under the rules, lies over one day.

At the request of Senator Ferns, and by unanimous consent, the Senate returned to the fourth order of business.

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

Your Committee on the Judiciary has had under consideration

**Senate Concurrent Resolution 57** (originating in the Committee on the Judiciary)—Requesting the Joint Committee on the Judiciary study the modification of criminal proceedings as it pertains to bail requirements and the potential creation of the West Virginia Sentencing Commission.

Whereas, The national government and several states have created criminal sentencing commissions; and

Whereas, Potential powers and duties of a sentencing commission need to be more thoroughly explored; and

Whereas, Bail requirements and punishments for crimes need to be more consistent across the state; and

Whereas, Adjusting bail requirements could prove to be beneficial to West Virginia's criminal justice system; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on the Judiciary is requested to study the modification of criminal proceedings as it pertains to bail requirements and the potential creation of the West Virginia Sentencing Commission; and, be it

*Further Resolved*, That the potential powers and duties of such a commission should be explored thoroughly during this endeavor. The study should examine sentencing commissions established in other states, as well as the national sentencing commission, in order to replicate such measures. Additionally, the study should investigate potential benefits and effects of modifying bail requirements so that a court or magistrate shall release a person charged with a misdemeanor offense on his or her own recognizance unless that person is charged with a misdemeanor offense of actual violence or threat of violence against a person, a misdemeanor offense where the victim was a minor, a misdemeanor offense involving the use of a deadly weapon, a misdemeanor offense of the Uniform Controlled Substances Act, or a serious misdemeanor driving offense; and, be it

*Further Resolved*, That the Joint Committee on the Judiciary enlist the assistance of the Governor's Committee on Crime, Delinquency and Correction in conducting the study; and, be it

*Further Resolved*, That the Joint Committee on the Judiciary report to the regular session of the Legislature, 2019, on its findings, conclusions, and other 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 the Judiciary.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Ferns, and by unanimous consent, the resolution (S. C. R. 57) contained in the foregoing report from the Committee on the Judiciary was then referred to the Committee on Rules.

Senator Maynard, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

**Senate Concurrent Resolution 58** (originating in the Committee on Natural Resources)—Requesting the Joint Committee on Government and Finance study options for solving the crisis presented by the abandonment of large horses on private lands in southern West Virginia.

Whereas, In West Virginia and surrounding states, many thousands of horses have been turned out onto former and active mine sites and other areas; and

Whereas, Many of these horses die or come near death during the winter due to poor food sources and are denied basic feeding, farrier care, or veterinary care; and

Whereas, Many of these horses go to the overseas meat market when locals round them up and take them to auctions; and

Whereas, Many of these horses are killed or injured via gunshots and on the roadways; and

Whereas, Many of these horses continue to breed and inbreed year after year; and

Whereas, The presence of these abandoned horses adversely impacts natural resources and processes by threatening plants and species, changing the plant community composition, reducing biodiversity, causing soil compaction, and interrupting native wildlife ecology; and

Whereas, The United States Park Service had considerable success in managing the feral horse population on Assateague Island in ways that may be instructive for efforts to do the same in West Virginia; and

Whereas, It would benefit the horses, the environment, and the local residents to explore the possibility of developing a program to manage the abandoned horses; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study options for solving the crisis presented by the abandonment of large horses on private lands in southern West Virginia; and, be it

*Further Resolved,* That the study include an analysis of possible legislative changes to facilitate cooperation with land and mine owners, such as eliminating administrative hurdles to accessing and obtaining abandoned livestock, and providing legal protection to persons accessing and/or removing abandoned horses; and, be it

*Further Resolved,* That the study include methods to safely round up nonferal, adoptable mares and foals, geld colts, and stallions, and euthanize severely injured or dangerous feral horses with the aid of voluntary, licensed veterinarians and veterinary students; and, be it

*Further Resolved,* That the study include an analysis of the advisability of imposing severe fines on persons abandoning horses on reclaimed or active mine sites or falsely claiming ownership of horses that have been abandoned on such sites; and, be it

*Further Resolved,* That the study analyze the feasibility of developing a program to devise and implement strategies for management of the abandoned horse population with goals including, but not limited to: maintaining genetic diversity; ensuring food and space availability; protecting reproductive capacity; reducing the negative impact of horses on key species, communities, and natural processes; educating the general public regarding the presence of the horses and their ecological impact; and exploring the possibility of providing a reasonable opportunity for visitors to view horses safely, and the potential for developing such opportunities for tourism purposes; and, be it

*Further Resolved,* That input shall be sought from appropriate state, local, and private agencies and organizations, including the Division of Natural Resources, the Department of Agriculture, and the Division of Tourism; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2019, on its findings, conclusions, and other 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.

And reports the same back with the recommendation that it be adopted; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

At the request of Senator Ferns, and by unanimous consent, the resolution (S. C. R. 58) contained in the foregoing report from the Committee on Natural Resources was then referred to the Committee on Rules.

Senator Maynard, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

**Senate Concurrent Resolution 59** (originating in the Committee on Natural Resources)—Requesting the Joint Committee on Government and Finance study possible methods to enhance forest management on state lands.

Whereas, Proper forest management planning of state lands provides a means of allowing the state to practice good stewardship of its property and what the state can realize from that property in economic, environmental, and recreational terms; and

Whereas, Proper forest management planning provides a means of identifying what can be done to enhance and protect the values and aspects of state lands that are most important to the state and its citizens; and

Whereas, Proper forest management planning helps ensure that state lands and resources will be in good condition for future generations; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study possible methods to enhance forest management on state lands; and, be it

*Further Resolved*, That the study include: A description of the state lands to be managed; a specific list of goals or objectives for management of those lands, including, but not limited to, improving and maintaining forest health, increasing wildlife diversity, and expanding recreational areas; and a description of activities to be performed in those lands to realize the goals and objectives identified; and, be it

*Further Resolved*, That input shall be sought from appropriate state, local, and private agencies and organizations, including the Division of Natural Resources and the Division of Forestry; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2019, on its findings, conclusions, and other 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.

And reports the same back with the recommendation that it be adopted; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

At the request of Senator Ferns, and by unanimous consent, the resolution (S. C. R. 59) contained in the foregoing report from the Committee on Natural Resources was then referred to the Committee on Rules.

Senator Maynard, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

**Senate Concurrent Resolution 60** (originating in the Committee on Natural Resources)—Requesting the Joint Committee on Government and Finance to study requiring the Division of Natural Resources and other state agencies to use nonemployee workforce to perform certain improvements related to the conservation and development of natural resources in rural lands owned by state and local governments.

Whereas, Many unemployed West Virginians are willing and able to perform manual labor and have a desire to do so; and

Whereas, Such West Virginians could benefit from a program that provided shelter, clothing, and food, together with a small stipend; and

Whereas, Participation in such a program could lead to improved physical condition, heightened morale, and increased employability for participants therein; and

Whereas, Such a program could also lead to a greater public awareness and appreciation of the outdoors and the state's natural resources, and the continued need for a carefully planned, comprehensive state program for the protection and development of natural resources; and

Whereas, Such a program could be of considerable benefit in planting trees, constructing and/or maintaining trails, lodges, and related facilities, as well as upgrading state parks and public roadways in remote areas; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby directed to study requiring the Division of Natural Resources and other state agencies to use nonemployee workforce to perform certain improvements related to the conservation and development of natural resources in rural lands owned by state and local governments; and, be it

*Further Resolved*, That Joint Committee on Government and Finance study the feasibility of developing a program whereby food, shelter, and a stipend could be provided to West Virginia citizens performing certain improvements related to the conservation and development of natural resources in rural lands owned by state and local governments, and requiring the Division of Natural Resources, and other state agencies as appropriate, to utilize participation in such programs when making such improvements; and, be it

*Further Resolved*, That the study include potential methods and sources to fund such program; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2019, on its findings, conclusions, and recommendations, together with any drafts of any legislation necessary to effectuate its recommendation; and, be it

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

And reports the same back with the recommendation that it be adopted; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

At the request of Senator Ferns, unanimous consent being granted, the resolution (S. C. R. 60) contained in the foregoing report from the Committee on Natural Resources was then referred to the Committee on Rules.

Senator Maynard, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

**Senate Concurrent Resolution 61** (originating in the Committee on Natural Resources)—Requesting the Joint Committee on Government and Finance study developing plans reclaiming solid waste landfills.

Whereas, Many new and innovative technologies and products exist that meet state and federal performance standards; and

Whereas, Landfill reclamation is a relatively new approach used to expand solid waste landfill capacity and avoid the high cost of acquiring additional land; and

Whereas, Reclamation costs are often offset by the sale or use of recovered materials, such as recyclables, soil, and waste, which can be burned as fuel; and

Whereas, Other important benefits may include avoided liability through site remediation, reductions in closure costs, and reclamation of land for other uses; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study developing plans reclaiming solid waste landfills; and, be it

*Further Resolved*, That the study include an analysis of the potential benefits and drawbacks to landfill reclamation, including, but not limited to, preventing and/or containing possible gas releases; safely dealing with unearthed hazardous materials; conducting site characterization studies; assessing potential economic benefits; investigating regulatory requirements; and establishing a preliminary worker health and safety plan; and, be it

*Further Resolved*, That input shall be sought from appropriate state, local, and private agencies and organizations, including the West Virginia Department of Environmental Protection; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2019, on its findings, conclusions, and recommendations; and, be it

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

And reports the same back with the recommendation that it be adopted; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

At the request of Senator Ferns, and by unanimous consent, the resolution (S. C. R. 61) contained in the foregoing report from the Committee on Natural Resources was then referred to the Committee on Rules.

Senator Maynard, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

**Senate Concurrent Resolution 62** (originating in the Committee on Natural Resources)—Requesting the Joint Committee on Government and Finance study the potential economic benefits of rock-climbing tourism throughout the State of West Virginia.

Whereas, West Virginia contains numerous world-class destinations for the sport of rock climbing, including, among other destinations, Summersville Lake, the New River Gorge, and Seneca Rocks; and

Whereas, Professional and recreational athletes travel to West Virginia each year from many other states and countries solely to participate in rock climbing; and

Whereas, A recent study published in the Journal of Appalachian Studies discovered that rock climbers who travel to the Red River Gorge in Kentucky, which is located within a two-hour drive of the West Virginia border, spend \$3.8 million annually in that region, mostly on local businesses; and

Whereas, Measures to facilitate and preserve athletes' access to rock-climbing destinations in the state could lead to the creation of jobs and help stimulate local economies through tourism, both by bringing out-of-state athletes into West Virginia and by increasing national awareness of the state's unique geological formations; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the potential economic benefits of efforts to promote rock-climbing tourism throughout the State of West Virginia; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance enlist the assistance of the Commissioner of Tourism in conducting the study; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2019, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

And reports the same back with the recommendation that it be adopted; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

At the request of Senator Ferns, unanimous consent being granted, the resolution (S. C. R. 62) contained in the foregoing report from the Committee on Natural Resources was then referred to the Committee on Rules.

Senator Maynard, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

**Senate Concurrent Resolution 63** (originating in the Committee on Natural Resources)—Requesting the Joint Committee on Government and Finance study the development of an adopt-a-waterway program.

Whereas, Many states and municipalities have enjoyed considerable success in developing and maintaining recreational waterways by creating adopt-a-waterway programs; and

Whereas, These programs allow local businesses, civil and professional organizations, environmental groups, academic institutions, neighborhood groups, and other community-minded organizations to formally adopt a waterway for the purpose of keeping the waterway clean, well-maintained, and marked by signage; and

Whereas, Creating a one-stop hub, such as a website, whereby the necessary forms and information for forming an adopt-a-waterway organization are all accessible together in one location has proven to be a fast, efficient, and effective way to enable and encourage formation of such groups; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the development of an adopt-a-waterway program; and, be it

*Further Resolved*, That the topics of the study include, but not be limited to, an investigation of: Using public parking lots for ingress and egress when available, such as public school parking lots during nonschool hours, post offices during nonbusiness hours, and other publicly funded parking areas; inviting businesses to allow waterway trail access from their property in order to increase business and provide goods and services to those traveling the waterway; using Department of Highways rights-of-way at bridges and other locations that can allow safe ingress and egress; organizing meetings of volunteers; and breaking waterways into segments assigned to individual volunteer groups; and, be it

*Further Resolved*, That input shall be sought from appropriate state, local, and private entities, including, but not limited to, the Department of Environmental Protection, the Division of Highways, the Division of Natural Resources, the and the Division of Tourism; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2019, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

And reports the same back with the recommendation that it be adopted; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

At the request of Senator Ferns, and by unanimous consent, the resolution (S. C. R. 63) contained in the foregoing report from the Committee on Natural Resources was then referred to the Committee on Rules.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 53**, US Army SGT Harold Scott White Memorial Bridge.

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

**House Concurrent Resolution 19**, World Moyamoya Awareness Day.

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

The question being on the adoption of the resolution, the same was put and prevailed.

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senator Rucker regarding the adoption of House Concurrent Resolution 19 were ordered printed in the Appendix to the Journal.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 152**, Budget Bill.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 152 pass?”

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 152) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 152) takes effect from passage.

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

**Eng. Senate Bill 633**, Expiring funds from Insurance Commission Fund and appropriating funds to Consolidated Medical Services Fund.

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

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 633) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 633) takes effect from passage.

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

**Eng. Senate Bill 634**, Adding, increasing, and decreasing appropriations from General Revenue to DHHR.

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

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 634) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 634) takes effect from passage.

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

**Eng. Com. Sub. for House Bill 2028**, Relating to the venue for suits and other actions against the state.

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

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2028) passed with its title.

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

**Eng. Com. Sub. for House Bill 4214**, Increasing penalties for unlawfully possessing or digging ginseng.

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

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4214) passed.

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

**Eng. Com. Sub. for House Bill 4214**—A Bill to amend and reenact §19-1A-3a of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-3-35 of said code, all relating to increasing penalties for unlawfully possessing or digging ginseng; requiring ginseng dealers to maintain a photocopy of a valid identification card of all diggers, growers, and dealers involved in a ginseng transaction; and requiring written consent by the landowner to enter the lands of another to dig or prospect for ginseng.

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

**Eng. Com. Sub. for House Bill 4276**, Allowing magistrates to grant work release privileges.

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

On the passage of the bill, the yeas were: Arvon, Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Baldwin and Mann—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4276) passed with its title.

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

**Eng. Com. Sub. for House Bill 4336**, Updating the schedule of controlled substances.

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

On the passage of the bill, the yeas were: Arvon, Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Baldwin and Mann—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4336) passed.

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

**Eng. Com. Sub. for House Bill 4336**—A Bill to amend and reenact §60A-2-204, §60A-2-206, §60A-2-210, and §60A-2-212 of the Code of West Virginia, 1931, as amended, all relating to updating schedules of controlled substances; reorganizing each schedule by removing numbering and lettering for subparts; by providing that the drugs listed in each schedule include not just the drug's chemical substance but also any isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, when the existence of the such compounds are possible within the chemical designation; and by adding specific chemical compounds to three of the schedules.

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

**Eng. House Bill 4376**, Expiring funds to the balance of the Department of Health and Human Resources.

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

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4376) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4376) takes effect from passage.

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

**Eng. House Bill 4379**, Supplementing, amending, decreasing, and increasing items of the existing appropriations to the Department of Transportation.

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

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4379) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4379) takes effect from passage.

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

**Eng. Com. Sub. for House Bill 4401**, Relating to the registration of business.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 4401 pass?”

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4401) passed.

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

**Eng. Com. Sub. for House Bill 4401**—A Bill to amend and reenact §21-3-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §21-3C-11; to amend and reenact §21-3D-8; to amend and reenact §21-5-5c; to amend and reenact §21-9-9; to amend and reenact §21-10-4; to amend and reenact §21-11-17; to amend and reenact §21-14-9; to amend and reenact §21-15-7; to amend and reenact §21-16-10; to amend and reenact §47-1-8, §47-1-20, §47-1-21 and §47-1-22; and to amend and reenact §47-1A-14, all relating to the collection and use of fees by the Commissioner of the Division of Labor; authorizing commissioner to utilize certain excess funds to meet the division’s funding obligations through June 30, 2019; eliminating authority to use certain excess funds after June 30, 2019; eliminating authority to charge annual registration fee for service persons and service agencies; eliminating authority to charge annual device registration fee; and eliminating certain rulemaking authority.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4401) takes effect from passage.

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

**Eng. Com. Sub. for House Bill 4453**, Relating to judicial review of contested cases under the West Virginia Department of Health and Human Resources Board of Review.

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

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4453) passed with its title.

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

**Eng. House Bill 4529**, Relating to oath by municipal official certifying list of delinquent business and occupation taxes.

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

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4529) passed with its title.

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

**Eng. Com. Sub. for House Bill 4571**, Relating to the final day of filing announcements of candidates for a political office.

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

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4571) passed.

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

**Eng. Com. Sub. for House Bill 4571**—A Bill to amend and reenact §3-5-7 of the Code of West Virginia, 1931, as amended, relating to the filing of certificates of announcement of candidacy for a political office; requiring that the office of the Secretary of State be open from 9:00 a.m. until 11:59 p.m. on the last day of the period during which a certificate of announcement may be filed; and requiring that the offices of the county clerks of each county be open from 9:00 a.m. until 12:00 p.m. on the last day of the period during which a certificate of announcement may be filed.

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

**Eng. Com. Sub. for House Bill 4618**, Relating to the authority of the Division of Protective Services.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 4618 pass?”

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4618) passed.

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

**Eng. Com. Sub. for House Bill 4618**—A Bill to amend and reenact §61-6-1, §61-6-1a, §61-6-3, §61-6-4, and §61-6-5 of the Code of West Virginia, 1931, as amended, relating to the

authority of the Division of Protective Services to compel dispersal of a riot or unlawful assemblage; to the authority of the Division of Protective Services to control riots and unlawful assemblages; to include officers of the Division of Protective Services among those officers on whom the penalty for failure to exercise power at riots and unlawful assemblages may be imposed; allowing Division of Protective Services officers to summon persons to suppress unlawful assemblages; to hold harmless Division of Protective Services officers from liability for the death of persons in riots and unlawful assemblages; correcting references to the State Police; removing language making all persons unlawfully assembled criminally liable for deaths of persons quelling unlawful assembly or riot; and to make technical corrections.

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

**Eng. House Bill 4627**, Relating to providing a limitation on the eminent domain authority of a municipal park board.

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

Pending discussion,

The question being “Shall Engrossed House Bill 4627 pass?”

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4627) passed with its title.

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

At the request of Senator Ferns, and by unanimous consent, Senator Fern addressed the Senate regarding today being the fiftieth birthday of the senator from Marshall and on behalf of the Senate extended felicitations and good wishes to Senator Maroney, with Senator Ferns leading the members in singing “Happy Birthday”.

On motion of Senator Ferns, at 1:21 p.m., the Senate recessed for 30 minutes.

The Senate reconvened at 1:59 p.m. today and proceeded to the ninth order of business.

**Senate Bill 635**, Relating to 2019 salary adjustment for employees of DHHR.

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

**Eng. Com. Sub. for House Bill 2008**, Relating to the Dealer Recovery Program.

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

**Eng. Com. Sub. for House Bill 2655**, Defining and establishing the crime of cyberbullying.

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

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

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

**ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.**

**§61-3C-14c. Cyberbullying or specific acts of electronic harassment of minors; definitions; penalties; exceptions.**

(a) It is unlawful for a person to knowingly and intentionally use a computer or computer network, as defined in §61-3C-3, to engage in conduct with the intent to harass, intimidate, or bully a minor, including, but not limited to:

(1) Posting, disseminating or encouraging others to post or disseminate private, personal, or sexual information pertaining to a minor on the Internet; or

(2) Posting obscene material, as defined in §61-3C-14a of this code, in a real or doctored image of a minor on the Internet;

(b) For the purposes of this section:

(1) "Harass, intimidate or bully" means any intentional gesture, or any intentional electronic, written, verbal, or physical act, communication, transmission or threat that:

(A) A reasonable person under the circumstances should know the act will have the effect of any one or more of the following:

(i) Physically harming a minor;

(ii) Damaging a minor's property;

(iii) Placing a minor in reasonable fear of harm to his or her person; or

(iv) Placing a minor in reasonable fear of damage to his or her property; or

(B) Is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or emotionally abusive environment for a minor.

(2) "Minor" means an individual under the age of 18 years old.

(c) This section does not apply to a peaceful activity intended to:

(i) Express a political view; or

(ii) Provide information to others with no intent to harass, intimidate, or bully.

(d) Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or confined in jail for a period not to exceed one year, or both confined and fined.

The bill (Eng. Com. Sub. for H. B. 2655), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2799**, Prohibiting the superintendent of schools from requiring a physical examination to be included to the application for a minor's work permit.

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

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

On page three, section three, lines nineteen and twenty, by striking out all of subsection (c) and inserting in lieu thereof a new subsection, designated subsection (c), to read as follows:

(c) The superintendent of schools may not require a physical examination to be included in the application for a work permit.

The bill (Eng. Com. Sub. for H. B. 2799), as amended, was then ordered to third reading.

**Eng. House Bill 2869**, Providing for paid leave for certain state officers and employees during a declared state of emergency.

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

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

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

## **ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.**

### **§15-5-15a. Paid leave for ~~disaster service volunteers~~ certain state officers and employees during a declared state of emergency.**

~~Any state employee who is a certified disaster service volunteer of the American Red Cross may be granted leave from his or her state employment with pay, for not more than fifteen work days in each year, to participate in specialized disaster relief services for the American Red Cross. Leave shall be granted under this section upon the request of the American Red Cross for the services of that employee and only upon the approval of that employee's immediate supervisor. Leave shall be granted without loss of pay, annual leave, sick leave, earned overtime compensation, seniority or compensatory time. The state shall compensate an employee granted leave under this section at the employee's regular rate of pay for those regular work hours during which the employee is absent from his or her state employment. Any supervisor granting leave to an employee for purposes of participating in specialized disaster relief shall make a report to the Governor which includes the name of the employee and the cost of salary and benefits of that employee during the period of the leave. The Governor shall keep a record of the total cost of the~~

~~salary and benefits of employees who have been granted leave and in no event shall the total cost for all state agencies exceed \$100,000: *Provided*, That upon approval of the Governor and repayment of the cost to the employing agency, from the civil contingent fund, leave may be granted in an excess of a total cost of \$100,000 if a state of emergency has been proclaimed pursuant to section six of this article.~~

(a) Any state employee who is designated an essential member of an emergency aid provider may be granted leave from his or her state employment with pay, for not more than 15 work days in each year, to provide disaster relief or emergency services in areas of the state in which a state of emergency has been declared.

(b) Leave shall be granted under this section upon designation of the employee as an essential member by the chief executive officer or other officer or agent of the emergency aid provider who has authority to act on its behalf, and upon approval of that leave by the employee's immediate supervisor and the head of the state agency for which the employee works: *Provided*, That the state agency head shall, prior to granting leave, first confirm that the total cost ceiling set forth in subsection (c) of this section has not yet been exceeded, and that granting leave to the employee will not adversely impact the ability of the state agency to perform its required duties. Leave shall be granted without loss of pay, annual leave, sick leave, earned overtime compensation, seniority, or compensatory time. The state shall compensate an employee granted leave under this section at the employee's regular rate of pay for those regular work hours during which the employee is absent from his or her state employment.

(c) Any supervisor granting leave to an employee for purposes of participating in disaster relief or emergency services pursuant to this section shall make a report to the Governor which includes the name of the employee and the total cost, if any, to the employing agency attributable to the temporary replacement of the employee granted leave in the circumstance where replacement is necessary. The Governor shall keep a record of the total cost reported, and in no event may the total cost for all state agencies exceed \$300,000 in any fiscal year: *Provided*, That upon approval of the Governor and repayment of the cost to the employing agency, from the Civil Contingent Fund, leave may be granted in an excess of a total cost of \$300,000 in any fiscal year: *Provided, however*, That the total cost of all leave, excluding any repayments from the Civil Contingent Fund, may not exceed a total cost of \$300,000 in any fiscal year.

(d) Notwithstanding the provisions of this section to the contrary, no person may be designated an essential member of an emergency aid provider for purposes of this section, if the person is employed by an emergency aid provider located in, or that customarily serves, an area included within the state of emergency declaration.

(e) As used in this section:

(1) "Emergency aid provider" means a local organization for emergency services as defined by §15-5-2 of this code or a volunteer fire department that is providing emergency services during a state of emergency as a result of the circumstances that resulted in the declaration of the state of emergency;

(2) "Essential member" means a person designated by an emergency aid provider whose services are needed to provide emergency services due to the circumstances that resulted in the declaration of the state of emergency;

(3) "State of emergency" means the situation existing after the occurrence of a disaster or circumstance in which a state of emergency has been declared by the Governor or by the Legislature pursuant to the provisions of §15-5-6 of this code, or in which a major disaster declaration or emergency declaration has been issued by the President of the United States.

The bill (Eng. H. B. 2869), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 3089**, Relating to the adoption of instructional resources for use in the public schools.

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

**Eng. Com. Sub. for House Bill 4006**, Revising the processes through which professional development is delivered for those who provide public education.

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

The following amendments to the bill, from the Committee on Education, were reported by the Clerk, considered simultaneously, and adopted:

On page nine, section two, after line thirteen, by inserting the following:

**§5F-1-5. House Bill 4006 amendments effective date.**

Except for instances where specifically provided otherwise, all amendments to this Code made by the passage of House Bill 4006 during the 2018 regular session of the Legislature shall become effective July 1, 2018.;

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

(b) The Center for Professional Development, formerly provided for under §18A-3A-1 et seq. of this code before the effective date of the amendment and reenactment of this section during the 2018 regular session of the Legislature, is hereby transferred to be under the authority and control of the state board. To assist in the delivery of high quality professional development for teachers, principals, and other school employees, the state board shall incorporate within the Department of Education the Center for Professional Development whose general mission shall be under the direction of the state board to advance the quality of teaching and learning in the schools of West Virginia through programs, technical assistance and support to schools and school systems to meet the legislative findings and goals of this article. The center shall perform other duties that may be assigned to it by the state board. In addition, the center shall provide statewide coordination for the continued growth and development of advanced placement programs in West Virginia high schools, including, but not limited to, serving as a liaison for The College Board, Inc., and providing for the training of advanced placement teachers.;

On page twenty-nine, by striking out the article heading;

And,

On pages twenty-nine through thirty-two, by striking out all of sections two, five, and six.

On motion of Senator Stollings, the following amendments to the bill (Eng. Com. Sub. for H. B. 4006) were next reported by the Clerk and considered simultaneously:

On pages four and five, after the enacting clause, by striking out all of chapter four;

On pages five through seven, by striking out all of chapter five;

On pages seven and eight, by striking out all of chapter five-b;

On pages eight and nine, by striking out all of section two;

On pages nine through fifteen, by striking out all of article two;

On pages fifteen through eighteen, by striking out all of chapter six;

On page eighteen, by striking out all of chapter ten;

On pages twenty-two through twenty-nine, by striking out all of article ten-a, sections one, two, three, six-a, and twelve;

On pages thirty-two through thirty-four, by striking out article thirty;

On pages sixty-five through sixty-seven, by striking out all of article one-b;

And,

On page sixty-nine, after section six, by striking out the remainder of the bill.

Following discussion,

The question being on the adoption of Senator Stollings' amendments to the bill (Eng. Com. Sub. for H. B. 4006), the same was put.

The result of the voice vote being inconclusive, Senator Stollings demanded a division of the vote.

A standing vote being taken, there were fifteen "yeas" and eighteen "nays".

Whereupon, Senator Carmichael (Mr. President) declared Senator Stollings' amendments to the bill rejected.

The bill (Eng. Com. Sub. for H. B. 4006), as amended by the Committee on Education, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4009**, State Settlement and Recovered Funds Accountability Act.

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

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

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

**ARTICLE 3. ATTORNEY GENERAL.**

**§5-3-5. Fees to be paid into State Treasury.**

[Repealed.]

**ARTICLE 3A. STATE SETTLEMENT AND RECOVERED FUNDS ACCOUNTABILITY ACT.**

**§5-3A-1. Short title.**

This article may be known and cited as the State Settlement and Recovered Funds Accountability Act.

**§5-3A-2. Legislative findings.**

(a) The Legislature hereby finds and declares that:

(1) Public accountability for funds or other assets recovered in a legal action or settlement by or on behalf of the general public, the state or its officers, agencies or political subdivisions is appropriate and required, whether the character of the assets or funds recovered is public or private;

(2) Accountability for assets or funds recovered by, or behalf of, the state is essential to the public trust;

(3) While it may be important that in certain circumstances funds or assets received retain their character, identity, and purpose, it is also important that the process by which funds are administered be open to public scrutiny and accountability to the public; and

(4) The power to appropriate funds for public purposes is solely within the purview of the legislative branch of government, and the Legislature, as a steward of the budgetary process, shall take steps to assure that settlements are handled in a manner that assures maximum accountability to the citizens of the state and their duly elected legislative representatives.

**§5-3A-3. Funds to be deposited in State Treasury subject to appropriation; exceptions.**

(a) Unless excepted under subsection (d) of this section, when the Attorney General or other officer or agency of the state, in accordance with statutory or common law authority, is a party to or has entered his or her appearance in a legal action on behalf of the State of West Virginia, including ex rel. or other type actions, or participated in a claim that resulted in an extra-judicial settlement, and a disposition of that action or claim has resulted in the recovery of funds or assets to the state, of any kind or nature whatsoever, including, but not limited to, public funds and private funds or assets, the funds or assets awarded to the state are public funds and shall be deposited in the State Treasury in the General Revenue Fund. Nothing in this subsection shall be construed to apply to equitable relief that is obtained and directly related to any action or claim referenced in this subsection.

(b) Unless excepted under subsection (d) of this section, when the Attorney General or other officer or agency of the state, in accordance with statutory or common law authority, is a party to or has entered his or her appearance in a legal action on behalf of the State of West Virginia, including ex rel. or other type actions or participated in a claim that resulted in an extra-judicial settlement and a disposition of that action or claim has resulted in the recovery of funds or assets to be held in trust by the state, through court action or otherwise, to administer the trust funds or assets, for charitable, eleemosynary, benevolent, educational, or similar public purposes, those funds shall be deposited in a special revenue account or trust fund established in the State Treasury. The Attorney General or other officer or agency of the state or a person, organization, or entity created by the Attorney General or other officer or agency of the state are prohibited from administering trust funds or assets for charitable, eleemosynary, benevolent, educational, or similar public purposes except as is thereafter provided by appropriation or statutory authorization. Nothing in this subsection shall be construed to apply to equitable relief that is obtained and directly related to any action or claim referenced in this subsection.

(c) Assets or funds deposited in an account in the State Treasury pursuant to subsection (a) or (b) of this section shall not be disbursed without a specific legislative appropriation of the deposited funds by the Legislature.

(d) With respect to funds or assets collected or recovered under subsections (a) or (b) of this section, the following shall apply and not be deposited in the General Revenue Fund of the state:

(1) Monies recovered or received by the state pursuant to §46A-7-101 et. seq. of this code, in which event the monies shall be deposited in the Consumer Protection Recovery Fund in accordance with, and otherwise comply with §5-3A-4 of this code;

(2) The recovery was on behalf of a political subdivision of the state and the funds or assets were specifically awarded to the political subdivision, in which event the recovery shall be transmitted to the treasurer of such political subdivision for deposit in its general fund;

(3) If, as part of a recovery under subsections (a) or (b) of this section, attorney fees, expenses, and costs are specifically awarded to the Attorney General, those monies shall be deposited in the Attorney General's General Administrative fund and shall be available for expenditure by the Attorney General: *Provided*, That should the matter involve an action brought by the Attorney General pursuant to §47-18-1 et seq. of this code, then such award of attorney fees, expenses, and costs shall be deposited in the Attorney General's Antitrust Enforcement Fund and shall be available for expenditure: *Provided, however*, That should the specifically awarded attorney fees and costs be owed to a special Assistant Attorney General appointed by the Attorney General pursuant to section three-a, article three of this chapter, then such attorney fees and expenses shall be paid to the Special Assistant Attorney General; or

(4) Civil asset forfeiture proceedings; or

(5) Fines and civil penalties.

#### **§5-3A-4. Retention of operational monies by Attorney General**

(a) *Legislative findings and purpose* - The Legislature finds and recognizes that the Attorney General bears the responsibility to investigate, research, prepare pleadings, and, if appropriate, bring action on behalf of the State, its agencies and its citizens. These litigation responsibilities include employing attorneys, investigators, support staff, and other administrative costs and

expenses in performance of the Attorney General's duties. In order to effectively and efficiently perform litigation responsibilities, certain operational monies need to be retained by the Attorney General's office.

(b) Except as required under subsection (c) of this section, any monies recovered or received by the state as a result of a civil action filed by the Attorney General pursuant to §46A-7-1 et seq. of this code, shall be deposited in a separate special revenue fund by the State Treasurer, to be known as the Consumer Protection Recovery Fund, which is hereby created in the State Treasury and to be administered by the Attorney General as follows:

(1) The Attorney General shall transfer, upon the expiration of each fiscal year, from the Consumer Protection Recovery Fund into the General Revenue Fund of the state, any unencumbered monies in excess of \$7 million from the balance remaining in the Consumer Protection Recovery Fund.

(2) The monies in the Consumer Protection Recovery Fund shall be used by the Attorney General for the direct and indirect administrative, investigative, compliance, enforcement, or litigation costs and services incurred for consumer protection purposes in accordance with the provisions of chapter 46-A of this code.

(c) Any monies received by the Attorney General for the specific purpose of consumer restitution or refunds shall be placed in a separate special revenue fund by the State Treasurer, to be known as the Consumer Protection Restitution Fund, which is hereby created in the State Treasury under the administration of the Attorney General. All monies placed in the Consumer Protection Restitution Fund shall be paid out to the specific consumers for whom recovery was made: *Provided*, That when the Attorney General is unable to locate a consumer, for purposes of payment of restitution or refund, within one year of the date of receipt of any such restitution, said funds shall be transferred to the Consumer Protection Recovery Fund.

(d) Upon the effective date of this section, the Consumer Protection Fund, heretofore created in the State Treasury and administered by the Attorney General, is terminated and closed and any balance remaining in the fund shall be transferred to the Consumer Protection Recovery Fund for expenditure pursuant to subsection (b) of this section.

#### **§5-3A-5. Preparation and enforceability of orders.**

(a) In the preparation of a settlement agreement, conciliation agreement, memorandum of understanding, or other type of agreement setting forth a disposition that will result in the recovery of funds or assets by the state, the Attorney General, or other officer or agency of the state who is a party to or has entered his or her appearance in the action on behalf of the State of West Virginia, may not agree to any terms contrary to the provisions of §5-3A-3 or §5-3A-4 of this code.

(b) In the preparation of a judgment order that will result in the recovery of funds or assets by the state, the Attorney General, or other officer or agency of the state who is a party to or has entered his or her appearance in the action on behalf of the State of West Virginia, shall advise the court of the provisions of this section and of the provisions of §5-3A-3 or §5-3A-4 of this code.

(c) In the event of an extra-judicial settlement that would result in the recovery of funds or assets by the state, the Attorney General, or other officer or agency of the state acting on behalf of the State of West Virginia, may not agree to any terms contrary to the provisions of sections three or four of this article.

**§5-3A-6. Reporting and accountability.**

(a) For purposes of this section, the Attorney General shall, on or before August 15 of each year, deliver to the Governor, the Joint Committee on Government and Finance, and the State Auditor, a report providing an accounting of receipts and expenditures for each fund administered by the Attorney General during the next preceding fiscal year.

(b) In addition to, and separate from, the annual report required to be filed under §5-3-4 of this code, the Attorney General shall, on or before January 15 of each year, deliver to the Governor, the Joint Committee on Government and Finance, and the State Auditor, a report of the causes described in §5-3A-3 of this code, in which there has been a disposition, and any extra-judicial settlements obtained, and summary of, the disposition, including amounts or assets recovered by the state during the next preceding calendar year.

(c) The report required by subsection (b) of this section shall also include:

(1) Amounts paid to any Special Assistant Attorney General or other persons under contract with the Attorney General to perform legal services, for representing the state or a public officer or employee of the state; and

(2) The amount of judgments, settlements, costs, and fees awarded by the courts to the Attorney General or to the state, including its officers or agencies, in which the Attorney General has served as counsel on behalf of the state.

On motion of Senator Romano, the following amendment to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 4009) was reported by the Clerk:

On page four, section four, subsection (b), subdivision (1), by striking out "\$7" and inserting in lieu thereof "\$5".

Following extended discussion,

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

The roll being taken, the yeas were: Baldwin, Beach, Facemire, Jeffries, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Takubo, Unger, and Woelfel—13.

The nays were: Arvon, Azinger, Blair, Boley, Boso, Clements, Cline, Drennan, Ferns, Gaunch, Karnes, Maroney, Maynard, Rucker, Smith, Swope, Sypolt, Trump, Weld, and Carmichael (Mr. President)—20.

Absent: Mann—1.

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

The question now being on the adoption of the Judiciary committee amendment to the bill.

Following discussion,

The question now being on the adoption of the Judiciary committee amendment to the bill, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 4009), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4036**, Increasing the maximum salaries of family case coordinators and secretary-clerks.

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

**Eng. Com. Sub. for House Bill 4156**, Establishing the qualifications of full and part time nursing school faculty members.

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

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

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

**~~§30-7-5. Schools of nursing; accreditation; standards; surveys and reports; failure to maintain standards.~~**

~~An institution desiring to be accredited by the board for the preparation of practitioners of registered professional nursing shall file an application therefor with the board, together with the information required and a fee of \$50. It shall submit written evidence that: (a) It is prepared to give a program of nursing education which meets the standards prescribed by the board; and (b) it is prepared to meet all other standards prescribed in this article and by the board.~~

~~Instruction and practice may be secured in one or more institutions approved by the board. Such institution or institutions with which the school is to be affiliated shall be surveyed by the executive secretary of the board, who shall submit a written report of the survey to the board. If, in the opinion of the board, the requirements for an accredited school to prepare practitioners of registered professional nursing are met, it shall approve the school as an accredited school. From time to time as deemed necessary by the board, it shall be the duty of the board, through its executive secretary, to survey all such schools. Written reports of such surveys shall be submitted to the board. If the board determines that any such accredited school is not maintaining the standards required by this article and by the board, notice thereof in writing specifying the defect or defects shall be immediately given to the school. A school which fails to correct these conditions to the satisfaction of the board within a reasonable time shall be removed from the list of accredited schools.~~

**ARTICLE 7. REGISTERED PROFESSIONAL NURSES.**

**§30-7-5. Schools of nursing.**

(a) A nursing program is determined to be board approved if the program is accredited by a national nursing accrediting agency recognized by the United States Department of Education.

The accreditation is considered board approved and is exempt from board rules that require ongoing approval if the school or program maintains this accreditation.

(b) By July 1, 2022, all nursing programs shall be accredited by a national accrediting agency recognized by the United States Department of Education. A program created after July 1, 2018, shall have 5 years to obtain accreditation by an accrediting agency recognized by the United States Department of Education.

(c) The board may require information concerning the nursing program to be reported to the board by legislative rule. The requested information shall be consistent with information already being collected by the schools which is required to maintain the program's accreditation.

(d) The board shall approve a new nursing program until the program is accredited by a national nursing accrediting agency recognized by the United States Department of Education.

### **§30-7-5a. Schools of nursing faculty requirements.**

(a) Full-time nursing faculty members shall:

(1) Have a graduate degree with a major in nursing; have a bachelor's degree with a major in nursing and be enrolled in a graduate degree program with a major in nursing within one year of employment as a faculty member; or have a bachelor's degree with a major in nursing and at least 10 years of direct patient care experience in nursing;

(2) Have evidence of current experience in nursing practice and education sufficient to demonstrate professional competence. For faculty with less than two years' experience in education, the nursing program administrator will submit to the board mentoring and orientation plans as defined by board guidelines and function under the guidance of a faculty member fully qualified in the specific teaching area and professional competence; and

(3) Have credentials which verify status as a registered professional nurse in West Virginia.

(b) Part-time nursing faculty members shall:

(1) Have a graduate degree with a major in nursing; have a bachelor's degree with a major in nursing and be enrolled in a graduate degree program with a major in nursing within one year of employment as a faculty member; or have a bachelor's degree with a major in nursing and at least two years of direct patient care experience in nursing;

(2) Have evidence of current experience in nursing practice and education sufficient to demonstrate professional competence. For faculty with less than two years' experience in education, the nursing program administrator will submit to the board mentoring and orientation plans as defined by board guidelines and function under the guidance of a faculty member fully qualified in the specific teaching area and professional competence; and

(3) Have credentials which verify status as a registered professional nurse in West Virginia.

(c) The board may grant an exception to the requirements in §30-7-21(a) and §30-7-21(b) of this code for faculty members who have qualifications other than those set forth in these subsections which are acceptable to the board.

**ARTICLE 7A. PRACTICAL NURSES.****§30-7A-8. Schools of practical nursing.**

~~The board shall prescribe curricula and standards for schools, clinical practice areas and courses preparing persons for licensure under this article; it shall provide for surveys of such schools, clinical practice areas and courses at such times as it may deem necessary. It shall accredit such schools, clinical practice areas and courses as meet the requirements of this article and of the board. An institution desiring to conduct a school of practical nursing to be accredited by the board as such shall file an application therefor with the board, together with the information required and such fee as may be prescribed by the board. It shall submit satisfactory evidence that: (1) It is prepared to give the course of instruction and practical experience in practical nursing as prescribed in the curricula adopted by the board; and (2) it is prepared to meet other standards established by this law and by the board.~~

~~A survey of the institution or institutions, with which the school is to be, or is, affiliated, shall be made by the executive secretary of the board. The executive secretary shall submit a written report of the survey to the board. If, in the opinion of the board, the requirements for an accredited school of practical nursing are met, it shall approve the school as an accredited school of practical nursing. From time to time as deemed necessary by the board, it shall be the duty of the board, through its executive secretary, to survey all schools of practical nursing in the state. Written reports of such surveys shall be submitted to the board. If the board determines that any accredited school of practical nursing is not maintaining the standards required by the statutes and by the board, notice thereof in writing specifying the defect or defects shall be immediately given to the school. A school which fails to correct these conditions to the satisfaction of the board within a reasonable time shall be removed from the list of accredited schools of practical nursing and shall be in violation of this article. Nothing contained in this article shall infringe upon the rights or power of the state Board of Education, or county boards of education to establish and conduct a program of practical nurse education or other health occupation so long as the prescribed curricula meets the requirements of the board.~~

(a) A practical nursing program is determined to be board approved if the program is accredited by a national nursing accrediting agency recognized by the United States Department of Education. The accreditation is considered board approved and is exempt from board rules that require ongoing approval if the school or program maintains this accreditation.

(b) By July 1, 2022, all practical nursing programs shall be accredited by a national accrediting agency recognized by the United States Department of Education. A program created after July 1, 2018, shall have 5 years to obtain accreditation by an accrediting agency recognized by the United States Department of Education.

(c) The board may require information concerning the practical nursing program to be reported to the board by legislative rule. The requested information shall be consistent with information already being collected by the schools which is required to maintain the program's accreditation.

(d) The board shall approve a new practical nursing program until the program is accredited by a national nursing accrediting agency recognized by the United States Department of Education.

On motion of Senator Takubo, the following amendments to the Health and Human Resources committee amendment to the bill (Eng. Com. Sub. for H. B. 4156) were reported by the Clerk and considered simultaneously:

On page three, section five-a, by striking out all of subsection (c) and inserting in lieu thereof a new subsection, designated subsection (c), to read as follows:

(c) The board may grant an exception to the requirements in §30-7-5a(a) and §30-7-5a(b) of this code for faculty members who have qualifications other than those set forth in these subsections which are acceptable to the board.;

On page four, section eight, subsection (a), after the word “national” by striking out the word “nursing”;

And

On page five, section eight, subsection (e), after the word “national” by striking out the word “nursing”.

Following discussion,

The question being on the adoption of Senator Takubo’s amendments to the Health and Human Resources committee amendment to the bill, the same was put and prevailed.

The question now being on the adoption of the Health and Human Resources committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 4156), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4157**, Eliminating the refundable exemption for road construction contractors.

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

**Eng. Com. Sub. for House Bill 4166**, Establishing a special revenue fund to be known as the “Capital Improvements Fund — Department of Agriculture Facilities”.

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

**Eng. Com. Sub. for House Bill 4187**, Business Liability Protection Act.

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

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

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

**ARTICLE 7. DANGEROUS WEAPONS.**

**§61-7-14. Right of certain persons to limit possession of firearms on premises.**

This section may be referred to as “The Business Liability Protection Act”.

(a) As used in this section:

(1) “Parking lot” means any property that is used for parking motor vehicles and is available to customers, employees, or invitees for temporary or long-term parking or storage of motor vehicles: *Provided*, That for purposes of this section, parking lot does not include the private parking area at a business located at the primary residence of the property owner.

(2) “Motor vehicle” means any privately-owned automobile, truck, minivan, sports utility vehicle, motor home, recreational vehicle, motorcycle, motor scooter, or any other vehicle operated on the roads of this state and, which is required to be registered under state law: *Provided*, That for purposes of this section, motor vehicle does not mean vehicles owned, rented, or leased by an employer and used by the employee in the course of employment.

(3) “Employee” means any person, who is over 18 years of age, not prohibited from possessing firearms by the provisions of this code or federal law, and

(A) Works for salary, wages, or other remuneration;

(B) Is an independent contractor; or

(C) Is a volunteer, intern, or other similar individual for an employer.

(4) “Employer” means any business that is a sole proprietorship, partnership, corporation, limited liability company, professional association, cooperative, joint venture, trust, firm, institution, association, or public-sector entity, that has employees.

(5) “Invitee” means any business invitee, including a customer or visitor, who is lawfully on the premises of a public or private employer.

(6) “Locked inside or locked to” means

(A) The vehicle is locked; or

(B) The firearm is in a locked trunk, glove box, or other interior compartment, or

(C) The firearm is in a locked container securely fixed to the vehicle; or

(D) The firearm is secured and locked to the vehicle itself by the use of some form of attachment and lock.

(b) Notwithstanding the provisions of this article, any owner, lessee or other person charged with the care, custody, and control of real property may prohibit the carrying openly or concealing of any firearm or deadly weapon on property under his or her domain: *Provided*, That for purposes of this section “person” means an individual or any entity which may acquire title to real property: *Provided, however*, That for purposes of this section “natural person” means an individual human being.

(c) Any natural person carrying or possessing a firearm or other deadly weapon on the property of another who refuses to temporarily relinquish possession of the firearm or other deadly weapon, upon being requested to do so, or to leave the premises, while in possession of the firearm or other deadly weapon, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail not more than six months, or both: *Provided*, That the provisions of this section do not apply to a natural person as set forth in ~~subdivisions (3) through (7), inclusive, subsection (a), section six of this article §61-7-6(a)(5) through §61-7-6(a)(7) and §61-7-6(a)(9) through §61-7-6(a)(10) of this code~~ while the person is acting in his or her an official capacity; ~~and or to a natural person as set forth in subdivisions (1) through (8), inclusive, subsection (b) of said section §61-7-6(b)(1) through §61-7-6(b)(8) of this code, while the person is acting in his or her official capacity.~~ *Provided, however*, That under no circumstances, except as provided for by the provisions of ~~paragraph (l), subdivision (2), subsection (b), section eleven-a of this article, §61-7-11a(b)(2)(A) through (l) of this code,~~ may any natural person possess or carry or cause the possession or carrying of any firearm or other deadly weapon on the premises of any primary or secondary educational facility in this state unless the natural person is a law-enforcement officer or he or she has the express written permission of the county school superintendent.

(d) Prohibited acts. – Notwithstanding the provisions of subsections (b) and (c) of this section:

(1) No owner, lessee, or other person charged with the care, custody, and control of real property may prohibit any customer, employee, or invitee from possessing any legally owned firearm, when the firearm is

(A) Lawfully possessed;

(B) Out of view;

(C) Locked inside or locked to a motor vehicle in a parking lot; and

(D) When the customer, employee, or invitee is lawfully allowed to be present in that area.

(2) No owner, lessee, or other person charged with the care, custody, and control of real property may violate the privacy rights of a customer, employee, or invitee either

(A) By verbal or written inquiry, regarding the presence or absence of a firearm locked inside or locked to a motor vehicle in a parking lot; or

(B) By conducting an actual search of a motor vehicle in a parking lot to ascertain the presence of a firearm within the vehicle: *Provided*, That a search of a motor vehicle in a parking lot to ascertain the presence of a firearm within that motor vehicle may only be conducted by on-duty, law enforcement personnel, in accordance with statutory and constitutional protections.

(C) No owner, lessee, or other person charged with the care, custody, and control of real property may take any action against a customer, employee, or invitee based upon verbal or written statements of any party concerning possession of a firearm stored inside a motor vehicle in a parking lot for lawful purposes, except upon statements made pertaining to unlawful purposes or threats of unlawful actions involving a firearm made in violation of §61-6-24 of this code.

(3) No employer may condition employment upon either:

(A) The fact that an employee or prospective employee holds or does not hold a license issued pursuant to §61-7-4 or §61-7-4a of this code; or

(B) An agreement with an employee or a prospective employee prohibiting that natural person from keeping a legal firearm locked inside or locked to a motor vehicle in a parking lot when the firearm is kept for lawful purposes.

(4) No owner, lessee, or other person charged with the care, custody, and control of real property may prohibit or attempt to prevent any customer, employee, or invitee from entering the parking lot of the person's place of business because the customer's, employee's, or invitee's motor vehicle contains a legal firearm being carried for lawful purposes that is out of view within the customer's, employee's, or invitee's motor vehicle.

(e) Limitations on duty of care; immunity from civil liability. —

(1) When subject to the provisions of subsection (d) of this section, an employer, owner, lessee, or other person charged with the care, custody, and control of real property has no duty of care related to the acts prohibited under said subsection.

(2) An employer, owner, lessee, or other person charged with the care, custody, and control of real property is not liable in a civil action for money damages based upon any actions or inactions taken in compliance with subsection (d) of this section. The immunity provided in this subdivision does not extend to civil actions based on actions or inactions of employers, owners, lessees, or other persons charged with the care, custody, and control of real property unrelated to subsection (d) of this section.

(3) Nothing contained in this section may be interpreted to expand any existing duty or create any additional duty on the part of an employer, owner, lessee, or other person charged with the care, custody, and control of real property.

(f) Enforcement. – The Attorney General is authorized to enforce the provisions of subsection (d) of this section and may bring an action seeking either:

(1) Injunctive or other appropriate equitable relief to protect the exercise or enjoyment of the rights secured in subsection (d) of any customer, employee, or invitee;

(2) Civil penalties of no more than \$5,000 for each violation of subsection (d) and all costs and attorney's fees associated with bringing the action; or

(3) Both the equitable relief and civil penalties described in subdivisions (1) and (2) of this section, including costs and attorney's fees. This action must be brought in the name of the state and instituted in the Circuit Court of Kanawha County. The Attorney General may negotiate a settlement with any alleged violator in the course of his or her enforcement of subsection (d) of this section.

(4) Notwithstanding any other provision in this section to the contrary, the authority granted to the Attorney General in this subsection does not affect the right of a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section to bring an action for violation of the rights protected under this section in his or her own name and instituted in the circuit court for the county where the alleged violator resides, has a principal place of business, or where the alleged violation occurred. In any successful action brought by a customer, employee, or invitee

aggrieved under the authority of subsection (d) of this section, the court may award injunctive or other appropriate equitable relief and civil penalties as set forth in subdivisions one, two and three of this subsection. In any action brought by a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section, the court shall award all court costs and attorney's fees to the prevailing party.

The bill (Eng. Com. Sub. for H. B. 4187), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4217**, Permitting an attending physician to obtain a patient's autopsy report.

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

**Eng. Com. Sub. for House Bill 4251**, Permitting employees of baccalaureate institutions and universities outside of this state to be appointed to board of governors.

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

The following amendments to the bill, from the Committee on Education, were reported by the Clerk, considered simultaneously, and adopted:

On page one, section one, line seven, after the word "employee" by inserting the words "or, as appropriate, nonclassified employee";

On page two, section one, line thirty-four, after the word "institution" by inserting the words "or, if the respective institution does not have classified employees, a member from the institutional nonclassified employees duly elected by the nonclassified employees of the respective institution";

On page three, section one, line seventy-one, after the word "employees" by inserting the words "or, as appropriate, nonclassified employees";

On page three, section one, line seventy-two, after the word "employees" by inserting the words "or, as appropriate, nonclassified employees";

On page five, section one, line one hundred one, after the word "employees" by inserting the words "or, as appropriate, nonclassified employees";

And,

On page five, section one, line one hundred fifteen, after the word "employees" by inserting the words "or, as appropriate, nonclassified employees".

The bill (Eng. Com. Sub. for H. B. 4251), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4270**, Providing for the timely payment of moneys owed from oil and natural gas production.

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

At the request of Senator Smith, as chair of the Committee on Energy, Industry, and Mining, and by unanimous consent, the unreported Energy, Industry, and Mining committee amendment to the bill was withdrawn.

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

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

## **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

### **ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS.**

#### **§22-6-22. Well report, logs, core samples, and cuttings to be filed; confidentiality and permitted use; authority to promulgate rules; reporting of production data for horizontal wells.**

(a) Within a reasonable time after the completion of the drilling of a shallow well or deep well, the well operator shall file with the secretary and with the state Geological and Economic Survey a completion report containing the following:

(1) The character, depth, and thickness of geological formations encountered, including fresh water, coal seams, mineral beds, brine, and oil and gas bearing formations; and

(2) Such other information as the secretary may require to effectuate the purposes of this chapter.

The secretary may promulgate such reasonable rules in accordance with §29A-3-1 *et seq* of this code, as may be considered necessary to ensure that the character, depth, and thickness of geological formations encountered are accurately logged: *Provided*, That the secretary shall not require logging by the use of an electrical logging device: *Provided, however*, That if electrical, mechanical, or geophysical logs are recorded in the well, the secretary may request copies of these logs: *Provided further*, That mechanical or geophysical logs may not include vertical seismic profiles or two-dimensional or three-dimensional seismic information.

(b) If a well operator takes core samples, that activity shall be noted within the report, and, within 60 days after filing the completion report, the operator shall, subject to the terms of this article, provide the state Geological and Economic Survey with a complete set of cores, consisting of at least quarter slabs, correctly labeled and identified according to depth. The core samples requested by and provided to the state Geological and Economic Survey may not contain any materials or documents made with regard to analyzing or interpreting the core samples.

(c) If a well operator catches cuttings during the drilling of any deep or shallow well, that activity shall be noted within the report and, within 60 days after filing the completion report, the operator shall, subject to the terms of this article, provide the state Geological and Economic Survey with a sample of the cuttings, correctly labeled and identified according to depth.

(d) Any information, reports, cuttings, and core samples requested by and provided to the state Geological and Economic Survey by the operator shall be kept confidential at the written request of the operator for a specified amount of time as follows:

(1) Except for core samples, any logs, drill cuttings, reports and other information or materials that reveal trade secrets or other confidential business information relating to the competitive interests of the operator or the operator's privy may not be disclosed to the public for one year following delivery, unless the operator consents in writing to a shorter time. At the operator's written request, the period of confidentiality may be extended in annual increments: *Provided*, That the total period of confidentiality may not exceed three years.

(2) Any core samples may not be disclosed to the public for five years following delivery to the state Geological and Economic Survey, unless the operator consents in writing to a shorter time. At the operator's written request, the period of confidentiality may be extended for an additional five years: *Provided*, That the total period of confidentiality may not exceed 10 years.

(e) Notwithstanding the provisions of subsection (d) of this section, the state Geological and Economic Survey may store and process confidential information within its minerals mapping or geographic information systems; however, that confidential information may not be revealed to the public until the lapsing of the period of confidentiality created pursuant to subsection (d) of this section. After the period of confidentiality has lapsed, statistics or other information generated as the result of storage and processing may be disclosed in the aggregate through articles, reports, maps, or lectures presented in accordance with generally accepted academic or scientific practices and in a manner to preclude the identification of a particular well or operator.

(f) A quarterly report of the monthly volumes of oil, natural gas, and natural gas liquids produced from any horizontal well drilled shall be filed with the Chief of the Office of Oil and Gas on a form prescribed by the Secretary of the West Virginia Department of Environmental Protection. All reported data shall be made available to the public through the Office of Oil and Gas' website within a reasonable time. The secretary has the express authority pursuant to this article, as well as pursuant to the powers enumerated in §22-6-2 of this code, to promulgate rules and to amend the current rules to require timely quarterly reporting of production data as well as to establish a process for collecting such data.

## **CHAPTER 37B. MINERAL DEVELOPMENT.**

### **ARTICLE 1. INFORMATION REPORTING AND PAYMENTS TO OWNERS.**

#### **§37B-1-1. Oil and natural gas production information reporting from horizontal wells.**

(a) An operator or producer or their agents, contractors or assigns shall provide the following information with each payment to all interest owners receiving payments resulting from the development and production of oil, natural gas, or their constituents by horizontal wells governed by §22-6A-1 et seq. of this code, being the Natural Gas Horizontal Well Control Act:

(1) A name, number, or combination of name and number, and the state issued American Petroleum Institute number that identifies each lease, property, unit, pad, and well, for which payment is being made, and the county in which the lease, property, and well are located;

(2) Month and year of production;

(3) Total barrels of oil; number of MCF, MMBTU, or DTH of natural gas; and volume of natural gas liquids produced from each well and sold;

(4) Price received per unit of oil, natural gas, and natural gas liquids produced;

(5) Gross value of the total proceeds from the sale of oil, natural gas, and natural gas liquids from each well less taxes and deductions set forth in §37B-1-1(a)(6) of this code;

(6) Aggregate amounts for each category of deductions for each well which affect payment and are allowed by law, including without limitation those deductions provided for under the terms of the governing lease;

(7) Interest owner's interest in production from each well expressed as a decimal or fraction and reported pursuant to §37B-1-1(a)(1) of this code;

(8) Interest owner's ratable share of the total value of the proceeds of the sale of oil, natural gas, and natural gas liquids prior to the deduction of taxes, if applicable, and other deductions set forth in §37B-1-1(a)(6) of this code;

(9) Interest owner's ratable share of the proceeds from the sale of oil, natural gas, and natural gas liquids less the interest owner's ratable share of taxes, if applicable, and other deductions set forth in §37B-1-1(a)(6) of this code; and

(10) Contact information of the producer of the oil, natural gas, or natural gas liquids, including a mailing address and telephone number.

(b) An interest owner who does not receive the information required to be provided under this section in a timely manner may send a written request for the information by certified mail. Not later than the 60th day after the date the operator or producer receives the written request for information under this section, the operator or producer shall provide the requested information to the interest owner. If the interest owner makes a written request for information under this section and the operator or producer does not provide the information within the 60-day period, the interest owner may bring a civil action against the operator or producer to enforce the provisions of this section, and a prevailing interest owner shall be entitled to recover reasonable attorneys' fees and court costs incurred in the civil action.

### **§37B-1-2. Accumulation and payment of proceeds from production from horizontal wells.**

Notwithstanding any of the other provisions of this article, proceeds from production of oil, natural gas, and natural gas liquids from horizontal wells may be accumulated by the owners, cotenants, lessees, operators, or their agents, contractors, or assigns, until such time as proceeds attributable to any interest owner exceeds \$100 before making a remittance: *Provided*, That, regardless of the amount of money accumulated, the owners, cotenants, lessees, operators, or their agents, contractors, or assigns shall remit proceeds from horizontal wells attributable to the interest owners not less than once annually: *Provided further*, That all accumulated proceeds from horizontal wells shall be paid to the interest owners entitled thereto immediately, or as soon as practicable, upon cessation of production of oil, natural gas, or natural gas liquids or upon relinquishment or transfer of the payment responsibility to another party.

### **§37B-1-3. Payments from horizontal wells to be made timely; interest penalties.**

All regular production payments from horizontal wells due and owing to an interest owner shall be tendered in a timely manner, which shall not exceed 120 days from the first date of sale of oil, natural gas, or natural gas liquids is realized and within 60 days thereafter for each additional sale, unless such failure to remit is due to lack of record title in the interest owner, a legal dispute concerning the interest, a missing or unlocatable owner of the interest, or due to conditions

otherwise specified in this article. Failure to remit timely payment for horizontal wells shall result in a mandatory additional payment of an interest penalty to be set at the prime rate plus an additional two percent until such payment is made, to be compounded quarterly. The prime rate shall be the rate published on the day of the sale of oil, natural gas, and natural gas liquids in the *Wall Street Journal* reflecting the base rate on corporate loans posted by at least 75 percent of the nation's 30 largest banks.

The bill (Eng. Com. Sub. for H. B. 4270), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4338**, Relating to the powers and authority of the Divisions of Administrative Services, and Corrections and Rehabilitation of the Department of Military Affairs and Public Safety.

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

The following amendment to the bill, from the Committee on Government Organization, was reported by the Clerk:

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

## **CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.**

### **ARTICLE 7. COMPENSATION AND ALLOWANCES.**

#### **§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of officers.**

(a) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer is as follows:

Commissioner, Division of Highways, \$92,500; Commissioner, ~~Division of Corrections~~ Division of Corrections and Rehabilitation, ~~\$80,000~~ \$90,000; Director, Division of Natural Resources, \$75,000; Superintendent, State Police, \$85,000; Commissioner, Division of ~~Banking~~ Financial Institutions, \$75,000; Commissioner, Division of Culture and History, \$65,000; Commissioner, Alcohol Beverage Control Commission, \$75,000; Commissioner, Division of Motor Vehicles, \$75,000; Director, Human Rights Commission, \$55,000; Commissioner, Division of Labor, \$70,000; ~~prior to July 1, 2011, Director, Division of Veterans Affairs, \$65,000~~; Chairperson, Board of Parole, \$55,000; members, Board of Parole, \$50,000; members, Employment Security Review Board, \$17,000; and Commissioner, Workforce West Virginia, \$75,000. Secretaries of the departments shall be paid an annual salary as follows: Health and Human Resources, \$95,000: *Provided*, That effective July 1, 2013, the Secretary of the Department of Health and Human Resources shall be paid an annual salary not to exceed \$175,000; Transportation, \$95,000: *Provided, however*, That if the same person is serving as both

the Secretary of Transportation and the Commissioner of Highways, he or she shall be paid \$120,000; Revenue, \$95,000; Military Affairs and Public Safety, \$95,000; Administration, \$95,000; Education and the Arts, \$95,000; Commerce, \$95,000; Veterans' Assistance, \$95,000; and Environmental Protection, \$95,000: *Provided further*, That any officer specified in this subsection whose salary is increased by more than \$5,000 as a result of the amendment and reenactment of this section during the 2011 regular session of the Legislature shall be paid the salary increase in increments of \$5,000 per fiscal year beginning July 1, 2011, up to the maximum salary provided in this subsection.

(b) Each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code and shall be paid an annual salary as follows:

Director, Board of Risk and Insurance Management, \$80,000; Director, Division of Rehabilitation Services, \$70,000; Director, Division of Personnel, \$70,000; Executive Director, Educational Broadcasting Authority, \$75,000; Secretary, Library Commission, \$72,000; Director, Geological and Economic Survey, \$75,000; Executive Director, Prosecuting Attorneys Institute, \$80,000; Executive Director, Public Defender Services, \$70,000; Commissioner, Bureau of Senior Services, \$75,000; Executive Director, Women's Commission, \$45,000; Director, Hospital Finance Authority, \$35,000; member, Racing Commission, \$12,000; Chairman, Public Service Commission, \$85,000; members, Public Service Commission, \$85,000; Director, Division of Forestry, \$75,000; ~~Director, Division of Juvenile Services, \$80,000; Executive Director, Regional Jail and Correctional Facility Authority, \$80,000~~ and Executive Director of the Health Care Authority, \$80,000.

(c) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer shall be as follows:

Commissioner, State Tax Division, \$92,500; Insurance Commissioner, \$92,500; Director, Lottery Commission, \$92,500; Director, Division of Homeland Security and Emergency Management, \$65,000; and Adjutant General, \$125,000.

(d) No increase in the salary of any appointive state officer pursuant to this section may be paid until and unless the appointive state officer has first filed with the State Auditor and the Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The Attorney General shall prepare and distribute the form to the affected spending units.

## **CHAPTER 15A. DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY.**

### **ARTICLE 1. DEFINITIONS.**

#### **§15A-1-1. Rules of construction generally.**

Whenever in this chapter, or in any rule or regulation authorized by it, any of the words, terms, or phrases defined in this article are used, they shall be taken and construed to have the meaning, application, and effect ascribed to them in this article, unless otherwise specified or clearly intended.

**§15A-1-2. “Department.”**

“Department” means the Department of Military Affairs and Public Safety.

**§15A-1-3. “Secretary.”**

“Secretary” means the Secretary of the Department of Military Affairs and Public Safety.

**§15A-1-4. “Commissioner” defined.**

“Commissioner” means the Commissioner of the Division of Corrections and Rehabilitation within the Department of Military Affairs and Public Safety.

**§15A-1-5. “Inmate” defined.**

“Inmate” means an adult incarcerated person.

**§15A-1-6. “Resident” defined.**

“Resident” means a juvenile within the custody of the Division of Corrections and Rehabilitation.

**ARTICLE 2. DIVISION OF ADMINISTRATIVE SERVICES.**

**§15A-2-1. Division of Administrative Services.**

(a) The Division of Administrative Services is created within the department to perform the administrative services for identified agencies within the department.

(b) The Division of Administrative Services shall provide fiscal services, payroll services, human resources services, and procurement services for the Division of Corrections and Rehabilitation, created in §15A-3-1 et seq. of this code, and any other agencies or boards required by the secretary: *Provided*, That the secretary may not require the administrative services of the State Police, the West Virginia National Guard, or the West Virginia Military Authority be provided by the Division of Administrative Services.

(c) The State Police, the West Virginia National Guard, and the West Virginia Military Authority may elect to utilize the services of the Division of Administrative Services. The director of the Division of Administrative Services is authorized to enter into a memorandum of understanding with the head of the State Police, the West Virginia National Guard, or the West Virginia Military Authority to effectuate this utilization.

**§15A-2-2. Division director; appointment and qualifications; powers and duties.**

(a) The secretary shall appoint a director for the Division of Administrative Services who shall serve at the will and pleasure of the secretary. The director shall have extensive knowledge in the

field of public safety and the principles and practices of administration and experience in the civil service system.

(b) The director shall have control and supervision of the Division of Administrative Services and shall be responsible for the work of each of its employees.

(c) The director shall have the authority to employ all personnel necessary to perform the functions of the Division of Administrative Services. The director shall also have the authority to employ assistants and attorneys as may be necessary for the efficient operation of the Division of Administrative Services.

(d) The director shall perform the duties herein specified and shall also perform other duties as the secretary may prescribe.

(e) Where reference in this article is made to the "director", it shall mean the Director of the Division of Administrative Services.

### **§15A-2-3. Transfer of employees; continuation of programs; transfer of equipment and records; protection.**

(a) Effective July 1, 2018, all persons employed on the effective date of this article by the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority or the Division of Corrections whose current employment responsibilities include those to be provided by the Division of Administrative Services are hereby assigned and transferred to the Division of Administrative Services.

(1) The Division of Administrative Services shall assume all responsibilities of the administrative services sections of the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority and the Division of Corrections, including those related to ongoing programs, benefits, litigation or grievances.

(2) All equipment and records necessary to effectuate the purposes of this article shall be transferred to the Division of Administrative Services.

(b) Any person transferred to the office of the director of the division of administrative services who on the effective date of this article is a classified civil service employee shall, within the limits contained in §29-6-1 *et seq.* of this code, remain in the civil service system as a covered employee. Any person transferred to the office of the director of the division of administrative services who on the effective date of this article is a classified exempt civil service employee, other than the Director, and his or her Deputy Directors, and one exempt assistant, shall, within the limits contained in §29-6-1 *et seq.* of this code, be transferred into the civil service system as a permanent covered employee, and is no longer exempt: *Provided*, That any transferred employee that has been employed in his or her position for less than the required probationary period must first complete the probationary period prior to becoming a permanent covered employee.

## **ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.**

### **§15A-3-1. Purpose and legislative intent.**

(a) The primary purpose of the Division of Corrections and Rehabilitation is to enhance public safety by providing for the detention of juvenile offenders, both pretrial and adjudicated, pretrial detention of adult persons facing criminal charges, and incarceration and care of adult convicted

offenders who have been sentenced by courts of proper jurisdiction to serve terms of incarceration.

(b) It is the intent of the Legislature:

(1) That juveniles and adult offenders be afforded appropriate education and treatment to reestablish their ability to live peaceably, consistent with the protection of the community;

(2) That persons held in pretrial detention, and committed to jails and correctional institutions of the state for whom release is available for crimes, be afforded appropriate treatment to reestablish their ability to live peaceably, consistent with the protection of the community;

(3) That persons committed to jails and correctional institutions of the state be released at the earliest possible date, consistent with public safety;

(4) To establish a just, humane, and efficient corrections program; and

(5) To avoid duplication and waste of effort and money on the part of public and private agencies.

(c) This chapter shall be construed in favor of public safety.

#### **§15A-3-2. Division of Corrections and Rehabilitation established.**

(a) The Division of Corrections and Rehabilitation is hereby established within the Department of Military Affairs and Public Safety. The executive and administrative head of the Division of Correction and Rehabilitation shall be the Commissioner appointed pursuant to §15A-3-3 of this code.

(b) Effective July 1, 2018, the Division of Corrections and the Division of Juvenile Services are hereby abolished. Except as otherwise provided in this chapter, the powers and authority of those divisions are hereby transferred to the Division of Corrections and Rehabilitation.

(c) Effective July 1, 2018, the powers and authority of the Regional Jail and Correctional Facility Authority Board, in relation to all functions of correctional operations, are hereby transferred to the Division of Corrections and Rehabilitation. The Regional Jail and Correctional Facility Authority Board shall only retain the powers authorized in §15A-8-1 *et seq.* of this code.

(d) Whenever in this code a reference is made to the Division of Corrections, it shall be construed to mean the Division of Corrections and Rehabilitation. Wherever in this code a reference is made to the Division of Juvenile Services, it shall be construed to mean the Division of Corrections and Rehabilitation. Whenever in this code reference is made to the Regional Jail and Correctional Facility Authority Board in relation to operations of any of the regional jails, it shall be construed to mean the Division of Corrections and Rehabilitation.

(f) Any person employed by the Division of Corrections and Rehabilitation who on the effective date of this article is a classified service employee shall, within the limits contained in §29-6-1 *et seq.* of this code, remain in the classified service system as a covered employee.

(e) Where reference in this article is made to the "division", it shall mean the Division of Corrections and Rehabilitation.

**§15A-3-3. Commissioner of division; qualifications, oath and bond.**

(a) A commissioner of the Division of Corrections and Rehabilitation shall be appointed by the Governor, by and with the advice and consent of the Senate, as provided in §6-7-2a of this code.

(b) Effective July 1, 2018, the offices of Commissioner of Division of Corrections, the Director of Juvenile Services, and the Executive Director of the Regional Jail and Correctional Facility Authority are hereby abolished. Except as otherwise provided in this chapter, the powers and authority of those officers are vested in the Commissioner of the Division of Corrections and Rehabilitation.

(c) The commissioner shall take and subscribe to the oath prescribed by the Constitution for public officials and shall execute an official bond in a penalty of \$15,000, conditioned as required by law. Premiums on the bond shall be paid from appropriations made for the commissioner's office. The bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor and, when fully executed and approved, shall be filed in the office of the Secretary of State.

(d) Whenever in this code, reference is made to the Commissioner of the Division of Corrections or the Director of the Division of Juvenile Services, it shall be construed to mean the Commissioner of the Division of Corrections and Rehabilitation. Whenever in this code reference is made to the Executive Director of the Regional Jail and Correctional Facility Authority, in relation to operations of any of the regional jails, it shall be construed to mean the Commissioner of the Division of Corrections and Rehabilitation.

**§15A-3-4. Powers and duties of commissioner generally.**

(a) The commissioner, in order to carry out the purposes and intent of this chapter, shall:

(1) Exercise general supervision over the administration of the institutions under the jurisdiction of the division;

(2) Establish separate subdivisions, including a Bureau of Prisons and Jails, a Bureau of Juvenile Services, and a Bureau of Community Corrections, each to be headed by assistant commissioners, and other subdivisions as he or she deems advisable, which may be headed by one of the assistant commissioners, or by deputy directors. Nothing herein shall prohibit the commissioner from appointing the same person to head more than one subdivision;

(3) Establish rules, policies, and regulations in writing governing all subdivisions and institutions within the division;

(4) Establish an appropriate training program for personnel of the division;

(5) Classify the institutions of the division, varying according to the factors as security features, program, age, and sex of inmates, physical stature or size, character of inmates;

(6) Establish a system of classification of inmates and residents, through a reception and examination procedure;

(7) Cooperate with the Department of Education in providing for the education of inmates and residents in all institutions within the division, as provided in §18-2-13f of this code and any other provision of this code;

(8) Supervise the treatment, custody, and discipline of all inmates and residents and the maintenance of the institutions and their industries;

(9) Establish a system of compensation for inmates and residents of the institutions of the state who perform good and satisfactory work either within the industrial program or in the servicing and maintenance of the institutions or any other institutions or camps within the state. The commissioner, or his or her designee, may establish a graduated scale of compensation to be paid to inmates and residents in accordance with their skill in industry; and

(10) Subject to the provisions in §25-1A-5 of this code, provide for the transportation of inmates between the jails and local holding facilities for court appearances.

(b) The commissioner, in order to carry out the purposes and intent of this chapter, may:

(1) Appoint a deputy commissioner to assist in the day to day operations of the division;

(2) Employ professional and support staff, including, but not limited to, certified public accountants, attorneys, assistants, and other employees as necessary for the efficient operation of the division;

(3) Acquire, own, hold, and dispose of property, real and personal, tangible and intangible;

(4) Lease property, whether as a lessee or lessor;

(5) Conduct examinations and investigations and hear testimony and take proof, under oath or affirmation;

(6) Issue subpoenas requiring the attendance of witnesses and the production of books and papers relevant to any hearing before the commissioner, or his or her designee, to conduct any hearing;

(7) Apply to the circuit court having venue of the offense to have punished for contempt any witness who refuses to obey a subpoena, refuses to be sworn or affirmed, or refuses to testify, or who commits any contempt after being summoned to appear;

(8) Sue and be sued, implead and be impleaded, and complain and defend in any court;

(9) Propose rules for legislative approval for the management and regulation of the affairs of the division pursuant to the provisions of §29A-3-1 *et seq.* of this code;

(10) Make policies for the management and regulation of the affairs of the divisions;

(11) Make contracts of every kind and nature and to execute all instruments necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership, or corporation to affect any or all of the purposes of this chapter;

(12) Accept gifts or grants of property, funds, security interests, money, materials, labor, supplies, or services from the United States of America or from any governmental unit or any person, firm, or corporation, acceptance or disposition of gifts or grants; and

(13) Designate a facility as a rehabilitation facility; a rehabilitation facility may utilize recommendations on programming from West Virginia higher education institutions and share statistical data with the same institutions for study on the effectiveness of services provided by the institution.

**§15A-3-5. Officers and employees of corrections institutions.**

(a) The commissioner, or his or her designee, has the authority to manage and administer the finances, business, operations, security, and personnel affairs of correctional units and juvenile facilities under the jurisdiction of the division.

(b) The superintendent of each institution or correctional unit has the power to hire all assistants and employees required for the management of the institution in his or her charge, but the number of the assistants and employees, and their compensation, shall first be approved by the commissioner.

(c) It is the duty of the commissioner to investigate any complaint made against the superintendent of any institution, and against any other officer or employee thereof, if the same has not been investigated.

(d) All prospective correctional employees shall pass a preemployment drug screening prior to being hired.

(e) All persons employed at a state-operated correctional institution or correctional unit are subject to the supervision and approval of the superintendent and the authority of the commissioner, or his or her designee, except those persons employed by the State Board of Education, pursuant to §18-2-13f of this code.

**§15A-3-6. Hiring of correctional officer without regard to position on the register.**

Notwithstanding any provision of law to the contrary or any rule promulgated under the provisions of this code, the Division of Corrections and Rehabilitation may hire any person listed on the Correctional Officer I Register for employment as a Correctional Officer I without regard to the person's position on the register: *Provided*, That no person on the Correctional Officer I Register may be offered employment or hired before an otherwise qualified person on a preference register who is willing to accept the position.

**§15A-3-7. Compensation of employees; traveling and other expenses.**

The commissioner shall, in accordance with the provisions of §29-6-1 *et seq.* of this code, approve the salaries of all employees of the division. Salaries shall be commensurate with their duties and responsibilities, but no meals or other emoluments of any kind shall be furnished, given, or paid to the employee as all or part of their salary. The employees may be provided meals, household facilities, and supplies as may be necessary for them to perform their duties, if the employees agree to pay the reasonable cost as established by the commissioner. In the event of an emergency, such as a riot or other disturbance, the commissioner may authorize meals to be provided to employees at no cost. Additionally, the commissioner may establish a procedure

to reimburse employees reasonable costs in the event the employee's personal property is stolen or damaged by an inmate or resident. All persons employed under this article are entitled to be reimbursed for necessary traveling and other expenses.

**§15A-3-8. Reports by commissioner and chief officers of institutions to Auditor.**

The commissioner shall, from time to time, as may be necessary, make a report to the Auditor, which shall state the name of each person employed at any of the institutions named in §15A-3-12 of this code, his or her official designation and biweekly rate of compensation, and out of what funds or appropriation the same is payable. The superintendent of the institution, or other person who may have been appointed for the purpose by the commissioner, shall make and certify to the Auditor at the end of each month a list of persons to whom any payments may be due, stating for what purpose due, the amount due each person, and the fund or appropriation from which payable; one copy whereof shall be filed in the office of the institution where made, and one in the office of the commissioner. If the Auditor finds the list correct and in accordance with the reports made to him or her by the commissioner, he or she may pay to the persons entitled thereto the amounts so certified as due each.

**§15A-3-9. Special compensation of officers and employees prohibited; penalty.**

No officer or employee shall receive, directly or indirectly, any other compensation for his or her services than that provided by law, or by the commissioner before his or her appointment, nor shall he or she receive any compensation whatever, directly or indirectly, for any act or service which he or she may do or perform for or on behalf of any contractor, or agent, or employee of a contractor. For any violation of this section the officer, agent, or employee of the state engaged therein shall be dismissed from his or her office or service, and every contractor, or employee, or agent of a contractor, engaged therein shall be expelled from the grounds of an institution, and not again employed in any institution as a contractor, agent, or employee.

**§15A-3-10. Law-enforcement powers of employees.**

(a) Other than as outlined in this section, a correctional officer employed by the division is not a law-enforcement officer as that term is defined in §30-29-1 of this code.

(b) The commissioner is a law-enforcement official, and has the authority to use, and permit and allow or disallow his or her designated employees to use, publicly provided carriage to travel from their residences to their workplace and return: *Provided*, That the usage is subject to the supervision of the Commissioner and is directly connected with and required by the nature and in the performance of the official's or designated employee's duties and responsibilities.

(c) All employees of the division are responsible for enforcing rules and laws necessary for the control and management of correctional units and the maintenance of public safety that is within the scope of responsibilities of the division.

(d) Persons employed by the Division of Corrections and Rehabilitation as correctional officers are hereby authorized and empowered to make arrests of persons already charged with a violation of law who surrender themselves to the correctional officer, to arrest persons already in the custody of the division for violations of law occurring in the officer's presence, to detain persons for violations of state law committed on the property of any facility under the jurisdiction of the commissioner, and to conduct investigations, pursue, and apprehend escapees from the custody of a facility of the division.

(e) The commissioner may designate correctional employees as correctional peace officers who have the authority:

(1) To detain persons for violations of state law committed on the property of any state correctional institution;

(2) To conduct investigations regarding criminal activity occurring within a correctional facility;

(3) To execute criminal process or other process in furtherance of these duties; and

(4) To apply for, obtain, and execute search warrants necessary for the completion of his or her duties and responsibilities.

(f) The Corrections Special Operations Team is hereby established and shall consist of the Corrections Emergency Response Team, the K9 unit, and the Crisis Negotiations team created under the former Division of Corrections. The Corrections Special Operations Team serves as the first responder necessary for the protection of life, liberty, and property. It shall have limited law-enforcement authority regarding matters occurring at jails, correctional centers, and juvenile centers, and arrest powers to apprehend escapees, absconders, and in all matters arising on the grounds of a facility under the care and control of the commissioner: *Provided*, That at any time the Corrections Special Operations Team is apprehending an escapee or an absconder outside the confinement of the facility grounds, it does so with the assistance and cooperation of local law enforcement or the West Virginia State Police.

**§15A-3-11. Unauthorized use of uniform, badge, identification card, or other insignia; impersonation of member; and penalty.**

(a) The commissioner shall prescribe the design, or designs, of uniforms used by employees of the division, which shall be dissimilar to the design of the uniform worn by the members of the State Police or the established statewide uniform of a sheriff or deputy sheriffs. A municipality shall not adopt for its police officers or other employees a uniform which is similar in design to the uniform adopted by the commissioner.

(b) No person who is not an officer or employee of the Division of Corrections and Rehabilitation, and no officer or employee of the division who is not authorized to do so, may, with intent to deceive, wear, use, order to be used or worn, copy, or imitate in any respect or manner the uniform, badge, identification card, or other insignia prescribed for employees of the division.

(c) No person who is not an officer or employee of the Division of Corrections and Rehabilitation may falsely represent himself or herself to be an officer or employee of the Division of Corrections and Rehabilitation or to be under the order or direction of any officer or employee of the division.

(d) No person employed as an officer or employee of the Division of Corrections and Rehabilitation may use his or her position as such to threaten or coerce any other person in order to receive any favoritism, employment, or thing of favor by virtue of his or her employment with the division: *Provided*, That this subsection does not apply to violations of the Prison Rape Elimination Act.

(e) Any person who violates the provisions of §15A-3-11(b), §15A-3-11(c), or §15A-3-11(d) of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than

\$200, or confined in the county or regional jail for not more than six months, or both fined and confined.

**§15A-3-12. Institutions managed by commissioner.**

(a) The commissioner shall manage, direct, control, and govern the prisons, jails, or correctional institutions of this state, and the juvenile facilities of this state, including, but not limited to:

Mount Olive Correctional Complex and Jail;

Huttonsville Correctional Center and Jail;

Anthony Correctional Center and Jail;

Denmar Correctional Center and Jail;

Pruntytown Correctional Center and Jail;

Northern Regional Jail and Correctional Center;

Saint Marys Correctional Center and Jail;

Lakin Correctional Center and Jail;

Ohio County Correctional Center and Jail;

Beckley Correctional Center and Jail;

Martinsburg Correctional Center and Jail;

Salem Correctional Center and Jail;

Parkersburg Correctional Center and Jail;

Charleston Correctional Center and Jail;

Central Regional Jail and Corrections Facility;

Eastern Regional Jail and Corrections Facility;

North Central Regional Jail and Corrections Facility;

Potomac Highlands Regional Jail and Corrections Facility;

South Central Regional Jail and Corrections Facility;

Southern Regional Jail and Corrections Facility;

Southwestern Regional Jail and Corrections Facility;

Tygart Valley Regional Jail and Corrections Facility;

Western Regional Jail and Corrections Facility;

Donald R. Kuhn Juvenile Center;

Gene Spadaro Juvenile Center;

J.M. Chick Buckbee Juvenile Center;

Kenneth "Honey" Rubenstein Juvenile Center;

Lorrie Yeager Juvenile Center;

Robert L. Shell Juvenile Center;

Sam Perdue Juvenile Center;

Tiger Morton Juvenile Center;

Vicki Douglas Juvenile Center; and

Any other juvenile or adult facility later transferred to the commissioner.

(b) The commissioner may contract with the county commission of McDowell County to house and incarcerate inmates at the Stevens Correctional Center consistent with all requirements and standards governing the division.

(c) The commissioner may contract with Youth Services System to house and detain juveniles at the Ronald Mulholland Juvenile Center consistent with all the requirements and standards governing the division.

(c) The commissioner may establish work and study release units as extensions and subsidiaries of those state institutions under his or her control and authority. The work and study release units may be coeducational and shall be managed, directed, and controlled as provided in this article.

(d) The commissioner may contract with nonprofit or charitable entities including, but not limited to, nonprofit community mental health clinics, operating half-way houses, or transitional housing facilities for the placement of persons in the commissioner's custody, whether confined or under parole supervision, as long as the facilities meet standards and criteria established by the commissioner.

(1) The commissioner may direct that a person who is placed in a half-way house or transitional housing facility under this section make reimbursement to the state in the amount of a reasonable sum calculated to offset all or part of the costs of the placement. Prior to ordering the person to make the reimbursement, the commissioner, or his or her designee, shall consider the following:

(A) The person's ability to pay;

(B) The nature and extent of the person's responsibilities to his or her dependents, if any;

(C) The length of probable incarceration under the court's sentence; and

(D) The effect, if any, that reimbursement might have on the person's rehabilitation.

(2) The division shall provide the number of persons placed in a half-way house or a transitional housing facility as authorized in this section in its report made pursuant to §5-1-20 of this code, and shall describe its plans to use the authority provided under the provisions of §15A-3-12(f) of this code in furtherance of the duties and responsibilities imposed by this article.

(e) All adult persons sentenced by a court to serve a sentence of incarceration in a prison, jail, or correctional institution under the jurisdiction of the commissioner shall be deemed to be sentenced to the custody of the commissioner. The commissioner, or his or her designee, has the authority to and may order the transfer of any adult to any appropriate institution within the division.

(f) The commissioner has full discretionary authority to contract with any county jail, or other appropriate facility or institution for the incarceration and care of adult inmates. If a felony sentenced inmate is held in a jail facility or unit, under the jurisdiction of the commissioner, the commissioner shall pay a per diem rate, not subject to the limitations set forth in §15A-3-16(g) of this code.

(g) The commissioner, or his or her designee, may transfer any adult prisoner or inmate who is mentally disturbed and who would more appropriately be treated in an institution under the jurisdiction of the Bureau of Health, to the Bureau, subject to the approval of the Director of Health, and may transfer any adult prisoner or inmate to an appropriate mental facility for specialized medical treatment.

(h) The commissioner shall, no later than July 1, 2019, complete an evaluation of all facilities within his or her control for the most appropriate space to house each type of inmate, and shall consult with the Juvenile Justice Commission on any and all intended uses of current or prospective juvenile facilities. This evaluation shall include an assessment of the physical plant of each institution, the inmate population size and type, and classification of inmates. Following completion of the evaluation, the commissioner shall develop a plan on how to best utilize the institutional space, and shall report to the Joint Committee on Government and Finance with recommendations regarding implementation of that plan. The commissioner may, from time to time, and as circumstances dictate, reorganize the facilities, and units within the facilities, to house pretrial inmates, convicted misdemeanants, and convicted felons in the most appropriate manner. No facility shall be converted from a juvenile to an adult facility, or from an adult to a juvenile facility, without legislative authorization.

**§15A-3-13. Title to property of state institutions; custody of deeds and other muniments of title; authority of Commissioner.**

The title to all property constituting or belonging to the several institutions named in §15A-3-12 of this code is vested in the state. The commissioner is custodian of all deeds and other muniments of title and shall cause such as are susceptible of recordation to be recorded in the proper offices. The commissioner is authorized, as lessor, to lease the West Virginia penitentiary in Moundsville, title to which is vested in the state by prior act of the legislator, for a term of not more than five years: *Provided*, That this section does not affect any lease in effect as of the effective date of this section. Any agreement entered into under this section shall be with the consent and approval of the Secretary of the Department of Military Affairs and Public Safety, and shall include a provision within each agreement allowing for the immediate termination by the secretary or commissioner at any time.

**§15A-3-14. Exempt from Purchasing Division; purchasing procedures.**

(a) The provisions established in §5A-3-1 et seq. of this code do not apply to the division or any institution under the control of the division.

(b) When the cost under any contract or agreement entered into by the division, other than compensation for personal services, involves an expenditure of more than \$2,500 and less than \$25,000, the division shall solicit at least 3 bids, if possible, from vendors and make a written contract with the lowest responsible bidder. When the cost under any contract or agreement entered into by the division, other than compensation for personal services, involves an expenditure of \$25,000 or more, the division shall make a written contract with the lowest responsible bidder after public notice published as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code, the publication area for the publication to be the county or counties wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids. But a contract for lease of a correctional facility is not subject to the foregoing requirements and the division may enter into the contract for lease pursuant to negotiation upon the terms and conditions and for the period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or efficient acquisition or construction of the projects. The division may reject any and all bids. A bond with good and sufficient surety, approved by the division, shall be required of all contractors in an amount equal to at least 50 percent of the contract price, conditioned upon faithful performance of the contract.

(c) If the division has to make a purchase under emergency conditions, or an emergency situation, which jeopardizes the safe, secure, and orderly operations of the division, as deemed by the Commissioner, and approved by the Secretary, §15A-3-14(a) and §15A-3-14(b) of this code shall not apply.

(d) The commissioner may enter into agreements with medical schools and institutions of higher education in this state to develop standards for appropriate and innovative medical programming and care for inmates: *Provided*, That the division will follow the procedures set forth in §15A-3-14(b) of this code for delivery of regular and normal medical care within the facilities.

**§15A-3-15. Mutual aid agreements.**

(a) The commissioner may enter into agreements to provide for the rendering of mutual aid with the political subdivisions of this state, other states, and the federal government to provide for the common defense, protect the public peace, health, and safety and to preserve the lives and property of the people of this state.

(b) Any agreement entered into under this section shall be with the consent and approval of the Secretary of the Department of Military Affairs and Public Safety, and shall include a provision within each agreement allowing for the immediate termination by the secretary or commissioner at any time.

**§15A-3-16. Funds for operations of jails under the jurisdiction of the commissioner.**

(a) Any special revenue funds previously administered by the Regional Jail and Correctional Facility Authority or its Executive Director are continued, and shall be administered by the commissioner.

(b) Funds that have been transferred by §15A-3-16(a) of this code shall be limited in use to operations of jail functions, and for payment to the Regional Jail and Correctional Facility Authority Board, for payment of indebtedness. In no case shall a fund be utilized to offset or pay operations of nonjail parts of the facility: *Provided*, That funds may be utilized on a pro rata basis for shared staff and for operational expenses of facilities being used as both prisons and jails.

(c) Whenever the commissioner determines that the balance in these funds is more than the immediate requirements of this article, he or she may request that the excess be invested until needed. Any excess funds so requested shall be invested in a manner consistent with the investment of temporary state funds. Interest earned on any moneys invested pursuant to this section shall be credited to these funds.

(d) These funds consist of the following:

(1) Moneys collected and deposited in the State Treasury which are specifically designated by Acts of the Legislature for inclusion in these funds;

(2) Contributions, grants, and gifts from any source, both public and private, specifically directed to the operations of jails under the control of the commissioner;

(3) All sums paid pursuant to §15A-3-16(g) of this code; and

(4) All interest earned on investments made by the state from moneys deposited in these funds.

(e) The amounts deposited in these funds shall be accounted for and expended in the following manner:

(1) Amounts deposited shall be pledged first to the debt service on any bonded indebtedness;

(2) After any requirements of debt service have been satisfied, the Commissioner shall requisition from these funds the amounts that are necessary to provide for payment of the administrative expenses of this article, as limited by this section;

(3) The commissioner shall requisition from these funds, after any requirements of debt service have been satisfied, the amounts that are necessary for the maintenance and operation of jails under his or her control. These funds shall make an accounting of all amounts received from each county by virtue of any filing fees, court costs or fines required by law to be deposited in these funds and amounts from the jail improvement funds of the various counties;

(4) Notwithstanding any other provisions of this article, sums paid into these funds by each county pursuant to §15A-3-16(g) of this code for each inmate shall be placed in a separate account and shall be requisitioned from these funds to pay for costs incurred; and

(5) Any amounts deposited in these funds from other sources permitted by this article shall be expended based on particular needs to be determined by the commissioner.

(f)(1) After a jail facility becomes available pursuant to this article for the incarceration of inmates, each county within the region shall incarcerate all persons whom the county would have incarcerated in any jail prior to the availability of the jail facility in the jail facility, except those whose incarceration in a local jail facility used as a local holding facility is specified as appropriate

under the previously promulgated, and hereby transferred standards and procedures developed by the Jail Facilities Standards Commission, and whom the sheriff or the circuit court elects to incarcerate therein.

(2) Notwithstanding the provisions of §15A-3-16(f)(1) of this code, circuit and magistrate courts are authorized to:

(A) Detain persons who have been arrested or charged with a crime in a county or municipal jail specified as appropriate under the standards and procedures referenced in §15A-3-16(f)(1), for a period not to exceed 96 hours; or

(B) Commit persons convicted of a crime in a county or municipal jail, specified as appropriate under the standards and procedures referenced in §15A-3-16(f)(1) of this code, for a period not to exceed 14 days.

(g) When inmates are placed in a jail facility under the jurisdiction of the commissioner pursuant to §15A-3-16(f) of this code, the county, and municipality if the incarceration is a municipal violation, shall pay into this fund a cost per day for each incarcerated inmate to be determined by the state Budget Office, by examining the most recent three years of costs submitted by the commissioner for the cost of operating the jail facilities and units under his or her jurisdiction, and taking an average per day, per inmate cost of maintaining the operations of the jail facilities or units: *Provided*, That beginning July 1, 2018, and continuing through July 1, 2021, in no case shall any county or municipality be required to pay a rate that exceeds \$48.25 per day, per inmate. Nothing in this section shall be construed to mean that the per diem cannot be decreased or be less than \$48.25 per day per inmate.

(h) The per diem costs for incarcerating inmates may not include the cost of construction, acquisition, or renovation of the regional jail facilities: *Provided*, That each jail facility or unit operating in this state shall keep a record of the date and time that an inmate is incarcerated, and a county may not be charged for a second day of incarceration for an individual inmate until that inmate has remained incarcerated for more than 24 hours. After that, in cases of continuous incarceration, subsequent per diem charges shall be made upon a county only as subsequent intervals of 24 hours pass from the original time of incarceration.

(i) The county is responsible for costs incurred by the division for housing and maintaining inmates in its facilities who are pretrial inmates and convicted misdemeanants. The costs of housing shall be borne by the division on a felony conviction on which an inmate is incarcerated beginning the calendar day following the day of sentencing: *Provided*, that beginning January 1, 2019, the costs of housing shall be borne by the division on a felony conviction when an inmate is incarcerated beginning the calendar day following the day of conviction. In no case shall the county be responsible for any costs of housing and maintaining felony convicted inmate populations.

(j) The county is responsible for the costs incurred by the authority for housing and maintaining an inmate who, prior to a felony conviction on which the inmate is incarcerated and is awaiting transportation to a state correctional facility for a 60 day evaluation period as provided in §62-12-7a of this code.

(k) On or before July 1, 2020, the commissioner shall prepare a report on the feasibility of phasing out the county and municipal per diem charges required by §15(A)-3-16(g) of this code. This report shall include information regarding savings realized because of the consolidation of

the former Division of Corrections, Division of Juvenile Services, and the operations of the Regional Jail and Correctional Facility Authority, as well as any other recommendations that might ease the burden of paying the per diem inmate costs by the counties or municipalities. On or before January 1, 2019, January 1, 2020 and January 1, 2021, the commissioner shall report to the Joint Committee on Government and Finance and the co-chairmen of the Joint Standing Committee on Finance the actual per diem rate as calculated pursuant to §15A-3-16(g) of this code and any amount not assessed to counties if the actual per diem cost is larger than the amount charged to the counties or municipalities pursuant to §15A-3-16(g) between July 1, 2018 and July 1, 2021.

**§15A-3-17. Jail Operations Partial Reimbursement Fund.**

(a) There is continued in the State Treasury the Jail Operations Partial Reimbursement Fund.

(b) Revenues deposited into this fund shall be composed of fees collected by magistrate courts pursuant to §50-3-2(a) of this code, and by circuit courts pursuant to §59-1-11 of this code.

(c) Revenues deposited into this fund shall be used to reimburse those counties and municipalities participating in the jail system for the cost of incarceration.

(d) The State Treasurer shall, in cooperation with the division, administer the fund. The State Treasurer shall determine the amount of funds available for reimbursement and, upon receiving a report from the commissioner containing the total number of inmate days in the fiscal year immediately concluded, the State Treasurer shall calculate the reimbursement to each participant based upon a pro rata share formula: *Provided*, That only counties and municipalities that, on July 1 of each year, are not more than 90 days delinquent in payments for moneys to incarcerate its offenders are eligible to receive this reimbursement: *Provided, however*, That the pro rata share formula shall not include the counties or municipalities which are not entitled to reimbursement pursuant to this section.

(e) A participant's share shall be comparable with its total of inmate days, which shall consist of the number of inmates it contributed to the regional jail system and the number of days those inmates remained incarcerated.

(f) A participant's share shall be disbursed annually, within 90 days of July 1 each year, as provided in §15A-3-17(d) of this section.

**§15A-3-18. Rules.**

(a) The commissioner is authorized to propose rules for legislative authorization pursuant to §29A-3-1 *et seq.* of this code or develop policies for the proper execution of his or her duties and powers; adopt rules or policies for the government of the institutions named or referred to in §15A-3-12 of this code; adopt rules or policies for the administration of the financial and business affairs of the institutions named or referred to in §15A-3-12 of this code, and establish policies regarding the treatment of mentally ill inmates, which reflect the safety and security concerns specific to jails and correctional facilities.

(b) All legislative rules and policies of the former Division of Corrections, the former Division of Juvenile Services, and the Regional Jail and Correctional Facility Authority shall remain effective until amended or terminated pursuant to the provisions of §29A-3-1 *et seq.* of this code

by the Division of Correction and Rehabilitation: *Provided*, That these rules shall expire on July 1, 2021, if not superseded sooner.

(c) Notwithstanding any provisions of law to the contrary, the division is not subject to the rules promulgated by, nor any mandates upon, the board of health for the treatment of mentally ill patients.

#### **ARTICLE 4. CORRECTIONS MANAGEMENT.**

##### **§15A-4-1. Applicability of article.**

(a) Except as otherwise provided herein, the provisions of this article relate to adult inmates housed in jails, prisons, and correctional facilities, and do not apply to juvenile residents housed in juvenile centers.

(b) Where reference in this article is made to the "division", it shall mean the Division of Corrections and Rehabilitation.

##### **§15A-4-2. Furlough programs.**

(a) The commissioner may establish a furlough program for inmates committed to his or her custody for a felony offense. The program may provide that selected inmates be permitted to reside outside an institution operated by the division under legislative rules, pursuant to §29A-3-1 *et seq.* of this code, or policy directives, promulgated by the commissioner.

(b) The commissioner, or his or her designee, is authorized to propose rules for legislative authorization, pursuant to §29A-3-1 *et seq.* of this code, or policy directives, promulgated by the commissioner, a furlough program for pretrial and misdemeanor inmates under his or her control and custody in accordance with the following provisions:

(1) The program may include, but is not limited to, granting furloughs or special escorts for specified inmates under the commissioner's control and custody to attend funerals or make hospital visits to terminally ill family members.

(2) The commissioner shall establish criteria to be used in determining which inmates are not likely to jeopardize public safety and should be granted a furlough or a special escort through this program.

(3) The commissioner is authorized to establish any other guidelines he or she considers necessary to administer the program and to ensure public safety, including, but not limited to:

(A) Eligibility for consideration, restrictions, conditions, and procedures; and

(B) The family relationship an inmate must have with the deceased or terminally ill individual in order to qualify for consideration for a furlough.

(c)(1) The division, the commissioner, members of the Regional Jail and Correctional Facility Authority Board, and employees of the division are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act of an inmate while on a furlough granted under this section.

(2) The immunity from suit and liability provided in this subsection does not extend to liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any person identified in §15A-4-2(c)(1) of this code.

### **§15A-4-3. Electronic monitoring of offenders; special account.**

(a) The commissioner may use electronic monitoring equipment to aid in the supervision of offenders.

(b) The commissioner shall charge offenders subject to supervision by means of electronic monitoring equipment a reasonable fee, to be established under a legislative rule proposed by the commissioner for legislative authorization pursuant to §29A-3-1 *et seq.* of this code, to help defray the costs of the purchase and use of the equipment and the division's operational costs: *Provided*, That an offender's inability to pay a fee does not preclude the offender from being eligible for this program.

(c) All fees collected shall be deposited in a special account in the State Treasury designated the "electronic monitoring program account." The funds deposited in the account may be used by the commissioner only for the operation of the program and for the administration of the division.

(d) For purposes of this section, "electronic monitoring equipment" means an electronic device or apparatus approved by the division that is capable of recording or transmitting information regarding the offender's presence or nonpresence in a designated area. The device shall be minimally intrusive. Except to the extent provided in this section, the division shall not approve any monitoring device which is capable of recording or transmitting: (1) Visual images, except for that of a still image of the offender that can only be transmitted by the offender triggering the monitoring system; or (2) information as to the offender's activities while he or she is within the designated area. A monitoring device may transmit information regarding blood alcohol levels. The monitoring device shall not be used to eavesdrop or record any conversation: *Provided*, That conversations between the offender and the person supervising the offender may be recorded solely for purpose of voice identification.

### **§15A-4-4. Diagnostic and classification divisions.**

(a) The commissioner may continue and establish diagnostic and classification subdivisions.

(b) Notwithstanding any provision of this code to the contrary, all persons committed to the custody of the division for presentence diagnosis and classification, and all persons sentenced to the custody of the division shall, upon transfer to the division, undergo diagnosis and classification, which shall include:

(1) Assessments of a person's criminogenic risk and need factors that are reliable, validated, and normed for a specific population and responsive to cultural and gender-specific needs as well as individual learning styles and temperament;

(2) Application of a mental health preliminary screen; and

(3) If the mental health preliminary screen suggests the need for further assessment, a full psychological evaluation.

(c) The division shall perform mental health preliminary screens, appraisals, and evaluations according to standards provided by the American Correctional Association.

**§15A-4-5. Transfer of inmates of state institutions or facilities.**

(a) The commissioner shall have authority to cause the transfer of any inmate from any facility under his or her control to any other state or federal institution or facility which is better equipped for the care or treatment of the inmate, or for other good cause or reason.

(b) Whenever an inmate committed to the custody of the division becomes mentally ill and his or her needs cannot be properly met within the correctional facility, the commissioner shall proceed in accordance with §15A-4-19 of this code.

(c) Whenever an inmate committed to the custody of the division needs medical attention, other than mental health care, not available at the prison, the superintendent of the facility shall immediately notify the commissioner who, after proper investigation, shall cause the transfer of the inmate to a facility properly equipped to render the medical attention necessary. The inmate, while receiving treatment in the hospital, shall be under an appropriate level of supervision at all times and shall forthwith be returned to his or her correctional facility upon release from the facility.

(d) In providing or arranging for the necessary medical and other care and treatment of a pregnant inmate, the superintendent of the facility shall take reasonable measures to assure that pregnant inmates will not be restrained after reaching the second trimester of pregnancy until the end of the pregnancy: *Provided*, That if the inmate, based upon her classification, discipline history, or other factors deemed relevant by the superintendent poses a threat of escape, or to the safety of herself, the public, staff, or the fetus, the inmate may be restrained in a manner reasonably necessary: *Provided, however*, That prior to directing the application of restraints and where there is no threat to the safety of the inmate, the public, staff, or the fetus, the superintendent, or designee shall consult with an appropriate health care professional to assure that the manner of restraint will not pose an unreasonable risk of harm to the inmate or the fetus.

**§15A-4-6. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.**

(a) The commissioner, or his or her designee, is authorized to monitor, intercept, record, and disclose telephone calls to or from adult inmates of state institutions under his or her control, in accordance with the following provisions:

(1) All adult inmates of state institutions shall be notified in writing that their telephone conversations may be monitored, intercepted, recorded, and disclosed;

(2) Only the commissioner, superintendent, or their designee shall have access to recordings of inmates' telephone calls unless disclosed pursuant to §15A-4-6(a)(4) of this code;

(3) Notice shall be prominently placed on, or immediately near, every telephone that may be monitored;

(4) The contents of inmates' telephone calls may be disclosed to an appropriate law-enforcement agency, or the West Virginia Intelligence Fusion Center, when disclosure is necessary for the investigation, prevention, or prosecution of a crime or to safeguard the orderly

operation of the correctional institution. Disclosure may also be made in civil or administrative proceedings pursuant to an order of a court or an administrative tribunal when the disclosure is:

(A) Necessary to safeguard and protect the orderly operation of the correctional institution; or

(B) Necessary to protect persons from physical harm or the threat of physical harm;

(5) All recordings of telephone calls shall be retained for at least three years and maintained and destroyed in accordance with the record retention policy of the division adopted as required by §5A-8-1 et seq. of this code; or

(6) To safeguard the sanctity of the attorney-client privilege, a telephone line that is not monitored shall be made available for telephone calls to or from an attorney. These calls may not be monitored, intercepted, recorded, or disclosed in any matter.

(b) The commissioner shall promulgate a policy directive establishing a record-keeping procedure which requires retention of: (1) A copy of the contents of any inmate telephone conversation provided to law enforcement; and (2) the name of the law-enforcement officer and the law-enforcement agency to which the contents of the telephone conversation were provided. The records required to be retained pursuant to this subsection shall be retained in accordance with the record retention policy specified in §29B-1-4(a)(4) of this code. The inmate's telephone conversation and the information regarding law enforcement are law-enforcement records under that subdivision.

(c) Should an inmate be charged with a crime based, in whole or in part, on the inmate's telephone conversation supplied to law enforcement, the inmate's attorney in the criminal matter shall be entitled to access to and copies of the inmate's telephone conversations in the custody of the commissioner which are not evidence in or the subject of another criminal investigation.

(d) The provisions of this section apply only to those persons in the physical custody of the commissioner.

**§15A-4-7. Monitoring inmate mail; procedures and restrictions; identifying mail from a state institution; mail to or from attorneys excepted.**

(a) The commissioner, or his or her designee, is authorized to monitor, open, review, copy, and disclose mail sent to adult inmates of state institutions under his or her control, in accordance with the following provisions:

(1) All adult inmates of state institutions shall be notified in writing that their mail may be monitored, opened, reviewed, copied, and disclosed;

(2) Only the commissioner and his or her designee shall have access to copies of inmates' mail unless disclosed pursuant to §15A-4-7(a)(4) of this code;

(3) Notice that the mail may be monitored shall be prominently placed on or immediately near every mail receptacle or other designated area for the collection or delivery of mail;

(4) The contents of inmates mail may be disclosed to an appropriate law-enforcement agency, or the West Virginia Intelligence Fusion Center, when disclosure is necessary for the investigation, prevention, or prosecution of a crime or to safeguard the orderly operation of the institution.

Disclosure may also be made in civil or administrative proceedings pursuant to an order of a court or administrative tribunal when the disclosure is:

(A) Necessary to safeguard and protect the orderly operation of the institution; or

(B) Necessary to protect persons from physical harm or the threat of physical harm;

(5) All copies of mail shall be retained for at least three years and maintained and destroyed in accordance with the records retention policy of the division adopted as required by §5A-8-1 et seq. of this code; or

(6) The inmate whose mail has been copied and disclosed under this section shall be given a copy of that mail when it is determined by the commissioner, or superintendent, not to jeopardize the safe and secure operation of the facility or to be detrimental to an ongoing investigation or administrative action.

(b) To safeguard the sanctity of the attorney-client privilege, mail to or from an inmate's attorney shall not be monitored, reviewed, copied, and kept by the institution, or disclosed in any manner unless required by an order of a court of competent jurisdiction. However, that mail may be checked for weapons, drugs, and other contraband provided it is done in the presence of the inmate and there is a reasonable basis to believe that any weapon, drug, or other contraband exists in the mail.

(c) All inmates outgoing mail must be clearly identified as being sent from an inmate at a state correctional institution and must include on the face of the envelope the name and full address of the institution.

(d) The commissioner or his or her designee is authorized to open, monitor, review, copy, and disclose an inmate's outgoing mail in accordance with the provisions of §15A-4-7(a) of this code.

(e) The commissioner shall promulgate a policy directive establishing a record-keeping procedure which requires retention of: (1) All inmate mail provided to law enforcement; and (2) the name of the law-enforcement officer and the law-enforcement agency to which the inmate mail was provided. The records required to be retained pursuant to this subsection shall be retained in accordance with the record retention policy specified in §15A-4-77(a)(5) of this code. The inmate mail and the information regarding law enforcement are law-enforcement records under §29B-1-4(a)(4) of this code.

(f) Should an inmate be charged with a criminal offense based, in whole or in part, on the inmate's mail supplied to law enforcement, the inmate's attorney in the criminal matter shall be entitled access to and copies of the inmate's mail in the custody of the commissioner which are not evidence in or the subject of another criminal investigation.

(g) The provisions of this section apply only to those persons in the physical custody of the commissioner.

**§15A-4-8. Monitoring of inmate electronic correspondence; procedures and restrictions; to or from attorneys excepted.**

(a) The commissioner, or his or her designee, is authorized to monitor, intercept, record, and disclose electronic communications to or from adult inmates of state institutions under his or her control, in accordance with the following provisions:

(1) All adult inmates of state institutions shall be notified in writing that their electronic communications may be monitored, intercepted, recorded, and disclosed;

(2) Only the commissioner, superintendent, or their designees, shall have access to copies or recordings of inmates' electronic communications unless disclosed pursuant to §15A-4-8(a)(4) of this code;

(3) Notice shall be prominently placed on, or immediately near, every electronic communications device that may be monitored;

(4) The contents of inmates' electronic communications may be disclosed to an appropriate law-enforcement agency, or the West Virginia Intelligence Fusion Center, when disclosure is necessary for the investigation, prevention, or prosecution of a crime or to safeguard the orderly operation of the correctional institution. Disclosure may also be made in civil or administrative proceedings pursuant to an order of a court or an administrative tribunal when the disclosure is:

(A) Necessary to safeguard and protect the orderly operation of the correctional institution; or

(B) Necessary to protect persons from physical harm or the threat of physical harm;

(5) All recordings or copies of electronic communications shall be retained for at least three years and maintained and destroyed in accordance with the record retention policy of the division adopted as required by §5A-8-1 *et seq.* of this code; or

(6) To safeguard the sanctity of the attorney-client privilege, a method of electronic communications that is not monitored shall be made available for communications to or from an attorney. These communications shall not be monitored, intercepted, recorded, or disclosed in any matter.

(b) The commissioner shall promulgate a policy directive establishing a record-keeping procedure which requires retention of: (1) A copy of the contents of any inmate electronic communication provided to law enforcement; and (2) the name of the law-enforcement officer and the law-enforcement agency to which the contents of the communications were provided. The records required to be retained pursuant to this subsection shall be retained in accordance with the record retention policy specified in §15A-4-8(a)(5) of this code. The inmate's electronic communication and the information regarding law enforcement are law-enforcement records under §29B-1-4(a)(4) of this code.

(c) Should an inmate be charged with a crime based, in whole or in part, on the inmate's electronic communication supplied to law enforcement, the inmate's attorney in the criminal matter shall be entitled to access to and copies of the inmate's electronic communications in the custody of the commissioner which are not evidence in or the subject of another criminal investigation.

(d) The provisions of this section shall apply only to those persons in the physical custody of the commissioner.

**§15A-4-9. Trustee accounts and funds, earnings and personal property of inmates and residents.**

(a) The commissioner is authorized to establish at each institution under his or her jurisdiction a "Trustee Fund". The superintendent of each institution shall receive and take charge of the money and personal property, as defined by policy, of all inmates or residents in his or her

institution and all money or personal property, as defined by policy, sent to the inmates or residents or earned by the inmates as compensation for work performed while they are domiciled there. The superintendent shall credit the money and earnings to the inmate or resident entitled to it and shall keep an accurate account of all the money and personal property so received, which account is subject to examination by the commissioner. The superintendent shall deposit the moneys in one or more responsible banks in accounts to be designated "Trustee Fund".

(b) For all felony sentenced inmates, except those serving life without mercy and those the superintendent determines are likely to serve the remainder of their natural lives in the custody of the division due to their age and the length of their sentences, the superintendent shall keep in an account at least 10 percent of all money earned during the inmate's or resident's incarceration and pay the money to the inmate or resident at the time of the inmate's or resident's release. The superintendent may authorize the inmate to withdraw money from his or her mandatory savings for the purpose of preparing the inmate for reentry into society.

(c) The commissioner may direct that offenders who work in community work programs, including work release inmates who have obtained employment, make reimbursement to the state toward the cost of his or her incarceration.

(d)(1) Prior to ordering an incarcerated offender to make reimbursement toward the costs of his or her incarceration, the commissioner, or his or her designee, shall consider the following:

(A) The offender's ability to pay;

(B) The nature and extent of the offender's responsibilities to his or her dependents, if any;

(C) The length of probable incarceration under the court's sentence; and

(D) The effect, if any, that reimbursement might have on the offender's rehabilitation.

(2) No order of reimbursement entered pursuant to this section may exceed \$500 per month unless the offender gives his or her express consent; and

(3) The commissioner shall, prior to the beginning of each fiscal year, prepare a report that details the average cost per inmate incurred by the division for the care and supervision of those individuals in his or her custody.

(e) The superintendent of any facility, on request of an inmate or resident, may expend up to one half of the money earned by the inmate or resident on behalf of the family of the inmate or resident if the 10 percent mandatory savings has first been set aside and other fees or court ordered obligations owed by the inmate or resident have been paid. The remainder of the money earned, after deducting amounts expended as authorized, shall be accumulated to the credit of the inmate or resident and be paid to the inmate or resident at times as may be prescribed by rules. The funds so accumulated on behalf of inmates or residents shall be held by the superintendent of each institution under a bond approved by the Attorney General.

(f) The superintendent shall deliver to the inmate or resident at the time he or she leaves the institution, or as soon as practicable after departure, all personal property, moneys and earnings then credited to the inmate or resident, or in case of the death of the inmate or resident before authorized release from the institution, the superintendent shall deliver the property to the inmate's or resident's personal representative. In case a conservator is appointed for the inmate

or resident while he or she is domiciled at the institution, the superintendent shall deliver to the conservator, upon proper demand, all moneys and personal property belonging to the inmate or resident that are in the custody of the superintendent.

(g) If any money is credited to a former inmate or resident after remittance of the sum of money as provided in §15A-4-9(f) of this code, the commissioner shall notify the former inmate or resident within 30 days of receipt of the money. The former inmate or resident will be afforded the opportunity to collect the money if he or she pays the cost of the transaction. If the former inmate or resident does not claim the money within 30 days of receiving the notice and the sum of money is less than \$10, the commissioner may place the money into the inmate benefit fund.

(h) The provisions of this section apply to both juveniles and adults within the custody of the commissioner.

#### **§15A-4-10. Inmate or resident benefit funds.**

(a) The commissioner shall establish an inmate, or resident, benefit fund for each of the institutions under his or her jurisdiction. The inmate, or resident, benefit fund is a fund held by the institutions for the benefit and welfare of inmates incarcerated, or juveniles placed in facilities under the jurisdiction of the commissioner, and for the benefit of victims.

(b) There is continued a special revenue account in the State Treasury for each inmate, or resident, benefit fund established by the commissioner. If an account does not currently exist for an institution, the commissioner may establish the account for that institution. Moneys received by an institution for deposit in an inmate, or resident, benefit fund shall be deposited with the State Treasurer to be credited to the special revenue account created for the institution's inmate, or resident, benefit fund: *Provided*, That commissions on any contract providing services to jail inmates shall not be deposited into this account. Moneys in a special revenue account established for an inmate benefit fund may be expended by the institution for the purposes set forth in this section. Moneys to be deposited into an inmate, or resident, benefit fund consist of, but are not limited to:

(1) All profit from the exchange or commissary operation and if the commissary is operated by a vendor, whether a public or private entity, the profit is the negotiated commission paid to the Division of Corrections and Rehabilitation by the vendor;

(2) All net proceeds from vending machines used for inmate or resident visitation;

(3) All proceeds from contracted inmate or resident telephone commissions;

(4) Any funds that may be assigned by inmates or donated to the institution by the general public or an inmate service organization on behalf of all inmates or residents;

(5) Any funds confiscated considered contraband; and

(6) Any unexpended balances in individual inmate or resident trustee funds if designated by the inmate upon his or her discharge from the institution.

(c) The inmate benefit fund may only be used for the following purposes at facilities:

(1) Open-house visitation functions or other nonroutine inmate or resident functions;

(2) Holiday functions which may include decorations and gifts for children of inmates or residents;

(3) Cable television service;

(4) Rental of movies;

(5) Payment of video license;

(6) Recreational supplies, equipment, or area surfacing;

(7) Reimbursement of employee wages for overtime incurred during open-house visitations and holiday functions;

(8) Post-secondary education classes;

(9) Reimbursement of a pro rata share of inmate or resident work compensation;

(10) Household equipment and supplies in day rooms or units as approved by superintendents of institutions, excluding supplies used in the daily maintenance and sanitation of the unit;

(11) Christmas or other holidays gift certificates for each inmate or resident to be used at the exchange or commissary;

(12) Any expense associated with the operation of the fund;

(13) Expenditures necessary to properly operate an automated inmate family and victim information notification system;

(14) Any expense for improvement of the facility which will benefit the inmate or resident population that is not otherwise funded;

(15) Any expense related to the installation, operation, and maintenance of the inmate or resident telephone system; and

(16) Restitution of any negative balance on any inmate's trustee account for inmate medical copay, legal and ancillary related postage, and photocopy fees that are due the State of West Virginia, if the balance is uncollectible from an inmate after one calendar year from an inmate's release on parole or discharge date.

(d) The institution shall compile a monthly report that specifically documents inmate benefit fund receipts and expenditures and a yearly report for the previous fiscal year by September 1 of each year and submit the reports to the commissioner.

(e) The provisions of this section apply to both juveniles and adults within the custody of the commissioner.

**§15A-4-11. Financial responsibility program for inmates.**

(a) The Legislature finds that:

(1) There is an urgent need for vigorous enforcement of child support, restitution, and other court ordered obligations;

(2) The duty of inmates to provide for the needs of dependent children, including their necessary food, clothing, shelter, education, and health care should not be avoided because of where the inmate resides;

(3) A person owing a duty of child support who chooses to engage in behaviors that result in the person becoming incarcerated should not be able to avoid child support obligations; and

(4) Each sentenced inmate should be encouraged to meet his or her legitimate court-ordered financial obligations.

(b) As part of the initial classification process into a correctional facility, the division shall assist each inmate in developing a financial plan for meeting the inmate's child support obligations, if any exist. At subsequent program reviews, the division shall consider the inmate's efforts to fulfill those obligations as indicative of that individual's acceptance and demonstrated level of responsibility.

(c)(1) The superintendent shall deduct from the earnings of each inmate all legitimate court-ordered financial obligations. The superintendent shall also deduct child support payments from the earnings of each inmate who has a court-ordered financial obligation. The commissioner shall develop a policy that outlines the formula for the distribution of the offender's income and the formula shall include a percentage deduction, not to exceed 50 percent in the aggregate, for any court ordered victim restitution, court fees and child support obligations owed under a support order, including an administrative fee, consistent with the provisions of §48-14-406(c) of this code, to support the division's administration of this financial service;

(2) If the inmate worker's income is subject to garnishment for child support enforcement deductions, it shall be calculated on the net wages after taxes, legal financial obligations, and garnishment;

(3) The division shall develop the necessary administrative structure to record inmates wages and keep records of the amount inmates pay for child support; and

(4) Nothing in this section limits the authority of the Bureau for Child Support Enforcement of the Department of Health and Human Resources from taking collection action against an inmate's moneys, assets, or property.

(d) If an inmate is awarded a civil judgment which awards him or her monetary damages, the court in which those damages are awarded shall enter an order which deducts all outstanding child support, restitution, or other court-ordered obligations from the award to the inmate, and satisfies those obligations, prior to releasing any funds to the inmate.

(e) The accumulation of the total funds, not necessary for current distribution, shall be invested, with the approval of the commissioner or as appropriate, through the West Virginia Municipal Bond Commission, in short term bonds or treasury certificates or equivalent of the United States. Bonds and certificates so purchased shall remain in the custody of the State Treasurer. The earnings from investments so made shall be reported to the principal officer of each institution from time to time, as earned, and shall be credited to the respective accounts of the institutions by the West Virginia Municipal Bond Commission. When the earnings are

transferred to the respective institutions, they shall be credited by the superintendent to the credit of, and for the benefit of, the inmate, or resident, benefit fund.

**§15A-4-12. Limitation on reimbursement rate to medical service providers for services outside division facilities.**

The division, or its contracted medical providers, may not pay an amount to an outside provider of a medical service for an adult inmate residing in a jail or correctional facility greater than the reimbursement rate applicable to service providers established in the West Virginia state Medicaid plan by the Bureau for Medical Services: *Provided*, That critical access hospitals shall be reimbursed at 75 percent of the billed charges. These limitations apply to all medical care services, goods, prescription drugs, and medications provided to a person who is in the custody of a correctional facility and is provided these services outside of a correctional facility: *Provided, however*, That the Department of Military Affairs and Public Safety and the Department of Health and Human Resources effectuate an interagency agreement for the electronic processing and payment of medical services.

**§15A-4-13. Charges assessed against inmates for services provided by state.**

(a) The commissioner is authorized to assess inmates serving a sentence in any state jail, penal, or correctional facility reasonable charges for health care and treatment services provided to them by the state. The charges assessed against an inmate may be deducted directly from the inmate's trustee account without the inmate's consent. The inmate shall be notified of the amount deducted and the charges to which it has been applied.

(b) As used in this section, a "reasonable charge" may not exceed the sum of \$25 for any billable service. Inmates shall be notified of the fee schedule, billable services, and exempt services. Services initiated by the inmate shall be assessed a fee, except that no charge may be assessed for: (1) a specific health care service required under the law of this state, including, by way of illustration, tuberculin testing; (2) an emergency service following a traumatic injury other than a self-induced injury, or necessary to prevent death or severe or permanent disability; (3) diagnosis and treatment of communicable diseases, including, by way of illustration, tuberculosis or hepatitis; (4) treatment of diagnosed severe mental illness; (5) treatment of specific chronic conditions identified by the commissioner, including, by way of illustration, heart disease and diabetes; (6) staff-initiated care, including follow-up and referral visits; (7) preventive services that the commissioner determines are to be provided or made available to all inmates, including services related to disease prevention and promotion of proper health habits; or (8) other services as may be exempted by rule of the commissioner. No inmate may be denied any necessary billable medical service because of inability to pay the charge.

(c) Any inmate who intentionally ingests, inhales, injects, absorbs, applies, or otherwise exposes himself or herself to, in any manner whatsoever not otherwise specified herein, an illegal drug, a drug not legally prescribed to him or her, a drug in quantities above that recommended by a prescribing physician, a synthetic intoxicant, or any substance for the purpose of causing an excited, euphoric, or stupefied state, or altered perception, including hallucinations or delusions, and the inmate requires medical treatment due to the ingestion, inhalation, injection, absorption, application, or exposure shall reimburse the cost of the medical treatment to the division.

(d) Each inmate shall be afforded an opportunity at least quarterly to review all deposits into, withdrawals from, and balance remaining in the inmate's trustee account during the preceding three months.

(e) The commissioner shall promulgate interpretive rules implementing this section pursuant to §29A-3-1 et seq. of this code prior to making any assessment under this section. The policy directive rules may establish the fee schedule and list of billable services and further define services to be exempted.

**§15A-4-14. Record of inmate or resident.**

The commissioner shall file and preserve the record of the indictment and conviction, in the case of an adult, or the charges and adjudication, in the case of a juvenile, of each inmate or resident, and keep a register describing him or her, the term of his or her confinement, for what offense, and when received into the institution.

**§15A-4-15. Manufacture of license plates, road signs or markers; securing signs and markers when federal government reimburses state for cost thereof.**

For the purpose of obtaining license plates to be used upon motor vehicles licensed for operation in this state and road signs or markers of any description for state roads, the commissioner is hereby authorized and empowered on behalf of the state, to establish and operate a plant for the manufacture of the license plates and road signs or markers in his or her institution.

It shall be unlawful for any state official or employee to manufacture or obtain the license plates, road signs, or markers otherwise than as herein specified: *Provided*, That the Commissioner of Highways may originally secure road signs or markers from sources other than that provided herein.

**§15A-4-16. Gifts to or dealings with convicts.**

No officer or employee of the state, or contractor, or employee of a contractor shall make any gift or present to an inmate or resident, or receive any from an inmate or resident, or have any barter or dealings with a convict, except as allowed and permitted by the commissioner.

For every violation of this section, the party engaged therein shall be dismissed from his or her office or service, and every contractor, or employee, or agent of a contractor engaged therein shall be expelled from any facility within the jurisdiction of the commissioner, and not again employed in any institution as a contractor, agent, or employee.

**§15A-4-17. Deduction from sentence for good conduct; mandatory supervision.**

(a) All current and future adult inmates sentenced to a felony and, placed in the custody of the division, except those committed pursuant to §25-4-1 et seq. of this code, shall be granted commutation from their sentences for good conduct in accordance with this section: *Provided*, That nothing in this section shall be considered to recalculate the "good time" of inmates currently serving a sentence or of giving back good time to inmates who have previously lost good time earned for a disciplinary violation, except for those inmates currently serving a sentence for a misdemeanor.

(b) The commutation of sentence, known as "good time", shall be deducted from the maximum term of indeterminate sentences or from the fixed term of determinate sentences.

(c) Each inmate committed to the custody of the commissioner and incarcerated in a facility pursuant to that commitment shall be granted one day good time for each day he or she is incarcerated, including any and all days in jail awaiting sentence which are credited by the sentencing court to his or her sentence pursuant to §61-11-24 of this code or for any other reason relating to the commitment. An inmate may not be granted any good time for time served either on parole or bond or in any other status when he or she is not physically incarcerated.

(d) An inmate sentenced to serve a life sentence is not eligible to earn or receive any good time pursuant to this section.

(e) An inmate under two or more consecutive sentences shall be allowed good time as if the several sentences, when the maximum terms of the consecutive sentences are added together, were all one sentence.

(f) The commissioner shall promulgate disciplinary rules and policies. The rules and policies shall describe acts that inmates are prohibited from committing, procedures for charging individual inmates for violation of the rules, and for determining the guilt or innocence of inmates charged with the violations, and the sanctions which may be imposed for the violations. A copy of the rules shall be given to each inmate. For each violation, by a sanctioned inmate, any part or all of the good time which has been granted to the inmate pursuant to this section may be forfeited and revoked by the superintendent of the institution in which the violation occurred. The superintendent when appropriate and with approval of the commissioner, may restore any forfeited good time.

(g) Each inmate, upon his or her commitment to, and being placed into the custody of the commissioner, or upon his or her return to custody as the result of violation of parole pursuant to §62-12-19 of this code, shall be given a statement setting forth the term or length of his or her sentence or sentences and the time of his or her minimum discharge computed according to this section.

(h) Each inmate shall be given a revision of the statement described in §15A-4-17(g) of this code when any part or all of the good time has been forfeited and revoked or restored pursuant to §15A-4-17(f) of this code, by which the time of his or her earliest discharge is changed.

(i) The superintendent may, with the approval of the commissioner, allow extra good time for inmates who perform exceptional work or service.

(j) There shall be no grants or accumulations of good time or credit to any current or future inmate serving a sentence in the custody of the Division of Corrections and Rehabilitation except in the manner provided in this section.

(k) Prior to the calculated discharge date of an inmate serving a sentence for a felony crime of violence against the person, a felony offense where the victim was a minor child or a felony offense involving the use of a firearm, one year shall be deducted from the inmate's accumulated good time to provide for one year of mandatory post-release supervision following the first instance in which the inmate reaches his or her calculated discharge date. All inmates released pursuant to this subsection shall be subject to electronic or GPS monitoring for the entire period of supervision. The provisions of this subsection are applicable to offenses committed on or after July 1, 2013.

(l) Upon sentencing of an inmate for a felony offense not referenced in §15A-4-17(k) of this code, the court may order that 180 days of the sentence, or some lesser period, be served through post-release mandatory supervision if the court determines supervision is appropriate and in the best interest of justice, rehabilitation, and public safety. All inmates released pursuant to this subsection shall be subject to electronic or GPS monitoring for the entire period of supervision. The provisions of this subsection are applicable to offenses committed on or after July 1, 2013.

(m) The commissioner shall adopt policies and procedures to implement the mandatory supervision provided for in §15A-4-17(k) and §15A-4-17(l) of this code, which may include terms, conditions, and procedures for supervision, modification, and violation applicable to persons on parole.

(n) As used in this section, “felony crime of violence against the person” means felony offenses set forth in §61-2-1 *et seq.*, §61-3E-1 *et seq.*, §61-8B-1 *et seq.*, or §61-8D-1 *et seq.* of this code, and the felony offenses of arson and burglary of a residence where an individual is physically located at the time of the offense as set forth in §61-3-1 *et seq.* of this code.

(o) As used in this section, “felony offense where the victim was a minor child” means any felony crime of violence against the person and any felony offense set forth in §61-8-1 *et seq.*, §61-8A-1 *et seq.*, §61-8C-1 *et seq.* or §61-8D-1 *et seq.* of this code.

**§15A-4-18. Governor’s authority to authorize commissioner to consent to transfer of inmates under a federal treaty.**

If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which they are citizens or nationals, the Governor may, on behalf of the state and subject to the terms of the treaty and with the consent of the offender, authorize the commissioner to consent to the transfer or exchange of inmates in his or her custody and take any other action necessary to initiate the participation of this state in the treaty. No transfer may occur pursuant to the provisions of this section until the inmate is informed of his or her rights and the procedures involved in his or her native language unless it is determined that the inmate’s knowledge of English is sufficient.

**§15A-4-19. Mentally ill inmates; treatment; transfer between correctional and mental health facilities; correctional facility procedures.**

(a) No person who is, or was considered to be, mentally ill, intellectually disabled, or addicted shall be denied parole or a parole hearing based upon the past or present condition. In the event a convicted person is deemed to be an appropriate candidate for parole, but for a condition warranting involuntary hospitalization of the person, shall be paroled, and proceedings instituted pursuant to §27-5-4 of this code. Any time spent in such a facility shall be considered part of the term, and any person whose sentence expires while receiving treatment for a mental condition shall be discharged unless proceedings have been instituted and a determination made pursuant to §27-5-4 of this code.

(b) When a convicted person in a jail, prison, or other facility is believed to be mentally ill, intellectually disabled, or addicted, as those terms are defined in §27-1-1 *et seq.* of this code, and in need of treatment, training, or other services, the facts relating to the illness, shall be presented to the superintendent of the facility. The facts may be presented by a correctional officer, member of a correctional institution medical staff, relative, or the convicted person. Immediately upon receipt of the facts, the superintendent shall arrange for psychiatric or psychological examination

of the person alleged to be so afflicted. If the report of the examination is to the effect that the individual is mentally ill, intellectually disabled, or addicted and that treatment, training, or other services are required which cannot reasonably be provided at the correctional facility, the superintendent shall file within 20 days after presentation of the facts an application for transfer with the clerk of the circuit court of the county of location of the correctional facility. The application for transfer shall include a statement of the nature of the treatment which the person's condition warrants and the facility to which transfer is sought.

Within 10 days of receipt of the application from the superintendent, the mental hygiene commissioner or circuit judge shall appoint counsel for the convicted person if the person is indigent.

The clerk of the circuit court shall forthwith notify the convicted person, by certified mail, return receipt requested, delivered only to addressee, that the application has been filed, enclosing therewith a copy of the application with an explanation of the place and purpose of the transfer and the type of treatment to be afforded, together with the name, address, and telephone number of any appointed counsel. The person shall be afforded reasonable telephone access to his or her counsel. The clerk shall also notify the superintendent or other chief administrative officer of the facility to which transfer is sought. Within 15 days after receipt of notice, the convicted person, through counsel, shall file a verified return admitting or denying the allegations and informing the court or mental hygiene commissioner as to whether the respondent wishes to oppose the transfer. Counsel shall file the return only after personal consultation with the convicted person. The superintendent of the facility to which transfer is sought shall also file a return within 15 days of the receipt of notice, informing the court or mental hygiene commissioner as to whether the needed treatment or other services can be provided within that facility. If the superintendent objects to receiving the convicted person for treatment or services, the reasons for the objection shall be specified in detail.

If the transfer is opposed by either the convicted person or by the superintendent of the facility to which transfer is sought, the matter shall forthwith be set for hearing, in no event to exceed 30 days from the date of the return opposing the transfer, and the clerk shall provide to the convicted person, the superintendent of the facility to which transfer is sought, and the superintendent of the correctional facility, at least 10 days written notice, by certified mail, return receipt requested, of the purpose, time, and place of the hearing.

The convicted person shall be present at the hearing, and be afforded an opportunity to testify and to present and cross-examine witnesses. Counsel for the convicted person shall be entitled to copies of all medical reports upon request. The person shall have the right to an examination by an independent expert of the person's choice and testimony from the expert as a medical witness on the person's behalf. The cost of providing the medical expert shall be borne by the state if the person is indigent. The person shall not be required to give testimony which is self-incriminating. The circuit court or mental hygiene commissioner shall hear evidence from all parties, in accord with the rules of evidence. A transcript or recording shall be made of all proceedings, and transcript made available to the person within 30 days, if the same is requested for the purpose of further proceedings, and without cost if the person is indigent.

Upon completion of the hearing, and consideration of the evidence presented therein, the circuit court or mental hygiene commissioner shall make findings of facts as to whether or not: (1) The individual is mentally ill, intellectually disabled, or addicted; (2) the individual because of mental illness, mental retardation, or addiction is likely to cause serious harm to self or others; (3) the individual could not obtain the requisite treatment or training at the correctional facility or

another appropriate correctional facility; and (4) the designated facility to which transfer is sought could provide the treatment or training with the security as the court finds appropriate; and, if all the findings are in the affirmative, the circuit court may order the transfer of the person to the appropriate facility. The findings of fact shall be incorporated into the order entered by the circuit court. In all proceedings hereunder, proof of mental condition and of likelihood of serious harm must be established by clear, cogent, and convincing evidence, and the likelihood of serious harm must be based upon evidence of recent overt acts.

**§15A-4-20. Work program.**

(a) The commissioner is authorized to establish at each institution a work program for qualified inmates. The commissioner shall establish guidelines and qualifications to allow inmates sentenced to a regional jail facility to be gainfully employed with local businesses and governmental entities as part of a job program.

(b) An inmate who works in work programs established under this section may be required to make reimbursement to the division toward the cost of his or her incarceration to be credited to the agency billed for that incarceration, pursuant to the conditions set forth in §15A-4-19 of this code.

(c) Notwithstanding any provision of this code to the contrary, the county commission, its members and agents, the Division of Corrections and Rehabilitation or designee, its employees, agents, or assigns, the Regional Jail and Correctional Facility Authority Board, its members, agents, or assigns, the sheriff, and his or her deputies, shall be immune from all liability of any kind except for accident, injury, or death resulting directly from gross negligence or malfeasance.

**§15A-4-21. Director of employment; director of housing; released inmates; duties.**

The commissioner may employ or contract for a Director of Employment and a Director of Housing for released inmates. The Director of Employment shall work with federal, state, county, and local government and private entities to negotiate agreements which facilitate employment opportunities for released inmates. The Director of Housing shall work with federal, state, county, and local government and private entities to negotiate agreements which facilitate housing opportunities for released inmates. The Director of Employment shall investigate job opportunities and give every possible assistance in helping released inmates find employment. The Director of Housing shall work in conjunction with the Bureau of Community Corrections and the Parole Board to reduce release delays due to lack of a home plan, develop community housing resources, and provide short-term loans to released inmates for costs related to reentry into the community.

**ARTICLE 5. BUREAU OF PRISONS AND JAILS.**

**§15A-5-1. Creation of Bureau of Prisons and Jails; organization of facilities.**

(a) The commissioner shall establish a Bureau of Prisons and Jails. The commissioner shall determine what adult facilities or institutions shall appropriately be managed by the Bureau of Prisons and Jails.

(b) The commissioner shall appoint an assistant commissioner, who shall oversee the Bureau of Prisons and Jails.

(c) Where reference in this article is made to the "division", it shall mean the Division of Corrections and Rehabilitation.

**§15A-5-2. Transfer of duties and funds of Division of Corrections.**

All prior conveyed responsibilities of the Division of Corrections, and its Commissioner are hereby transferred to the Division of Corrections and Rehabilitation. All funds, both general revenue and special revenue, are hereby transferred to the Division of Corrections and Rehabilitation. Any funds administered by the Division of Corrections are to be administered by the Division of Corrections and Rehabilitation, and its Commissioner

**§15A-5-3. Superintendents; duties and authority; bond; residence.**

(a) The commissioner shall appoint a superintendent for each institution under the control of the division. Each superintendent shall be bonded by the Board of Risk and Insurance Management.

(b) The superintendent shall be the chief executive officer of his or her assigned correctional institution and, subject to the direction of the commissioner, has the responsibility for the overall management of all operations within his or her assigned institution. The superintendent shall be in charge of its internal police and management and shall provide for feeding, clothing, working and taking care of the inmates, subject to the control of the commissioner.

(c) The superintendent shall promptly enforce all orders and rules made by the commissioner. He or she shall protect and preserve the property of the state and may for that purpose punish the inmates in the manner authorized by the commissioner. The superintendent shall have the custody and control of all the real and personal property at the correctional institution, subject to the orders of the commissioner.

(d) The commissioner may authorize the superintendent to establish an imprest fund in accordance with the provisions of §12-2-2 of this code for the sole purpose of providing employees with funds to transport inmates for any purpose as determined by the superintendent, and any of the fund that currently exists is hereby continued. The employee is required to complete a travel reimbursement form for the travel within five days of returning to the correctional facility. The funds shall be used to reimburse the imprest fund for the amount expended by the employee.

**§15A-5-4. Appointment of deputy superintendent; duties; bond.**

Each superintendent, with the approval of the commissioner, may hire a deputy superintendent. The deputy superintendent's duties shall be fixed by the superintendent, as approved by the commissioner. In the absence of the superintendent, the deputy superintendent shall perform all the duties required of the superintendent. The deputy superintendent shall be bonded by the Board of Risk and Insurance Management.

**§15A-5-5. Hiring of other assistants and employees.**

The superintendent of each correctional institution or unit shall, in the manner provided in §15A-3-5 of this code, hire all assistants and employees required for the management of the correctional institutions or units, including a sufficient number of correctional employees to preserve order and enforce discipline among the inmates, to prevent escapes, and to remove all persons convicted and sentenced to the custody of the Division of Corrections and Rehabilitation,

from the place confined to a correctional institution, all of whom shall be under the control of the superintendent: *Provided*, That the number of the assistants and employees, and their compensation, shall first be approved by the commissioner.

All persons employed at a state-operated correctional institution or correctional unit are subject to the supervision and approval of the superintendent and the authority of the commissioner, or his or her designee, except those persons employed by the State Board of Education, pursuant to §18-2-13f of this code.

**§15A-5-6. Jail intake facilities; housing of adult inmates.**

To the extent practicable, and in a manner consistent with providing for the safety of the public, correctional employees, and inmates, the commissioner will create space in every adult institution for both jail and prison populations: *Provided*, That in no case shall the commissioner be required to provide jail space in every institution in excess of space necessary for initial receiving, booking, and holding of an inmate to await transport by the Division of Corrections and Rehabilitation to the most appropriate housing placement for that inmate. In no case may a person who is a pretrial detainee, who is not currently serving a felony sentence in the custody of the commissioner, be held in a space designated as a prison unit. Further, no convicted misdemeanor actively serving a sentence on a misdemeanor shall be held in a space designated as a prison unit.

**§15A-5-7. Pretrial risk assessment.**

(a) Within three calendar days of the arrest and placement of any person in a jail, the division shall conduct a pretrial risk assessment using a standardized risk assessment instrument approved and adopted by the Supreme Court of Appeals of West Virginia. The results of all standardized risk and needs assessments are confidential and shall only be provided to the court, court personnel, the prosecuting attorney, defense counsel, and the person who is the subject of the pretrial risk assessment. Upon completion of the assessment, the Division of Corrections and Rehabilitation shall provide it to the magistrate and circuit clerks for delivery to the appropriate circuit judge or magistrate.

(b) The pretrial risk assessment and all oral or written statements made by an individual during risk assessment shall be inadmissible evidence at any criminal or civil trial.

**§15A-5-8. Jail processing fee.**

(a) A person committed to be housed in jail by order of magistrate, circuit judge, or by temporary commitment order shall, at the time of initial booking into the jail, pay a processing fee of \$30. If the person is unable to pay at the time of booking, the fee shall be deducted, at a rate of 50 percent, from any new deposits made into the person's trust account until the jail processing fee is paid in full. The fee shall be credited to:

(1) The Jail's operating budget if the person is committed to and housed in a jail;

(2) The county commission if the person is committed to and housed in a county jail; or

(3) The municipality if the person is committed to and housed in a municipal jail. The fee should be paid prior to the offender being released.

(b) A refund of a fee collected under this section shall be made to a person who has paid the fee if the person is not convicted of the offense for which the person was booked and the person provides documentation from the court showing that all charges for which the person was booked were dismissed, accurate current name and address and a valid photographic identification. In the case of multiple offenses, if the person is convicted of any of the offenses the fee may not be refunded. If the person is convicted of a lesser included offense or a related offense, no refund may be made.

**§15A-5-9. Ability to refuse offenders.**

Notwithstanding any other provision of this code, the commissioner, or any employee of the division, having authority to accept offenders in a jail is not required to accept those offenders if an offender appears to be in need of medical attention of a degree necessitating treatment by a physician. If an offender is refused pursuant to the provisions of this section, he or she may not be accepted for detention until a written clearance from a licensed physician reflecting that the offender has been examined and if necessary treated, and which states that it is the physician's medical opinion that the offender can be safely housed in a jail.

**ARTICLE 6. BUREAU OF JUVENILE SERVICES.**

**§15A-6-1. Creation of Bureau of Juvenile Services; organization of facilities.**

(c) The Commissioner of Corrections and Rehabilitation shall establish a Bureau of Juvenile Services. This bureau shall manage any juvenile facilities or units, as determined pursuant to §15A-3-12 of this code.

(b) The commissioner shall appoint an assistant commissioner, who shall oversee the Bureau of Juvenile Services.

(c) Where reference in this article is made to the "division", it shall mean the Division of Corrections and Rehabilitation.

**§15A-6-2. Transfer of duties and funds.**

All prior conveyed responsibilities and duties of the Division of Juvenile Services, and the Director of Juvenile Services, outlined in §49-1-101 et seq. of this code, are hereby transferred and conveyed to the Division of Corrections and Rehabilitation, and to its Commissioner. Any funds administered by the Division of Juvenile Services are to be administered by the Division of Corrections and Rehabilitation, and its Commissioner.

**§15A-6-3. Superintendents; duties and authority; bond; residence.**

(a) The commissioner shall appoint a superintendent for each institution under the control of the division. Each superintendent shall be bonded by the Board of Risk and Insurance Management.

(b) The superintendent shall be the chief executive officer of his or her assigned correctional institution and, subject to the direction of the commissioner, has the responsibility for the overall management of all operations within his or her assigned institution. The superintendent shall be in charge of its internal police and management and shall provide for feeding, clothing, working and taking care of the inmates, subject to the control of the commissioner.

(c) The superintendent shall promptly enforce all orders and rules made by the commissioner. He or she shall protect and preserve the property of the state and may for that purpose punish the inmates in the manner authorized by the commissioner. The superintendent shall have the custody and control of all the real and personal property at the correctional institution, subject to the orders of the commissioner.

(d) The commissioner may authorize the superintendent to establish an imprest fund in accordance with the provisions of §12-2-2 of this code for the sole purpose of providing employees with funds to transport inmates for any purpose as determined by the superintendent, and any of the fund that currently exists is hereby continued. The employee is required to complete a travel reimbursement form for the travel within five days of returning to the correctional facility. The funds shall be used to reimburse the imprest fund for the amount expended by the employee.

#### **§15A-6-4. Appointment of deputy superintendent; duties; bond.**

Each superintendent, with the approval of the commissioner, may hire a deputy superintendent. The deputy superintendent's duties shall be fixed by the superintendent, as approved by the commissioner. In the absence of the superintendent, the deputy superintendent shall perform all the duties required of the superintendent. The deputy superintendent shall be bonded by the Board of Risk and Insurance Management.

#### **§15A-6-5. Hiring of other assistants and employees; duties of correctional employees.**

The superintendent of each juvenile institution or unit shall, in the manner provided in §15A-3-5 of this code, hire all assistants and employees required for the management of the juvenile institutions or units, including a sufficient number of correctional employees to preserve order and enforce internal rules among the juvenile inmates, to prevent escapes, and carry out all other responsibilities as outlined in chapter 49 of this code.

All persons employed at a state-operated juvenile facility are subject to the supervision and approval of the superintendent and the authority of the commissioner, or his or her designee, except those persons employed by the State Board of Education, pursuant to §18-2-13f of this code.

### **ARTICLE 7. BUREAU OF COMMUNITY CORRECTIONS.**

#### **§15A-7-1. Creation of Bureau of Community Corrections; Organization of facilities.**

(a) The commissioner shall establish a Bureau of Community Corrections. The commissioner shall establish which adult facilities or institutions shall appropriately be managed by the Bureau of Community Corrections.

(b) The commissioner shall appoint an assistant commissioner, who shall oversee the Bureau of Community Corrections.

(c) Where reference in this article is made to the "division", it shall mean the Division of Corrections and Rehabilitation.

#### **§15A-7-2. Duties of superintendents; bond; residence.**

The commissioner shall appoint a Superintendent for each institution under the control of the division. The superintendent of a community corrections facility shall have the same duties and responsibilities as described in §15A-3-1 *et seq.* of this code.

**§15A-7-3. Hiring of other assistants and employees; duties of employees.**

(a) Each superintendent of a community corrections facility shall, in the manner provided in §15A-3-5 of this code, hire all assistants and employees required for the management of these facilities or units, including a sufficient number of correctional employees to preserve order and enforce discipline among the inmates or parolees, to prevent escapes, to enforce laws, rules, and policies, and to protect the public. Any person employed by the office of the Commissioner of the Division of Corrections and Rehabilitation who on the effective date of this article is a classified civil service employee shall, within the limits contained in §29-6-1 et seq. of this code, remain in the civil service system as a covered employee.

(b) The commissioner shall, in the manner provided in §15A-3-5 of this code, hire all probation and parole officers, assistants, and employees required to carry out the duties as proscribed in this code for management of the parolee population, and probation population, as set forth in §15A-7-4 and §62-13-2(b) of this code, for the management of parolees, to preserve order, and enforce discipline among the parolees, to enforce laws, rules, and policies, and to protect the public. Any person employed by the office of the Commissioner of the Division of Corrections and Rehabilitation who on the effective date of this article is a classified civil service employee shall, within the limits contained in §29-6-1 et seq. of this code, remain in the civil service system as a covered employee. Nothing in this section shall limit the abilities of the Supreme Court of Appeals of this state to carry forth their responsibilities and duties as proscribed in this code. All persons appointed or employed by the director shall be paid all necessary expenses incurred in the discharge of their duties.

**§15A-7-4. Supervision of probationers and parolees; final determinations remaining with board of probation and parole.**

The commissioner shall supervise all persons released on parole and placed in the charge of a state parole officer and all persons released on parole under any law of this state. He or she shall also supervise all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into pursuant to the uniform act for out-of-state probation and parolee supervision. The commissioner shall prescribe rules for the supervision of probationers and parolees under his or her supervision and control, and shall succeed to all administrative and supervisory powers of the Parole Board and the authority of the Parole Board in those matters only.

The commissioner shall administer all other laws affecting the custody, control, treatment, and employment of persons sentenced or committed to institutions under the supervision of the department or affecting the operation and administration of institutions or functions of the division.

The final determination regarding the release of inmates from penal institutions and the final determination regarding revocation of parolees from those institutions pursuant to the provisions of §62-12-1 et seq. of this code shall remain within the exclusive jurisdiction of the Parole Board.

**§15A-7-5. Powers and duties of state parole officers.**

(a) Each state probation and parole officer employed by the Division of Corrections and Rehabilitation shall:

(1) Investigate all cases referred to him or her for investigation by the Commissioner of Corrections and Rehabilitation and report in writing on the investigation;

(2) Update the standardized risk and needs assessment adopted by the Division of Corrections and Rehabilitation pursuant to §62-12-13(h) of this code for each parolee for whom an assessment has not been conducted for parole by a specialized assessment officer;

(3) Supervise each parolee according to the assessment and supervision standards determined by the Commissioner of Corrections and Rehabilitation;

(4) Furnish to each parolee under his or her supervision a written statement of the conditions of his or her parole together with a copy of the rules prescribed by the Commissioner of Corrections and Rehabilitation for the supervision of parolees;

(5) Keep informed concerning the conduct and condition of each parolee under his or her supervision and report on the conduct and condition of each parolee in writing as often as required by the Commissioner of Corrections and Rehabilitation;

(6) Use all practicable and suitable methods to aid and encourage a parolee and to bring about improvement in his or her conduct and condition;

(7) Keep detailed records of his or her work;

(8) Keep accurate and complete accounts of, and give receipts for, all money collected from parolees under his or her supervision, and pay over the money to persons designated by a circuit court or the Commissioner of Corrections and Rehabilitation;

(9) Give bond with good security, to be approved by the Commissioner of Corrections and Rehabilitation, in a penalty of not less than \$1,000 nor more than \$3,000, as determined by the Commissioner of Corrections and Rehabilitation; and

(10) Perform any other duties required by the Commissioner of Corrections and Rehabilitation.

(b) Each probation and parole officer, as described in this article, may, with or without an order or warrant: (1) Arrest or order confinement of any parolee or probationer under his or her supervision; and (2) search a parolee or probationer, or a parolee or probationer's residence or property, under his or her supervision. A probation and parole officer may apply for a search warrant, and execute the search warrant, in connection to a parolee's whereabouts, or a parolee's activities. He or she has all the powers of a notary public, with authority to act anywhere within the state.

(c) The Commissioner of Corrections and Rehabilitation may issue a certificate authorizing any state parole officer who has successfully completed the Division of Corrections and Rehabilitation's training program for firearms certification, which is the equivalent of that required of any correctional employee under §15A-3-10 of this code, to carry firearms or concealed weapons. Any parole officer authorized by the Commissioner of Corrections and Rehabilitation may, without a state license, carry firearms and concealed weapons. Each state parole officer, authorized by the Commissioner of Corrections and Rehabilitation, shall carry with him or her a certificate authorizing him or her to carry a firearm or concealed weapon bearing the official signature of the Commissioner of Corrections and Rehabilitation.

#### **§15A-7-6. Parole supervision benefit fund.**

(a) There is continued a special revenue account in the State Treasury designated the "Parole Supervision Benefit Fund". The fund is to be used by the Division of Corrections and Rehabilitation for the benefit of parolee supervision with approval of the commissioner. The fund shall consist of

moneys received from any source, including, but not limited to, funds donated by the general public or an organization dedicated to parole supervision improvement, and funds seized from parolees that are forfeited pursuant to the provisions of §60A-7-701 et seq. of this code.

(b) Notwithstanding any other provision of this code to the contrary, the commissioner may authorize use of the money in the fund created pursuant to this section for payment to a community corrections program established pursuant to §62-11C-1 et seq. of this code for providing enhanced supervision of parolees.

#### **ARTICLE 8. REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY BOARD.**

##### **§15A-8-1. Powers and authority of the Regional Jail and Correctional Facility Authority Board; continuation of the Regional Jail and Correctional Facility Authority Board; payment of bonds; appeal of per diem rate.**

(a) The Regional Jail and Correctional Facility Authority Board is continued, as follows:

(1) The powers and authority of the Regional Jail and Correctional Facility Authority Board, in relation to all functions of correctional operations, are hereby abolished, and these powers and authority are transferred to the Division of Corrections and Rehabilitation as of July 1, 2018. The Regional Jail and Correctional Facility Authority Board shall only retain the powers as now outlined in this chapter. Where reference in this code is made to the Regional Jail and Correctional Facility Authority, in relation to operations of any of the regional jails, it shall be construed to mean the Division of Corrections and Rehabilitation.

(2) The following powers and authority of the Regional Jail and Correctional Facility Board are hereby specifically abolished:

(A) To mortgage or otherwise grant security interests in its property;

(B) To borrow money and to issue its negotiable bonds, security interests, or notes and to provide for and secure the payment thereof, and to provide for the rights of the holders thereof, and to purchase, hold, and dispose of any of its bonds, security interests, or notes;

(C) To sell, at public or private sale, any bond or other negotiable instrument, security interest or obligation of the authority in a manner and upon terms that the authority considers would best serve the purposes of this article;

(D) To issue its bonds, security interests, and notes payable solely from the revenues or other funds available to the authority therefor; and the authority may issue its bonds, security interests, or notes in those principal amounts as it considers necessary to provide funds for any purposes under this article, including:

(i) The payment, funding, or refunding of the principal of, interest on, or redemption premiums on, any bonds, security interests, or notes issued by it whether the bonds, security interests, notes, or interest to be funded or refunded have or have not become due; and

(ii) The establishment or increase of reserves to secure or to pay bonds, security interests, notes, or the interest thereon and all other costs or expenses of the Division of Corrections and Rehabilitation incident to and necessary or convenient to carry out its purposes and powers. Any

bonds, security interests, or notes may be additionally secured by a pledge of any revenues, funds, assets, or moneys of the authority from any source whatsoever;

(E) To issue renewal notes or security interests, to issue bonds to pay notes or security interests and, whenever it considers refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured except that no renewal notes shall be issued to mature more than 10 years from date of issuance of the notes renewed and no refunding bonds may be issued to mature more than 25 years from the date of issuance;

(F) To apply the proceeds from the sale of renewal notes, security interests, or refunding bonds to the purchase, redemption, or payment of the notes, security interests, or bonds to be refunded; and

(G) To sell security interests in the loan portfolio of the authority. The security interests shall be evidenced by instruments issued by the authority.

(3) The powers and duties of the board in relation to paying the current bond series, designated as The State Building Commission of West Virginia Lease Revenue Refunding Bonds (West Virginia Regional Jail and Correctional Facility Authority) Series 1998A, Series 1998B, and Series 1998C are specifically continued. The board, however, may not reissue these bonds, renegotiate the terms of the current bonds, or refinance these bonds. There is hereby created in the State Treasury a Regional Jail and Correctional Facility Board Fund. The fund shall be controlled by the board, and shall be utilized for the sole purpose of payment of the outstanding bond series as provided above. The Commissioner of the Division of Corrections and Rehabilitation shall, on or before the fifth day of every month, transfer to this fund the amount necessary for the monthly payment of the bond, as set forth by the yearly communication from the creditor of the bonds. Further, on the effective date of this section, the commissioner shall transfer to this fund the reserve amount required by the bonds. On the date that the bonds are satisfied in full, these obligations shall cease, and any funds left in the board fund shall be transferred to the Commissioner of the Division of Corrections and Rehabilitation: *Provided*, That the funds can only be used in the manner directed or established by the board. Further, the board retains the authority to be able, and with consent of the Secretary of the Department of Military Affairs and Public Safety, to the extent permitted under its contracts with the holders of bonds, security interests, or notes of the authority, consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any bond, security interest, note, or contract or agreement of any kind to which the authority is a party.

(4) The Regional Jail Authority shall review the per diem cost set by the state Budget Office, pursuant to §15A-3-16 of this code. If the authority believes that the amount set by the state Budget Office is incorrect, or that the amounts submitted by the Division of Corrections and Rehabilitation include more than what should be attributed to the efficient operation of jail facilities and units, the authority may institute an action in regard to this pursuant to §29A-5-1 *et seq.* of this code.

(5) The Regional Jail Authority retains the ability to sue, as defined in this article, and to be sued.

(b) Where reference in this article is made to the "division", it shall mean the Division of Corrections and Rehabilitation.

**§15A-8-2. West Virginia Regional Jail and Correctional Facility Authority Board; composition; appointment; terms; compensation and expenses.**

The West Virginia Regional Jail and Correctional Facility Authority Board is continued. The members of the board in office on the date this section takes effect shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

The authority shall be governed by a board of nine members, seven of whom are entitled to vote on matters coming before the authority. The complete governing board shall consist of the Commissioner of the Division of Corrections; the Assistant Commissioner for the Bureau of Juvenile Services; the Secretary of the Department of Military Affairs and Public Safety; the Secretary of the Department of Administration, or his or her designated representative; two county commissioners and one sheriff appointed by the Governor, no more than two of which may be of the same political party; and two citizens appointed by the Governor to represent the areas of law and medicine. The Commissioner of the Division of Corrections and Rehabilitation and the Assistant Commissioner for the Bureau of Juvenile Services shall serve in an advisory capacity and are not entitled to vote on matters coming before the authority. Members of the Legislature are not eligible to serve on the board.

The Governor shall nominate and, by and with the advice and consent of the Senate, appoint the five appointed members of the authority for staggered terms of four years.

Any appointed member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any appointed member is eligible for reappointment. Members of the board are not entitled to compensation for services performed as members, but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

All members of the board shall execute an official bond in a penalty of \$10,000, conditioned as required by law. Premiums on the bond shall be paid from funds accruing to the Division of Corrections and Rehabilitation. The bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor and, when fully executed and approved, shall be filed in the office of the Secretary of State.

**§15A-8-3. Governing body; organization and meetings; quorum; administrative expenses.**

(a) The board shall consist of the voting members of the board as provided for in §15A-8-2 of this code and shall exercise all the powers given to the authority in this article. On the second Monday of July of each odd-numbered year, the board shall meet to elect a chairman and a secretary from among its own members. The Secretary of the Department of Administration or his or her designated representative shall serve as treasurer of the board. The board shall otherwise meet two times a year, unless a special meeting is called by its chairman.

(b) A majority of the members of the board constitute a quorum, and a quorum must be present for the board to conduct business. Unless the bylaws require a larger number, action may be taken by majority vote of the members present.

(c) The board shall prescribe, amend, and repeal bylaws and rules governing the manner in which the business of the authority is conducted and shall review and approve the budget prepared by the executive director annually.

(d) All costs incidental to the administration of the board shall be paid from the jail operation fund by the Commissioner of Corrections and Rehabilitation.

## CHAPTER 19. AGRICULTURE.

### ARTICLE 12A. LAND DIVISION.

#### §19-12A-5. Powers, duties and responsibilities of commission.

(a) On or before July 1, 1990, the commission shall meet and confer with respect to the development of a management plan to determine the optimum use or disposition of all institutional farms, at which time the Farm Management Director shall provide the commission with a complete inventory of all institutional farms, and such information relating to easements, mineral rights, appurtenances, farm equipment, agricultural products, livestock, inventories, and farm facilities as may be necessary to develop such management plan. The commission shall complete and provide to the Governor a management plan, which plan shall set forth the objectives of the commission with respect to institutional farms, the criteria by which the commission shall determine the optimum use or disposition of such property, and determinations as to whether each institutional farm shall be used in production, sold, or leased, in whole or in part. Prior to the adoption of any plan, the commission shall consult with the secretaries of the various departments of state government and shall request from such secretaries suggestions for land use and resource development on farm commission lands. On or before December 1, 1990, such management plan shall be presented to the Legislature, by providing a copy to the President of the Senate and the Speaker of the House of Delegates. The commission may confer with any other agency or individual in implementing and adjusting its management plan. The management plan established pursuant to this subsection may be amended, from time to time, as may be necessary.

(b) The commission shall manage its institutional farms, equipment, and other property in order to most efficiently produce food products for state institutions and shall implement the intent of the Legislature as set forth by this article. From the total amount of food, milk and other commodities produced on institutional farms, the commission shall sell, at prevailing wholesale prices, and each of the institutions under the control of the Bureau of Public Health ~~and the Division of Corrections~~ shall purchase, a proportionate amount of these products based on the dietary needs of each institution.

(c) If requested by the ~~commissioner of corrections~~ Commissioner of Corrections and Rehabilitation, the commission may authorize the Division of Corrections and Rehabilitation to operate a farm or other enterprise using inmates as labor on those lands. The ~~commissioner of corrections~~ Commissioner of Corrections and Rehabilitation is responsible for the selection, direction, and supervision of the inmates and shall assign the work to be performed by inmates.

(d) The commission is hereby authorized and empowered to:

(1) Lease to public or private parties, for purposes including agricultural production or experimentation, public necessity, or other purposes permitted by the management plan, any land, easements, equipment, or other property, except that property may not be leased for any

use in any manner that would render the land toxic for agricultural use, nor may toxic or hazardous materials as identified by the Commissioner of Agriculture be used or stored upon such property unless all applicable state and federal permits necessary are obtained. Any lease for an annual consideration of \$1,000 or more shall be by sealed bid auction and the commission shall give notice of such auction by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication is the county in which the property to be leased is located;

(2) Transfer to the public land corporation land designated in its management plan as land to be disposed of, which land shall be sold, exchanged, or otherwise transferred pursuant to §20-1A-4 and §20-1A-5 of this code: *Provided*, That the net proceeds of the sale of farm commission lands shall be deposited in the General Revenue Fund of the state: *Provided, however*, That no sale may be concluded until on or after March 15, 1991, except with respect to: (A) Properties located at institutions closed on or before the effective date of this section, March 10, 1990; or (B) properties conveyed to or from the farm management commission to or from any other entity in order to facilitate the construction of a regional jail or correctional facility by the Regional Jail and Correctional Facilities Authority or the State Building Commission, with the decision to execute any such conveyance being solely within the discretion of, and at the direction of, the Regional Jail and Correctional Facilities Authority;

(3) Develop lands to which it has title for the public use including forestation, recreation, wildlife, stock grazing, agricultural production, rehabilitation and/or other conservation activities and may contract or lease for the proper development of timber, oil, gas, or mineral resources, including coal by underground mining or by surface mining where reclamation as required by specifications of the Division of Environmental Protection will increase the beneficial use of such property. Any such contract or lease shall be by sealed bid auction as provided for in subdivision (1) above;

(4) Exercise all other powers and duties necessary to effectuate the purposes of this article.

(e) Notwithstanding the provisions of subsection (d) ~~herein of this section~~, no timberland may be leased, sold, exchanged, or otherwise disposed of unless the Division of Forestry of the Department of Commerce, Labor and Environmental Resources certifies that there is no commercially salable timber on the timberland, an inventory is provided, an appraisal of the timber is provided, and the sale, lease, exchange, or other disposition is accomplished by the sealed bid auction procedure provided above in subdivisions (1) or (2), as applicable.

(f) The commission shall promulgate, pursuant to ~~chapter 29A~~ §29-1-1 *et seq.* of this code, rules and regulations relating to the powers and duties of the commission as enumerated in this section.

## CHAPTER 25. DIVISION OF CORRECTIONS.

### ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

**§25-1-1. Office of commissioner of public institutions abolished; department and commissioner of corrections established; qualifications, oath and bond.**

[Repealed.]

**§25-1-1a. Purpose and legislative intent.**

[Repealed.]

**§25-1-3. Institutions managed by Commissioner of Corrections; certain institutions transferred to Department of Health and Human Resources; establishment of work and study release units; contracting with certain entities for reentry and direct placement services; reports to Governor.**

[Repealed.]

**§25-1-3a. Trustee accounts and funds, earnings and personal property of inmates.**

[Repealed.]

**§25-1-3b. Inmate benefit funds.**

[Repealed.]

**§25-1-3c. Financial responsibility program for inmates.**

[Repealed.]

**§25-1-4. Limitation on reimbursement rate to medical service providers for services provided for services outside division facilities.**

[Repealed.]

**§25-1-5. Rules and regulations.**

[Repealed.]

**§25-1-5a. Mutual aid agreements.**

[Repealed.]

**§25-1-6. Title to property of state institutions; custody of deeds and other muniments of title; authority of commissioner.**

[Repealed.]

**§25-1-7. Pruntytown Correctional Center established as a minimum security facility; limitations on type of residents therein.**

[Repealed.]

**§25-1-8. Charges assessed against inmates for services provided by state.**

[Repealed.]

**§25-1-11. Officers and employees of corrections institutions.**

[Repealed.]

**§25-1-11a. Duties of wardens and administrators; bond; residence.**

[Repealed.]

**§25-1-11b. Appointment of deputy warden; duties; bond.**

[Repealed.]

**§25-1-11c. Hiring of other assistants and employees; duties of correctional employees; right to carry weapons; powers of correctional peace officers.**

[Repealed.]

**§25-1-11d. Compensation of employees approved by commissioner; traveling and other expenses; payment of salaries.**

[Repealed.]

**§25-1-11e. Unauthorized use of uniform, badge, identification card or other insignia; impersonation of member; and penalty.**

[Repealed.]

**§25-1-11f. Hiring of correctional officer without regard to position on the register.**

[Repealed.]

**§25-1-13. Furlough programs.**

[Repealed.]

**§25-1-14. Electronic monitoring of offenders; special account.**

[Repealed.]

**§25-1-15. Diagnostic and classification divisions.**

[Repealed.]

**§25-1-16. Transfer of inmates of state institutions or facilities.**

[Repealed.]

**§25-1-16a. Governor's authority to authorize commissioner of corrections to consent to transfer of inmates under a federal treaty.**

[Repealed.]

**§25-1-17. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.**

[Repealed.]

**§25-1-18. Monitoring inmate mail; procedures and restrictions; identifying mail from a state correctional institution; mail to or from attorneys excepted.**

[Repealed.]

**§25-1-19. Reports by Commissioner of Public Institutions and chief officers of institutions to Auditor.**

[Repealed.]

**§25-1-20. Reports to Governor.**

[Repealed.]

**§25-1-21. Employment of displaced correctional employees at other facilities.**

[Repealed.]

**§25-1-22. Task Force to Study the Feasibility of Establishing a Correctional Facility for the Incarceration and Treatment of Sex Offenders; members; duties.**

[Repealed.]

## **CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.**

### **ARTICLE 5. THE PENITENTIARY.**

**§28-5-7. Record of convict.**

[Repealed.]

**§28-5-8a. Manufacture of license plates, road signs or markers; securing signs and markers when federal government reimburses state for cost thereof.**

[Repealed.]

**§28-5-23. Special compensation of officers and employees prohibited; penalty.**

[Repealed.]

**§28-5-24. Gifts to or dealings with convicts.**

[Repealed.]

**§28-5-27. Deduction from sentence for good conduct; mandatory supervision.**

[Repealed.]

## **CHAPTER 31. CORPORATIONS.**

### **ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.**

**§31-20-1. Short title.**

[Repealed.]

**§31-20-1a. Legislative findings and purposes.**

[Repealed.]

**§31-20-2. Definitions.**

[Repealed.]

**§31-20-3. West Virginia Regional Jail and Correctional Facility Authority; composition; appointment; terms; compensation and expenses.**

[Repealed.]

**§31-20-4. Governing body; organization and meetings; quorum; administrative expenses.**

[Repealed.]

**§31-20-5. Powers and duties of the authority; bidding procedures.**

[Repealed.]

**§31-20-5a. Bidding procedures.**

[Repealed.]

**§31-20-5b. Prohibition against use or possession of tobacco products by inmates held by regional facility authority in regional jails operated solely by the authority; authorization to establish smoking cessation program.**

[Repealed.]

**§31-20-5c. Additional powers and duties of the authority; juvenile detention facilities.**

[Repealed.]

**§31-20-5d. Good-time credit.**

[Repealed.]

**§31-20-5e. Monitoring of inmate telephone calls and electronic communications; procedures and restrictions; attorney-client privilege protected and exempted.**

[Repealed.]

**§31-20-5f. Charges assessed against inmates for services provided by the authority.**

[Repealed.]

**§31-20-5g. Pretrial risk assessment.**

[Repealed.]

**§31-20-5h. Programs for inmates committed to prison.**

[Repealed.]

**§31-20-8. Jail facilities standards commission; appointment; compensation; vacancies; quorum.**

[Repealed.]

**§31-20-8a. Juvenile facilities standards commission; appointment; compensation; vacancies; quorum.**

[Repealed.]

**§31-20-9. Jail facilities standards commission: Purpose, powers and duties.**

[Repealed.]

**§31-20-9a. Juvenile facilities standards commission; purpose; powers; and duties.**

[Repealed.]

**§31-20-10. Regional jail and correctional facility authority funds.**

[Repealed.]

**§31-20-10a. Criteria and procedures for determining the cost per day for inmates incarcerated in facilities operated by the authority and allocating cost.**

[Repealed.]

**31-20-10b. Regional Jail Operations Partial Reimbursement Fund.**

[Repealed.]

**§31-20-11. Borrowing of money.**

[Repealed.]

**§31-20-12. Notes, security interests and bonds as general obligations of authority.**

[Repealed.]

**§31-20-13. Notes, security interests and bonds as negotiable instruments.**

[Repealed.]

**§31-20-14. Authorizing resolutions.**

[Repealed.]

**§31-20-15. Redemption of notes, security interests or bonds.**

[Repealed.]

**§31-20-20. Authorized limit on borrowing.**

[Repealed.]

**§31-20-22. Money of the authority.**

[Repealed.]

**§31-20-23. Conflict of interest; when contracts void.**

[Repealed.]

**§31-20-24. Agreement with federal agencies not to alter or limit powers of authority.**

[Repealed.]

**§31-20-27. Correctional officers; regional jails; priority of hiring.**

[Repealed.]

**§31-20-27a. Regional jail employees right to carry firearm; arrest authority of correctional officers.**

[Repealed.]

**§31-20-28. Limitations on contracts for sale of bonds or other securities.**

[Repealed.]

**§31-20-29. Furlough program.**

[Repealed.]

**§31-20-30. Limitation on reimbursement rate to medical service providers for services outside regional jail facilities.**

[Repealed.]

**§31-20-30a. Mechanical restraints during pregnancy.**

[Repealed.]

**§31-20-31. Work program.**

[Repealed.]

**§31-20-32. Jail processing fee.**

[Repealed.]

**CHAPTER 50. MAGISTRATE COURTS.****ARTICLE 3. COSTS, FINES AND RECORDS.****§50-3-2. Costs in criminal proceedings.**

(a) In each criminal case before a magistrate court in which the defendant is convicted, whether by plea or at trial, there is imposed, in addition to other costs, fines, forfeitures or penalties as may be allowed by law: (1) Costs in the amount of \$60, of which \$5 of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code; (2) an amount equal to the one-day per diem provided for in ~~subsection (h), section ten, article twenty, chapter thirty-one~~ §15A-3-16(g) of this code; and (3) costs in the amount of \$30 to be deposited in the Regional Jail Operations Partial Reimbursement Fund created by ~~section ten-b of said article~~ §15A-3-16 of this code. A magistrate may not collect costs in advance. Notwithstanding any other provision of this code, a person liable for fines and court costs in a criminal proceeding in which the defendant is confined in a jail or prison and not participating in a work release program shall not be held liable for the fines and court costs until one hundred eighty days after completion of the term in jail or prison. A magistrate court shall deposit \$5 from each of the criminal proceedings fees collected pursuant to this section in the Court Security Fund created in section fourteen, article three, chapter fifty-one of this code. A magistrate court shall, on or before the tenth day of the month following the month in which the fees imposed in this section were collected, remit an amount equal to the one-day per diem provided for in ~~subsection (h), section ten, article twenty, chapter thirty-one~~ §15A-3-16(g) of this code from each of the criminal proceedings in which the fees specified in this section were collected to the magistrate court clerk, or if there is no magistrate court clerk to the clerk of the circuit, together with information as may be required by the rules of the Supreme Court of Appeals and the rules of the Office of Chief Inspector. These moneys are paid to the sheriff who shall distribute the moneys solely in accordance with the provisions of section fifteen, article five, chapter seven of this code. Amendments made to this section during the 2001 regular session of the Legislature, are effective after June 30, 2001.

(b) A magistrate shall assess costs in the amount of \$2.50 for issuing a sheep warrant and the appointment and swearing appraisers and docketing the proceedings.

(c) In each criminal case which must be tried by the circuit court but in which a magistrate renders some service, costs in the amount of \$10 shall be imposed by the magistrate court and is certified to the clerk of the circuit court in accordance with the provisions of section six, article five, chapter sixty-two of this code.

**§50-3-4a. Disposition of criminal costs and civil filing fees into State Treasury account for Regional Jail and Prison Development Fund.**

(a) The clerk of each magistrate court shall, at the end of each month, pay into the Regional Jail and Prison Development Fund in the state Treasury an amount equal to \$40 of the costs collected in each criminal proceeding and all but \$10 of the costs collected for the filing of each civil action.

(b) The clerk of each magistrate court shall, at the end of each month, pay into the Regional Jail Operations Partial Reimbursement Fund established in ~~section ten-a, article twenty, chapter thirty-one~~ §15A-3-17 of this code the fees collected pursuant to subsection (g), section one and subdivision (3), subsection (a), section two of this article.

**CHAPTER 62. CRIMINAL PROCEDURE.****ARTICLE 12. PROBATION AND PAROLE.****§62-12-14. Appointment of probation and parole officers and clerical assistants; qualifications of officers; salaries and expenses.**

[Repealed.]

**§62-12-14a. Director of employment; director of housing; released inmates; duties.**

[Repealed.]

**§62-12-15. Powers and duties of state parole officers.**

[Repealed.]

**§62-12-25. Parole supervision benefit fund.**

[Repealed.]

**ARTICLE 13. CORRECTIONS MANAGEMENT.****§62-13-3. Appointment and qualifications of director.**

[Repealed.]

**§62-13-4. Powers and duties of commissioner or director generally; compensation and funds of inmates.**

[Repealed.]

**§62-13-5. Commitments; transfers.**

[Repealed.]

**§62-13-6a. Payment of jail fees to county commissions.**

[Repealed.]

On motion of Senator Clements, the following amendments to the Government Organization committee amendment to the bill (Eng. Com. Sub. for H. B. 4338) were reported by the Clerk and considered simultaneously:

On page twenty-three, section sixteen, line seventy-four, by striking out the word "January" and inserting in lieu thereof the word "July";

And,

On page sixty-six, section five, lines forty-three and forty-four, by striking out the words "§20-1A-4 and §20-1A-5" and inserting in lieu thereof the words "§5A-11-4 and §5A-11-5".

Following discussion,

The question being on the adoption of Senator Clements' amendments to the Government Organization committee amendment to the bill, the same was put and prevailed.

The question now being on the adoption of the Government Organization committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 4338), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4350**, Eliminating the regulation of upholstery.

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

At the request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the unreported Government Organization committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. House Bill 4389**, Expiring funds to the Enterprise Resource Planning System Fund.

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

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

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

WHEREAS, The Governor finds that the account balances in the Auditor's Office – Securities Regulation Fund, fund 1225, fiscal year 2018, organization 1200, and in the Treasurer's Office, Banking Services Expense Fund, fund 1322, fiscal year 2018, organization 1300 exceed that which is necessary for the purposes for which the accounts were established; therefore

*Be it enacted by the Legislature of West Virginia:*

That the balance of funds available for expenditure in the fiscal year ending June 30, 2018, to the Auditor's Office – Securities Regulation Fund, fund 1225, fiscal year 2018, organization 1200, be decreased by expiring the amount of \$1,133,000, and to the Treasurer's Office, Banking Services Expense Fund, fund 1322, fiscal year 2018, organization 1300 be decreased by expiring the amount of \$1,133,000 to the West Virginia Enterprise Resource Planning Board - Enterprise Resource Planning System Fund, fund 9080, fiscal year 2018, organization 0947, and the balance of funds available for expenditure in the fiscal year ending June 30, 2018, to the Auditor's Office – Securities Regulation Fund, fund 1225, fiscal year 2018, organization 1200, be decreased by expiring the amount of \$1,500,000 to the Department of Transportation, State Rail Authority, West Virginia Commuter Rail Access Fund, fund \*\*\*\*, fiscal year 2018, organization 0804 to be available for expenditure during the fiscal year ending June 30, 2018.

And, chapter one, Acts of the Legislature, 1st extraordinary session, 2017, known as the budget bill, be supplemented and amended by adding to Title II, section three thereof, the following:

## **TITLE II – APPROPRIATIONS.**

**Sec. 3. Appropriations from other funds.**

**DEPARTMENT OF TRANSPORTATION.**

*259a– State Rail Authority*

*West Virginia Commuter Rail Access Fund*

(WV Code Chapter 29)

Fund \*\*\*\* FY 2018 Org 0804

	<b>Appro-</b>		<b>Other</b>
	<b>priation</b>		<b>Funds</b>
1 Current Expenses .....	13000	\$	1,500,000

The bill (H. B. 4389), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4392**, Relating to Medicaid subrogation liens of the Department of Health and Human Resources.

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

The following amendments to the bill, from the Committee on Health and Human Resources, were reported by the Clerk and considered simultaneously:

On page three, section eleven, lines thirty through thirty-two, by striking out all of subdivision (6) and inserting in lieu thereof a new subdivision, designated subdivision (6), to read as follows:

(6) The department shall have a priority right to be paid first out of any payments made to the recipient for past medical expenses before the recipient can recover any of his or her own costs for medical care.;

On page four, section eleven, lines fifty-four through fifty-six, by striking out all of subdivision (5) and inserting in lieu thereof a new subdivision, designated subdivision (5), to read as follows:

(5) When determined by the department to be cost effective, the secretary or his or her designee may, in his or her sole discretion, negotiate for a reduction in the lien in an amount sufficient to incentivize Medicaid members to settle claims against liable third parties.;

And,

On page five, section eleven, lines ninety through ninety-five, by striking out all of paragraph (B) and inserting in lieu thereof a new paragraph, designated paragraph (B), to read as follows:

(B) The department shall have the burden of proving by a preponderance of the evidence that the allocation agreed to by the parties is proper. The trial court shall give due consideration to the department's interest in being fairly reimbursed for purposes of the operation of the Medicaid program. The trial court's decision should be set forth in a detailed order containing the requisite findings of fact and conclusions of law to support its rulings.

Following discussion,

The question being on the adoption of the Health and Human Resources committee amendments to the bill, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 4392), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4394**, Relating to forest fires.

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

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

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

### **ARTICLE 3. FORESTS AND WILDLIFE AREAS.**

#### **§20-3-5. Forest fire seasons; prohibited and permissible fires; burning permits and fees; fire control measures; criminal and civil penalties.**

(a) *Forest fire seasons.* — March 1 through May 31, and October 1 through December 31 are designated as forest fire seasons. During any fire season, a person may set on fire or cause to be set on fire any forest land, or any grass, grain, stubble, slash, debris, or other inflammable materials only between 5 p.m. and 7 a.m., at which time the fire must be extinguished.

(b) *Permissible fires during forest fire seasons.* — The following attended fires are permitted during forest fire season as set forth in subsection (a) of this section without a burning permit unless there is a burning ban in effect:

(1) Small fires set for the purpose of food preparation, or providing light or warmth around which all grass, brush, stubble, or other debris has been removed for a distance of 10 feet from the fire; and

(2) Burning conducted at any time when the ground surrounding the burning site is covered by one inch or more of snow.

(c) *Burning permits.* — The director or his or her designee may issue burning permits authorizing fires during forest fire seasons as set forth in subsection (a) of this section that are otherwise prohibited by this section. The permits shall state the requisite conditions and time frame to prevent danger from the fire to life or property: *Provided*, That the director or his or her designee shall take final action upon all completed permit applications within 30 days of receipt if the application is uncontested, or within 90 days if the application is contested.

(1) *Permit fees.* — Entities required to pay a permit fee are those engaged in commercial, manufacturing, public utility, mining, and like activities. Agricultural activities are exempt from paying the permit fee. The permit fee is \$125 per site and shall be deposited into the Division of Forestry Fund (3081) to be used to administer the provisions of this section. The permit fee covers the fire season during which it is issued.

(2) Noncompliance with any condition of the permit is a violation of this section. Any permit which was obtained through willful misrepresentation is invalid and violates this section.

(3) Permit holders shall take all necessary and adequate precautions to confine and control fires authorized by the permit. Failure to take action is a violation of this section and is justification for the director to revoke the permit.

(d) *Fire control.* —

(1) With approval of the Governor, the director may prohibit the starting of and require the extinguishment of fire in any designated area, including fires permitted by this section.

(2) With approval of the Governor, the director may designate any forest area as a danger area, prohibit entry, and declare conditional uses and prohibited areas of the forest by proclamation at any time of the year. The proclamation shall be furnished to newspapers, radio stations, and television stations that serve the designated area and ~~shall become~~ becomes effective after 24 hours. The proclamation remains in effect until the director, with the approval of the Governor, terminates it. The order shall designate the time of termination, and notice of the order shall be furnished to each newspaper, radio station, and television station that received a copy of the proclamation.

(3) ~~Burning is not permitted by this section until all inflammable material has been removed from around the material to be burned and a safety strip of at least ten feet is established to ensure that the fire will not escape~~ A person shall remove all flammable material from the area immediately surrounding the material to be burned for a distance which ensures the fire will at all times be contained; this safety strip shall in no event be less than 10 feet wide. Any person or his or her agent or employee who sets or causes to be set any fire which escapes the safety strip and causes damage to the lands of another is guilty of a misdemeanor.

(e) Criminal and civil penalties. — A person or entity that violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$100 and not more than \$1,000 for each violation. In addition to fines and costs, a person or entity convicted of a violation of this section shall pay a \$200 civil penalty to the division within 60 days. The civil penalty shall be collected by the court in which the person is convicted and forwarded to the division and deposited in the Division of Forestry Fund (3081) to be used to administer the provisions of this section.

#### **§20-3-5a. Prescribed Fire Program.**

(a) As used in this section:

(1) “Certified prescribed fire manager” means an employee of the Division of Forestry, the Division of Natural Resources, or any federal employee who has successfully completed a certification process established by the director.

(2) "Prescribed fire" means the controlled application of fire or wildland fuels in wildlife management areas, state forests or federal lands in either the natural or modified state, under specified environmental conditions, which allows the fire to be confined to a predetermined area and produces the fire behavior and fire characteristics necessary to attain planned fire treatment and ecological, silvicultural, and wildlife management objectives.

(3) "Prescription" means a written statement defining the objectives to be attained by a prescribed fire and the conditions of temperature, humidity, wind direction and speed, fuel moisture, and soil moisture under which a fire will be allowed to burn. A prescription is generally expressed as an acceptable range of the prescription elements.

(b) Director certification process. — The director shall develop and administer a certification process and prescribed burn course for any individual who desires to become a certified prescribed fire manager. The prescribed fire course shall include the following subjects: the legal aspects of prescribed fire, fire behavior, prescribed fire tactics, smoke management, environmental effects, plan preparation, and safety. The director shall give a final examination on these subjects to all attendees. The director may charge a reasonable fee to cover the costs of the prescribed fire course and the examination.

(c) To be certified as a certified prescribed fire manager, a person shall:

(1) Successfully complete all components of the prescribed fire course developed by the director and pass the examination developed for the course;

(2) Successfully complete a prescribed fire course comparable to that developed by the director and pass the examination developed for the course; or

(3) Demonstrate relevant past experience, complete a review course and pass the examination developed for the prescribed fire course.

(d) Prescribed burning shall be performed in the following manner:

(1) A certified prescribed fire manager shall prepare a prescription for the prescribed fire prior to the burn. The prescription shall include: (A) The landowner's name, address, and telephone number, and the telephone number of the certified prescribed fire manager who prepared the plan; (B) a description of the area to be burned, a map of the area to be burned, the objectives of the prescribed fire, and the desired weather conditions or parameters; (C) a summary of the methods to be used to start, control, and extinguish the prescribed fire; and (D) a smoke management plan. The smoke management plan shall conform to the Department of Environmental Protection's rule, Control of Air Pollution from Combustion of Refuse, 45 CSR 6. A copy of the prescription shall be retained at the site throughout the period of the burning;

(2) A certified prescribed fire manager shall directly supervise a prescribed fire and ensure that the prescribed fire is in accordance with the prescription; and

(3) The certified prescribed fire manager shall notify the nearest regional office of the division 24 hours prior to the prescribed fire.

(e) If the actions of any certified prescribed fire manager or the prescriptions prepared by him or her violate any provision of this article, state air pollution control laws, the Division of Forestry

rules, the Department of Environmental Protection rules or laws, or threaten public health and safety, the director may revoke his or her certification.

(f) The director shall propose rules for promulgation in accordance with the provisions of §29A-3-1 et seq. of this code for establishing the procedures for the development of a certification program for prescribed fire managers.

The bill (Eng. Com. Sub. for H. B. 4394), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4424**, Providing that the Ethics Act applies to certain persons providing services without pay to state elected officials.

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

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

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

**ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT;  
CONSTRUCTION AND APPLICATION OF CHAPTER; SEVERABILITY.**

**§6B-1-3. Definitions.**

As used in this chapter, unless the context in which used clearly requires otherwise:

(a) "Review Board" means the Probable Cause Review Board created by §6B-2-2a of this code.

(b) "Business" means any entity through which business for-profit is conducted including a corporation, partnership, proprietorship, franchise, association, organization, or self-employed individual.

(c) "Compensation" means money, thing of value, or financial benefit. The term "compensation" does not include reimbursement for actual reasonable and necessary expenses incurred in the performance of one's official duties.

(d) "Employee" means any person in the service of another under any contract of hire, whether express or implied, oral, or written, where the employer or an agent of the employer or a public official has the right or power to control and direct such person in the material details of how work is to be performed and who is not responsible for the making of policy nor for recommending official action.

(e) "Ethics Commission" or "commission" means the West Virginia Ethics Commission.

(f) "Immediate family", with respect to an individual, means a spouse with whom the individual is living as husband and wife and any dependent child or children, dependent grandchild or grandchildren, and dependent parent or parents.

(g) "Ministerial functions" means actions or functions performed by an individual under a given state of facts in a prescribed manner in accordance with a mandate of legal authority, without

regard to, or without the exercise of, the individual's own judgment as to the propriety of the action being taken.

(h) "Person" means an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club, or other organization or group of persons, irrespective of the denomination given such organization or group.

(i) "Political contribution" means and has the same definition as is given that term under the provisions of §3-8-1 et seq. of this code.

(j) "Public employee" means any full-time or part-time employee of any state, county or municipal governmental body or any political subdivision thereof, including county school boards.

(k) "Public official" means any person who is elected ~~or appointed to~~ to, appointed to, or given the authority to act in any state, county, or municipal office or position, whether compensated or not, and who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both, with respect to: (1) Contracting for, or procurement of, goods or services; (2) administering or monitoring grants or subsidies; (3) planning or zoning; (4) inspecting, licensing, regulating, or auditing any person; or (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interest or interests of any person. The term "public official" includes a public servant volunteer.

(l) "Public servant volunteer" means any person who, without compensation, performs services on behalf of a public official and who is granted or vested with powers, privileges, or authorities ordinarily reserved to public officials.

~~(m)~~ (m) "Relative" means spouse, mother, father, sister, brother, son, daughter, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, or daughter-in-law.

~~(n)~~ (n) "Respondent" means a person who is the subject of an investigation by the commission or against whom a complaint has been filed with the commission.

~~(o)~~ (o) "Thing of value", "other thing of value," or "anything of value" means and includes: (1) Money, bank bills, or notes, United States treasury notes and other bills, bonds or notes issued by lawful authority and intended to pass and circulate as money; (2) goods and chattels; (3) promissory notes, bills of exchange, orders, drafts, warrants, checks, bonds given for the payment of money, or the forbearance of money due or owing; (4) receipts given for the payment of money or other property; (5) any right or chose in action; (6) chattels real or personal or things which savor of realty and are, at the time taken, a part of a freehold, whether they are of the substance or produce thereof or affixed thereto, although there may be no interval between the severing and the taking away thereof; (7) any interest in realty, including, but not limited to, fee simple estates, life estates, estates for a term or period of time, joint tenancies, cotenancies, tenancies in common, partial interests, present or future interests, contingent or vested interests, beneficial interests, leasehold interests, or any other interest or interests in realty of whatsoever nature; (8) any promise of employment, present or future; (9) donation or gift; (10) rendering of services or the payment thereof; (11) any advance or pledge; (12) a promise of present or future interest in any business or contract or other agreement; or (13) every other thing or item, whether tangible or intangible, having economic worth. "Thing of value", "other thing of value" or "anything of value" shall not include anything which is de minimis in nature nor a lawful political contribution reported as required by law.

**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-2-5. 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 and whether compensated or not, 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 29A 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 30 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 §29A-2-1 *et seq.* of this 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 §29A-2-1 *et seq.* of this 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 §5A-4-2 *et seq.* of this code.

(d) Interests in public contracts. —

(1) In addition to the provisions of §61-10-15 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 §8A-2-3, §8A-2-4, or §8A-2-5 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 12 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 12 months: *Provided*, That this limitation only applies if the total amount of the loan or loans exceeds \$15,000.

(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.

(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 §6B-1-3 of this code, 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 10 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 §6B-1-3 of this code, 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 10 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 §30-3-1 *et seq.*, §30-8-1 *et seq.*, §30-14-1 *et seq.*, §30-14A-1 *et seq.*, §30-15-1 *et seq.*, §30-16-1 *et seq.*, §30-20-1 *et seq.*, §30-21-1 *et seq.*, or §30-31-1 *et seq.* 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 29A of this code, define further exemptions from this section as necessary or appropriate.

The bill (Eng. Com. Sub. for H. B. 4424), as amended, was then ordered to third reading.

(Senator Weld in the Chair.)

**Eng. Com. Sub. for House Bill 4428**, Allowing training hours earned through public school education or apprenticeship to count towards an applicant's occupational certification.

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

The following amendments to the bill, from the Committee on Education, were reported by the Clerk, considered simultaneously, and adopted:

On page one, after the enacting clause, by inserting the following:

**CHAPTER 18. EDUCATION.****ARTICLE 5. COUNTY BOARD OF EDUCATION.****§18-5-15g. Vocational education classes for homeschooled and private schooled students.**

County boards shall permit students who are homeschooled or attend private schools to enroll and take classes at the county's vocational schools, if the county offers vocational classes either itself or through a joint vocational program or service with another county or counties: *Provided*, That such students will be treated equally for admission purposes with applicants enrolled in public school. These students may not be charged more than public school students of compulsory school age.;

On page three, section five, line four, after the word "acquired" by inserting the word "through";

On page three, section five, line five, after the word "education" by inserting the word "and";

On page three, section five, line eight, after the word "programs" by inserting the word "and";

On page four, section four, line four, after the word "acquired" by inserting the word "through";

On page four, section four, line five, after the word "education" by inserting the word "and";

And,

On page four, section four, line eight, after the word "programs" by inserting the word "and".

On motion of Senator Jeffries, the following amendment to the bill (Eng. Com. Sub. for H. B. 4428) was next reported by the Clerk:

On page one, after the enacting clause, by inserting the following:

**CHAPTER 18. EDUCATION.****ARTICLE 33. GOVERNOR'S WORKFORCE CREDENTIAL.****§18-33-1. Establishing the Governor's Workforce Credential.**

The Governor's Workforce Credential is an initiative aimed at preparing students to enter the workforce with industry ready skills and abilities to meet business and industry expectations. It also creates a way for employers to identify potential employees who are prepared to enter the workforce and understand the industry accepted expectations of such employees. The credential honors those students who are able to meet or exceed rigid requirements within their Career and Technical Education (CTE) programs.

**§18-33-2. Requirements.**

In order to receive the Governor's Workforce Credential, a graduating senior shall:

(1) Obtain a grade of "B" or better in the four required state-approved CTE Program of study courses;

(2) Accomplish a minimum score of 95 percent on the CTE portfolio;

(3) Attain a verified school attendance rate of 95 percent or higher during senior year;

(4) Score at an elite level of 70 or higher on the industry-recognized audit;

(5) Earn an industry certification that coincides with a state-approved CTE Program of Study in accordance with the West Virginia Board of Education Policy 2520 13; and

(6) Pass a minimum of two documented drug screenings.

**§18-33-3. Recognition for recipients of credential upon graduation.**

Any student who fulfills the requirements of the Governor's Workforce Credential and has also met their graduation requirements will receive individual recognition at their high school graduation ceremony.

Following discussion,

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

The bill (Eng. Com. Sub. for H. B. 4428), as amended, was then ordered to third reading.

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

**Eng. Com. Sub. for House Bill 4431**, Establishing the Mountaineer Trail Network Recreation Authority.

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

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

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

**ARTICLE 14A. MOUNTAINEER TRAIL NETWORK RECREATION AUTHORITY.**

**§20-14A-1. Legislative findings.**

The West Virginia Legislature finds that there is a significant need within the state and throughout the eastern United States for well-managed facilities for trail-oriented recreation for bicycle enthusiasts, mountain bicyclists, and others. The Legislature further finds that under an appropriate contractual and management scheme, well-managed, trail-oriented recreation facilities could exist on private property without diminishing the landowner's interest, control, or profitability in the land and without increasing the landowner's exposure to liability.

The Legislature further finds that, with the cooperation of private landowners, there is an opportunity to provide trail-oriented recreation facilities primarily on private property in the mountainous terrain of north central West Virginia and that the facilities will provide significant economic and recreational benefits to the state and to the communities in north central West

Virginia through increased tourism in the same manner as whitewater rafting, snow skiing, and utility terrain motor vehicle riding benefit the state and communities surrounding those activities.

The Legislature further finds that the creation and empowering of a joint development entity to work with the landowners, county officials and community leaders, state and federal government agencies, recreational user groups, and other interested parties to enable and facilitate the implementation of the facilities will greatly assist in the realization of these potential benefits.

The Legislature further finds that it is in the best interests of the state to encourage private landowners to make land available for public use, through the Mountaineer Trail Network Recreation Authority, for these recreational purposes by limiting landowner liability for injury to persons entering thereon, by limiting landowner liability for injury to the property of persons entering thereon, and by limiting landowner liability to persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

### **§20-14A-2. Definitions.**

Unless the context clearly requires a different meaning, the terms used in this article have the following meanings:

(1) "Authority" means the Mountaineer Trail Network Recreation Authority;

(2) "Board" means the board of the Mountaineer Trail Network Recreation Authority;

(3) "Charge" means, for purposes of limiting liability for recreational purposes set forth in this article, the amount of money asked in return for an invitation to enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience, or occasion as set by the authority, which may be set by the authority in differing amounts for different categories of participants;

(4) "Land" includes, but is not limited to, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment thereon when attached to the realty;

(5) "Mountaineer Trail Network Recreation Area" means a system of recreational trails and appurtenant facilities, including trail head centers, parking areas, camping facilities, picnic areas, recreational areas, historic or cultural interpretive sites, and other facilities that are a part of the system: *Provided*, That for the purposes of permitted or prohibited use of such a system, the term includes a system located in a regional Mountaineer Trail Network Authority established pursuant to §20-14A-13 of this article;

(6) "Owner" means those vested with title to real estate and those with the ability to exercise control over real estate and includes, but is not limited to, tenant, lessee, licensee, holder of a dominant estate, or other lawful occupant;

(7) "Participant" means any person using the land, trails, and facilities of the Mountaineer Trail Network Recreation Area;

(8) "Participating county" means the counties of Barbour, Grant, Harrison, Marion, Mineral, Monongalia, Preston, Randolph, Taylor, and Tucker and, upon request of the county commission,

any county that is adjacent to a participating county of the Mountaineer Trail Network Recreation Area as of July 1, 2021; and

(9) "Recreational purposes" includes, but is not limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, bicycling, mountain bicycling, running, cross-country running, equestrian activities, nature study, winter sports and visiting, viewing or enjoying historical, archaeological, scenic, or scientific sites or otherwise using land for purposes of the user.

**§20-14A-3. Mountaineer Trail Network Recreation Authority; board; terms.**

(a) There is hereby created the "Mountaineer Trail Network Recreation Authority" which is a public corporation and a joint development entity existing for the purpose of enabling and facilitating the development and operation of a system of trail-oriented recreation facilities for use by bicycling enthusiasts, mountain bicyclists, and others, to be located in north central West Virginia with significant portions of the trails system being located on private property made available for use through lease, license, easement, or other appropriate legal form by a willing landowner.

(b) The authority is composed of a board of members who shall be representative of the various interests involved in the Mountaineer Trail Network Recreation Area project in the participating counties and who shall be appointed as follows:

(1) The county commission of each participating county, as defined in §20-14A-2 of this article, shall appoint two members to the board as follows:

(A) One member who represents and is associated with a corporation or individual landowner whose land is being used or is expected to be used in the future as part of the Mountaineer Trail Network Recreation Area project or their designee. This member shall be appointed to a four-year term.

(B) One member who represents and is associated with travel and tourism or economic development efforts within the county or who is associated with a mining, logging, natural gas, or other resource-extraction industry or who is a licensed land surveyor or licensed professional engineer. The initial appointment shall be for a two-year term, but all subsequent appointments shall be for a four-year term.

(2) Any appointed member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any appointed member is eligible for reappointment. Members of the board are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

(c) The Mountaineer Trail Network Recreation Authority is a "public body" for purposes of the West Virginia Freedom of Information Act, as provided in §29B-1-1 et seq. of this code.

**§20-14A-4. Board; quorum; executive director; expenses.**

(a) The board is the governing body of the authority and the board shall exercise all the powers given the authority in this article.

(b) The board shall meet quarterly, unless a special meeting is called by its chairman: *Provided*, That at the first meeting of each fiscal year beginning in an odd-numbered year, or as soon thereafter as feasible, the board shall elect a chairman, secretary, and treasurer from among its own members.

(c) A majority of the members of the board constitutes a quorum and a quorum shall be present for the board to conduct business.

(d) The board may prescribe, amend, and repeal bylaws and rules governing the manner in which the business of the authority is conducted, rules governing the use of the trail system and the safety of participants, and shall review and approve an annual budget. The fiscal year for the authority begins on July 1 and ends on the thirtieth day of the following June.

(e) The board shall appoint an executive director to act as its chief executive officer, to serve at the will and pleasure of the board. The board, acting through its executive director, may employ any other personnel considered necessary and retain such temporary legal, engineering, financial, and other consultants or technicians as may be required for any special study or survey consistent with the provisions of this article. The executive director shall carry out plans to implement the provisions of this article and to exercise those powers enumerated in the bylaws. The executive director shall prepare an annual budget to be submitted to the board for its review and approval prior to the commencement of each fiscal year. The budget shall contain a detailed account of all planned and proposed revenue and expenditures for the authority for the upcoming fiscal year, including a detailed list of employees by title, salary, cost of projected benefits and total compensation. Before August 15 of each year, the executive director shall provide to the board and the county commission for each participating county a detailed list of actual expenditures and revenue by account and recipient name for the previous fiscal year and a copy of the approved budget for the current fiscal year.

(f) All costs incidental to the administration of the authority, including office expenses, personal services expense, and current expense, shall be paid in accordance with guidelines issued by the board from funds accruing to the authority.

(g) All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and no liability or obligation may be incurred by the authority under this article beyond the extent to which moneys have been provided under the authority of this article.

#### **§20-14A-5. Financial review and oversight.**

(a) The authority shall contract for and obtain an annual financial audit to be conducted by a private accounting firm in compliance with generally accepted government auditing standards. When complete, the audit shall be transmitted to the board, the president of the county commission of each participating county, and the Legislative Auditor. The cost of the audit shall be paid by the authority.

(b) If the authority receives any funds from the Legislature by appropriation or grant, the Legislative Auditor shall have the power and authority to examine the revenues, expenditures, and performance of the Mountaineer Trail Network Recreation Authority, and for these purposes, shall have the power to inspect the properties, equipment, and facilities of the authority and to request, inspect, and obtain copies of any records of the authority. For each fiscal year in which the authority receives any funds from the Legislature by appropriation or grant, the executive

director shall provide to the Legislative Auditor and Secretary of Revenue a detailed list of actual expenditures and revenue by account and recipient name for the previous fiscal year within 45 days of the close of that fiscal year.

**§20-14A-6. Powers of the authority.**

The authority, as a public corporation and joint development entity, may exercise all powers necessary or appropriate to carry out the purposes of this article, including, but not limited to, the power:

(1) To acquire, own, hold, and dispose of property, real and personal, tangible and intangible;

(2) To lease property, whether as lessee or lessor, and to acquire or grant through easement, license, or other appropriate legal form, the right to develop and use property and open it to the use of the public;

(3) To mortgage or otherwise grant security interests in its property;

(4) To procure insurance against any losses in connection with its property, license, or easements, contracts, including hold-harmless agreements, operations, or assets in such amounts and from such insurers as the authority considers desirable;

(5) To maintain such sinking funds and reserves as the board determines appropriate for the purposes of meeting future monetary obligations and needs of the authority;

(6) To sue and be sued, implead and be impleaded, and complain and defend in any court;

(7) To contract for the provision of legal services by private counsel and, notwithstanding the provisions of §5-3-1 *et seq.* of this code, the counsel may, in addition to the provisions of other legal services, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating to the authority, prepare contracts and other agreements, and provide such other legal services as may be requested by the authority;

(8) To adopt, use, and alter at will a corporate seal;

(9) To make, amend, repeal, and adopt bylaws for the management and regulation of its affairs;

(10) To appoint officers, agents, and employees and to contract for and engage the services of consultants;

(11) To make contracts of every kind and nature and to execute all instruments necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership, or corporation to effect any or all of the purposes of this article;

(12) Without in any way limiting any other subdivision of this section, to accept grants and loans from, and enter into contracts and other transactions with, any federal agency;

(13) To maintain an office at such places within the state as it may designate;

(14) To borrow money and to issue notes and to provide for the payment of notes and to provide for the rights of the holders of the notes and to purchase, hold, and dispose of any of its notes;

(15) To issue notes payable solely from the revenues or other funds available to the authority, and the authority may issue its notes in such principal amounts as it considers necessary to provide funds for any purpose under this article, including:

(A) The payment, funding or refunding of the principal of, interest on or redemption premiums on notes issued by it, whether the notes or interest to be funded or refunded have or have not become due; and

(B) The establishment or increase of reserves to secure or to pay notes or the interest on the notes and all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers. Notes may be additionally secured by a pledge of any revenues, funds, assets, or moneys of the authority from any source whatsoever;

(16) To issue renewal notes, except that no renewal notes may be issued to mature more than 10 years from the date of issuance of the notes renewed;

(17) To apply the proceeds from the sale of renewal notes to the purchase, redemption, or payment of the notes to be refunded;

(18) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies, or services from the federal government or from any governmental unit or any person, firm, or corporation and to carry out the terms or provisions of or make agreements with respect to or pledge any gifts or grants and to do any and all things necessary, useful, desirable, or convenient in connection with the procuring, acceptance, or disposition of gifts or grants;

(19) To the extent permitted under its contracts with the holders of notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any note, contract or agreement of any kind to which the authority is a party;

(20) To construct, reconstruct, improve, maintain, repair, operate, and manage the Mountaineer Trail Network Recreation Area at the locations within the participating counties as may be determined by the authority;

(21) To enter into an agreement with the West Virginia Division of Natural Resources for natural resources police officers to provide law-enforcement services within the Mountaineer Trail Network Recreation Area and to reimburse the Division of Natural Resources for its costs therefor;

(22) To exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, maintain, and operate or oversee the operation of the Mountaineer Trail Network Recreation Area at such locations within the participating counties as may be determined by the authority;

(23) To exercise all of the powers which a corporation may lawfully exercise under the laws of this state;

(24) To develop, maintain, and operate or to contract for the development, maintenance, and operation of the Mountaineer Trail Network Recreation Area;

(25) To enter into contract with landowners and other persons holding an interest in the land being used for its recreational facilities to hold those landowners and other persons harmless with respect to any claim in tort growing out of the use of the land for recreational purposes or growing out of the recreational activities operated or managed by the authority from any claim except a claim for damages proximately caused by the willful or malicious conduct of the landowner or other person or any of his or her agents or employees;

(26) To assess and collect a reasonable fee from those persons who use the trails, parking facilities, visitor centers, or other facilities which are part of the Mountaineer Trail Network Recreation Area and to retain and utilize that revenue for any purposes consistent with this article;

(27) To enter into contracts or other appropriate legal arrangements with landowners under which their land is made available for use as part of the Mountaineer Trail Network Recreation Area;

(28) To directly operate and manage recreation activities and facilities within the Mountaineer Trail Network Recreation Area;

(29) To establish and collect charges for users to enter or go upon the Mountaineer Trail Network Recreation Area, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience, or occasion as set by the authority and including fees set by the authority in differing amounts for different categories of participants: *Provided*, That the authority may not charge a fee for any user to enter or go upon any trail that is open for use by the public without fee as of January 1, 2018;

(30) To promulgate and publish rules governing the use of the trail system and the safety of participants, including rules designating particular trails or segments of trails within the Mountaineer Trail Network Recreation Area for certain activities and limiting use of designated trails to such activities;

(31) To coordinate and conduct mountain bicycling or other athletic races, competitions, or events within the Mountaineer Trail Network Recreation Area, in cooperation with the county commissions of participating counties in which such events will take place; and

(32) To exercise such other and additional powers as may be necessary or appropriate for the exercise of the powers conferred in this section;

**§20-14A-7. Requirements for trail users and prohibited acts; criminal penalties.**

(a) A person may not enter or remain upon the Mountaineer Trail Network Recreation Area without a valid, nontransferable user permit issued by the authority and properly displayed, except properly identified landowners or leaseholders or their officers, employees, or agents while on the land that the person owns or leases for purposes related to the ownership or lease of the land.

(b) A person may not consume or possess any alcoholic liquor, wine, nonintoxicating beer, or nonintoxicating craft beer at any time or any location within the Mountaineer Trail Network Recreation Area.

(c) The operator or any passengers of a bicycle or mountain bicycle within the Mountaineer Trail Network Recreation Area shall wear size-appropriate protective helmets at all times. All operators and passengers shall wear helmets that meet the current performance specifications established by the United States Consumer Products Safety Commission standard or the American Society for Testing and Materials standard.

(d) Each trail user shall obey all traffic laws, traffic-control devices, and signs within the Mountaineer Trail Network Recreation Area, including those which restrict trails to certain types of bicycles or mountain bicycles.

(e) Each trail user shall at all times remain within and on a designated and marked trail while within the Mountaineer Trail Network Recreation Area.

(f) A person may not ignite or maintain any fire within the Mountaineer Trail Network Recreation Area except in a designated camp site.

(g) A person may not operate a motor vehicle within the Mountaineer Trail Network Recreation Area.

(h) A person may not possess a glass container while riding on a bicycle or mountain bicycle within the Mountaineer Trail Network Recreation Area.

(i) A person may not operate or ride in an all-terrain vehicle or utility-terrain vehicle, as defined in §17F-1-1 *et seq.* of this code, or any other motor vehicle with bench or bucket seating and a steering wheel for control within the Mountaineer Trail Network Recreation Area.

(j) A person who violates any provision of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$100. Prosecution or conviction for the misdemeanor described in this subsection shall not prevent or disqualify any other civil or criminal remedies for the conduct prohibited by this section.

#### **§20-14A-8. Limiting liability.**

(a) An owner of land used by the Mountaineer Trail Network Recreation Authority owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous or hazardous condition, use, structure, or activity on the premises used by the Mountaineer Trail Network Recreation Authority to persons entering for those purposes.

(b) Unless otherwise agreed in writing, an owner who grants a lease, easement, or license of land to the authority for recreational purposes, whether with or without charge, owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon the land of any dangerous or hazardous conditions, uses, structures, or activities thereon. An owner who grants a lease, easement, or license of land to the authority for recreational purposes does not by giving a lease, easement, or license: (1) Extend any assurance to any person using the land that the premises are safe for any purpose; (2) confer upon those persons the legal status of an invitee or licensee to whom a duty of care is owed; or (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land. The provisions of this section apply whether the person entering upon the land is an invitee, licensee, trespasser, or otherwise.

(c) Nothing herein limits in any way any liability which otherwise exists for deliberate, willful, or malicious infliction of injury to persons or property: *Provided*, That nothing herein limits in any way the obligation of a person entering upon or using the land of another for recreational purposes to exercise due care in his or her use of the land and in his or her activities thereon, so as to prevent the creation of hazards or the commission of waste by himself or herself.

**§20-14A-9. Purchasing and bidding procedures; criminal penalties.**

(a) Whenever the authority proposes to purchase or contract for commodities or services reasonably anticipated to equal or exceed \$25,000 in cost, the purchase or contract shall be based on competitive bids. Where the purchase of particular commodities or services is reasonably anticipated to be \$25,000 or less, the executive director may, on behalf of the authority, solicit bids or price quotes in any manner that the executive director deems appropriate and the authority shall obtain its commodities or services by the lowest bid. In lieu of seeking bids or quotes for commodities or services in this price range, the authority may purchase those commodities and services pursuant to state master contracts as provided in §5A-3-10e of this code.

(b) Where the cost for the purchase of commodities or services is reasonably anticipated to exceed \$25,000, the executive director shall solicit sealed bids for the commodities or services to be provided: *Provided*, That the executive director may permit bids by electronic transmission be accepted in lieu of sealed bids. Bids shall be solicited by public notice. The notice shall be published as a Class II legal advertisement in all participating counties in compliance with the provisions of §59-3-1 *et seq.* of this code and by such other means as the executive director deems appropriate. The notice shall state the general character of the work and general character of the materials to be furnished, the place where plans and specifications therefor may be examined, and the time and place of receiving bids. After all bids are received, the authority shall enter into a written contract with the lowest responsible bidder; however, the authority may reject any or all bids that fail to meet the specifications required by the authority or that exceed the authority's budget estimation for those commodities or services. If the executive director determines in writing that there is only one responsive and responsible bidder and that there has been sufficient public notice to attract competitive bids, he or she may negotiate the price for a noncompetitive award or the specifications for a noncompetitive award based solely on the original purpose of the solicitation.

(c) For any contract that exceeds \$25,000 in total cost, the authority shall require the vendors to post a bond, with form and surety to be approved by the authority, in an amount equal to at least 50 percent of the contract price conditioned upon faithful performance and completion of the contract.

(d) The bidding requirements specified in this section do not apply to any leases for real property upon which the authority makes improvements for public access to the recreation area, information distribution, and welcome centers. This exemption does not apply to leases for offices, vehicle and heavy equipment storage, or administrative facilities.

(e) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction, shall be confined in jail not less than 10 days nor more than one year, or fined not less than \$10 nor more than \$1,000, or both confined and fined.

**§20-14A-10. Conflicts of interest prohibiting certain contracts; criminal penalties.**

(a) No contract, change order to a prior contract, or renewal of any contract may be awarded or entered by the authority to any vendor or prospective vendor when the vendor or prospective

vendor is a member of the board or an employee of the authority, or a spouse, sibling, child, or parent of a member of the board or an employee of the authority or to any vendor or prospective vendor in which a member of the board or employee of the authority, or a spouse, sibling, child, or parent of a member of the board or an employee of the authority has an ownership interest of greater than five percent.

(b) No contract, change order to a prior contract, or renewal of any contract may be awarded or entered by the authority to any vendor or prospective vendor when the vendor or prospective vendor is a member of the West Virginia Legislature, or a spouse, sibling, child, or parent of a member of the Legislature, or to any vendor or prospective vendor in which a member of the Legislature or a spouse, sibling, child, or parent of a member of the Legislature, has an ownership interest of greater than five percent.

(c) All responses to bid solicitations, requests for quotation, requests for proposal, contracts, change orders, and contract renewals with the authority submitted or approved under the provisions of this article shall include an affidavit that the vendor or prospective vendor is not in violation of this section.

(d) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than 10 days nor more than one year, or fined not less than \$10 nor more than \$1,000, or both confined and fined.

#### **§20-14A-11. Civil remedies for unlawful purchasing and contracts.**

The county commission of any participating county may challenge the validity of any contract or purchase entered, solicited, or proposed by the authority in violation of §20-14A-9 or §20-14A-10 of this article by seeking declaratory or injunctive relief in the circuit court of the county of the challenging party. If the court finds by a preponderance of evidence that the provisions of those sections have been violated, the court may declare the contract or purchase to be void and may grant any injunctive relief necessary to correct the violations and protect the funds of the authority as a joint development entity.

#### **§20-14A-12. Creation of regional Mountaineer Trail Network Recreation Authorities.**

(a) For the purposes provided in §20-14A-1 of this article, four or more adjacent counties may, upon approval of the county commission of each county desiring to participate, form a separate and distinct regional Mountaineer Trail Network Recreation Authority that will be a joint development entity and a public corporation. A regional Mountaineer Trail Network Recreation Authority shall promulgate its own rules and bylaws relating to use of trails within the regional authority area and operations of the regional authority board.

(b) With respect to a regional Mountaineer Trail Network Recreation Authority area, a regional authority formed pursuant to this section shall have the same powers and duties of the Mountaineer Trail Network Recreation Authority, and such regional authority shall comply with all requirements of this article that apply to the Mountaineer Trail Network Recreation Authority.

(c) The liability of the owner of land used by a regional Mountaineer Trail Network Recreation Authority is limited in the same manner as provided in §20-14-8 of this article.

(d) All other provisions of this article regarding requirements, limitations, and privileges of a user, the board, participating landowners, or participating counties of the Mountaineer Trail

Network Recreation Authority shall apply to a user, the board, a participating landowner, or a participating county of a regional Mountaineer Trail Network Recreation Authority with respect to the separate and distinct regional authority.

**§20-14A-13. Severability.**

The several sections and provisions of this article are severable, and if any section or provision hereof is held unconstitutional, all the remaining sections and provisions of this article shall nevertheless remain valid.

The bill (Eng. Com. Sub. for H. B. 4431), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4447**, Providing for a uniform and efficient system of broadband conduit installation.

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

On motions of Senators Gaunch, Boso, and Plymale, the following amendment to the bill was reported by the Clerk and adopted:

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

**ARTICLE 2E. DIG ONCE POLICY.**

**§17-2E-1. Legislative findings.**

(a) The Legislature finds that it is in the public interest to accommodate telecommunications facilities on Division of Highways' right-of-way when the use of the right-of-way does not adversely affect the safety of the traveling public or impair the highway or its aesthetic quality or conflict with any federal, state, or local laws, rules, regulations, or policies.

(b) The Legislature further finds that a broadband connection is an essential part of developing the state and local economies, enhancing the transportation system and creating a safer and more secure environment for our citizens.

(c) The Legislature further finds that expanding telecommunication facilities will allow the state to participate in the E-Rate Program of funding for digital education in America to provide reliable services opportunities for education and training.

(d) The Legislature further finds that fast, reliable broadband connections enhance telemedical opportunities for our rural doctors and hospitals, linking them to our major medical centers. Thereby overcoming distance barriers, and improving access to medical services that often are not consistently available in rural communities.

(e) The Legislature further finds that instituting a dig once policy encourages telecommunications carriers to coordinate installation of broadband conduit to minimize costs to the carriers and minimize disruption and inconvenience to the traveling public.

**§17-2E-2. Definitions.**

For the purposes of this article:

“Broadband conduit” or “conduit” means a conduit, innerduct, or microduct for fiber optic cables that support facilities for broadband service.

“Longitudinal access” means access to or the use of any part of a right-of-way that extends generally parallel to the traveled way.

“Permit” means an encroachment permit issued by the West Virginia Division of Highways that specifies the requirements and conditions for performing work in a right-of-way.

“Right-of-way” means land, property, or any interest therein acquired or controlled by the West Virginia Division of Highways for transportation facilities or other transportation purposes or specifically acquired for utility accommodation.

“Telecommunications facility” means any cable, line, fiber, wire, conduit, innerduct, access manhole, handhole, tower, hut, pedestal, pole, box, transmitting equipment, receiving equipment, power equipment, or other equipment, system, or device that is used to transmit, receive, produce, or distribute a signal for telecommunications purposes via wireless, wireline, electronic, or optical means.

“Telecommunications carrier” means a telecommunications provider as determined by the Public Service Commission of West Virginia or that meets the definition of telecommunications carrier with respect to the Federal Communications Commission, as contained in 47 U.S.C. §153

“Utility facility” has the meaning ascribed to it in §17-2A-17a of this code.

“Wireless access” means access to and use of a right-of-way for the purpose of constructing, installing, maintaining, using, or operating telecommunications facilities for wireless telecommunications.

### **§17-2E-3. Use of rights-of-way.**

(a) Before granting longitudinal access or wireless access to a right-of-way, the Division of Highways shall first enter into an agreement with a telecommunications carrier that is competitively neutral and nondiscriminatory as to other telecommunications carriers. Upon receipt of any required approval or concurrence by the Federal Highway Administration the division may issue a permit granting access under this section: *Provided*, That the Division of Highways shall comply with all applicable federal regulations with respect to approval of an agreement, including but not limited to 23 C.F.R. § 710.403 and 23 C.F.R. §710.405. The agreement shall be approved by the Commissioner of Highways in order to be effective and, without limitation:

- (1) Specify the terms and conditions for renegotiation of the agreement;
- (2) Set forth the maintenance requirements for each telecommunications facility;
- (3) Be nonexclusive; and
- (4) Be for a term of not more than 30 years.

(b) Unless specifically provided for in an agreement entered into pursuant to §17-2E-3(a) of this code, the Division of Highways may not grant a property interest in a right-of-way pursuant to this article.

(c) A telecommunications carrier shall compensate the Division of Highways for access to a right-of-way for the construction, installation, and maintenance of telecommunication facilities, the use of spare conduit or related facilities of the Division of Highways as part of any longitudinal access or wireless access granted to a right-of-way pursuant to this section. The compensation must be, without limitation:

(1) At fair market value;

(2) Competitively neutral;

(3) Nondiscriminatory;

(4) Open to public inspection;

(5) Calculated based on the geographic region of this state, taking into account the population and the impact on private right-of-way users in the region;

(6) Paid in cash or with in-kind compensation, or a combination of cash and in-kind compensation; and

(7) Paid in a lump-sum payment or in annual installments, as agreed to by the telecommunications carrier and the Division of Highways.

(d) The division may consider the value and benefits expanding broadband service to the unserved and underserved areas of the state has on economic development and expansion of digital education and telemedical opportunities in the area.

(e) For the purpose of determining the amount of compensation a telecommunications carrier must pay the Division of Highways for the use of spare conduit or excess conduit or related facilities of the Division of Highways as part of any longitudinal access or wireless access granted to a right-of-way pursuant to this section, the division shall:

(1) Conduct an analysis once every five years, in accordance with the rules, policies, or guidelines of the Division of Highways, to determine the fair market value of a right-of-way to which access has been granted pursuant to this section; and

(2) If compensation is paid in-kind, determine the fair market value of the in-kind compensation based on the incremental costs for the installation of conduit and related facilities.

(f) The value of in-kind compensation, or a combination of money and in-kind compensation, must be equal to or greater than the amount of monetary compensation that the Division of Highways would charge if the compensation were paid solely with money.

(g) The provisions of this article shall not apply to the relocation or modification of existing telecommunication facilities in a right-of-way, nor shall these provisions apply to aerial telecommunications facilities or associated apparatus or equipment in a right-of-way. Relocation of telecommunications facilities within rights-of-way for state highways shall be in accordance with the provisions of §17-4-17b of this code.

#### **§17-2E-4. Highway safety.**

(a) The Division of Highways, in its sole discretion, may deny any longitudinal access or wireless access if such access would compromise the safe, efficient, and convenient use of any road, route, highway, or interstate in this state for the traveling public.

(b) Any longitudinal access or wireless access to a right-of-way granted by the Division of Highways pursuant to this article does not abrogate, limit, supersede, or otherwise affect access granted or authorized pursuant to the division's rules, policies, and guidelines related to accommodation of utilities on highways' rights-of-way and adjustment and relocation of utility facilities on highway projects.

**§17-2E-5. Joint use.**

(a) The Division of Highways shall provide for the proportionate sharing of costs between telecommunications carriers for joint trenching or trench sharing based on the amount of conduit innerduct space or excess conduit that is authorized in the agreements entered into pursuant to this article. If the division plans to use the trench it shall pay its proportional share unless it is utilizing the trench as in-kind payment for use of the right-of-way.

(b) Upon application for a permit, the carrier will notify, by email, the West Virginia Broadband Enhancement Council and all other carriers on record with the West Virginia Broadband Enhancement Council of the application. Other carriers have 30 calendar days to notify the applicant if they wish to share the applicant's trench. This requirement extends to all underground construction technologies.

(c) The carrier shall also meet the following conditions for a permit:

(1) The telecommunications carrier will be required to place, at its sole expense, a Class II legal advertisement, in accordance with §59-3-2(a) of this code, and of a form and content approved by the Division of Highways, in the local project area newspaper, in the Charleston newspaper, on industry and the Division of Highways' websites, and within other pertinent media, announcing the general scope of the proposed installation within the right-of-way and providing competing telecommunications carriers the opportunity to timely express an interest in installing additional telecommunication facilities during the initial installation. The legal advertisement is to run at least two consecutive weeks, and the telecommunications carrier is to notify the division of any interest of other parties received.

(2) If a competing telecommunications carrier expresses interest in participating in the project, an agreement between the two (or more) telecommunications carriers will be executed by those entities, outlining the responsibilities and financial obligations of each, with respect to the installation within the right-of-way. A copy of the executed agreement shall be provided to the Division of Highways.

(3) The telecommunications carrier that placed the legal advertisement is responsible for resolving in good faith all disputes between any competing telecommunications carriers that timely responded to the advertisement and that wishes to install facilities within the same portion of the rights-of-way to be occupied. Should a dispute arise between the initial telecommunications carrier and a competing telecommunications carrier, the initial telecommunications carrier will attempt to mediate the dispute. Any dispute that is not resolved by the telecommunications carriers shall be adjudicated by the Public Service Commission.

(d) If two or more telecommunications carriers are required or authorized to share a single trench, each carrier in the trench must share the cost and benefits of the trench in a fair, reasonable, competitively neutral, and nondiscriminatory manner. This requirement extends to all underground construction technologies.

**§17-2E-6. Monetary and in-kind compensation.**

(a) All monetary compensation collected by the Division of Highways pursuant to this article shall be deposited in the State Road Fund.

(b) In-kind compensation paid to the Division of Highways under an agreement entered into pursuant to this article may include, without limitation:

(1) Conduit or excess conduit;

(2) Innerduct;

(3) Dark fiber;

(4) Access points;

(5) Telecommunications equipment or services;

(6) Bandwidth; and

(7) Other telecommunications facilities as a component of the present value of the trenching.

(c) The Division of Highways shall value any in-kind compensation based on fair market value at the time of installation or review.

(d) In-kind compensation paid to the Division of Highways may be disposed of if both of the following conditions are met:

(1) The telecommunications facility received as in-kind payment has not been used within 10 years of its installation; and

(2) The Commissioner of the Division of Highways determines that the division does not have an immediately foreseeable need for the telecommunications facility.

(e) Upon determining that it is appropriate to dispose of the telecommunications facility, the division shall determine its current fair market value. The division shall offer the provider or providers who made the in-kind payment the option to purchase any telecommunications facility obtained from such provider. If the provider or providers do not purchase the telecommunications facility, it shall be offered for public auction in the same manner as the division auctions excess rights-of-way.

**§17-2E-7. Multiple carriers in a single trench.**

(a) If the Division of Highways enters into an agreement with two or more telecommunications carriers, a consortium or other entity whose members, partners or other participants are two or more telecommunications carriers, or, if the division requires or allows two or more telecommunications carriers to share a single trench, the agreements entered into pursuant to this article shall require that the telecommunications carriers share the obligation of compensating the Division of Highways on a fair, reasonable and equitable basis, taking into consideration the proportionate uses and benefits to be derived by each telecommunications carrier from the trench, conduits, and other telecommunications facilities installed under the agreements.

(b) The provisions of §17-2E-7(a) of this code do not prevent the Division of Highways from requiring every participating telecommunications carrier to bear joint and several liability for the obligations owed to the Division of Highways under the agreements.

(c) Any agreement requiring two or more telecommunications carriers to share the obligation of compensating the Division of Highways shall provide the division the right to review and audit the records and contracts of and among the participating carriers to ensure compliance with §17-2E-7(a) of this code.

**§17-2E-8. Existing policies.**

(a) The requirements set forth in this article do not alter existing rules, policies, and procedures relating to other utility facilities within a right-of-way or for accommodating utility facilities or other facilities under the control of the Division of Highways.

(b) The Division of Highways may consider the financial and technical qualifications of a telecommunications carrier when determining specific insurance requirements for contractors authorized to enter a right-of-way to construct, install, inspect, test, maintain, or repair telecommunications facilities with longitudinal access or wireless access to the right-of-way.

(c) If the Division of Highways authorizes longitudinal access, wireless access, or the use of, and access to, conduit or related facilities of the division for construction and installation of a telecommunications facility, the division may require an approved telecommunications carrier to install the telecommunications facility in the same general location as similar facilities already in place, coordinate their planning and work with other contractors performing work in the same geographic area, install in a joint trench when two or more telecommunications carriers are performing installations at the same time and equitably share costs between such carriers.

(d) The placement, installation, maintenance, repair, use, operation, replacement, and removal of telecommunications facilities with longitudinal access or wireless access to a right-of-way or that use or access conduit or related facilities of the division shall be accommodated only when in compliance with this code and Division of Highways rules, policies and guidelines.

(e) Access to a right-of-way must be administered in compliance with the Telecommunications Act of 1996, 47 U.S.C. §151, et seq., as amended.

The bill (Eng. Com. Sub. for H. B. 4447), as amended, was then ordered to third reading.

**Eng. House Bill 4465**, Authorizing the acupuncture board to issue certificates to perform auricular acudetox therapy.

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

**Eng. Com. Sub. for House Bill 4524**, Establishing guidelines for the substitution of certain biological pharmaceuticals.

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

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

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

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS  
AND PHARMACIES.**

**§30-5-12c. Substitution of biological product: Definitions; selection of interchangeable biological products; exceptions; records; labels; manufacturing standards; emergency rules; complaints; and immunity.**

(a) As used in this section:

“Biological product” means the same as that term is defined in 42 U.S.C. § 262.

“Brand name” means the proprietary or trade name selected by the manufacturer and placed upon a drug or drug product, its container, label, or wrapping at the time of packaging.

“Interchangeable biological product” means a biological product that the federal Food and Drug Administration has:

(1) Licensed and determined meets the standards for interchangeability pursuant to 42 U.S.C § 262(k)(4); or

(2) Determined is therapeutically equivalent as set forth in the latest edition of or supplement to the federal Food and Drug Administration’s Approved Drug Products with Therapeutic Equivalence Evaluations.

“Proper name” means the nonproprietary name of a biological product.

“Substitute” means to dispense without the prescriber’s express authorization an interchangeable biological product in the place of the drug ordered or prescribed.

(b) Except as limited by subsection (c) and unless instructed otherwise by the patient, a pharmacist who receives a prescription for a specific biological product shall select a less expensive interchangeable biological product unless in the exercise of his or her professional judgment the pharmacist believes that the less expensive drug is not suitable for the particular patient. The pharmacist shall provide notice to the patient or the patient’s designee regarding the selection of a less expensive interchangeable biological product.

(c) If, in the professional opinion of the prescriber, it is medically necessary that an equivalent drug product or interchangeable biological product not be selected, the prescriber may so indicate by certifying that the specific brand-name drug product prescribed, or the specific brand-name biological product prescribed, is medically necessary for that particular patient. In the case of a prescription transmitted orally, the prescriber must expressly indicate to the pharmacist that the specific brand-name drug product prescribed, or the specific biological product prescribed is medically necessary.

(d) (1) Within five business days following the dispensing of a biological product, the dispensing pharmacist or the pharmacist’s designee shall communicate the specific product provided to the patient, including the name of the product and the manufacturer, to the prescriber through any of the following electronic records systems:

(A) An interoperable electronic medical records system;

(B) An electronic prescribing technology;

(C) A pharmacy benefit management system; or

(D) A pharmacy record.

(2) Communication through an electronic records system as described in §30-5-12c(d)(1) of this code is presumed to provide notice to the prescriber.

(3) If the pharmacist is unable to communicate pursuant to an electronic records system the pharmacist shall communicate to the prescriber which biological product was dispensed to the patient using facsimile, telephone, electronic transmission, or other prevailing means.

(4) Communication is not required under this subsection when:

(A) There is no Federal Food and Drug Administration approved interchangeable biological product for the product prescribed; or

(B) A refill prescription is not changed from the product dispensed on the prior filling of the prescription.

(e) The pharmacist shall maintain a record of the biological product dispensed for at least two years. Such record shall include the manufacturer and proper name of the interchangeable biological product selected.

(f) All biological products shall be labeled in accordance with the instructions of the practitioner.

(g) Unless the practitioner directs otherwise, the prescription label on all biological products dispensed by the pharmacist shall indicate the proper name using abbreviations, if necessary, and either the name of the manufacturer or packager, whichever is applicable, in the pharmacist's discretion. The same notation will be made on the original prescription retained by the pharmacist.

(h) A pharmacist may not dispense a product under the provisions of this section unless the manufacturer has shown that the biological product has been manufactured with the following minimum good manufacturing standards and practices by:

(1) Labeling products with the name of the original manufacturer and control number;

(2) Maintaining quality control standards equal to or greater than those of the United States Food and Drug Administration;

(3) Marking products with identification code or monogram; and

(4) Labeling products with an expiration date.

(i) The West Virginia Board of Pharmacy shall promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code setting standards for substituted interchangeable biological

products, obtaining compliance with the provisions of this section, and enforcing the provisions of this section.

(j) Any person shall have the right to file a complaint with the West Virginia Board of Pharmacy regarding any violation of the provisions of this article. Such complaints shall be investigated by the Board of Pharmacy.

(k) No pharmacist or pharmacy complying with the provisions of this section shall be liable in any way for the dispensing of an interchangeable biological product substituted under the provisions of this section, unless the interchangeable biological product was incorrectly substituted.

(l) In no event where the pharmacist substitutes an interchangeable biological product under the provisions of this section shall the proscribing physician be liable in any action for loss, damage, injury, or death of any person occasioned by or arising from, the use of the substitute biological product unless the original biological product was incorrectly prescribed.

(m) Failure of a practitioner to specify that a specific brand name is necessary for a particular patient shall not constitute evidence of negligence unless the practitioner had reasonable cause to believe that the health of the patient required the use of a certain product and no other.

The bill (Eng. Com. Sub. for H. B. 4524), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4558**, Establishing the Entrepreneurship and Innovation Investment Fund in the West Virginia Development Office.

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

**Eng. Com. Sub. for House Bill 4603**, Providing immunity from civil liability to facilities and employees providing crisis stabilization.

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

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

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

**ARTICLE 7K. IMMUNITY FROM CIVIL LIABILITY FOR BEHAVIORAL HEALTH FACILITIES AND RESIDENTIAL RECOVERY FACILITIES.**

**§55-7K-1. Limiting civil liability for certain behavioral health facilities and residential recovery facilities providing crisis stabilization services and/or drug and alcohol detoxification services, substance use disorder services, and/or drug overdose services on a short-term basis.**

Notwithstanding any other provision of this code, no behavioral health facility that is licensed in this state, another state, or operated by the state, or one of its political subdivisions, and no residential recovery facility certified by or meeting the standards of a national certifying body, nor any of their directors, officers, employees, and agents shall be liable for injury or civil damages

related to the provision of short-term crisis stabilization and/or drug and alcohol detoxification services, substance use disorder services, drug overdose services, and/or withdrawal services to the extent the injury or damages arise from an individual's refusal of services, election to discontinue services, failure to follow the orders or instructions of a facility, voluntary departure, elopement, or abandonment from a facility, with or without notice to others, so long as the services are offered in good faith, the facility does not require payment from the individual receiving the services, and the injury or damages are not proximately caused by the gross negligence or willful or wanton misconduct of the facility, or its directors, officers, employees, or agents: *Provided*, That for the purposes of this section, to the extent such behavioral health facilities or residential recovery facilities are reimbursed or receive Medicaid or grant funding, they are not deemed to have required payment from the individual receiving the services.

**§55-7K-2. Applicability of provisions.**

(a) The provisions of this article are applicable to all causes of action accruing on or after July 1, 2018.

(b) The provisions of this article operate in addition to, and not in derogation of, any of the provisions contained in §55-7B-1 et seq. of this code.

The bill (Eng. Com. Sub. for H. B. 4603), as amended, was then ordered to third reading.

**Eng. House Bill 4628**, Relating to authorizing the redirection of amounts collected from certain surcharges and assessments on workers' compensation insurance policies for periods prior to January 1, 2019.

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

**Eng. House Bill 4629**, Relating to broadband enhancement and expansion policies generally.

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

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

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

**CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.**

**ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.**

**§31G-1-10. Pilot Project for cooperatives by political subdivisions.**

[Repealed].

**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, as a political subdivision of this state, or as a business.

(5) "Qualified activity" means using internet services.

#### **ARTICLE 4. MAKE-READY POLE ACCESS.**

##### **§31G-4-4. Public Service Commission jurisdiction; rulemaking; enforcement.**

(a) The Public Service Commission shall possess and exercise regulatory jurisdiction over the provisions of this article. The Commission shall administer and adjudicate disputes relating to the issues and procedures provided for under this article.

(b) The Commission shall promulgate rules and regulations necessary to effectuate the provisions of the article.

(c) The Commission shall certify to the Federal Communications Commission that this state, as evidenced by the enactment of this article, hereby exercises jurisdiction over the regulation of pole attachments. The certification shall include notice that the State of West Virginia hereby:

(1) Regulates the rates, terms, and conditions related to pole attachments, and

(2) In so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the services.

The bill (Eng. H. B. 4629), as amended, was then ordered to third reading.

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

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, at 3:43 p.m., the Senate recessed until 6:30 p.m. today.

The Senate reconvened at 8:16 p.m. tonight and, at the request of Senator Weld, and by unanimous consent, returned to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 8th day of March, 2018, 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. 2694)**, Relating to the development and implementation of a program to facilitate commercial sponsorship of rest areas.

**(Com. Sub. for H. B. 2696)**, Relating to crossbow hunting.

**(Com. Sub. for H. B. 2843)**, Permitting Class III municipalities to be included in the West Virginia Tax Increment Act.

**(Com. Sub. for H. B. 2890)**, Establishing a Library Facilities Improvement Fund that will serve to support library facilities construction, maintenance and improvement projects.

**(Com. Sub. for H. B. 3104)**, Transfer of the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund.

**(Com. Sub. for H. B. 4022)**, Exempting the consumer sales and service tax and use tax for services for the repair, remodeling and maintenance of certain aircraft.

**(Com. Sub. for H. B. 4138)**, Requiring certain public or private schools and daycare centers to install carbon monoxide detectors.

**(Com. Sub. for H. B. 4175)**, Preventing requirement that an advanced practice registered nurse participate in a collaborative relationship to obtain payment.

**(Com. Sub. for H. B. 4199)**, Permitting a nursing home to use trained individuals to administer medication.

**(H. B. 4285)**, Relating to the West Virginia Safe Mortgage Licensing Act.

**(H. B. 4332)**, Relating to home peritoneal renal dialysis.

**(H. B. 4385)**, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Human Services.

And,

**(Com. Sub. for H. B. 4619)**, Relating to supporting implementation of comprehensive systems for teacher and leader induction and professional growth.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
Roger Hanshaw,  
*Chair, House Committee.*

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2982**, Relating to allowing draw games winners to remain anonymous.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 7, 2018;

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2982) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

At the further request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

Senator Takubo, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. Com. Sub. for House Bill 4001**, Relating to eligibility and fraud requirements for public assistance.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on Health and Human Resources on March 7, 2018;

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

Respectfully submitted,

Tom Takubo,  
*Chair.*

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4001) contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration and read a second time.

At the further request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the unreported Health and Human Resources committee amendment pending and the right for further amendments to be considered on that reading.

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4150**, Prohibiting telecommunications and IP-enabled voice services from displaying the name or telephone number of the recipient.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 7, 2018;

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4150) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

At the further request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4233**, Relating generally to fraudulent transfers.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 7, 2018;

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4233) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

At the further request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendments pending and the right for further amendments to be considered on that reading.

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4320**, Limiting the ability of an agent under a power of attorney to take self-benefiting actions.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 7, 2018;

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4320) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

At the further request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

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

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 4324**, Relating to the employment of individuals by municipal paid fire departments under civil service.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 7, 2018;

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. H. B. 4324) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

At the further request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4345**, Relating to limitations on permits for growers, processors and dispensaries of medical cannabis.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 7, 2018;

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4345) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

At the further request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

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

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 4488**, Relating to the Hatfield-McCoy Recreation Authority.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 7, 2018;

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. H. B. 4488) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

At the further request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4607**, Establishing certain criteria for the restricted operation of drones within State Parks, Forests, and Rail Trails.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4607) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

The Senate proceeded to the fifth order of business.

### **Filed Conference Committee Reports**

The Clerk announced the following conference committee report had been filed at 8:25 p.m. tonight:

**Eng. Com. Sub. for House Bill 2995**, Permitting certain animal euthanasia technicians who have been certified by other states be certified animal euthanasia technicians in West Virginia.

At the request of Senator Facemire, unanimous consent being granted, Senator Facemire addressed the Senate regarding Braxton County High School's basketball team defeating Robert C. Byrd High School in the sectional tournament.

At the request of Senator Romano, and by unanimous consent, Senator Romano addressed the Senate regarding Braxton County High School's basketball team defeating Robert C. Byrd High School in the sectional tournament.

Thereafter, at the request of Senator Ojeda, and by unanimous consent, the remarks by Senators Facemire and Romano were ordered printed in the Appendix to the Journal.

Pending announcement of a meeting of a standing committee of the Senate,

On motion of Senator Ferns, at 8:28 p.m., the Senate adjourned until tomorrow, Friday, March 9, 2018, at 10 a.m.

---

## **SENATE CALENDAR**

**Friday, March 09, 2018  
10:00 AM**

### **UNFINISHED BUSINESS**

S. C. R. 56 - PFC Franklin L. Conn and SGM Bill Jeffrey Memorial Bridge

### **THIRD READING**

- Eng. S. B. 635 - Relating to 2019 salary adjustment for employees of DHHR
- Eng. Com. Sub. for H. B. 2008 - Relating to the Dealer Recovery Program
- Eng. Com. Sub. for H. B. 2655 - Defining and establishing the crime of cyberbullying - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 2799 - Prohibiting the superintendent of schools from requiring a physical examination to be included to the application for a minor's work permit
- Eng. H. B. 2869 - Providing for paid leave for certain state officers and employees during a declared state of emergency - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 2982 - Relating to allowing draw games winners to remain anonymous - (Amend. and title amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 3089 - Relating to the adoption of instructional resources for use in the public schools
- Eng. Com. Sub. for H. B. 4001 - Relating to eligibility and fraud requirements for public assistance - (Amend. and title amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 4002 - Providing that all delegates shall be elected from one hundred single districts following the United States Census in 2020
- Eng. Com. Sub. for H. B. 4006 - Revising the processes through which professional development is delivered for those who provide public education
- Eng. Com. Sub. for H. B. 4009 - State Settlement and Recovered Funds Accountability Act - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 4036 - Increasing the maximum salaries of family case coordinators and secretary-clerks
- Eng. Com. Sub. for H. B. 4150 - Prohibiting telecommunications and IP-enabled voice services from displaying the name or telephone number of the recipient - (Amend. pending) - (With right to amend)

- Eng. Com. Sub. for H. B. 4156 - Establishing the qualifications of full and part time nursing school faculty members - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 4157 - Eliminating the refundable exemption for road construction contractors
- Eng. Com. Sub. for H. B. 4166 - Establishing a special revenue fund to be known as the "Capital Improvements Fund — Department of Agriculture Facilities"
- Eng. Com. Sub. for H. B. 4187 - Business Liability Protection Act - (Com. title amend. pending) (original similar to SB484)
- Eng. Com. Sub. for H. B. 4217 - Permitting an attending physician to obtain a patient's autopsy report
- Eng. Com. Sub. for H. B. 4233 - Relating generally to fraudulent transfers - (Amend. and title amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 4251 - Permitting employees of baccalaureate institutions and universities outside of this state to be appointed to board of governors - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 4270 - Providing for the timely payment of moneys owed from oil and natural gas production - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 4320 - Limiting the ability of an agent under a power of attorney to take self-benefiting actions - (Amend. pending) - (With right to amend)
- Eng. H. B. 4324 - Relating to the employment of individuals by municipal paid fire departments under civil service - (Amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 4338 - Relating to the powers and authority of the Divisions of Administrative Services, and Corrections and Rehabilitation of the Department of Military Affairs and Public Safety - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 4345 - Relating to limitations on permits for growers, processors and dispensaries of medical cannabis - (Amend. and title amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 4350 - Eliminating the regulation of upholstery - (Amend. and title amend. pending) - (With right to amend)
- Eng. H. B. 4389 - Expiring funds to the Enterprise Resource Planning System Fund
- Eng. Com. Sub. for H. B. 4392 - Relating to Medicaid subrogation liens of the Department of Health and Human Resources
- Eng. Com. Sub. for H. B. 4394 - Relating to forest fires - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 4424 - Providing that the Ethics Act applies to certain persons providing services without pay to state elected officials - (Com. title amend. pending)

- Eng. Com. Sub. for H. B. 4428 - Allowing training hours earned through public school education or apprenticeship to count towards an applicant's occupational certification
- Eng. Com. Sub. for H. B. 4431 - Establishing the Mountaineer Trail Network Recreation Authority - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 4447 - Providing for a uniform and efficient system of broadband conduit installation
- Eng. H. B. 4465 - Authorizing the acupuncture board to issue certificates to perform auricular acudetox therapy
- Eng. H. B. 4486 - Relating to persons required to obtain a license to engage in the business of currency exchange
- Eng. H. B. 4488 - Relating to the Hatfield-McCoy Recreation Authority - (Amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 4524 - Establishing guidelines for the substitution of certain biological pharmaceuticals - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 4558 - Establishing the Entrepreneurship and Innovation Investment Fund in the West Virginia Development Office
- Eng. Com. Sub. for H. B. 4603 - Providing immunity from civil liability to facilities and employees providing crisis stabilization - (Com. title amend. pending)
- Eng. H. B. 4628 - Relating to authorizing the redirection of amounts collected from certain surcharges and assessments on workers' compensation insurance policies for periods prior to January 1, 2019
- Eng. H. B. 4629 - Relating to broadband enhancement and expansion policies generally - (Com. title amend. pending)

## **SECOND READING**

- Eng. Com. Sub. for H. B. 4607 - Establishing certain criteria for the restricted operation of drones within State Parks, Forests, and Rail Trails - (Com. amends. and title amend. pending)

**ANNOUNCED SENATE COMMITTEE MEETINGS**

**Regular Session 2018**

---

**Friday, March 9, 2018**

9 a.m.

Transportation & Infrastructure

(Room 451M)