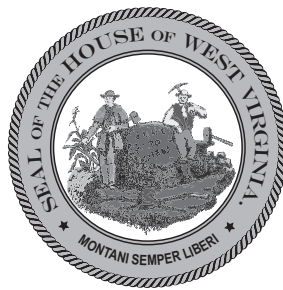


West Virginia Legislature

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March 2, 2019
FIFTY-THIRD DAY

Saturday, March 2, 2019

FIFTY-THIRD DAY

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

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

The Clerk proceeded to read the Journal of Friday, March 1, 2019, being the first order of business, when the further reading thereof was dispensed with and the same approved.

Committee Reports

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

Your Committee on Education has had under consideration:

S. B. 670, Relating to WV College Prepaid Tuition and Savings Program,

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

In accordance with the former direction of the Speaker, the bill (S. B. 670) was referred to the Committee on Finance.

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

Your Committee on Education has had under consideration:

Com. Sub. for S. B. 553, Relating to federal funds for land-grant institutions,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 553) was referred to the Committee on Finance.

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

Your Committee on Finance has had under consideration:

S. B. 587, Relating to PEIA reimbursement of air ambulance providers,

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

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

Your Committee on Finance has had under consideration:

Com. Sub. for S. B. 1, Increasing access to career education and workforce training,

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

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

Your Committee on Finance has had under consideration:

S. B. 617, Relating to method of payment to Municipal Pensions Security Fund,

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

Messages from the Executive

Delegate Hanshaw (Mr. Speaker) presented a communication from His Excellency, the Governor, advising that on March 1, 2019, he approved **S. B. 377, Com. Sub. for S. B. 489, Com. Sub. for H. B. 2324, H. B. 2351, Com. Sub. for H. B. 2607, H. B. 2666 and H. B. 2668.**

Messages from the Senate

A message from the Senate, by

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

Com. Sub. for H. B. 2204, Prohibiting state licensing boards from hiring lobbyists.

A message from the Senate, by

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

H. B. 2510, Relating to special funds of boards of examination or registration.

A message from the Senate, by

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

H. B. 2608, Repealing the requirement of printing the date a consumer deposit account was opened on paper checks.

A message from the Senate, by

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

Com. Sub. for H. B. 2737, Relating to training of State Tax Division employees.

A message from the Senate, by

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

H. B. 2743, Eliminating reference to municipal policemen's pension and relief funds and firemen's pension and relief funds in section restricting investment.

A message from the Senate, by

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

H. B. 2829, Relating to the termination of severance taxes on limestone and sandstone.

A message from the Senate, by

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

Com. Sub. for H. B. 2848, Relating to the West Virginia ABLE Act.

A message from the Senate, by

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

Com. Sub. for H. B. 2854, Exempting sales from the consumers sales and service tax and use tax by not for profit volunteer school support groups raising funds for schools.

A message from the Senate, by

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

H. B. 3093, Relating to standards for factory-built homes.

A message from the Senate, by

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

S. B. 453, Relating to background checks of certain financial institutions.

Delegate Summers asked and obtained unanimous consent that the House proceed to bills on third reading.

Special Calendar

Third Reading

Com. Sub. for S. B. 60, Licensing practice of athletic training; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 404**), and there were—yeas 93, nays 2, absent and not voting 5, with the nays and absent and not voting being as follows:

Nays: Howell and McGeehan.

Absent and Not Voting: Angelucci, Cooper, Hornbuckle, Longstreth and Porterfield.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 60) passed.

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

Com. Sub. for S. B. 310, Establishing certain requirements for dental insurance; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 405**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Angelucci, Cooper, Hornbuckle, Longstreth and Porterfield.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 310) passed.

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

Com. Sub. for S. B. 310 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-6-39, relating to dental insurance plans; defining terms; prohibiting insurers from requiring dentists to provide a discount on noncovered services; prohibiting dentists from charging covered persons more for noncovered services than his or her customary or usual rate for the services; providing that insurers may not provide for a nominal reimbursement for a service in order to claim that the service or material is covered; and providing an effective date.”

Delegate Summers moved that the bill take effect July 1, 2019.

On this question, the yeas and nays were taken (**Roll No. 406**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Angelucci, Cooper, Longstreth and Porterfield.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 310) takes effect from July 1, 2019.

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

Com. Sub. for S. B. 408, Determining indigency for public defender services; on third reading, coming up in regular order, was reported by the Clerk.

Delegate Shott asked and obtained unanimous consent to amend the bill on third reading, and the rule was suspended to permit the offering and consideration of such.

On motion of Delegate Shott, the bill was amended on page two, section sixteen, beginning on line twenty-eight, by striking out the following sentence:

“In circuits in which a public defender office is in operation, all determinations of indigency shall be made by a public defender office employee designated by the executive director.”

The bill was then read a third time.

Delegate Hicks requested to be excused from voting on Com. Sub. for S. B. 408 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill and directed the Member to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 407**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Angelucci, Cooper, Longstreth and Porterfield.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 408) passed.

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

Com. Sub. for S. B. 641, Relating to Primary Care Support Program; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 408**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Angelucci, Cooper, Longstreth and Porterfield.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 641) passed.

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

On this question, the yeas and nays were taken (**Roll No. 409**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Angelucci, Cooper, Longstreth and Porterfield.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 641) takes effect from its passage.

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

Com. Sub. for H. B. 2020, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

On motion of Delegate Householder, the bill was amended on page one hundred one, line twelve, following the words "Medical Services Trust Fund (Fund", by striking out the number "5158" and inserting in lieu thereof the number "5185".

On page one hundred eighty-nine, at the bottom of the page, by striking out the words “(WV Code Chapter 46A)” and inserting in lieu thereof the words “(WV Code Chapter 29)”.

On page one hundred eighty-nine, line five, following the words “Medical Services Trust Fund (Fund”, by striking out the number “5158” and inserting in lieu thereof the number “5185”.

On page one hundred ninety, at the top of the page, by striking out the words “Fund 1509 FY 2020 Org 0218” and inserting in lieu thereof the words “Fund 2367 FY 2020 Org 0218”.

On page one hundred ninety, line two, following the words “Directed Transfer (Fund”, by striking out the number “1509” and inserting in lieu thereof the number “2367”.

And,

On page one hundred ninety, line four, following the words “Medical Services Trust Fund (Fund”, by striking out the number “5158” and inserting in lieu thereof the number “5185”.

Delegates Lavender-Bowe, Zukoff, Walker, Brown, Estep-Burton and Fleischauer moved to amend the bill on page one hundred eighty-seven, following the first line on the page that provides Glenville State College \$500,000 from general revenue fund surplus, by inserting the following:

“58 – Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2020 Org 0506

Sexual Assault Intervention and Prevention – Surplus ##### 125,000.00”

And,

By reconciling page one hundred eighty-seven, line two, “Total Title II, Section 9 - Surplus Accrued” accordingly.

On the adoption of the amendment, Delegate Fleischauer demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 410**), and there were—yeas 89, nays 7, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: Anderson, Atkinson, Bibby, Butler, Cadle, McGeehan and Wilson.

Absent and Not Voting: Angelucci, Cooper, Longstreth and Porterfield.

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

Delegates Byrd and Capito moved to amend the bill on page one hundred eight-seven, following the first line on the page that provides Glenville State College \$500,000 from general revenue fund surplus, by inserting the following:

“58 – Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2020 Org 0506

New Born Screening testing – Surplus ##### 200,000.00”

And,

By reconciling page one hundred eighty-seven, line two, “Total Title II, Section 9 - Surplus Accrued” accordingly.

On the adoption of the amendment, Delegate Byrd demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 411**), and there were—yeas 58, nays 38, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: Anderson, Atkinson, Bibby, Butler, Cadle, Cowles, Criss, Ellington, Espinosa, Fast, Foster, Graves, Hanna, Hardy, Harshbarger, Hollen, Hott, Householder, D. Jeffries, J. Jeffries, Jennings, D. Kelly, J. Kelly, C. Martin, P. Martin, Maynard, McGeehan, Pack, Paynter, Phillips, Rowan, Summers, Sypolt, Toney, Waxman, Wilson, Worrell and Hanshaw (Mr. Speaker).

Absent and Not Voting: Angelucci, Cooper, Longstreth and Porterfield.

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

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 412**), and there were, including pairs—yeas 92, nays 5, absent and not voting 3, with the nays, paired and absent and not voting being as follows:

Pursuant to House Rule 43, the following pairing was filed and announced by the Clerk:

Paired:

Yea: Longstreth Nay: Kump

Nays: Butler, J. Jeffries, McGeehan and Wilson.

Absent and Not Voting: Angelucci, Cooper and Porterfield.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2020) passed.

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

On this question, the yeas and nays were taken (**Roll No. 413**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Angelucci, Cooper, Longstreth and Porterfield.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2020) takes effect from its passage.

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

Second Reading

Com. Sub. for S. B. 3, Establishing WV Small Wireless Facilities Deployment Act; on second reading, coming up in regular order, was read a second time.

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

“CHAPTER 11. TAXATION

ARTICLE 6L. SPECIAL METHOD FOR VALUATION OF CERTAIN WIRELESS TECHNOLOGY PROPERTY.

§11-6L-1. Short title.

This article shall be known and cited as the Wireless Technology Business Property Valuation Act.

§11-6L-2. Definitions.

For the purposes of this article:

(1) ‘Tower’” means a structure which hosts an antenna or other equipment used for the purposes of transmitting cellular or wireless signals for communications purposes, including telephonically, or for computing purposes, including any antenna and all associated equipment, and which is constructed or erected between July 1, 2019 and July 1, 2024; and

(2) ‘Salvage value’ means five percent of original cost.

§11-6L-3. Limited-time valuation of certain specialized wireless technology property.

Notwithstanding any other provision of this code to the contrary, for five years immediately following the date of its erection, the value of a tower is its salvage value, and the correlated value determined under a unit valuation approach shall be reduced by the difference between the original cost and the salvage value of a tower.

§11-6L-4. Initial determination; Protest and appeal.

The valuation and assessment of any tower subject to this article, including the process of protest and appeal from any such valuation shall be conducted the manner set forth and more fully described in Article 6, Chapter 11 of this Code and any applicable legislative rules.

§11-6L-5. Effective date.

This article is effective on and after July 1, 2019.

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION**POLICIES.****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 adopt the rates, terms and conditions of access to and use of poles, ducts, conduits and rights-of-way as provided in 47 U.S.C. § 224 and 47 C.F.R. § 1.1401 – 1.1415, inclusive of the dispute resolution process incorporated by reference in those regulations and any subsequent modifications or additions to the provisions of the United States Code or Code of Federal Regulations provisions referenced herein.

(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.

§31G-4-5. Electric power utilities; feasibility study for providing broadband services; Public Service Commission to assist; proposed legislation to be developed. Report.

(a) For purposes of this section:

(1) 'Commission' shall mean the West Virginia Public Service Commission.

(2) 'Council' shall mean the Broadband Enhancement Council, as defined in §31G-1-1 of this Code.

(3) 'Electric Utility' shall mean any electric utility operating within this state that is regulated by the commission.

(4) 'Project' shall mean a middle-mile broadband infrastructure expansion project proposed by an electric utility.

(b) Each electric utility may investigate the feasibility of constructing and operating a project within the electric utility distribution system and, if it so elects, may submit a feasibility study of a proposed project to the Council on or before December 1, 2019. Additional feasibility studies may be submitted to the Council after December 1, 2019, without penalty.

(c) The Council and the Commission shall assist each such electric utility in its preparation of such a feasibility study.

(d) The feasibility study shall include an evaluation of the following:

(1) The scope of the proposed project for which the feasibility study is conducted, which shall include but not be limited to:

(A) The route of the middle-mile infrastructure proposed for the project, the number of fiber strands that would be utilized in connection with the proposed project and dedicated to serve as the middle mile, the location of the electric utility's distribution infrastructure that will be utilized in connection with the proposed project, the capacity of the middle mile broadband infrastructure that will be available to lease to last-mile broadband Internet providers upon completion of the proposed project;

(B) The estimated cost of the proposed project, including but not limited to engineering costs, construction costs, permitting costs, materials and labor, right of way costs, and a reasonable rate of return to the electric utility;

(C) The proposed schedule of construction of the proposed project; and

(D) The method of attachment and connection of the middle-mile broadband fiber assets to the electric utility's distribution infrastructure;

(2) The regulatory and legal barriers to an electric utility constructing a project and operating middle-mile broadband infrastructure to provide access to unserved areas of the state, as defined in §31G-1-2 of this Code, and any underserved areas of the state, and proposed legislation to address such regulatory barriers;

(3) Whether it is in the public interest and the interest of the electric utility to make improvements to the distribution grid in furtherance of providing such middle-mile broadband Internet services in conjunction with its program of electric distribution projects;

(4) Whether it is in the public interest and the interest of the electric utility to operate middle-mile broadband Internet assets to provide access to unserved and underserved areas of the state;

(5) Whether it is in the public interest and the interest of the electric utility to permit a third-party to lease such capacity to provide last-mile broadband Internet services to unserved and underserved areas of the state;

(6) Whether construction of middle-mile broadband Internet infrastructure utilizing electric utility distribution systems is feasible with respect to the maturity of the relevant technology, the compatibility of such services with existing electric services, and the financial requirements to undertake such project;

(7) The anticipated level of rate adjustment necessary to allow the electric utility to recover its costs associated with the proposed project, and a reasonable rate of return, on an expedited basis, that will be recovered by the electric utility through a rate adjustment at the Commission; and

(8) Such other information that is pertinent to the project;

(e) Upon receipt of a feasibility study, the Council shall post the same on the Council website for written public comment for a period of seven days and then shall render a determination, by a majority vote of the Council, as to the feasibility of the proposed project.

(f) In its consideration of the feasibility of a project, the Council shall identify one or more last-mile broadband Internet providers that may lease the middle-mile broadband Internet capacity created by the proposed project pursuant to lease terms and conditions set by the Council.

(g) The Council shall render such feasibility determination within 60 days from the date the feasibility study is submitted to the Council.

(h) Commencing January 1, 2020, and each year thereafter, the Council shall give a report of its consideration of feasibility studies submitted pursuant to this section of the code to the Governor, the President of the Senate, the Speaker of the House of Delegates, and the Joint Committee on Government and Finance.

§31G-4-6. Severability.

Pursuant to §2-2-10 of this code, if any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

CHAPTER 31H. SMALL WIRELESS FACILITIES DEPLOYMENT ACT.

ARTICLE 1. WEST VIRGINIA SMALL WIRELESS FACILITIES DEPLOYMENT ACT.

§31H-1-1. Legislative findings.

(a) The deployment of reliable small wireless facilities and other next generation wireless and broadband network technology is a matter of statewide concern and critical to the continued economic development and diversification in the state of West Virginia.

(b) Small wireless facilities are critical to delivering wireless access to advanced technology, broadband, and 911 services to homes, businesses, and schools throughout the state of West Virginia.

(c) Because of the integral role that the delivery of broadband and wireless technology plays in the economic vitality of the state of West Virginia and in the lives of its citizens, the Legislature has determined that a law addressing the further deployment of wireless technology is of vital interest to the state.

(d) Small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, may often be deployed most effectively in public rights-of-way.

(e) To meet the key objectives of this chapter, wireless providers must have access to certain public rights-of-way and the ability to attach or collocate on existing infrastructure that will permit these providers to offer next generation wireless and broadband technology.

(f) To ensure that public and private West Virginia consumers may benefit from these services as soon as possible and to ensure that providers of wireless access have a fair and predictable process for the deployment of small wireless facilities in a manner consistent with the character of the area in which the small wireless facilities are deployed, the Legislature is enacting this chapter, which specifies the regulatory authority for the collocation of small wireless facilities.

§31H-1-2. Definitions.

As used in this chapter, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

(1) 'Antenna' means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services;

(2) 'Applicable codes' means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, including the National Electric Safety Code;

(3) 'Applicant' means any person who submits an application and is a wireless provider;

(4) 'Application' means a request submitted by an applicant to an authority for a permit to collocate small wireless facilities or to approve the installation, modification, or replacement of a utility pole or wireless support structure;

(5) 'Authority' means the State of West Virginia or a political subdivision that has jurisdiction and control for use of public rights-of-way as provided by this code for placements within public rights-of-way or has zoning or land use control for placements not within public rights-of-way;

(6) 'Authority utility pole' means a utility pole owned or operated by an authority in a public right-of-way;

(7) 'Collocate' or 'collocation' means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole;

(8) 'Commissioner' means the Commissioner of the West Virginia Division of Highways;

(9) 'Communications facilities' means the set of equipment and network components, including wires, cables, antennas, and associated facilities, used by a communications service provider to provide communications service;

(10) 'Communications service' means cable service, as defined in 47 U.S.C. 522(6), as amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C. 153(53), as amended; mobile service, as defined in 47 U.S.C. 153(33), as amended; or wireless service other than mobile service;

(11) 'Communications service provider' means any entity that provides communications service;

(12) 'Decorative pole' means an authority utility pole that is specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than a small wireless facility, or specially designed informational, or directional signage, or temporary holiday or special event attachments have been placed, or are permitted to be placed, according to nondiscriminatory municipal rules or codes;

(13) 'Division' means the West Virginia Division of Highways;

(14) 'FCC' means the Federal Communications Commission of the United States;

(15) 'Fee' means a one-time, nonrecurring charge;

(16) 'Historic district' means a group of buildings, properties, or sites that are either listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C;

(17) 'Law' means a federal or state statute, common law, code, rule, regulation, order, or a local ordinance or resolution;

(18) 'Micro wireless facility' means a small wireless facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, that is no longer than 11 inches;

(19) 'Permit' means a written authorization required by an authority to perform an action or initiate, continue, or complete a project;

(20) 'Person' means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority;

(21) 'Rate' means a recurring charge;

(22) 'Right-of-way' means the area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property, but not including a federal interstate highway;

(23) 'Small wireless facility' means a wireless facility that meets both of the following qualifications:

(A) Each antenna could fit within an imaginary enclosure of no more than 6 cubic feet; and

(B) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: Electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and communications services;

(24) 'Utility pole' means a pole or similar structure that is or may be used, in whole or in part, by a communication services provider or for electric distribution, lighting, traffic control, signage (if the pole is 15 feet or taller), or a similar function, or for the collocation of small wireless facilities. However, "utility pole" does not include wireless support structures or electric transmission structures;

(25) 'Wireless facility' means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:

(A) Equipment associated with wireless communications; and

(B) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. "Wireless facility" includes small wireless facilities. "Wireless facility" does not include:

(i) The structure or improvements on, under, or within which the equipment is collocated; or

(ii) Wireline backhaul facilities, coaxial or fiber-optic cable that is between wireless support structures or utility poles, or coaxial or fiber-optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna;

(26) 'Wireless infrastructure provider' means any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles, but that is not a wireless provider;

(27) 'Wireless provider' means a wireless infrastructure provider or a wireless provider;

(28) 'Wireless services' means any services, using licensed or unlicensed spectrum, including the use of WiFi, whether at a fixed location or mobile location, provided to the public using wireless facilities;

(29) 'Wireless service provider' means a person who provides wireless services;

(30) 'Wireless support structure' means a structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. "Wireless support structure" does not include a utility pole; and

(31) 'Wireline backhaul facility' is a facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.

ARTICLE 2. ACCESS TO PUBLIC RIGHTS-OF-WAY.

§31H-2-1. Use of rights-of-way for small wireless facilities and utility poles; other structures.

(a) The provisions of this section shall only apply to activities of a wireless provider within the right-of-way.

(b) Except as provided in this chapter, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities or the installation of utility poles and associated small wireless facilities.

(c) An authority may not enter into an exclusive arrangement with any person for use of the right-of-way for the collocation of small wireless facilities or the installation, operation, marketing, modification, maintenance, or replacement of utility poles.

(d) An authority may only charge a wireless provider a rate or fee for the use of the right-of-way with respect to the collocation of small wireless facilities or the installation, maintenance, modification, operation, or replacement of a utility pole in the right-of-way if the authority charges other entities for similar use of the right-of-way. Notwithstanding any provision of this article to the contrary, an authority is permitted, on a nondiscriminatory basis, to refrain from charging any rate to a wireless provider for the use of the right-of-way. The rate for occupancy and use of the right-of-way may not initially exceed \$25 per year per small wireless facility. An authority may adjust this rate up to 10 percent every five years.

(e) Subject to the provisions of this section, a wireless provider has the right, as a permitted use not subject to zoning review or approval, to collocate small wireless facilities and install, maintain, modify, and replace its own utility poles or, with the permission of the owner, a third party's utility pole, along, across, upon, and under the right-of-way. Such structures and facilities shall be so installed

and maintained as not to obstruct or hinder the usual travel or public safety on such right-of-way or to obstruct the legal use of such right-of-way by utilities or authorities.

(f) Each new or modified utility pole installed by a wireless provider in the right-of-way may not exceed the greater of:

(1) 10 feet in height above the tallest existing utility pole in place as of the effective date of this chapter located within 500 feet of the new pole in the same right-of-way; or

(2) 50 feet above ground level. New small wireless facilities in the right-of-way may not extend:

(A) More than 10 feet above an existing utility pole in place as of the effective date of this chapter;
or

(B) for small wireless facilities on a new utility pole, above the height permitted for a new utility pole pursuant to the provisions of this section. Subject to the provisions of this article, a wireless provider has the right to collocate a small wireless facility and install, maintain, modify, operate, and replace its own utility pole or, with the permission of the owner, a third party's utility pole that exceeds these height limits along, across, upon, and under the right-of-way, subject to applicable zoning regulations.

(g) An authority may adopt reasonable written design guidelines with objective, technically feasible criteria that reasonably match the aesthetics and character of an immediate area regarding all of the following:

(1) The location of any ground-mounted small wireless facilities;

(2) The location of a small wireless facility on a utility pole or wireless support structure;

(3) The appearance and concealment of small wireless facilities, including those relating to materials used for arranging, screening, or landscaping; and

(4) The design and appearance of a utility pole or wireless support structure.

Any such guidelines shall be applied in a nondiscriminatory manner. Materials utilized to comply with the appearance and concealment criteria established in the guidelines shall not be considered part of the small wireless facility for purposes of facility size restrictions in this chapter. Each new or modified small wireless facility or utility pole installed in the right-of-way shall comply with an authority's current design guidelines.

(h) A wireless provider is permitted to replace decorative poles when necessary to collocate a small wireless facility, but any replacement pole shall reasonably conform to the design aesthetics of the decorative poles being replaced.

(i) A wireless provider shall comply with written, objective, reasonable, and nondiscriminatory requirements that prohibit the installation of structures in the right-of-way in an area designated solely for underground communications and electric lines where:

(1) The authority has required all such lines to be placed underground by a date certain that is three months prior to the submission of the application;

(2) Those utility poles which the authority allows to remain shall be made available to wireless providers for the collocation of small wireless facilities and may be replaced by a wireless provider to accommodate the collocation of small wireless facilities, in compliance with this act; and

(3) a wireless provider may install a new utility pole in the designated area that otherwise complies with the other subsections of this section when it is not able to provide wireless service by collocating on a remaining structure. For small wireless facilities installed before an authority adopts requirements that communications and electric lines be placed underground, an authority adopting such requirements shall:

(A) Permit a wireless provider to maintain the small wireless facilities in place subject to any applicable pole attachment agreement with the utility pole owner; or

(B) permit the wireless provider to replace the associated utility pole within 50 feet of the prior location, subject to the permission of the utility pole owner.

(j) Subject to the provisions of this section, an authority may require reasonable, technically feasible, nondiscriminatory, and technologically neutral design or concealment measures in a historic district. Any such design or concealment measures may not have the effect of prohibiting any provider's technology; nor may any such measures be considered a part of the small wireless facility for purposes of the size restrictions in the definition of small wireless facility.

(k) Any requirements an authority adopts under subsections (g) through (j), inclusive, of this section must be:

(1) Reasonable, in that they are technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments;

(2) no more burdensome than those applied to other types of infrastructure deployments; and

(3) objective and published in advance. The authority, in the exercise of its administration and regulation related to the management of the right-of-way, must be competitively neutral with regard to other wireless service providers who are users of the right-of-way, including that terms may not be unreasonable or discriminatory and may not violate any applicable law or effectively prohibit the provision of wireless services.

(l) The authority may require a wireless provider to repair all damage to the right-of-way directly caused by the activities of the wireless provider in the right-of-way and to return the right-of-way to its functional equivalence before the damage, as determined by the authority, pursuant to the competitively neutral, reasonable requirements and specifications of the authority. If the wireless provider fails to make the repairs required by the authority within a reasonable time after written notice, the authority may complete those repairs and charge the applicable party the reasonable, documented cost of such repairs. Regardless of whether the authority or the wireless provider ultimately makes the repairs, the authority may assess an additional fine of \$100 per day that the wireless provider failed to make the required repairs after the wireless provider received written notice until the repairs were completed.

(m) Nothing in this chapter shall be deemed to impose or otherwise affect any rights, controls, tariffs, or contractual obligations that may be established with regard to the utility poles, similar structures, or equipment of any type that are owned or controlled by an investor-owned electric utility whose rates are regulated by the Public Service Commission of West Virginia or any such utility's affiliates, or by an independent transmission company.

§31H-2-2. Permitting process for small wireless facilities.

(a) The provisions of this section shall apply to the permitting of small wireless facilities by a wireless provider in or outside the right-of-way as specified in subsection (b) of this section and to the permitting of the installation, modification, and replacement of utility poles by a wireless provider inside the right-of-way.

(b) Small wireless facilities that meet the requirements of §31H-2-1(f) through §31H-2-1(j) of this code shall be classified as permitted uses and not subject to zoning review or approval if they are collocated:

(1) In the right-of-way in any zone or;

(2) outside the right-of-way in property not zoned exclusively for single-family residential use.

(c) An authority may require an applicant to obtain one or more permits to collocate a small wireless facility that meets the requirements of §31H-2-1(f) through §31H-2-1(j) of this code or to install, modify, or replace a utility pole and associated small wireless facilities that meet the requirements of §31H-2-1(f) through §31H-2-1(j) of this code, provided that the permits are of general applicability. An authority shall receive applications for, process, and issue permits subject to the following requirements:

(1) An authority may not directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority on the wireless provider's utility pole;

(2) An applicant may not be required to provide more information to obtain a permit than communications service providers that are not wireless providers, provided that an applicant may be required to include construction and engineering drawings and information demonstrating compliance with the criteria set forth in this subsection;

(3) An authority, other than the Division of Highways, may not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole nor the underground placement of small wireless facilities;

(4) An authority, other than the Division of Highways, may not limit the placement of small wireless facilities by minimum separation distances;

(5) An authority may require an applicant to include an attestation that the small wireless facilities will be operational for use by a wireless provider within one year after the permit issuance date, unless the authority and the applicant agree to extend this period or delay is caused by lack of commercial power or communications transport facilities to the site;

(6) Within 10 days of receiving an application, an authority must determine and notify the applicant in writing whether the application is complete. If an application is incomplete, an authority must specifically identify the missing information in writing. The processing deadlines in this subsection are tolled from the time the authority sends the notice of incompleteness to the time the applicant provides the missing information. That processing deadline also may be tolled by agreement of the applicant and the authority;

(7) An application shall be processed on a nondiscriminatory basis and deemed approved if the authority fails to approve or deny the application within 60 days of receipt of the application for a

collocation of a small wireless facility and 90 days for an application for the installation, modification, or replacement of a utility pole in the right-of-way;

(8) An authority may deny a proposed collocation of a small wireless facility or installation, modification, or replacement of a utility pole that meets the requirements of this section only if the proposed application:

(A) Materially interferes with the safe operation of traffic control equipment;

(B) Materially interferes with sight lines or clear zones for transportation or pedestrians;

(C) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;

(D) Fails to comply with reasonable and nondiscriminatory spacing requirements of general application adopted by legislative rule or ordinance that concern the location of ground-mounted equipment and new utility poles. Such spacing requirements may not prevent a wireless provider from serving any location;

(E) Fails to comply with applicable codes, legislative rule, and generally applicable standards that are consistent with this chapter and adopted by an authority for construction and public safety in the rights-of-way, including reasonable and nondiscriminatory wiring and cabling requirements, grounding requirements, and abandonment and removal provisions;

(F) Fails to comply with applicable design guidelines adopted under §31H-2-1(g) of this code; or

(G) Fails to attest that a small wireless facility will comply with relevant Federal Communications Commission (FCC) regulations concerning:

(1) Radiofrequency emissions from radio transmitters; and

(2) unacceptable interference with the public safety spectrum and CII spectrum, including compliance with the abatement and resolution procedures for interference with the public safety spectrum and CII spectrum established by the FCC set forth in 47 C.F.R. 22.970 through 47 C.F.R. 22.973 and 47 C.F.R. 90.672 through 47 C.F.R. 90.675;

(9) The authority must document the basis for a denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant on or before the day the authority denies an application. The applicant may cure the deficiencies identified by the authority and resubmit the application within 30 days of the denial without paying an additional application fee. The authority shall approve or deny the revised application within 30 days. Any subsequent review shall be limited to the changes made in the resubmission;

(10) An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority shall be allowed at the applicant's discretion to file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities; the denial of one or more small wireless facilities in a consolidated application may not delay processing of any other small wireless facilities in the same batch;

(11) Installation or collocation for which a permit is granted pursuant to this section shall be completed within one year after the permit issuance date unless the authority and the applicant agree to extend this period or a delay is caused by the lack of commercial power or communications facilities at the site. Approval of an application authorizes the applicant to:

(A) Undertake the installation or collocation; and

(B) Subject to applicable relocation requirements and the applicant's right to terminate at any time, operate and maintain the small wireless facilities and any associated utility pole installed by the wireless provider or authority utility that is covered by the permit for a period of not less than 10 years, which must be renewed for equivalent durations so long as the small wireless facilities and utility pole are in compliance with the criteria set forth in this subsection;

(12) An authority may not institute, either expressly or de facto, a moratorium on filing, receiving, or processing applications or issuing permits or other approvals, if any, for the collocation of small wireless facilities or the installation, modification, or replacement of utility poles to support small wireless facilities.

(d) An authority may require a permit to work within a right-of-way for any activities under this chapter, if applicable, and may prohibit access when a road is closed or its access is limited to the public: *Provided*, that except for this permit, and the other actions explicitly authorized by this chapter, an authority may not require an additional application, approval, or permit, or require any fees or other charges from a communications service provider authorized to occupy the right-of-way, for:

(1) Routine maintenance;

(2) the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller; or

(3) the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on existing cables that are strung between existing utility poles in compliance with applicable safety codes and the pole owner's construction standards and engineering practices.

(e) An authority may revoke a permit at any time if the conditions of the permit required pursuant to this article are no longer being satisfied.

§31H-2-3. Access to authority utility poles; application and permit fees and rates for small wireless facilities.

(a) An authority shall allow the collocation of small wireless facilities on authority utility poles within the right-of-way subject to the provisions of this chapter and the following:

(1) An authority may not enter into an exclusive arrangement with any person for the right to attach small wireless facilities to authority utility poles;

(2) The rates and fees for collocations on authority utility poles shall be nondiscriminatory regardless of the services provided by the collocating person;

(3) An authority may charge an annual recurring rate to collocate small wireless facilities on an authority utility pole that equals \$65 per year per pole. An authority may adjust this rate 10 percent every five years, rounded to the nearest five dollars. Nothing in this subdivision prohibits a wireless provider and an authority from mutually agreeing to an annual recurring rate of less than \$65 to collocate a small wireless facility on an authority utility pole;

(4) The rates, fees, and terms for make-ready work must be nondiscriminatory, competitively neutral, and commercially reasonable and must comply with this section;

(5) An authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation by a wireless provider, including pole replacement if necessary, within 60 days after receipt of a complete application. Make-ready work including any pole replacement shall be completed within 60 days of written acceptance of the good faith estimate by the applicant. An authority may require replacement of the authority utility pole only if it demonstrates that the collocation would make the authority utility pole structurally unsound; and

(6) The person owning, managing, or controlling the authority utility pole may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting or prior damage or noncompliance. Fees for make-ready work including any pole replacement may not exceed the actual costs or the amount charged to other communications service providers for similar work and may not include any consultant fee or expense.

(b) For the purposes of a state-owned right-of-way maintained by the Division of Highways, the commissioner shall propose rules for legislative approval, in accordance with the provisions of §29A-3-1 et seq. of this code, to implement the provisions of this article.

(c) Application fees are subject to the following requirements:

(1) An authority may not require a wireless provider to pay any rates, fees, or compensation to the authority or other person other than what is expressly authorized by this chapter;

(2) An authority may charge an application fee for collocation of small wireless facilities on an existing utility pole not to exceed \$200 each for the first five small wireless facilities in the same application and \$100 for each additional small wireless facility in the same application. An authority may adjust this fee 10 percent every five years, rounded to the nearest five dollars;

(3) An authority may charge an application fee for the installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility that are permitted uses in accordance with the specifications in this chapter not to exceed \$250. An authority may adjust this fee 10 percent every five years, rounded to the nearest five dollars; and

(4) An authority may charge an application fee for the installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility that is not a permitted use in accordance with the specifications in this chapter not to exceed \$1,000. An authority may adjust this fee 10 percent every five years, rounded to the nearest five dollars.

§31H-2-4. Local authority; miscellaneous provisions.

(a) Nothing in this chapter may be construed to relieve any person from any requirement:

(1) To obtain a franchise or a state-issued authorization to offer cable television service; or

(2) to obtain any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities subject to this chapter. The permitting procedures and authorizations set forth in this chapter apply only to the placement of small wireless facilities and associated utility poles, and do not authorize the installation or operation of a wireline backhaul facility.

(b) Except as provided in this chapter or otherwise specifically authorized by state or federal law, an authority shall not adopt or enforce any regulations or requirements on the placement or operation

of communications facilities in a right-of-way by a communications service provider authorized by state or local law to operate in a right-of-way.

(c) Except as authorized by federal law, this chapter, and municipal taxation ordinances authorizing collection of business and occupation taxes since at least November 1, 1998, an authority shall not regulate any communications services or impose or collect any tax, fee, or charge for the provision of communications service over the communications service provider's communications facilities in a right-of-way, to the extent the communications service provider is already paying the authority a fee for access to the right-of-way.

(d) Subject to the provisions of this chapter and applicable federal law, an authority may continue to exercise zoning, land use, planning, and permitting authority within its territorial boundaries with respect to wireless support structures and utility poles; no authority shall have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any campus, stadium, or athletic facility not owned or controlled by the authority, other than to comply with applicable codes; and an authority shall evaluate the structure classification for wireless support structures under the latest version of ANSI/TIA-222. Nothing in this chapter authorizes the state or any political subdivision, including an authority, to require wireless facility deployment or to regulate wireless services.

(e) An authority may adopt an ordinance that makes available to wireless providers rates, fees, and other terms that comply with the provisions of this chapter. Subject to the provisions of this section, in the absence of an ordinance that fully complies with this chapter and until such a compliant ordinance is adopted, if at all, wireless providers may install and operate small wireless facilities and utility poles under the requirements of this chapter. An authority and a wireless provider may enter into a voluntary and nondiscriminatory agreement implementing the provisions of this chapter, but an authority may not require a wireless provider to enter into such an agreement.

(f) An agreement or ordinance that does not fully comply with this chapter may apply only to small wireless facilities and associated utility poles that became operational or were installed before the effective date of this chapter. Such an agreement or ordinance may not be renewed, or extended, unless it is modified to fully comply with this chapter. An agreement or ordinance that applies to small wireless facilities and associated utility poles that became operational or were constructed before the effective date of this chapter is invalid and unenforceable beginning on the 181st day after the effective date of this chapter unless it fully complies with this chapter. If an agreement or ordinance is invalid in accordance with this subsection, in the absence of an agreement or ordinance that fully complies with this chapter and until such a compliant agreement or ordinance is entered or adopted, small wireless facilities and associated utility poles that become operational or were constructed before the effective date of this chapter may remain installed and be operated under the requirements of this chapter.

(g) An agreement or ordinance that applies to small wireless facilities and utility poles that become operational on or after the effective date of this chapter is invalid and unenforceable beginning on the effective date of this chapter unless it fully complies with this chapter. If an agreement or ordinance is invalid in accordance with this subsection, in the absence of an agreement or ordinance that fully complies with this chapter and until such a compliant agreement or ordinance is entered or adopted, small wireless facilities and utility poles may be installed and operated in the right-of-way or become operational under the requirements of this chapter.

(h) Any wireless provider who owns or operates small wireless facilities or utility poles in the right-of-way shall indemnify, protect, defend, and hold the authority and its elected officials, officers,

employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the wireless provider who owns or operates small wireless facilities or utility poles in the right-of-way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the wireless provider, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in rights-of-way.

(i) Except for a wireless provider with an existing franchise to occupy and operate in the rights-of-way, during the period in which the wireless provider's facilities are located on the authority improvements or rights-of-way, the authority may require the wireless provider to carry, at the wireless provider's own cost and expense, the following insurance:

(1) Property insurance for its property's replacement cost against all risks;

(2) workers' compensation insurance, as required by law; or

(3) commercial general liability insurance with respect to its activities on the authority improvements or rights-of-way to afford minimum protection limits consistent with its requirements of other users of authority improvements or rights-of-way, including coverage for bodily injury and property damage. An authority may require a wireless provider to include the authority as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the authority in a commercial general liability policy as reasonably required by the authority.

A wireless provider may self-insure all or a portion of the insurance coverage and limit requirements required by an authority. A wireless provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement for the naming of additional insureds under this section. A wireless provider that elects to self-insure shall provide to the authority evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limits required by the authority.

(j) An authority may impose reasonable and nondiscriminatory requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal of abandoned or unused wireless facilities or damage to the right-of-way or authority property caused by the wireless provider or its agent.

(k) On or before December 31, 2026, all Class I and Class II municipalities shall report to the Joint Committee on Government and Finance of the effects of the implementation of this article."

The bill was then ordered to third reading.

Com. Sub. for S. B. 72, Creating Sexual Assault Victims' Bill of Rights; on second reading, coming up in regular order, was read a second time.

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

"ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.

§61-11A-9. Sexual Assault Victims' Bill of Rights.

(a) In addition to those rights afforded victims of crime by other provisions of this code, a sexual assault victim has the following rights:

(1) The right to a personal representative of the victim's choice to accompany him or her to a hospital or other health care facility and to attend proceedings concerning the alleged assault, including police interviews and court proceedings. *Provided*, That nothing in this subsection shall be construed to violate established forensic interview protocols;

(2) The right to receive a forensic medical examination consistent with the provisions of §61-8B-1(12) of this code conducted by a qualified medical provider in accordance with best practices, taking into consideration the age of the victim and circumstances of the offense;

(3) The right to have a sexual assault evidence collection kit tested and preserved by the investigating law-enforcement agency;

(4) The right to be informed by the investigating law-enforcement agency of any results of the forensic medical examination, if such disclosure would not impede or compromise an ongoing investigation;

(5) The right to be informed in writing of the policies governing the forensic medical examination and preservation of evidence obtained from the examination;

(6) The right to receive, upon his or her written request, notification by United States mail, restricted delivery, to his or her last known address, from the custodian of the evidence obtained from the forensic medical examination no fewer than 60 days prior to the date of the intended destruction or disposal of the evidence: *Provided*, That notice to a victim which meets the requirements of this subdivision, whether received by the addressee or not, meets all notice requirements imposed by this section;

(7) The right, upon his or her written request, to have the evidence obtained from the forensic medical examination preserved for an additional period not to exceed 10 years; and

(8) The right to be informed of the rights afforded a victim pursuant to this section.

(b) As used in this section, "sexual assault" means any sexual act proscribed by §61-8-1 *et seq.*, §61-8B-1 *et seq.*, and §61-8D-1 *et seq.* of this code."

The bill was then ordered to third reading.

Com. Sub. for S. B. 393, Protecting right to farm; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the by striking out everything after the enacting clause and inserting in lieu thereof the following:

"ARTICLE 19. PRESERVATION OF AGRICULTURAL PRODUCTION.**§19-19-2. Definitions.**

For the purposes of this article:

(a) 'Agriculture' shall mean the production of food, fiber and woodland products, by means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, and the practice of forestry, silviculture, horticulture, harvesting of silviculture products, packing, shipping, milling, and marketing of agricultural products conducted by the proprietor of the agricultural operation, or any other legal plant or animal production and all farm practices. ~~the packing, shipping and marketing, but not including any manufacturing, milling, or processing of such products by other than the producer thereof.~~

(b) 'Agricultural land' shall mean ~~not less than five acres~~ any amount of land and the improvements thereupon, used or usable in the production of food, fiber or woodland products of an annual value of \$1,000 or more, by the conduct of the business of agriculture, as defined in subsection (a) of this section.

(c) 'Agricultural operation' shall mean any facility utilized for agriculture.

§19-19-7. Additional limitations on nuisance actions.

(a) The provisions of this section are in addition to the limitations on actions brought against an agricultural operation in §19-19-4 of this code, and shall also apply to any nuisance action brought against an agricultural operation in any court of this state.

(b) A person may not file a nuisance action to recover damages in which an agricultural operation is alleged to be a public or private nuisance unless:

(1) He or she is the majority legal land owner;

(2) He or she owns property adversely affected by agricultural operations within one half mile of the agricultural operation; and

(3) The agricultural operation has materially violated a federal, state, or local law applicable to agriculture.

(c) No agricultural operation within this state which has been in operation for a period of more than one year shall be considered a nuisance, either public or private, as the result of a changed condition in or about the locality where such agricultural operation is located. In any nuisance action, public or private, against an agricultural operation or its principals or employees proof that the agricultural operation has existed for one year or more is an absolute defense to the nuisance action, if the operation is in compliance with all applicable state and federal laws, regulations, and permits.

(d) No state or local agency may bring a criminal or civil action against an agricultural operation for an activity that is in material compliance with all applicable state and federal laws, regulations, and permits.

(e) No agricultural operation shall be or become a private or public nuisance if the operators are conducting the agricultural operation in a manner consistent with commonly accepted agricultural practice. If the operation is in material compliance with all applicable state and federal laws, regulations, and permits, it shall be presumed to be conducted in a manner consistent with commonly accepted agricultural practice.

(f) No agricultural operation shall be considered a nuisance, private or public, if the agricultural operation makes a reasonable expansion, so long as the operation is in material compliance with all applicable state and federal laws, regulations, and permits.

(1) For the purpose of this section, a reasonable expansion includes, but is not limited to:

(A) Transfer of the agricultural operation;

(B) Purchase of additional land for the agricultural operation;

(C) Introducing technology to an existing agricultural operation including, but not limited to, new activities, practices, equipment, and procedures consistent with technological development within the agricultural industry;

(D) Applying a Natural Resources Conservation Service program or other United States Department of Agriculture program to an existing or future agricultural operation; or,

(E) Any other change that is related and applied to an existing agricultural operation, so long as the change does not affect the agricultural operation's compliance with applicable state and federal laws, regulations, and permits.

(2) The reasonable expansion exemption provided by this subsection cannot apply to an expansion that:

(A) Creates a substantially adverse effect upon the environment; or

(B) Creates a hazard to public health and safety.

(g) A requirement of a municipality does not apply to an agricultural operation situated outside of the municipality's corporate boundaries on the effective date of this chapter. If an agricultural operation is subsequently annexed or otherwise brought within the corporate boundaries of a municipality, the requirements of the municipality do not apply to the agricultural operation.

(h) An agricultural operation is not, nor shall it become, a private or public nuisance after it has been in operation for more than one year, if such operation was not a nuisance at the time the operation began, and the conditions or circumstances complained of as constituting the basis for the nuisance action exist substantially unchanged since the established date of operation. The established date of operation is the date on which an agricultural operation commenced.

(i) The provisions of this section shall not apply in any of the following circumstances:

(1) Whenever a nuisance results from the negligent operation of any such agricultural operation;

or

(2) To affect or defeat the right of any person to recover for injuries or damages sustained because of an agricultural operation or portion of an agricultural operation that is conducted in violation of a federal, state, or local statute or governmental requirement that applies to the agricultural operation or portion of agricultural operation.

(j) The protected status of an agricultural operation, once acquired, is assignable, alienable, and inheritable. The protected status of an agricultural operation, once acquired, may not be waived by the temporary cessation of operations or by diminishing the size of the operation.

§19-19-8. Damages.

(a) A person who brings a nuisance action for damages or injunctive relief against an agricultural operation that has existed for one year or more prior to the date that the action is instituted or who

violates the provisions of §19-19-7(h) of this code is liable to the agricultural operation for all costs and expenses incurred in defense of the action, including, but not limited to, attorneys' fees, court costs, travel, and other related incidental expenses incurred in the defense.

(b) In no event shall the total amount of damages in any successful nuisance action exceed the diminished value of the subject property.

(c) The exclusive compensatory damages that may be awarded to a claimant where the alleged nuisance originates from an agricultural operation shall be as follows:

(1) If the nuisance is determined to be a permanent nuisance, compensatory damages shall be limited to the reduction in the fair market value of the claimant's property caused by the nuisance, not to exceed the fair market value of the claimant's property; and

(2) If the nuisance is determined to be a temporary nuisance, compensatory damages shall be limited to the diminution of the fair rental value of the claimant's property caused by the nuisance.

(d) If any claimant or claimant's successor in interest brings a subsequent private nuisance action against any agricultural operation, the combined recovery from all such actions shall not exceed the fair market value of his or her property. This limitation applies regardless of whether the subsequent action or actions were brought against a different defendant than the preceding action or actions.

(e) A claimant shall not be awarded punitive damages for nuisance actions originating from an agricultural operation."

The bill was then ordered to third reading.

Com. Sub. for S. B. 441, Relating to higher education campus police officers; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 520, Requiring entities report drug overdoses; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Health and Human Resources, was reported by the Clerk and adopted, amending the bill on page two, section four, line two, after the word, "appropriate", by inserting the word "information".

The bill was then ordered to third reading.

S. B. 635, Relating generally to coal mining activities; on second reading, coming up in regular order, was read a second time.

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

"CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

§5B-2A-5. Powers and duties.

The office has and may exercise the following duties, powers, and responsibilities:

~~(1) To establish a procedure for developing a community impact statement as provided in section six of this article and to administer the procedure so established;~~

~~(2) (1) To establish a procedure for determining the assets that could be developed in and maintained by the community to foster its long-term viability as provided in §5B-2A-8 of this code and to administer the procedure so established;~~

~~(3) (2) To establish a procedure for determining the land and infrastructure needs in the general area of the surface mining operations as provided in §5B-2A-9 of this code and to administer the procedure so established;~~

~~(4) (3) To establish a procedure to develop action reports and annual updates as provided in §5B-2A-10 of this code and to administer the procedure so established;~~

~~(5) (4) To determine the need for meetings to be held among the various interested parties in the communities impacted by surface mining operations and, when appropriate, to facilitate the meetings;~~

~~(6) (5) To establish a procedure to assist property owners in the sale of their property as provided in §5B-2A-11 of this code and to administer the procedure so established;~~

~~(7) (6) In conjunction with the department, to maintain and operate a system to receive and address questions, concerns, and complaints relating to surface mining; and~~

~~(8) (7) On its own initiative or at the request of a community in close proximity to a mining operation, or a mining operation, offer assistance to facilitate the development of economic or community assets. Such assistance shall include the preparation of a master land use plan pursuant to the provisions of §5B-2A-9 of this code.~~

§5B-2A-6. Community impact statement review.

~~(a)(1) The office shall, no less frequently than quarterly, either consult with representatives of the department's Office of Mining and Reclamation or review the department's permit application database(s) to determine whether newly proposed surface mines or significant modifications to existing surface mining operations may present opportunities for mine operators to cooperate with local landowners and local governmental officials to mine and reclaim properties so as to develop community assets or secure developable land and infrastructure pursuant to this article. The operator shall develop a community impact statement, as described in this section, which shall be submitted to the office within sixty days of the filing of a surface mining application pursuant to the provisions of article three, chapter twenty two of this code. Failure to submit a community impact statement to the office shall be considered a violation under the provisions of section seventeen of said article; and~~

~~(2) The operator shall provide copies of the community impact statement to the department's Office of Mining Reclamation and Office of Explosives and Blasting and to the county commissions, county clerks' offices and local, county or regional development or redevelopment authorities of the areas to be affected by the surface mining operations.~~

~~(b) The community impact statement, where practicable, shall not be a highly technical or legalistic document, but shall be written in a clear and concise manner understandable to all citizens. The community impact statement shall include the following:~~

~~(1) The amount and location of land to be mined or used in the actual mining operations;~~

~~(2) The expected duration of the mining operations in each area of the community;~~

~~(3) The extent of anticipated mining-related property acquisitions, to the extent that such acquisitions are known or knowable;~~

~~(4) The intentions of the surface and mineral owners relative to the acquired property, to the extent that such intentions are known or knowable;~~

~~(5) A statement of the post-mining land use for all land within the permit boundary;~~

~~(6) The intended blasting plan and the expected time and duration it will affect each community;~~

~~(7) Information concerning the extent and nature of valley fills and the watersheds to be affected;~~

~~(8) Economic information, such as the number of jobs created and annual coal production resulting from the surface mining operation, the anticipated life of the mining operation and such other information as may be deemed appropriate; and~~

~~(9) An acknowledgment of the recommendations of any approved master land use plan that pertains to the land proposed to be mined, including an acknowledgment of the infrastructure components needed to accomplish the designated post mine land use required by the plan.~~

~~(c) Where the operator makes any significant revision to the permit application under section eighteen, article three, chapter twenty-two of this code, which revision substantially affects any of the information provided in subsection (b) of this section, the operator shall revise the affected provisions of its community impact statement and shall submit such revisions as set forth in subsection (a) of this section.~~

~~(d) Within thirty days of receipt of a community impact statement pursuant to subdivision (2), subsection (a) of this section or a revised community impact statement pursuant to subsection (c) of this section, the local, county or regional development or redevelopment authorities of the areas to be affected by the surface mining operations shall provide a written acknowledgment of the receipt of this community impact statement or revised community impact statement to the department's Division of Mining Reclamation, to the county commission or county commissions and to the office.~~

~~(e) (b) The provisions of this section shall apply as follows: to all surface mining permit applications granted after July 1, 2018.~~

~~(1) To all surface mining permits granted after June 11, 1999; and~~

~~(2) At the first renewal date of all previously issued permits: *Provided*, That the permittee shall be afforded ninety days from said date to comply with the provisions of this section.~~

§5B-2A-8. Determining and developing needed community assets.

(a) The office shall determine the community assets that may be developed by the community, county, or region to foster its viability when surface mining operations are completed.

(b) Community assets to be identified pursuant to subsection (a) of this section may include the following:

(1) Water and wastewater services;

(2) Developable land for housing, commercial development, or other community purposes;

(3) Recreation facilities and opportunities; and

(4) Education facilities and opportunities.

~~(c) The operator shall be required to prepare and submit to the office the information set forth in this subsection as follows:~~

~~(1) A map of the area for which a permit under article three, chapter twenty-two of this code is being sought or has been obtained;~~

~~(2) The names of the surface and mineral owners of the property to be mined pursuant to the permit; and~~

~~(3) A statement of the post-mining land use for all land which may be affected by the mining operations.~~

~~(d)~~ (c) In determining the nature and extent of the needed community assets, the office shall consider at least the following:

(1) An evaluation of the future of the community once mining operations are completed;

(2) The prospects for the long-term viability of any asset developed under this section;

(3) The desirability of foregoing some or all of the asset development required by this section in lieu of the requirements of §5B-2A-9 of this code; and

(4) The extent to which the community, local, state, or the federal government may participate in the development of assets the community needs to assure its viability.

§5B-2A-9. Securing developable land and infrastructure.

(a) The office shall determine the land and infrastructure needs in the general area of the surface mining operations: for which it makes the determination authorized in §5B-2A-6 of this code.

(b) For the purposes of this section, the term 'general area' shall mean the county or counties in which the mining operations are being conducted or any adjacent county.

(c) To assist the office, the operator, upon request by the office, shall be required to prepare and submit to the office the information set forth in this subsection as follows:

(1) A map of the area for which a permit under §22-3-1 *et seq.* of this code is being sought or has been obtained;

(2) The names of the surface and mineral owners of the property to be mined pursuant to the permit; and

(3) A statement of the post-mining land use for all land which may be affected by the mining operations.

(d) In making a determination of the land and infrastructure needs in the general area of the mining operations, the office shall consider at least the following:

(1) The availability of developable land in the general area;

(2) The needs of the general area for developable land;

(3) The availability of infrastructure, including, but not limited to, access roads, water service, wastewater service, and other utilities;

(4) The amount of land to be mined and the amount of valley to be filled;

(5) The amount, nature, and cost to develop and maintain the community assets identified in §5B-2A-8 of this code; and

(6) The availability of federal, state, and local grants and low-interest loans to finance all or a portion of the acquisition and construction of the identified land and infrastructure needs of the general area.

(e) In making a determination of the land and infrastructure needs in the general area of the surface mining operations, the office shall give significant weight to developable land on or near existing or planned multilane highways.

(f) The office may secure developable land and infrastructure for a Development Office or county through the preparation of a master land use plan for inclusion into a reclamation plan prepared pursuant to the provisions of §22-3-10 of this code. No provision of this section may be construed to modify requirements of §22-3-1 *et seq.* of this code.

(1) The county commission or other governing body for each county in which there are surface mining operations that are subject to this article shall determine land and infrastructure needs within their jurisdictions through the development of a master land use plan which incorporates post-mining land use needs, including, but not limited to, renewable and alternative energy uses, residential uses, highway uses, industrial uses, commercial uses, agricultural uses, public facility uses, or recreational facility uses. A county commission or other governing body of a county may designate a local, county, or regional development or redevelopment authority to assist in the preparation of a master land use plan. A county commission or other governing body of a county may adopt a master land use plan developed after July 1, 2009, only after a reasonable public comment period.

(2) Upon the request of a county or designated development or redevelopment authority, the office shall assist the county or development or redevelopment authority with the development of a master land use plan.

(3)(A) The Department of Environmental Protection and the Office of Coalfield Community Development shall review master land use plans existing as of July 1, 2009. If the office determines that a master land use plan complies with the requirements of this article and the rules promulgated pursuant to this article, the office shall approve the plan on or before July 1, 2010.

(B) Master land use plans developed after July 1, 2009, shall be submitted to the department and the office for review. The office shall determine whether to approve a master land use plan submitted pursuant to this subdivision within three months of submission. The office shall approve the plan if it complies with the requirements of this article and the rules promulgated pursuant to this article.

(C) The office shall review a master land use plan approved under this section every three years. No later than six months before the review of a master land use plan, the county or designated development or redevelopment authority shall submit an updated master land use plan to the department and the office for review. The county may submit its updated master land use plan only after a reasonable public comment period. The office shall approve the master land use plan if the

updated plan complies with the requirements of this article and the rules promulgated pursuant to this article.

(D) If the office does not approve a master land use plan, the county or designated development or redevelopment authority shall submit a supplemental master land use plan to the office for approval.

(4) The required infrastructure component standards needed to accomplish the designated post-mining land uses identified in a master land use plan shall be developed by the county or its designated development or redevelopment authority. These standards must be in place before the respective county or development or redevelopment authority can accept ownership of property donated pursuant to a master land use plan. Acceptance of ownership of such property by a county or development or redevelopment authority may not occur unless it is determined that: ~~(i) The property use is compatible with adjacent land uses; (ii) the use satisfies the relevant county or development or redevelopment authority's anticipated need and market use; (iii) the property has in place necessary infrastructure components needed to achieve the anticipated use; (iv) the use is supported by all other appropriate public agencies; (v) the property is eligible for bond release in accordance with section twenty three, article three, chapter twenty two of this code; and (vi) the use is feasible. Required infrastructure component standards require approval of the relevant county commission, commissions or other county governing body before such standards are accepted. County commission or other county governing body approval may be rendered only after a reasonable public comment period;~~

(A) The property use is compatible with adjacent land uses;

(B) The use satisfies the relevant county or development or redevelopment authority's anticipated need and market use;

(C) The property has in place necessary infrastructure components needed to achieve the anticipated use;

(D) The use is supported by all other appropriate public agencies;

(E) The property is eligible for bond release in accordance with §22-3-23 of this code; and

(F) The use is feasible.

Required infrastructure component standards require approval of the relevant county commission, commissions, or other county governing body before such standards are accepted. County commission or other county governing body approval may be rendered only after a reasonable public comment period.

(5) The provisions of this subsection shall not take effect until legislative rules are promulgated pursuant to ~~paragraph (C), subdivision (1), subsection (c), section twenty three, article three, chapter twenty two~~ of this code governing bond releases which assure sound future maintenance by the local or regional economic development, redevelopment, or planning agencies.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE AND COAL MINING RECLAMATION ACT.

§22-3-14. General environmental protection performance standards for the surface effects of underground mining; application of other provisions of article to surface effects of underground mining.

(a) The director shall promulgate separate rules directed toward the surface effects of underground coal mining operations, embodying the requirements in subsection (b) of this section: *Provided*, That in adopting such rules, the director shall consider the distinct difference between surface coal mines and underground coal mines in West Virginia. Such rules may not conflict with or supersede any provision of the federal or state coal mine health and safety laws or any rule issued pursuant thereto.

(b) Each permit issued by the director pursuant to this article and relating to underground coal mining shall require the operation at a minimum to:

(1) Adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability and maintain the value and reasonably foreseeable use of overlying surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner: *Provided*, That this subsection does not prohibit the standard method of room and pillar mining;

(2) Seal all portals, entryways, drifts, shafts, or other openings that connect the earth's surface to the underground mine workings when no longer needed for the conduct of the mining operations in accordance with the requirements of all applicable federal and state law and rules promulgated pursuant thereto;

(3) Fill or seal exploratory holes no longer necessary for mining and maximize to the extent technologically and economically feasible, if environmentally acceptable, return of mine and processing waste, tailings, and any other waste incident to the mining operation to the mine workings or excavations;

(4) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the operator from current operations through construction in compacted layers, including the use of incombustible and impervious materials, if necessary, and assure that any leachate therefrom will not degrade surface or groundwaters below water quality standards established pursuant to applicable federal and state law and that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section;

(5) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to §22-3-13 of this ~~article~~ code, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, and solid wastes and used either temporarily or permanently as dams or embankments;

(6) Establish on regraded areas and all other disturbed areas a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area within the time period prescribed in §22-3-13(b)(20) of this ~~article~~ code;

(7) Protect off-site areas from damages which may result from such mining operations;

(8) Eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(9) Minimize the disturbance of the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quantity and the quality of water in surface and groundwater systems both during and after mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water before being released to water courses; and (iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering ground and surface waters; and (B) conducting mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall the contributions be in excess of requirements set by applicable state or federal law, and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines: *Provided*, That in recognition of the distinct differences between surface and underground mining the monitoring of water from underground coal mine workings shall be in accordance with the provisions of the Clean Water Act of 1977;

(10) With respect to other surface impacts of underground mining not specified in this subsection, including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under §22-3-13 of this code for such effects which result from surface-mining operations: *Provided*, That the director shall make such modifications in the requirements imposed by this subdivision as are necessary to accommodate the distinct difference between surface and underground mining in West Virginia;

(11) To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, aquatic life, wildlife, and related environmental values, and achieve enhancement of such resources where practicable; and

(12) Unless otherwise permitted by the director and in consideration of the relevant safety and environmental factors, locate openings for all new drift mines working in acid producing or iron producing coal seams in a manner as to prevent a gravity discharge of water from the mine.

(c) In order to protect the stability of the land, the director shall suspend underground mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he or she finds imminent danger to inhabitants of the urbanized areas, cities, towns, or communities.

(d) The provisions of this article relating to permits, bonds, insurance, inspections, reclamation and enforcement, public review, and administrative and judicial review are also applicable to surface operations and surface impacts incident to an underground mine with such modifications by rule to the permit application requirements, permit approval, or denial procedures and bond requirements as are necessary to accommodate the distinct difference between surface mines and underground mines in West Virginia.

(e) The secretary shall promulgate for review and consideration by the West Virginia Legislature during the regular session of the Legislature, 2020, revisions to legislative rules (38 CSR 2) pertaining to surface owner protection from material damage due to subsidence under this article. The secretary shall specifically consider adoption of the federal standards codified at 30 C.F.R. § 817.121.

ARTICLE 11. WATER POLLUTION CONTROL ACT.**§22-11-10. Water Quality Management Fund established; permit application fees; annual permit fees; dedication of proceeds; rules.**

(a) The special revenue fund designated the Water Quality Management Fund established in the State Treasury on July 1, 1989, is hereby continued.

(b) The permit application fees and annual permit fees established and collected pursuant to this section; any interest or surcharge assessed and collected by the secretary; interest accruing on investments and deposits of the fund; and any other moneys designated by the secretary shall be deposited into the Water Quality Management Fund. The secretary shall expend the proceeds of the Water Quality Management Fund for the review of initial permit applications, renewal permit applications, and permit issuance activities.

(c) The secretary shall propose for promulgation, legislative rules in accordance with the provisions of §29A-1-1 *et seq.* of this code, to establish a schedule of application fees for all applications except for surface coal mining operations as defined in §22-3-13 of this code. The appropriate fee shall be submitted by the applicant to the department with the application filed pursuant to this article for any state water pollution control permit or national pollutant discharge elimination system permit. The schedule of application fees shall be designed to establish reasonable categories of permit application fees based upon the complexity of the permit application review process required by the department pursuant to the provisions of this article and the rules promulgated under this article: *Provided*, That no initial application fee may exceed \$15,000 for any facility nor may any permit renewal application fee exceed \$5,000. The department may not process any permit application pursuant to this article until the required permit application fee has been received.

(d) The secretary shall propose for promulgation legislative rules in accordance with the provisions of §29A-1-1 *et seq.* of this code, to establish a schedule of permit fees to be assessed annually upon each person holding a state water pollution control permit or national pollutant discharge elimination system permit issued pursuant to this article except for permits held by surface coal mining operations as defined in §22-3-1 *et seq.* of this ~~chapter~~ code. Each person holding a permit shall pay the prescribed annual permit fee to the department pursuant to the rules promulgated under this section: *Provided*, That no person holding a permit for a home aerator of ~~six hundred~~ 600 gallons and under shall be required to pay an annual permit fee. The schedule of annual permit fees shall be designed to establish reasonable categories of annual permit fees based upon the relative potential of categories or permits to degrade the waters of the state: *Provided, however*, That no annual permit fee may exceed \$5,000. The secretary may declare any permit issued pursuant to this article void when the annual permit fee is more than ~~ninety~~ 90 days past due pursuant to the rules promulgated under this section. Voiding of the permit will only become effective upon the date the secretary mails, by certified mail, written notice to the permittee's last known address notifying the permittee that the permit has been voided.

(e) The secretary shall file a quarterly report with the Joint Committee on Government and Finance setting forth the fees established and collected pursuant to this section.

(f) On July 1, 2002, and each year thereafter, a \$1,000 fee shall be assessed for permit applications and renewals submitted pursuant to this article for surface coal mining operations, as defined in §22-3-1 *et seq.* of this code. On July 1, 2002, and each year thereafter, a \$500 fee shall be assessed for application for permit modifications submitted pursuant to this article for surface coal mining operations, as defined in §22-3-1 *et seq.* of this code. Beginning July 1, 2002 and every year

thereafter, an annual permit fee shall be assessed on the issuance anniversary dates of all permits issued pursuant to this article for surface coal mining operations as defined in §22-3-1 *et seq.* of this code. The annual permit fee shall be collected as follows: ~~Five hundred dollars~~ \$500 for the fiscal year beginning on July 1, 2002, and \$1,000 for each fiscal year thereafter. For all other categories of permitting actions pursuant to this article related to surface coal mining operations, the secretary shall propose for promulgation legislative rules in accordance with the provisions of §29A-1-1 *et seq.* of this code to establish a schedule of permitting fees.

ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.

§22-30-3. Definitions.

For purposes of this article:

(1) 'Aboveground storage tank' or 'tank' or 'AST' means a device made to contain an accumulation of more than ~~one thousand three hundred twenty~~ 1,320 gallons of fluids that are liquid at standard temperature and pressure, which is constructed primarily of nonearthen materials, including concrete, steel, plastic, or fiberglass reinforced plastic, which provide structural support, more than ~~ninety percent~~ 90 percent of the capacity of which is above the surface of the ground, and includes all ancillary pipes and dispensing systems up to the first point of isolation. The term includes stationary devices which are permanently affixed, and mobile devices which remain in one location on a continuous basis for ~~three hundred sixty five~~ 365 or more days. A device meeting this definition containing hazardous waste subject to regulation under 40 C. F. R. Parts 264 and 265, exclusive of tanks subject to regulation under 40 C. F. R. § 265.201 is included in this definition but is not a regulated tank. Notwithstanding any other provision of this code to the contrary, the following categories of devices are not subject to the provisions of this article:

(A) Shipping containers that are subject to state or federal laws or regulations governing the transportation of hazardous materials, including, but not limited to, railroad freight cars subject to federal regulation under the Federal Railroad Safety Act, 49 U. S. C. §§20101-2015, as amended, including, but not limited to, federal regulations promulgated thereunder at 49 C. F. R. ~~Parts~~ §§172, 173, or 174;

(B) Barges or boats subject to federal regulation under the United States Coast Guard, United States Department of Homeland Security, including, but not limited to, federal regulations promulgated at 33 C. F. R. 1, *et seq.* or subject to other federal law governing the transportation of hazardous materials;

(C) Swimming pools;

(D) Process vessels;

(E) Devices containing drinking water for human or animal consumption, surface water or groundwater, demineralized water, noncontact cooling water, or water stored for fire or emergency purposes;

(F) Devices containing food or food-grade materials used for human or animal consumption and regulated under the Federal Food, Drug and Cosmetic Act (21 U. S. C. §301-392);

(G) Except when located in a zone of critical concern, a device located on a farm, the contents of which are used exclusively for farm purposes and not for commercial distribution;

(H) Devices holding wastewater that is being actively treated or processed (e.g., clarifier, chlorine contact chamber, batch reactor, etc.);

(I) Empty tanks held in inventory or offered for sale;

(J) Pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate pipeline facility regulated by the West Virginia Public Service Commission or otherwise regulated under any state law comparable to the provisions of either the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;

(K) Liquid traps, atmospheric and pressure vessels, or associated gathering lines related to oil or gas production and gathering operations;

(L) Electrical equipment such as transformers, circuit breakers, and voltage regulator transformers;

(M) Devices having a capacity of ~~two hundred ten~~ 210 barrels or less, containing brine water or other fluids produced in connection with hydrocarbon production activities, that are not located in a zone of critical concern; and

(N) Devices having a capacity of 10,000 gallons or less, containing sodium chloride or calcium chloride water for roadway snow and ice pretreatment, that are not located in a zone of critical concern: *Provided*, That all such devices exempted under subdivisions (M) and (N) of this subdivision must still meet the registration requirements contained in §22-30-4 of this code, the notice requirements contained in §22-30-10 of this code, and the signage requirements contained in §22-30-11 of this code.

(2) 'Department' means the West Virginia Department of Environmental Protection.

(3) 'First point of isolation' means the valve, pump, dispenser, or other device or equipment on or nearest to the tank where the flow of fluids into or out of the tank may be shut off manually or where it automatically shuts off in the event of a pipe or tank failure.

(4) 'Nonoperational storage tank' means an empty aboveground storage tank in which fluids will not be deposited or from which fluids will not be dispensed on or after the effective date of this article.

(5) 'Operator' means any person in control of, or having responsibility for, the daily operation of an aboveground storage tank.

(6) 'Owner' means a person who holds title to, controls, or owns an interest in an aboveground storage tank, including the owner immediately preceding the discontinuation of its use. 'Owner' does not mean a person who holds an interest in a tank for financial security unless the holder has taken possession of and operated the tank.

(7) 'Person', 'persons', or 'people' means any individual, trust, firm, owner, operator, corporation, or other legal entity, including the United States government, an interstate commission or other body, the state or any agency, board, bureau, office, department, or political subdivision of the state, but does not include the Department of Environmental Protection.

(8) 'Process vessel' means a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process or in which a biological, chemical, or physical change in the material occurs. This does

not include tanks used for storage of materials prior to their introduction into the production process or for the storage of finished products or by-products of the production process.

(9) 'Public groundwater supply source' means a primary source of water supply for a public water system which is directly drawn from a well, underground stream, underground reservoir, underground mine, or other primary sources of water supplies which are found underneath the surface of the state.

(10) 'Public surface water supply source' means a primary source of water supply for a public water system which is directly drawn from rivers, streams, lakes, ponds, impoundments, or other primary sources of water supplies which are found on the surface of the state.

(11) 'Public surface water influenced groundwater supply source' means a source of water supply for a public water system which is directly drawn from an underground well, underground river or stream, underground reservoir, or underground mine, and the quantity and quality of the water in that underground supply source is heavily influenced, directly or indirectly, by the quantity and quality of surface water in the immediate area.

(12) 'Public water system' means:

(A) Any water supply or system which regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of ~~twenty-five~~ 25 individuals per day for at least ~~sixty~~ 60 days per year, or which has at least ~~fifteen~~ 15 service connections, and shall include:

(i) Any collection, treatment, storage, and distribution facilities under the control of the owner or operator of the system and used primarily in connection with the system; and

(ii) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

(B) A public water system does not include a bathhouse located on coal company property solely for the use of its employees or a system which meets all of the following conditions:

(i) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(ii) Obtains all of its water from, but is not owned or operated by, a public water system which otherwise meets the definition;

(iii) Does not sell water to any person; and

(iv) Is not a carrier conveying passengers in interstate commerce.

(13) 'Regulated level 1 aboveground storage tank' or 'level 1 regulated tank' means:

(A) An AST located within a zone of critical concern, source water protection area, public surface water influenced groundwater supply source area, or any AST system designated by the secretary as a level 1 regulated tank; or

(B) An AST that contains substances defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as a 'hazardous substance' (42 U. S. C. § 9601(14)); or is on EPA's Consolidated List of Chemicals Subject to the Emergency Planning and Community Right to Know Act (EPCRA), CERCLA, and §112(r) of the Clean Air Act

(CAA) (known as the List of Lists) as provided by 40 C. F. R. §§ 355, 372, 302, and 68) in a concentration of one percent or greater, regardless of the AST's location, except ASTs containing petroleum are not level 1 regulated tanks based solely upon containing constituents recorded on the CERCLA lists; or

(C) An AST with a capacity of 50,000 gallons or more, regardless of its contents or location.

(14) 'Regulated level 2 aboveground storage tank' or 'level 2 regulated tank' means an AST that is located within a zone of peripheral concern that is not a level 1 regulated tank.

(15) 'Regulated aboveground storage tank' or 'regulated tank' means an AST that meets the definition of a level 1 or level 2 regulated tank.

(16) 'Release' means any spilling, leaking, emitting, discharging, escaping, or leaching of fluids from an aboveground storage tank into the waters of the state or escaping from secondary containment.

(17) 'Secondary containment' means a safeguard applied to one or more aboveground storage tanks that prevents the discharge into the waters of the state of the entire capacity of the largest single tank and sufficient freeboard to contain precipitation. In order to qualify as secondary containment, the barrier and containment field must be sufficiently impervious to contain fluids in the event of a release, and may include double-walled tanks, dikes, containment curbs, pits, or drainage trench enclosures that safely confine the release from a tank in a facility catchment basin or holding pond. Earthen dikes and similar containment structures must be designed and constructed to contain, for a minimum of ~~seventy-two~~ 72 hours, fluid that escapes from a tank.

(18) 'Secretary' means the Secretary of the Department of Environmental Protection, or his or her designee.

(19) 'Source water protection area' for a public groundwater supply source is the area within an aquifer that supplies water to a public water supply well within a five-year time of travel, and is determined by the mathematical calculation of the locations from which a drop of water placed at the edge of the protection area would theoretically take five years to reach the well.

(20) 'Zone of critical concern' for a public surface water supply source and for a public surface water influenced groundwater supply source is a corridor along streams within a watershed that warrants detailed scrutiny due to its proximity to the surface water intake and the intake's susceptibility to potential contaminants within that corridor. The zone of critical concern is determined using a mathematical model that accounts for stream flows, gradient and area topography. The length of the zone of critical concern is based on a five-hour time of travel of water in the streams to the intake. The width of the zone of critical concern is ~~one thousand~~ 1,000 feet measured horizontally from each bank of the principal stream and ~~five hundred~~ 500 feet measured horizontally from each bank of the tributaries draining into the principal stream.

(21) 'Zone of peripheral concern' for a public surface water supply source and for a public surface water influenced groundwater supply source is a corridor along streams within a watershed that warrants scrutiny due to its proximity to the surface water intake and the intake's susceptibility to potential contaminants within that corridor. The zone of peripheral concern is determined using a mathematical model that accounts for stream flows, gradient, and area topography. The length of the zone of peripheral concern is based on an additional five-hour time of travel of water in the streams beyond the perimeter of the zone of critical concern, which creates a protection zone of ~~ten~~ 10 hours above the water intake. The width of the zone of peripheral concern is ~~one thousand~~ 1,000 feet

measured horizontally from each bank of the principal stream and ~~five hundred~~ 500 feet measured horizontally from each bank of the tributaries draining into the principal stream.

§22-30-24. Powers and duties of secretary.

(a) In addition to the powers and duties prescribed in this chapter or otherwise provided by law, the secretary has the exclusive authority to perform all acts necessary to implement this article.

(b) The secretary may receive and expend money from the federal government or any other sources to implement this article.

(c) The secretary may revoke any registration or certificate to operate for a significant violation of this article or the rules promulgated hereunder.

(d) The secretary may issue orders, assess civil penalties, institute enforcement proceedings, and prosecute violations of this article as necessary.

(e) The secretary, in accordance with this article, may order corrective action to be undertaken, take corrective action, or authorize a third party to take corrective action.

(f) The secretary may recover the costs of taking corrective action, including costs associated with authorizing third parties to perform corrective action. Costs may not include routine inspection and administrative activities not associated with a release.

(g) The secretary shall promulgate for review and consideration by the West Virginia Legislature in the regular session of the Legislature, 2020, legislative rules to incorporate the relevant provisions of this article in the Groundwater Protection Rules for Coal Mining, 38 CSR 2F, for tanks and devices located at coal mining operations.

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

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

§22A-1-21. Penalties.

(a) (1) Any operator of a coal mine in which a violation of any health or safety rule occurs or who violates any other provisions of this chapter shall be assessed a civil penalty by the director under subdivision (3) of this subsection, which shall be not more than \$5,000, for each violation, unless the director determines that it is appropriate to impose a special assessment for the violation, pursuant to the provisions of subdivision (2), subsection (b) of this section. Each violation constitutes a separate offense. In determining the amount of the penalty, the director shall consider the operator's history of previous violations, whether the operator was negligent, the appropriateness of the penalty to the size of the business of the operator charged, the gravity of the violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.

(2) Revisions to the assessment of civil penalties shall be proposed as legislative rules in accordance with the provisions of §29A-3-1 *et seq.* of this code.

(3) Any miner who knowingly violates any health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter is subject to a civil penalty assessed by the director under subdivision (4) of this subsection which shall not be more than \$250 for each occurrence of the

violation. Any miner issued a violation under this subsection shall either appeal the violation or pay the civil penalty within 30 days after receipt of the violation. Any violation not appealed or paid within 30 days shall become delinquent.

Any civil penalty that becomes delinquent on or after July 1, 2019, and has not been paid shall be deemed a failure by the miner to perform a duty mandated pursuant to this article for purposes of §22A-1-31 of this code.

(4) A civil penalty under subdivision (1) or (2), subsection (a) of this section or subdivision (1) or (2), subsection (b) of this section shall be assessed by the director only after the person charged with a violation under this chapter or rule promulgated pursuant to this chapter has been given an opportunity for a public hearing and the director has determined, by a decision incorporating the director's findings of fact in the decision, that a violation did occur and the amount of the penalty which is warranted and incorporating, when appropriate, an order in the decision requiring that the penalty be paid. Any hearing under this section shall be of record.

(5) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in the order, the director may file a petition for enforcement of the order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall immediately be sent by certified mail, return receipt requested, to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be. The director shall certify and file in the court the record upon which the order sought to be enforced was issued. The court has jurisdiction to enter a judgment enforcing, modifying and enforcing as modified, or setting aside, in whole or in part, the order and decision of the director or it may remand the proceedings to the director for any further action it may direct. The court shall consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a circuit court under §22A-1-20 of this code and, upon the request of the respondent, those issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the Attorney General, attorneys appointed for the director may appear for and represent the director in any action to enforce an order assessing civil penalties under this subdivision.

(b) (1) Any operator who knowingly violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under §22A-1-15 of this ~~article~~ code, or any order incorporated in a final decision issued under this article, except an order incorporated in a decision under §22A-1-22(a) or §22A-1-22(b) of this ~~article~~ code, shall be assessed a civil penalty by the director under subdivision (5), subsection (a) of this section of not more than \$5,000 and for a second or subsequent violation assessed a civil penalty of not more than \$10,000, unless the director determines that it is appropriate to impose a special assessment for the violation, pursuant to the provisions of subdivision (2) of this subsection.

(2) In lieu of imposing a civil penalty pursuant to the provisions of subsection (a) of this section or subdivision (1) of this subsection, the director may impose a special assessment if an operator violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter and the violation is of serious nature and involves one or more of the following by the operator:

(A) Violations involving fatalities and serious injuries;

(B) Failure or refusal to comply with any order issued under §22A-1-15 of this code;

(C) Operation of a mine in the face of a closure order;

(D) Violations involving an imminent danger;

(E) Violations involving an extraordinarily high degree of negligence or gravity or other unique aggravating circumstances; or

(F) A discrimination violation under §22A-1-22 of this code.

In situations in which the director determines that there are factors present which would make it appropriate to impose a special assessment, the director shall assess a civil penalty of at least \$5,000 and not more than \$10,000.

(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated in a final decision issued under this law, except an order incorporated in a decision issued under §22A-1-22(a) or §22A-1-22(b) of this ~~article~~ code, any director, officer, or agent of the corporation who knowingly authorized, ordered or carried out the violation, failure or refusal is subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this law or any order or decision issued under this law is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000 or confined in jail not more than one year, or both fined and confined. The conviction of any person under this subsection shall result in the revocation of any certifications held by the person under this chapter which certified or authorized the person to direct other persons in coal mining by operation of law and bars that person from being issued any license under this chapter, except a miner's certification, for a period of not less than one year or for a longer period as may be determined by the director.

(e) Whoever willfully distributes, sells, offers for sale, introduces, or delivers in commerce any equipment for use in a coal mine, including, but not limited to, components and accessories of the equipment, who willfully misrepresents the equipment as complying with the provisions of this law, or with any specification or rule of the director applicable to the equipment, and which does not comply with the law, specification or rule, is guilty of a misdemeanor and, upon conviction thereof, is subject to the same fine and confinement that may be imposed upon a person under subsection (d) of this section.

(f) Any person who willfully violates any safety standard pursuant to this chapter or a rule promulgated thereunder that causes a fatality or who willfully orders or carries out such violation that causes a fatality is guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000 or confined in a state correctional facility not less than one year and not more than five years, or both fined and ~~imprisoned~~ confined.

(g) There is continued in the Treasury of the State of West Virginia a Special Health, Safety and Training Fund. All civil penalty assessments collected under this section shall be collected by the director and deposited with the Treasurer of the State of West Virginia to the credit of the Special Health, Safety and Training Fund. The fund shall be used by the director who is authorized to expend the moneys in the fund for the administration of this chapter.

§22A-1-35. Mine rescue teams.

(a) The operator shall provide mine rescue coverage at each active underground mine.

(b) Mine rescue coverage may be provided by:

(1) Establishing at least two mine rescue teams which are available at all times when miners are underground; or

(2) Entering into an arrangement for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground.

(3) A West Virginia Office of Miners' Health, Safety, and Training Mine Rescue Team ~~may~~ shall serve as a second or backup team for mines within the state and qualify as one of the two teams required under subdivision (1) of this subsection and in accordance with 30 CFR, Part 49.20(4) for all mines with no backup team available within a one-hour drive to the mine. The operator shall contact the office and ~~obtain the state's agreement to serve as a backup team in the form of a written notification signed by the director and this notification shall be kept posted at the mine~~ notify them of the need for mine rescue services beginning July 1, 2019. The director shall utilize surplus funds from the West Virginia Office of Miners' Health, Safety, and Training's special revenue fund to provide backup mine rescue services.

(c) As used in this section, mine rescue teams shall be considered available where teams are capable of presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or while in an off-duty capacity. The requirement that mine rescue teams be available does not apply when teams are participating in mine rescue contests or providing rescue services to another mine.

(d) In the event of a fire, explosion, or recovery operations in or about any mine, the director is hereby authorized to assign any mine rescue team to said mine to protect and preserve life and property. The director may also assign mine rescue and recovery work to inspectors, instructors, or other qualified employees of the office as he or she deems necessary.

(e) The ground travel time between any mine rescue station and any mine served by that station shall not exceed two hours. To ensure adequate rescue coverage for all underground mines, no mine rescue station may provide coverage for more than ~~seventy~~ 70 mines within the two-hour ground travel limit as defined in this subsection.

(f) Each mine rescue team shall consist of five members and one alternate, who are fully qualified, trained, and equipped for providing emergency mine rescue service. Each mine rescue team shall be trained by a state certified mine rescue instructor.

(g) Each member of a mine rescue team must have been employed in an underground mine for a minimum of one year. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground meet the experience requirement. The underground experience requirement is waived for those members of a mine rescue team on the effective date of this statute.

(h) An applicant for initial mine rescue training shall pass, on at least an annual basis, a physical examination by a licensed physician certifying his or her fitness to perform mine rescue work. A record that such examination was taken, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to the director.

(i) Upon completion of the initial training, all mine rescue team members shall receive at least ~~forty~~ 40 hours of refresher training annually. This training shall be given at least four hours each month, or for a period of eight hours every two months, and shall include:

(1) Sessions underground at least once every six months;

(2) The wearing and use of a breathing apparatus by team members for a period of at least two hours, while under oxygen, once every two months;

(3) Where applicable, the use, care, capabilities, and limitations of auxiliary mine rescue equipment, or a different breathing apparatus; and

(4) Mine map training and ventilation procedures.

(j) When engaged in rescue work required by an explosion, fire, or other emergency at a mine, all members of mine rescue teams assigned to rescue operations shall, during the period of their rescue work, be employees of the operator of the mine where the emergency exists, and shall be compensated by the operator at the rate established in the area for such work. In no case shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, members of mine rescue teams shall be protected by the workers' compensation subscription of the mine operator.

(k) During the recovery work and prior to entering any mine at the start of each shift, all rescue or recovery teams shall be properly informed of existing conditions and work to be performed by the designated company official in charge.

(1) For every two teams performing rescue or recovery work underground, one six-member team shall be stationed at the mine portal.

(2) Each rescue or recovery team performing work with a breathing apparatus shall be provided with a backup team of equal number, stationed at each fresh air base.

(3) The mine operator shall provide two-way communication and a lifeline or its equivalent at each fresh air base for all mine rescue or recovery teams and no mine rescue team member shall advance more than 1,000 feet in by the fresh air base: *Provided*, That if a life may possibly be saved and existing conditions do not create an unreasonable hazard to mine rescue team members, the rescue team may advance a distance agreed upon by those persons directing the mine rescue or recovery operations: *Provided, however*, That the mine operator shall provide a lifeline or its equivalent in each fresh air base for all mine rescue or recovery teams.

(4) A rescue or recovery team shall immediately return to the fresh air base when the atmospheric pressure of any member's breathing apparatus depletes to ~~sixty~~ 60 atmospheres, or its equivalent.

(l) Mine rescue stations shall provide a centralized storage location for rescue equipment. This storage location may be either at the mine site, affiliated mines, or a separate mine rescue structure. All mine rescue teams shall be guided by the mine rescue apparatus and auxiliary equipment manual. Each mine rescue station shall be provided with at least the following equipment:

(1) Twelve self-contained oxygen breathing apparatuses, each with a minimum of two hours capacity, and any necessary equipment for testing such breathing apparatuses;

(2) A portable supply of liquid air, liquid oxygen, pressurized oxygen, oxygen generating or carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatuses and sufficient to sustain each team for six hours while using the breathing apparatuses during rescue operations;

(3) One extra, fully charged, oxygen bottle for each self-contained compressed oxygen breathing apparatus, as required under subdivision (1) of this subsection;

(4) One oxygen pump or a cascading system, compatible with the supplied breathing apparatuses;

(5) Twelve permissible cap lamps and a charging rack;

(6) Two gas detectors appropriate for each type of gas which may be encountered at the mines served;

(7) Two oxygen indicators;

(8) One portable mine rescue communication system or a sound-powered communication system. The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system. The communication system shall be at least ~~one thousand~~ 1,000 feet in length; and

(9) Necessary spare parts and tools for repairing the breathing apparatuses and communication system, as presently prescribed by the manufacturer.

(m) Mine rescue apparatuses and equipment shall be maintained in a manner that will ensure readiness for immediate use. A person trained in the use and care of breathing apparatuses shall inspect and test the apparatuses at intervals not exceeding ~~thirty~~ 30 days and shall certify by signature and date that the inspections and tests were done. When the inspection indicates that a corrective action is necessary, the corrective action shall be made and recorded by said person. The certification and corrective action records shall be maintained at the mine rescue station for a period of one year and made available on request to an authorized representative of the director.

(n) Authorized representatives of the director have the right of entry to inspect any designated mine rescue station.

(o) When an authorized representative finds a violation of any of the mine rescue requirements, the representative shall take appropriate corrective action in accordance with §22A-1-15 of this ~~article~~ code.

(p) Operators affiliated with a station issued an order by an authorized representative will be notified of that order and that their mine rescue program is invalid. The operators shall have ~~twenty-four~~ 24 hours to submit to the director a revised mine rescue program.

(q) Every operator of an underground mine shall develop and adopt a mine rescue program for submission to the director within ~~thirty~~ 30 days of the effective date of this statute: *Provided*, That a new program need only be submitted when conditions exist as defined in subsection (p) of this section, or when information contained within the program has changed.

(r) A copy of the mine rescue program shall be posted at the mine and kept on file at the operator's mine rescue station or rescue station affiliate and the state regional office where the mine is located. A copy of the mine emergency notification plan filed pursuant to 30 CFR §49.9(a) will satisfy the requirements of subsection (q) of this section if submitted to the director.

(s) The operator shall immediately notify the director of any changed conditions materially affecting the information submitted in the mine rescue program.

§22A-1-43. Hold harmless clause; decision to enter mine.

(a) If any injury or death shall occur to any person who has entered any mine, whether active workings, inactive workings, or abandoned workings, without permission, neither:

(1) The owner of that mine or property; nor

(2) The State of West Virginia or any of its political subdivisions, or any agency operating under color of law thereunder; nor

(3) Any person, organization, or entity involved in any rescue or attempted rescue of such person who has committed an entry without permission, shall be held liable in any court or other forum for such injury or death.

(b) The director is authorized to make the decision on whether a mine is too dangerous, and this decision is not subject to review by a court of this state.

(c) A company shall not be required or ordered to conduct rescue operations.

§22A-1-44. Temporary exemption for environmental regulations.

In the event of an unauthorized entry by any person or persons into any mine whether active workings, inactive workings, or abandoned workings, neither the owner of that mine or property, nor any other person, organization, or entity involved in any rescue or attempted rescue of such person, may be held liable for any violation of any environmental regulation, if such violation occurred as part of any rescue efforts.

ARTICLE 1A. OFFICE OF MINERS' HEALTH, SAFETY, AND TRAINING; ADMINISTRATION; SUBSTANCE ABUSE.

§22A-1A-1. Substance abuse screening; minimum requirements; standards and procedures for screening.

(a) Every employer of certified persons, as defined in §22A-1-2 of this chapter code, shall implement a substance abuse screening policy and program that shall, at a minimum, include:

(1) A preemployment, ~~ten~~ 10-panel urine test for the following and any other substances as set out in rules adopted by the Office of Miners' Health, Safety, and Training:

(A) Amphetamines;

(B) Cannabinoids/THC;

(C) Cocaine;

(D) Opiates;

(E) Phencyclidine (PCP);

(F) Benzodiazepines;

- (G) Propoxyphene;
- (H) Methadone;
- (I) Barbiturates; and
- (J) Synthetic narcotics.

Split samples shall be collected by providers who are certified as complying with standards and procedures set out in the United States Department of Transportation's rule, 49 C. F. R. Part 40, which may be amended, from time to time, by legislative rule of the Office of Miners' Health, Safety, and Training. Collected samples shall be tested by laboratories certified by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) for collection and testing. Notwithstanding the provisions of this subdivision, the mine operator may implement a more stringent substance abuse screening policy and program;

(2) A random substance abuse testing program covering the substances referenced in subdivision (1) of this subsection. 'Random testing' means that each person subject to testing has a statistically equal chance of being selected for testing at random and at unscheduled times. The selection of persons for random testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with the persons' Social Security numbers, payroll identification numbers, or other comparable identifying numbers; and

(3) Review of the substance abuse screening program with all persons required to be tested at the time of employment, upon a change in the program and annually thereafter.

(b) For purposes of this subsection, preemployment testing shall be required upon hiring by a new employer, rehiring by a former employer following a termination of the employer/employee relationship or transferring to a West Virginia mine from an employer's out-of-state mine to the extent that any substance abuse test required by the employer in the other jurisdiction does not comply with the minimum standards for substance abuse testing required by this article. Furthermore, the provisions of this section apply to all employers that employ certified persons who work in mines, regardless of whether that employer is an operator, contractor, subcontractor or otherwise.

(c) Any employee involved in an accident that results in physical injuries or damage to equipment or property may be subject to a drug test by his or her employer.

~~(e)~~ (d) (1) Every employer shall notify the director, on a form prescribed by the director, within seven days of any of the following:

(A) A Any positive drug or alcohol test of a certified person., ~~whether it be a preemployment test, random test, reasonable suspicion test or post-accident test.~~ However, for purposes of determining whether a drug test is positive the certified employee may not rely on a prescription dated more than one year prior to the date of the drug test result;

- (B) The refusal of a certified person to submit a sample;
- (C) A certified person possessing a substituted sample or an adulterated sample; or
- (D) A certified person submitting a substituted sample or an adulterated sample.

(2) With respect to any certified person subject to a collective bargaining agreement, the employer shall notify the director, on a form prescribed by the director, within seven days of any of the following:

(A) A ~~Any~~ positive drug or alcohol test of a certified person, ~~whether it be a preemployment test, random test, reasonable suspicion test or post-accident test.~~ However, for purposes of determining whether a drug test is positive the certified employee may not rely on a prescription dated more than one year prior to the date of the drug test result;

(B) The refusal of a certified person to submit a sample;

(C) A certified person possessing a substituted sample or an adulterated sample; or

(D) A certified person submitting a substituted sample or an adulterated sample.

(3) When the employer submits the completed notification form prescribed by the director, the employer shall also submit a copy of the laboratory test results showing the substances tested for and the results of the test.

(4) Notice shall result in the immediate temporary suspension of all certificates held by the certified person who failed the screening, pending a hearing before the board of appeals pursuant to §22A-1-2 of this ~~article~~ code.

~~(d)~~ (e) Suspension or revocation of a certified person's certificate as a miner or other miner specialty in another jurisdiction by the applicable regulatory or licensing authority for substance abuse-related matters shall result in the director's immediately and temporarily suspending the certified person's West Virginia certificate until such time as the certified person's certification is reinstated in the other jurisdiction.

~~(e)~~ (f) The provisions of this article shall not be construed to preclude an employer from developing or maintaining a drug and alcohol abuse policy, testing program, or substance abuse program that exceeds the minimum requirements set forth in this section. The provisions of this article shall also not be construed to require an employer to alter, amend, revise or otherwise change, in any respect, a previously established substance abuse screening policy and program that meets or exceeds the minimum requirements set forth in this section. The provisions of this article shall require an employer to subject its employees who as part of their employment are regularly present at a mine and who are employed in a safety-sensitive position to preemployment and random substance abuse tests: *Provided*, That each employer shall retain the discretion to establish the parameters of its substance abuse screening policy and program so long as it meets the minimum requirements of this article. For purposes of this section, a 'safety-sensitive position' means an employment position where the employee's job responsibilities include duties and activities that involve the personal safety of the employee or others working at a mine.

§22A-1A-2. Board of Appeals hearing procedures.

(a) Any hearing conducted after the temporary suspension of a certified person's certificate pursuant to this article, shall be conducted within ~~sixty~~ 60 days of the temporary suspension. The Board of Appeals shall make every effort to hold the hearing within ~~forty~~ 40 days of the temporary suspension.

(b) All hearings of the Board of Appeals pursuant to this section shall be conducted in accordance with the provisions of §22A-1-31 of this ~~chapter~~ code. In addition to the rules and procedures in §22A-1-31 of this ~~chapter~~ code in hearings under this section, the Board of Appeals may accept as evidence a notarized affidavit of drug testing procedures and results from a Medical Review Officer

(MRO) in lieu of live testimony by the MRO. If the Board of Appeals desires testimony in lieu of a notarized affidavit, the MRO may testify under oath telephonically or by an Internet-based program in lieu of physically attending the hearing. The Board of Appeals may suspend the certificate or certificates of a certified person for violation of this article or for any other violation of this chapter pertaining to substance abuse. The Board of Appeals may impose further disciplinary actions for repeat violations. The director shall have the authority to propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to establish the disciplinary actions referenced in this section following the receipt of recommendations from the Board of Coal Mine Health and Safety following completion of the study required pursuant to §22A-6-14 of this ~~chapter~~ code. The legislative rules authorized by this subsection shall not, however, include any provisions requiring an employer to take or refrain from taking any specific personnel action or mandating any employer to establish or maintain an employer-funded substance abuse rehabilitation program.

(c) No person whose certification is suspended or revoked under this section may perform any duties under any other certification issued under this chapter, during the period of the suspension imposed by the Board of Appeals. For all miners determined to have a positive drug or alcohol test as determined pursuant to the provisions of this article, the board shall suspend the miner's certification card(s) for a minimum of six months from the date of the drug test. This six-month minimum suspension shall also apply to miners who enter into a treatment program after testing positive in a drug test administered pursuant to the provisions of this article and are placed under probationary treatment and testing agreements by the board. The director shall promulgate an emergency rule and legislative rule by July 1, 2019, requiring all miners who have a positive drug or alcohol test shall have their miner certification card(s) suspended for a minimum of six months.

(d) Any party adversely affected by a final order or decision issued by the Board of Appeals hereunder is entitled to judicial review thereof pursuant to §29A-5-4 of this code.

ARTICLE 2. UNDERGROUND MINES.

§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) (a) The A mine operator shall give the director a copy of the MSHA United States Department of Labor's Mine Safety and Health Administration (MSHA)-approved plan and any addenda as soon as the operator receives the approval from 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 this code or state rules.~~

~~(c) (b) 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)~~ (c) 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-2-12. Instruction of employees and supervision of apprentices; annual examination of persons using approved methane-detecting devices; records of examination; maintenance of methane detectors, etc.

(a) The Office of Miners' Health, Safety, and Training shall prescribe and establish a course of instruction in mine safety and particularly in dangers incident to employment in mines and in mining laws and rules, which course of instruction shall be successfully completed within ~~twelve~~ 12 weeks after any person is first employed as a miner. It is further the duty and responsibility of the Office of Miners' Health, Safety, and Training to see that the course is given to all persons as above provided after their first being employed in any mine in this state. In addition to other enforcement actions available to the director, upon a finding by the director of the existence of a pattern of conduct creating a hazardous condition at a mine, the director shall notify the ~~Board of Miners' Training, Education and Certification~~ Board of Coal Mine Health and Safety, which shall cause additional training to occur at the mine addressing such safety issue or issues identified by the director, pursuant to §22A-7-1 *et seq.* of this ~~chapter~~ code. The Director of the Office of Miners' Health, Safety, and Training is authorized to promulgate emergency and legislative rules establishing a course of instruction.

(b) It is the duty of the mine foreman or the assistant mine foreman of every coal mine in this state to see that every person employed to work in the mine is, before beginning work therein, instructed in the particular danger incident to his or her work in the mine, and furnished a copy of the mining laws and rules of the mine. It is the duty of every mine operator who employs apprentices, as that term is used in §22A-8-3 and §22A-8-4 of this ~~chapter~~ code to ensure that the apprentices are effectively supervised with regard to safety practices and to instruct apprentices in safe mining practices. Every apprentice shall work under the direction of the mine foreman or his or her assistant mine foreman and they are responsible for his or her safety. The mine foreman or assistant mine foreman may delegate the supervision of an apprentice to an experienced miner, but the foreman and his or her assistant mine foreman remain responsible for the apprentice. During the first ~~one hundred twenty~~ 120 days of employment in a mine, the apprentice shall work within sight and sound of the mine foreman, assistant mine foreman, or an experienced miner, and in a location that the mine foreman, assistant mine foreman, or experienced miner can effectively respond to cries for help of the apprentice: Provided, That if the apprentice has completed an approved training program as certified by the Board of Coal Mine Health and Safety, this period may be reduced by an amount not to exceed 30 days. The location shall be on the same side of any belt, conveyor, or mining equipment.

(c) Persons whose duties require them to use an approved methane-detecting device or other approved methane detectors shall be examined at least annually as to their competence by a qualified official from the Office of Miners' Health, Safety, and Training and a record of the examination shall be kept by the operator and the office. Approved methane-detecting devices and other approved methane detectors shall be given proper maintenance and shall be tested before each working shift. Each operator shall provide for the proper maintenance and care of the permissible approved methane-detecting device or any other approved device for detecting methane and oxygen deficiency by a person trained in the maintenance, and, before each shift, care shall be taken to ensure that the approved methane-detecting device or other device is in a permissible condition and maintained according to manufacturer's specifications.

§22A-2-13. Daily inspection of working places; records.

Before the beginning of any shift upon which they shall perform supervisory duties, the mine foreman or his or her assistant shall review carefully and countersign all books and records reflecting the conditions and the areas under their supervision, exclusive of equipment logs, which the operator is required to keep under this chapter. The mine foreman, assistant mine foreman, or fire boss shall visit and carefully examine each working place in which miners will be working at the beginning of each shift before any face equipment is energized and shall examine each working place in the mine at least once every two hours each shift while such miners are at work in such places, and shall direct that each working place shall be secured by props, timbers, roof bolts, or other approved methods of roof support or both where necessary to the end that the working places shall be made safe. The mine foreman or his or her assistants upon observing a violation or potential violation of §22A-2-1 *et seq.* of this ~~chapter~~ code or any regulation or any plan or agreement promulgated or entered into thereunder shall arrange for the prompt correction thereof. The foreman shall not permit any miner other than a certified foreman, fire boss, assistant mine foreman, assistant mine foreman-fire boss or pumper to be on a working section by himself or herself. Should the mine foreman or his or her assistants find a place to be in a dangerous condition, they shall not leave the place until it is made safe, or shall remove the persons working therein until the place is made safe by some competent person designated for that purpose.

He or she shall place his or her initials, time and the date at or near each place he or she examines. He or she shall also record any dangerous conditions and practices found during his or her examination in a book provided for that purpose.

Notwithstanding any other law to the contrary, the director may use any data collected from a tracking device as evidence that a person designated to perform daily examinations under this section neglected or failed to perform a duty mandated by this section under §22A-1-31 of this code and may decertify any miner who is found to have failed to perform his or her duties.

§22A-2-80. Existing regulations to be revised.

By August 31, 2019, all existing rules or regulations under authority of this article shall be revised to reflect the changes enacted during the 2019 Regular Session of the Legislature.

ARTICLE 8. CERTIFICATION OF UNDERGROUND AND SURFACE COAL MINERS.**§22A-8-5. Supervision of apprentices.**

Each holder of a permit of apprenticeship shall be known as an apprentice. Any miner holding a certificate of competency and qualification may have one person working with him or her, and under his or her supervision and direction, as an apprentice, for the purpose of learning and being instructed in the duties and calling of mining. Any mine foreman or fire boss, or assistant mine foreman or fire boss, may have three persons working with him or her under his or her supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining: *Provided*, That a mine foreman, assistant mine foreman, or fire boss supervising apprentices in an area where no coal is being produced or which is outby the working section may have as many as five apprentices under his or her supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining or where the operator is using a production section under program for training of apprentice miners, approved by the ~~Board of Miner Training, Education and Certification~~ Board of Coal Mine Health and Safety.

Every apprentice working at a surface mine shall be at all times under the supervision and control of at least one person who holds a certificate of competency and qualification.

In all cases, it is the duty of every mine operator who employs apprentices to ensure that such persons are effectively supervised and to instruct such persons in safe mining practices. Each apprentice shall wear a red hat which identifies the apprentice as such while employed at or near a mine. No person shall be employed as an apprentice for a period in excess of eight months, except that in the event of illness or injury, time extensions shall be permitted as established by the Director of the Office of Miners' Health, Safety, and Training.

§22A-8-10. Loss of certification for unlawful trespass.

Upon a conviction under the provisions of §61-3B-6 of this code, the certification of any person certified under the provision of §22A-8-1 et seq. of this code, including a safety sensitive certification issued pursuant to 56 CSR 19, shall be deemed revoked and person shall be permanently barred from holding a certification under the provisions of §22A-8-1 et seq. of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat, or other vessel; penalties; counts in indictment.

If any person shall, at any time, break and enter, or shall enter without breaking, any office, shop, ~~underground coal mine~~, storehouse, warehouse, banking house, or any house or building, other than a dwelling house or outhouse adjoining thereto or occupied therewith, any railroad or traction car, propelled by steam, electricity or otherwise, any steamboat or other boat or vessel, or any commercial, industrial or public utility property enclosed by a fence, wall, or other structure erected with the intent of the property owner of protecting or securing the area within and its contents from unauthorized persons, within the jurisdiction of any county in this state, with intent to commit a felony or any larceny, he or she shall be deemed guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than one nor more than 10 years. And if any person shall, at any time, break and enter, or shall enter without breaking, any automobile, motorcar, or bus, with like intent, within the jurisdiction of any county in this state, he or she shall be guilty of a misdemeanor and, upon conviction, shall be confined in jail not less than two nor more than 12 months and be fined not exceeding \$100.

An indictment for burglary may contain one or more counts for breaking and entering, or for entering without breaking, the house or building mentioned in the count for burglary under the provisions of this section and §61-3-11 of this code.

ARTICLE 3B. TRESPASS.

§61-3B-6. Mine trespass; penalties.

(a) A person who willfully enters an underground coal mine, whether active workings, inactive workings, or abandoned workings, without permission, is guilty of a felony and, upon conviction thereof shall be imprisoned in a correctional facility not less than one year and nor more than 10 years and shall be fined not less than \$5,000 nor more than \$10,000: *Provided*, That for any conviction pursuant to this subsection, any inactive or abandoned underground workings must be either: (1) sealed; or (2) clearly identified by signage at some conspicuous place near the entrance of the mine that includes a notice that the unauthorized entry into the mine is a felony criminal offense.

(b) A person who willfully enters a surface coal mine, whether active workings, inactive workings or abandoned workings, without permission, and with the intent to commit a felony or any larceny, is

guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than one week and not more than one month and shall be fined not less than \$1,000 nor more than \$5,000. For a second conviction, pursuant to this subsection, the person shall be guilty of a felony and shall be confined in a correctional facility not less than one year and not more than five years and shall be fined not less than \$5,000 nor more than \$10,000. For a third or subsequent conviction, pursuant to this subsection, the person shall be guilty of a felony and shall be confined in a correctional facility not less than five year and not more than 10 years and shall be fined not less than \$10,000, nor more than \$25,000.

(c) If a person violates subsections (a) or (b) of this section, and during any rescue efforts for any such person, there occurs an injury that causes substantial physical pain, illness, or any impairment of physical condition to any person other than himself or herself, then that person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one week and not more than one year and shall be fined not less than \$1,000 nor more than \$5,000: *Provided*, That such jail term shall include actual confinement of not less than seven days.

(d) If a person violates subsections (a) or (b) of this section, and during any rescue efforts for any such person, there occurs an injury that creates a substantial risk of death, causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ to any person other than himself or herself, then that person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than two nor more than 10 years and shall be fined not less than \$5,000 nor more than \$10,000.

(e) If a person violates subsections (a) or (b) of this section, and during any rescue efforts of such person, the death of any other person occurs, then that person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than three nor more than 15 years and shall be fined not less than \$10,000 nor more than \$25,000.

(f) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass in violation of this section is liable to the property owner in the amount of twice the amount of such damage.

(g) The terms 'mine', 'active workings', 'inactive workings,' and 'abandoned workings' have the same meaning ascribed to such terms as set forth in §22A-1-2 of this code.

(h) Nothing in this section shall be construed to prevent lawful assembly and petition for the lawful redress of grievances, during any dispute, including, but not limited to, activities protected by the West Virginia Constitution or the United States Constitution or any statute of this state or the United States."

The bill was ordered to third reading.

S. B. 636, Authorizing legislative rules for Higher Education Policy Commission; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 668, Relating to physician assistants collaborating with physicians in hospitals; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Health and Human Resources, was reported by the Clerk and adopted, amending the bill on page three, section three, line nine, by striking out the words "at the direction of his or her collaborating physician," and the comma.

On page four, section three, line twenty-five, by striking "or practice notification".

On page four, section three, line thirty-seven, by striking out “or practice notification”.

On page five, section nine, line thirteen, by striking out “or practice notification”.

And,

On page fifty, by striking out section ten-a and inserting in lieu thereof the following:

“§30-3E-10a. Practice notification requirements.

(a) A physician assistant shall collaborate with physicians in a hospital only after the physician assistant is notified by the appropriate licensing board that a complete practice notification has been filed with the Board.

(b) The licensing boards shall promulgate emergency rules to establish the content and criteria for submission of practice notifications for physician assistant hospital practice.

(c) A physician assistant shall notify the Board, in writing, within ten days of the termination of a practice notification. Failure to provide timely notice of the termination constitutes unprofessional conduct and disciplinary proceedings may be instituted by the appropriate licensing board.”

On page six, line two, by striking out the word, “or”.

On page seven, line twenty-one subsection (c) after the period by striking the remainder of the subsection.

On page seven, line twenty-five, by striking out subsection (d) and inserting a new subsection (d) to read as follows:

(d) Every licensed physician assistant shall be individually responsible and liable for the care they provide. This article does not relieve physician assistants or collaborating physicians of responsibility and liability which otherwise may exist for acts and omissions occurring during collaboration.

On page seven, after line twenty-seven, by inserting the following:

“§30-3E-12. Scope of practice.

(a) A license issued to a physician assistant by the appropriate state licensing board shall authorize the physician assistant to perform medical acts:

(1) Pursuant to a practice notification or delegated to the physician assistant as part of an authorized practice agreement;

(2) Appropriate to the education, training and experience of the physician assistant;

(3) Customary to the practice of the collaborating physician; and

(4) Consistent with the laws of this state and rules of the boards.

(b) This article does not authorize a physician assistant to perform any specific function or duty delegated by this code to those persons licensed as chiropractors, dentists, dental hygienists, optometrists or pharmacists, or certified as nurse anesthetists.”

And,

On page seven, line four, by striking out the word, "primary".

The bill was then ordered to third reading.

First Reading

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

Com. Sub. for S. B. 100, Increasing court fees to fund law-enforcement standards training and expenses,

Com. Sub. for S. B. 101, Equalizing penalties for intimidating and retaliating against certain public officers and other persons,

Com. Sub. for S. B. 154, Using school facilities for funeral and memorial services for certain community members,

Com. Sub. for S. B. 163, Authorizing DEP promulgate legislative rules,

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

S. B. 190, DOH rule relating to employment procedures,

Com. Sub. for S. B. 223, Authorizing Department of Commerce promulgate legislative rules,

Com. Sub. for S. B. 237, Improving ability of law enforcement to locate and return missing persons,

Com. Sub. for S. B. 316, Preserving previously approved state Municipal Policemen's or Firemen's pensions,

Com. Sub. for S. B. 330, Requiring contact information be listed on agency's online directory and website,

Com. Sub. for S. B. 344, Relating to operation of state-owned farms,

Com. Sub. for S. B. 360, Relating to third-party litigation financing,

Com. Sub. for S. B. 373, Relating to financial responsibility of inmates,

And,

Com. Sub. for S. B. 481, Relating to Judicial Vacancy Advisory Commission.

Com. Sub. for S. B. 491, Extending effective date for voter registration in conjunction with driver licensing; on first reading, coming up in regular order, were each read a first time.

Pursuant to House Rule 103, Delegate Robinson moved that the bill be rejected on first reading.

The question being, "Shall the bill be rejected?", the yeas and nays were demanded, which demand was sustained.

Having been ordered, the yeas and nays were taken (**Roll No. 414**), and there were—yeas 38, nays 57, absent and not voting 5, with the yeas and absent and not voting being as follows:

Yeas: Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Lavender-Bowe, Lovejoy, Miley, Miller, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaugle, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Williams and Zukoff.

Absent and Not Voting: Angelucci, Cooper, Longstreth, Porterfield and Stagers.

So, a majority of the members present and voting not having voted in the affirmative, the motion to reject the bill on first reading did not prevail.

The bill was then ordered to second reading:

S. B. 519, Requiring county emergency dispatchers complete course for telephonic cardiopulmonary resuscitation; on first reading, coming up in regular order, was read a first time and ordered to second reading.

S. B. 531, Relating generally to workers' compensation claims; on first reading, coming up in regular order, was read a first time and ordered to second reading.

Com. Sub. for S. B. 624, Allowing county boards of education use alternative assessment provided in Every Student Succeeds Act; on first reading, coming up in regular order, was read a first time and ordered to second reading.

S. B. 664, Authorizing certain members of federal judiciary perform marriages; on first reading, coming up in regular order, was read a first time and ordered to second reading.

S. B. 667, Creating WV Motorsport Committee; on first reading, coming up in regular order, was read a first time and ordered to second reading.

At 12:44 p.m., the House of Delegates recessed until 4:00 p.m.

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Afternoon Session

* * * * *

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

In the absence of objection, the House returned to the Seventh Order of Business for the purpose of introducing resolutions.

Resolutions Introduced

Delegates Cooper, Dean, Toney, J. Kelly, Paynter, Hott, Rohrbach, Campbell, Pack, R. Thompson and Lavender-Bowe offered the following resolution, which was read by its title and referred to the Committee on Education then Rules:

H. C. R. 89 - "Requesting the Joint Committee on Government and Finance to study the feasibility of designating teachers and school superintendents to identify issues confronting the school system of the state and potential solutions to solving these issues."

Whereas, The school system of West Virginia has had unsolved problems for decades that include, among other issues, pay and insurance. The current session of the Legislature has attempted to deal with a variety of these problems with an "omnibus education bill" that, rather than provide solutions to problems, has led to dissention among the many stakeholders and persons affected by the legislation; and

Whereas, An alternative addressing the many issues and problems may be the designation of "focus" groups consisting of classroom teachers in one group and county superintendents and the state school superintendent in another group brain-storming ideas to identify the five most important problems or issues facing the education system in this state; and

Whereas, This might be accomplished by having one designated focus group consisting of currently employed teachers who are active in the class room, who will hold meetings in five separate areas or zones of the state to identify and discuss the five greatest problems or issues facing the education system and to propose solutions to these problems. At the same time, designate, separate from the teachers' meetings, that county superintendents and the state superintendent meet to discuss the five greatest problems and issues and develop solutions. Then, the five teachers' groups would meet with the superintendents to compare their five problems or issues that need to be solved and their answers to these problems; striving to arrive at solutions to the five most important issues. These are to be presented to the Legislature, in the hope that workable legislation will devolve; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the problems and issues within the state's school system and using some or all of the suggestions contained in this resolution; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Delegate Wilson offered the following resolution, which was read by its title and referred to the Committee on the Judiciary then Rules:

H. C. R. 90 - "Requesting the Joint Committee on Government and Finance study the authority and proper circumstances for mobilization of the National Guard into active duty for combat."

Whereas, Article I, Section 8 of the Constitution of the United States vests in the United States Congress the exclusive power of war; and

Whereas, In spite of the clear language of the United States Constitution, vesting the power over war exclusively in the United States Congress, the United States Executive Branch has assumed that power without the constitutional declaration required of the United States Congress; and

Whereas, Though the United States Congress has not declared war in over 70 years, the nation has since gone to war repeatedly at the whim of the executive branch;

Whereas, When such unconstitutional actions are taken by the federal government, it is the proper role of the states themselves to take action to remedy such situations, as outlined in the Kentucky and Virginia Resolutions of 1798; and

Whereas, George Washington, once wrote: "The Constitution vests the power of declaring war in Congress; therefore, no offensive expedition of importance can be undertaken until after they shall have deliberated upon the subject and authorized such a measure"; and

Whereas, The Father of the Constitution, James Madison, once wrote: "The Constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It has accordingly with studied care vested the question of war to the Legislature";

Whereas, The author of the Declaration of Independence, Thomas Jefferson, once wrote: "We have already given in example one effectual check to the dog of war by transferring the power of letting him loose from the Executive to the Legislative body. . ." and "Considering that Congress alone is constitutionally invested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using force in any degree which could be avoided"; and

Whereas, Another constitutional framer, Alexander Hamilton, once wrote: "The Congress shall have the power to declare war; the plain meaning of which is, that it is the peculiar and exclusive duty of Congress, when the nation is at peace, to change that state into a state of war..."; and

Whereas, Mobilization of the West Virginia National Guard to active duty for combat without lawful congressional authorization usurps the authority of the state, drains the financial resources of the country, and unnecessarily risks the lives of citizens of West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance study the authority and proper circumstances for mobilization of the National Guard into active duty for combat; and, be it

Further Resolved, That in conducting the study, the committee include an evaluation of the necessary and lawful means through which the state may assert and require that the constitutional processes be followed before its citizens are deployed for combat; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, 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.

In the absence of objection, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

Committee Reports

Delegate Butler, Chair of the Committee on Technology and Infrastructure, submitted the following report, which was received:

Your Committee on Technology and Infrastructure has had under consideration:

S. B. 297, Extending expiration of military members' spouses' driver's license,

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

In accordance with the former direction of the Speaker, the bill (S. B. 297) was referred to the Committee on Finance.

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

Your Committee on the Judiciary has had under consideration:

Com. Sub. for S. B. 285, Relating to sale of homemade food items,

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

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

Your Committee on the Judiciary has had under consideration:

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

And,

S. B. 675, Requiring DEP create and implement Adopt-A-Stream Program,

And reports the same back with the recommendation that they each do pass.

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

Com. Sub. for S. B. 564, Expanding comprehensive coverage for pregnant women through Medicaid,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 564) was referred to the Committee on Finance.

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

Com. Sub. for S. B. 574, Permitting authorized physician order involuntary hospitalization of individual if physician believes addicted or mentally ill,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 574) was referred to the Committee on the Judiciary.

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

Com. Sub. for S. B. 546, Relating to health care provider taxes,

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

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

Com. Sub. for S. B. 537, Creating workgroup to review hospice need standards,

And,

Com. Sub. for S. B. 653, Relating generally to practice of medical corporations,

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

Leaves of Absence

At the request of Delegate Summers, and by unanimous consent, leaves of absence for the day were granted Delegates Angelucci, Cooper, Longstreth and Porterfield.

Miscellaneous Business

At 4:15 p.m., the House of Delegates adjourned until 11:00 a.m., Monday, March 4, 2019.

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470

SPECIAL CALENDAR

Monday, March 4, 2019

55th Day

11:00 A. M.

THIRD READING

- Com. Sub. for S. B. 3 - Establishing WV Small Wireless Facilities Deployment Act (SHOTT) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for S. B. 72 - Creating Sexual Assault Victims' Bill of Rights (SHOTT) (REGULAR)
- Com. Sub. for S. B. 393 - Protecting right to farm (SHOTT) (REGULAR)
- Com. Sub. for S. B. 441 - Relating to higher education campus police officers (HAMRICK) (REGULAR)
- Com. Sub. for S. B. 520 - Requiring entities report drug overdoses (ELLINGTON) (REGULAR)
- S. B. 635 - Relating generally to coal mining activities (ANDERSON) (EFFECTIVE FROM PASSAGE)
- S. B. 636 - Authorizing legislative rules for Higher Education Policy Commission (HAMRICK) (EFFECTIVE FROM PASSAGE)
- S. B. 668 - Relating to physician assistants collaborating with physicians in hospitals (ELLINGTON) (REGULAR)

SECOND READING

- Com. Sub. for S. B. 100 - Increasing court fees to fund law-enforcement standards training and expenses (FINANCE COMMITTEE TITLE AMENDMENT PENDING) (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 101 - Equalizing penalties for intimidating and retaliating against certain public officers and other persons (SHOTT) (REGULAR)
- Com. Sub. for S. B. 154 - Using school facilities for funeral and memorial services for certain community members (HAMRICK) (REGULAR)
- Com. Sub. for S. B. 163 - Authorizing DEP promulgate legislative rules (SHOTT) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for S. B. 175 - Authorizing DHHR promulgate legislative rules (JUDICIARY COMMITTEE AMENDMENT PENDING) (SHOTT) (EFFECTIVE FROM PASSAGE)
- S. B. 190 - DOH rule relating to employment procedures (SHOTT) (EFFECTIVE FROM PASSAGE)

- Com. Sub. for S. B. 223 - Authorizing Department of Commerce promulgate legislative rules (SHOTT) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for S. B. 237 - Improving ability of law enforcement to locate and return missing persons (SHOTT) (REGULAR)
- Com. Sub. for S. B. 316 - Preserving previously approved state Municipal Policemen's or Firemen's pensions (FINANCE COMMITTEE TITLE AMENDMENT PENDING) (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 330 - Requiring contact information be listed on agency's online directory and website (HOWELL) (REGULAR)
- Com. Sub. for S. B. 344 - Relating to operation of state-owned farms (HOWELL) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for S. B. 360 - Relating to third-party litigation financing (JUDICIARY COMMITTEE AMENDMENT PENDING) (SHOTT) (REGULAR)
- Com. Sub. for S. B. 373 - Relating to financial responsibility of inmates (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 481 - Relating to Judicial Vacancy Advisory Commission (JUDICIARY COMMITTEE AMENDMENT PENDING) (SHOTT) (REGULAR)
- Com. Sub. for S. B. 491 - Extending effective date for voter registration in conjunction with driver licensing (JUDICIARY COMMITTEE AMENDMENT PENDING) (SHOTT) (EFFECTIVE FROM PASSAGE)
- S. B. 519 - Requiring county emergency dispatchers complete course for telephonic cardiopulmonary resuscitation (HOUSEHOLDER) (REGULAR)
- S. B. 531 - Relating generally to workers' compensation claims (SHOTT) (REGULAR)
- Com. Sub. for S. B. 624 - Allowing county boards of education use alternative assessment provided in Every Student Succeeds Act (HAMRICK) (JULY 1, 2019)
- S. B. 664 - Authorizing certain members of federal judiciary perform marriages (SHOTT) (EFFECTIVE FROM PASSAGE)
- S. B. 667 - Creating WV Motorsport Committee (HOWELL) (REGULAR)

FIRST READING

- Com. Sub. for S. B. 1 - Increasing access to career education and workforce training (FINANCE COMMITTEE AMENDMENT PENDING) (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 187 - Authorizing Department of Revenue to promulgate legislative rules (SHOTT) (EFFECTIVE FROM PASSAGE)

- Com. Sub. for S. B. 285 - Relating to sale of homemade food items (JUDICIARY COMMITTEE AMENDMENT PENDING) (SHOTT) (REGULAR)
- Com. Sub. for S. B. 537 - Creating workgroup to review hospice need standards (HEALTH AND HUMAN RESOURCES COMMITTEE AMENDMENT PENDING) (ELLINGTON) (REGULAR)
- Com. Sub. for S. B. 546 - Relating to health care provider taxes (HEALTH AND HUMAN RESOURCES COMMITTEE AMENDMENT PENDING) (ELLINGTON) (JULY 1, 2019)
- S. B. 587 - Relating to PEIA reimbursement of air ambulance providers (HOUSEHOLDER) (REGULAR)
- S. B. 617 - Relating to method of payment to Municipal Pensions Security Fund (FINANCE COMMITTEE AMENDMENT PENDING) (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 653 - Relating generally to practice of medical corporations (HEALTH AND HUMAN RESOURCES COMMITTEE AMENDMENT PENDING) (ELLINGTON) (REGULAR)
- S. B. 675 - Requiring DEP create and implement Adopt-A-Stream Program (SHOTT) (EFFECTIVE FROM PASSAGE)

HOUSE CALENDAR

Monday, March 4, 2019

55th Day

11:00 A. M.

THIRD READING

- H. B. 2729 - Recognition of Emergency Medical Services Personnel Licensure Interstate Compact (HOWELL) (REGULAR)
- Com. Sub. for H. B. 2931 - Clarifying that the State Lottery Commission has no authority over nonlottery games (SHOTT) (REGULAR)
- Com. Sub. for H. B. 3105 - Permitting the Alcohol Beverage Control Administration to request the assistance of law enforcement (HOWELL) (REGULAR)
- H. B. 3136 - Relating to the Centers for Medicare and Medicaid Services (HOUSEHOLDER) (REGULAR)
- H. B. 3137 - Relating to the personal income tax fund (HOUSEHOLDER) (REGULAR)

SECOND READING

- Com. Sub. for S. B. 529 - Clarifying provisions of Nonintoxicating Beer Act (SHOTT) (REGULAR)
- Com. Sub. for H. B. 2008 - Relating to nonpartisan election of justices of the Supreme Court of Appeals (SHOTT) (REGULAR)
- Com. Sub. for H. B. 2433 - Modifying the school calendar to begin not earlier than Labor Day and end prior to Memorial Day (HAMRICK) (REGULAR)
- Com. Sub. for H. B. 2441 - Removing certain requirements related to wages for construction of public improvements (SHOTT) (REGULAR)
- Com. Sub. for H. B. 2597 - Creating a hunting permit to safely accommodate visually impaired hunters (SHOTT) (REGULAR)
- H. B. 2692 - Relating to primary elections and procedures (HOWELL) (REGULAR)
- H. B. 2732 - Defend the Guard Act (MCGEEHAN) (REGULAR)
- H. B. 2819 - Relating generally to contractors (FINANCE COMMITTEE AMENDMENT PENDING) (HOUSEHOLDER) (REGULAR)
- H. B. 2953 - Permitting a critical access hospital to become a community outpatient medical center (ELLINGTON) (REGULAR)

- Com. Sub. for H. B. 2976 - Economic Diversification Act of 2019 (CRISS) (REGULAR)
- Com. Sub. for H. B. 2980 - Mine Trespass Act (SHOTT) (REGULAR)
- Com. Sub. for H. B. 3100 - Clarifying certain provisions of the Nonintoxicating Beer Act (HOWELL) (REGULAR)
- Com. Sub. for H. B. 3103 - Authorizing operators of a distillery or mini-distillery to offer for purchase and consumption liquor on the premises (HOWELL) (REGULAR)
- Com. Sub. for H. B. 3116 - Removing current limitations on sales of nonintoxicating beer and nonintoxicating craft beer growlers (HOWELL) (REGULAR)
- H. B. 3147 - Requiring the Board of Insurance and Risk Management purchase life insurance products from state resident agents (HOWELL) (REGULAR)

FIRST READING

- Com. Sub. for H. B. 2179 - Allowing nonmembers of a political party to request that party's partisan ballot at a primary election (SHOTT) (REGULAR)

WEST VIRGINIA HOUSE OF DELEGATES

MONDAY, MARCH 4, 2019

HOUSE CONVENES AT 11:00 A.M.

**COMMITTEE ON EDUCATION
9:00 A.M. – ROOM 432M**

**COMMITTEE ON GOVERNMENT ORGANIZATION
9:00 A.M. – ROOM 215E**

**COMMITTEE ON THE JUDICIARY
9:15 A.M. – ROOM 418M**

**COMMITTEE ON RULES
10:45 A.M. – BEHIND CHAMBER**

**TECHNOLOGY & INFRASTRUCTURE
1:00 P.M. – ROOM 215E**

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470