

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-THIRD LEGISLATURE
REGULAR SESSION, 2017
FIFTY-NINTH DAY

Charleston, West Virginia, Friday, April 7, 2017

The Senate met at 11 a.m.

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

Prayer was offered by the Reverend Dan Biser, Foxes Hollow Baptist Church, Romney, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Ron Stollings, a senator from the seventh district.

Pending the reading of the Journal of Thursday, April 6, 2017,

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

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

The Senate then proceeded to the third order of business.

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

Eng. Com. Sub. for Senate Bill 4, Allowing licensed professionals donate time to care of indigent and needy in clinical setting.

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

Eng. Com. Sub. for Senate Bill 187, Providing for confidentiality of patients' medical records.

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

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

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

That §27-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CONFIDENTIALITY.

§27-3-1. DEFINITION OF CONFIDENTIAL INFORMATION; DISCLOSURE.

(a) Communications and information obtained in the course of treatment or evaluation of any client or patient are confidential information. Such confidential information includes the fact that a person is or has been a client or patient, information transmitted by a patient or client or family thereof for purposes relating to diagnosis or treatment, information transmitted by persons participating in the accomplishment of the objectives of diagnosis or treatment, all diagnoses or opinions formed regarding a client's or patient's physical, mental or emotional condition, any advice, instructions or prescriptions issued in the course of diagnosis or treatment, and any record or characterization of the matters hereinbefore described. It does not include information which does not identify a client or patient, information from which a person acquainted with a client or patient would not recognize such client or patient and uncoded information from which there is no possible means to identify a client or patient.

(b) Confidential information shall not be disclosed, except:

(1) In a proceeding under section four, article five of this chapter to disclose the results of an involuntary examination made pursuant to section two, three or four of said article;

(2) In a proceeding under article six-a of this chapter to disclose the results of an involuntary examination made pursuant thereto;

(3) Pursuant to an order of any court based upon a finding that the information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section;

(4) To provide notice to the federal National Instant Criminal Background Check System, established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act, 18 U. S. C. §922, in accordance with article seven-a, chapter sixty-one of this code;

(5) To protect against a clear and substantial danger of imminent injury by a patient or client to himself, herself or another;

~~(6) For treatment or internal review purposes, to staff of the mental health facility where the patient is being cared for or to other health professionals involved in treatment of the patient; and~~

~~(7) Without the patient's consent as provided for under the Privacy Rule of the federal Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. §164.506, for thirty days from the date of admission to a mental health facility if: (i) The provider makes a good faith effort to obtain consent from the patient or legal representative prior to disclosure; (ii) the minimum information necessary is released for a specifically stated purpose; and (iii) prompt notice of the disclosure, the recipient of the information and the purpose of the disclosure is given to the patient or legal representative.~~

(6) Pursuant to and as provided for under the federal privacy rule of the Health Insurance Portability and Accountability Act of 1996 in 45 CFR §164.506; and

(7) Pursuant to and as provided for under the federal privacy rule of the Health Insurance Portability and Accountability Act of 1996 in 45 CFR §164.512: *Provided*, That disclosures made pursuant to 45 CFR §164.512(e) comply with subdivision (3) of this subsection.

(8) Upon execution of a duly executed release in compliance with the Health Insurance Portability and Accountability Act of 1996.;

And,

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

Eng. Com. Sub. for Senate Bill 187—A Bill to amend and reenact §27-3-1 of the Code of West Virginia, 1931, as amended, relating generally to confidentiality of medical records for patients' physical, mental or emotional conditions generally; eliminating disclosure exception for treatment or internal review purposes; eliminating 30-day requirement; eliminating requirement that provider make good faith effort to obtain consent from the patient or legal representative; eliminating requirement that the minimum information necessary is released for a specifically stated purpose; eliminating requirement that prompt notice of the disclosure, the recipient of the information and the purpose of the disclosure is given to the patient or legal representative; adopting provisions of federal law which pertain to disclosure of protected health information; and providing for disclosure upon execution of a duly executed release in compliance with the Health Insurance Portability and Accountability Act of 1996.

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

Engrossed Committee Substitute for Senate Bill 187, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 187) passed with its House of Delegates amended title.

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

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

Eng. Senate Bill 235, Relating to motorcycle registration renewal.

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

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

On page two, section three, line twenty-six, after the words “at least one year” by inserting the words “from the date of registration,”;

On page two, section three, line twenty-seven, after the words “to the division” by changing the colon to a period and striking out the proviso;

And,

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

Eng. Senate Bill 235—A Bill to amend and reenact §17A-10-3 of the Code of West Virginia, 1931, as amended, relating to requiring that the registration fee and any other fees required by this chapter for motorcycles and parking enforcement vehicles shall be for at least one year.

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

Engrossed Senate Bill 235, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 235) passed with its House of Delegates amended title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 235) takes effect from passage.

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

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

Eng. Com. Sub. for Senate Bill 238, Increasing tax credits allowed for rehabilitation of certified historic structures.

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

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

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

That §11-21-8a and §11-21-8e of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-24-23a and §11-24-23e of said code be amended and reenacted, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8A. CREDIT FOR QUALIFIED REHABILITATED BUILDINGS INVESTMENT. A CREDIT AGAINST THE TAX IMPOSED BY THE PROVISIONS OF THIS ARTICLE SHALL BE IS ALLOWED AS FOLLOWS:

(a) Certified historic structures. – For certified historic structures, the credit is equal to ten percent of qualified rehabilitation expenditures as defined in Title 26, §47(c)(2) of the United States Code, as amended: Provided, That for qualified rehabilitation expenditures made after June 30, 2018, the credit allowed by this section is equal to fifteen percent of the qualified rehabilitation expenditure; Provided, however, That for qualified rehabilitation expenditures made after June 30, 2019, the credit allowed by this section is equal to twenty percent of the qualified rehabilitation expenditure; Provided further, That for qualified rehabilitation expenditures made after June 30, 2020, the credit allowed by this section is equal to twenty-five percent of the qualified rehabilitation expenditure; And provided further, That the taxpayer may not be entitled to this credit if the taxpayer is in arrears in the payment of any tax administered by the Tax Division or the taxpayer is delinquent in the payment of property taxes on the property containing the certified historic tax structure when the applicant begins to claim the credit and throughout the time period within which the credit is claimed. The Tax Commissioner shall promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code that provide what information must accompany any claim for the tax credit for the determination that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division nor is the taxpayer delinquent in the payment of property taxes on the property containing the certified historic tax structure. The Tax Commissioner may also propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code for the administration of this tax credit and to provide any necessary mechanism to recover credits claimed by taxpayers that become delinquent in the payment of property taxes on the property containing the historic structure or become in arrears in the payment of any tax administered by the Tax Division. This credit is available for both residential and nonresidential buildings located in this state, that are reviewed by the West Virginia Division of Culture and History and designated by the National Park Service, United States Department of the Interior as certified historic structures, and further

defined as a qualified rehabilitated building, as defined under Title 26, §47(c)(1) of the United States Code, as amended.

(b) No more than \$5 million of the tax credits may be allocated by the Division of Culture and History in any given West Virginia state fiscal year. The Division of Culture and History shall allocate the tax credits in the order the applications therefor are received.

§11-21-8e. Carryback, carryforward.

(a) Any unused portion of the credit for qualified rehabilitated buildings investment authorized by section eight-a of this article which may not be taken in the taxable year to which the credit applies qualifies for carryback and carryforward treatment subject to the identical general provisions under §39, Title 26 of the United States Code, as amended: *Provided*, That the amount of the credit taken in a taxable year shall in no event exceed the tax liability due for the taxable year; *Provided, however*, That for tax years beginning January 1, 2018, any unused portion of the credit authorized by section eight-a of this article, may not be carried back to any prior taxable year; *Provided, further*, That for tax years beginning January 1, 2018, any unused portion of the credit authorized by section eight-a of this article may be carried over to each of the next five tax years following the unused credit year until used or forfeited due to lapse of time.

(b) Effective for taxable years beginning on and after January 1, 2001, credits granted to an electing small business corporation (S corporation), limited partnership, general partnership, limited liability company or multiple owners of property shall be passed through to the shareholders, partners, members or owners, either pro rata or pursuant to an agreement among the shareholders, partners, members or owners documenting an alternative distribution method. The Tax Commissioner shall promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code that provide the method of reporting the alternative method of distribution authorized by this section.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-23A. CREDIT FOR QUALIFIED REHABILITATED BUILDINGS INVESTMENT.

(a) A credit against the tax imposed by the provisions of this article shall be allowed as follows:

Certified historic structures. – For certified historic structures, the credit is equal to ten percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United States Code, as amended: *Provided*, That for qualified rehabilitation expenditures made after June 30, 2018, the credit allowed by this section is equal to fifteen percent of the qualified rehabilitation expenditure; *Provided, however*, That for qualified rehabilitation expenditures made after June 30, 2019, the credit allowed by this section is equal to twenty percent of the qualified rehabilitation expenditure; *Provided further*, That for qualified rehabilitation expenditures made after June 30, 2020, the credit allowed by this section is equal to twenty-five percent of the qualified rehabilitation expenditure; *And provided further*, That the taxpayer may not be entitled to this credit if the taxpayer is in arrears in the payment of any tax administered by the Tax Division or the taxpayer is delinquent in the payment of property taxes on the property containing the certified historic tax structure when the applicant begins to claim the credit and throughout the time period within which the credit is claimed. The Tax Commissioner shall promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code that provide what information must accompany any claim for the tax credit for the determination that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division nor is the taxpayer delinquent in the

payment of property taxes on the property containing the certified historic tax structure. The Tax Commissioner shall also propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code for the administration of this tax credit and to provide any necessary mechanism to recover credits claimed by taxpayers that become delinquent in the payment of property taxes on the property containing the historic structure or become in arrears in the payment of any tax administered by the Tax Division. This credit is available for both residential and nonresidential buildings located in this state that are reviewed by the West Virginia Division of Culture and History and designated by the national park service, United States department of the interior as "certified historic building", and further defined as a "qualified rehabilitated building", as defined under §47(c)(1), Title 26, of the United States Code, as amended.

(b) No more than \$5 million of the tax credits may be allocated by the Division of Culture and History in any given West Virginia state fiscal year. The Division of Culture and History shall allocate the tax credits in the order the applications therefor are received.

§11-24-23e. Carryback, carryforward.

Any unused portion of the credit for qualified rehabilitated buildings investment authorized by section twenty-three-a of this article which may not be taken in the taxable year to which the credit applies shall qualify for carryback and carryforward treatment subject to the identical general provisions under §39, Title 26 of the United States Code, as amended: *Provided*, That the amount of such credit taken in a taxable year shall in no event exceed the tax liability due for the taxable year; *Provided, however* That for tax years beginning January 1, 2018, any unused portion of the credit authorized by section twenty-three a of this article, may not be carried back to any prior taxable year; *Provided, further*, That for tax years beginning January 1, 2018, any unused portion of the credit authorized by section twenty-three-a of this article may be carried over to each of the next five tax years following the unused credit year until used or forfeited due to lapse of time.;

And,

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

Eng. Com. Sub. for Senate Bill 238—A Bill to amend and reenact §11-21-8a and §11-21-8e of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-24-23a and §11-24-23e of said code, all relating to tax credits for qualified rehabilitated buildings investment; increasing the allowable corporation net income tax credit and personal income tax credit for qualified rehabilitated buildings investments; limiting taxpayers eligible for the credits; authorizing Tax Commissioner to promulgate procedural rules and propose legislative rules; and setting limits on total aggregate tax credits in a fiscal year and limiting carry forward and carry back of unused tax credits.

On motion of Senator Ferns, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for S. B. 238) and requested the House of Delegates to recede therefrom.

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

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

Eng. Com. Sub. for Senate Bill 240, Creating crime of nonconsensual distribution of sexual images.

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

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-8-28a, to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-28a. Nonconsensual disclosure of private intimate images; definitions; and penalties.

(a) As used in this section:

(1) "Disclose" means to publish, publicly display, distribute, deliver, circulate or disseminate by any means, including, but not limited to, electronic transmission.

(2) "Image" means a photograph, videotape, motion picture film, digital recording or any product of any mechanical or electronic recording process or device that can preserve, for later viewing, a visual image.

(3) "Intimate parts" means a person's genitalia, pubic area, anus or female post-pubescent breasts.

(4) To "publicly disclose" means to disclose an image to one or more persons other than those persons whom the person depicted understood would view the image at the time it was captured.

(b) No person may knowingly and intentionally disclose, cause to be disclosed or threaten to disclose, with the intent to harass, intimidate, threaten, humiliate, embarrass, coerce, or profit from, an image of another which shows the intimate parts of the depicted person or shows the depicted person engaged in sexually explicit conduct which was captured under circumstances where the person depicted had a reasonable expectation that the image would not be publicly disclosed.

(c) (1) A person convicted of a violation of subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year, fined not less than \$1,000 nor more than \$5,000, or both confined and fined.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person convicted of a second or subsequent violation of subsection (b) of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not more than three years, fined not less than \$2,500 nor more than \$10,000, or both imprisoned and fined.

(d) The provisions of this section do not apply to:

(1) Images disclosed with the prior written consent of the person depicted;

(2) Images depicting the person voluntarily exposing himself or herself in a public or commercial setting; or

(3) Disclosures made through the reporting of illegal conduct or the lawful and common practices of law enforcement, criminal reporting, legal proceeding or medical treatment.

(e) Nothing in this section shall be construed to impose liability on the provider of an interactive computer service as defined by 47 U. S. C. §230(f)(2), an information service as defined by 47 U. S. C. §153(24), or telecommunications service as defined by 47 U. S. C. §153(53), for content provided by another person.;

And,

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

Eng. Com. Sub. for Senate Bill 240—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8-28a, relating to creating the offense of nonconsensual disclosure of privately taken images of another that show intimate parts of the depicted person or show the depicted person engaged in sexually explicit conduct; defining terms; setting forth elements of the crime; providing for criminal penalties; providing circumstances in which this section does not apply; and excluding providers of interactive computer services, information services, and telecommunications services from liability under this section

On motion of Senator Ferns, the following amendment to the House of Delegates amendments to the bill (Eng. Com. Sub. for H. B. 240) was reported by the Clerk and adopted:

On page one, section twenty-eight-a, subsection (b), after the word “coerce” by striking out the comma and the words “or profit from”.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Committee Substitute for Senate Bill 240, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 240) passed with its House of Delegates amended title.

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

At the request of Senator Stollings, and by unanimous consent, the Senate returned to the second order of business and the introduction of guests.

The Senate again proceeded to the third order of business.

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

Eng. Com. Sub. for Senate Bill 255, Relating generally to filling vacancies in elected office.

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

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

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

That §3-10-3, §3-10-5 and §3-10-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. FILLING VACANCIES.

§3-10-3. Vacancies in offices of state officials, United States senators, justices, judges and magistrates.

(a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, or in any office created or made elective to be filled by the voters of the entire state, is filled by the Governor of the state by appointment and subsequent election to fill the remainder of the term, if required by section one of this article. The Governor shall make the appointment from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of qualified persons to fill the vacancy shall be submitted to the Governor within fifteen days after the vacancy occurs and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the fifteen-day period, the Governor shall appoint within five days thereafter a legally qualified person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred.

(b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge of a circuit court or judge of a family court is filled by the Governor of the state by appointment and, if the unexpired term be for a period of more than two years, by a subsequent election to fill the remainder of the term, as required by subsection (d) of this section. If an election is required under subsection (d) of this section, the Governor, circuit court or the chief judge thereof in vacation, is responsible for the proper proclamation by order and notice required by section one of this article.

(c) Any vacancy in the office of magistrate is appointed according to the provisions of section six, article one, chapter fifty of this code, and, if the unexpired term be for a period of more than

two years, by a subsequent election to fill the remainder of the term, as required by subsection (d) of this section.

(d) (1) When the vacancy in the office of Justice of the Supreme Court of Appeals, judge of the circuit court, judge of a family court or magistrate occurs after the eighty-fourth day before a general election, and the affected term of office ends on the thirty-first day of December following the succeeding general election two years later, the person appointed to fill the vacancy shall continue in office until the completion of the term.

(2) When the vacancy occurs before the close of the candidate filing period for the primary election and, if the unexpired term be for a period of greater than two years, the vacancy shall be filled by election in the nonpartisan judicial election held concurrently with the primary election and the appointment shall continue until a successor is elected and certified.

(3) When the vacancy occurs after the close of candidate filing for the primary election and not later than eighty-four days before the general election and, if the unexpired term be for a period of greater than two years, the vacancy shall be filled by election in a nonpartisan judicial election held concurrently with the general election and the appointment shall continue until a successor is elected and certified.

(e) When an election to fill a vacancy is required to be held at the general election according to the provisions of subsection (d) of this section, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for Justice of the Supreme Court of Appeals, judge of a circuit court, judge of the family court or magistrate shall file a certificate of announcement and pay the filing fee no earlier than the first Monday in August and no later than seventy-seven days before the general election.

§3-10-5. Vacancies in state Legislature.

(a) Any vacancy in the office of state senator or member of the House of Delegates shall be filled by appointment by the Governor, from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of qualified persons to fill the vacancy shall be submitted to the Governor within fifteen days after the vacancy occurs and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the fifteen-day period, the Governor shall appoint within five days thereafter a legally qualified person of the same political party as ~~the person vacating the office with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred.~~

(b) In the case of a member of the House of Delegates, the list shall be submitted by the party executive committee of the delegate district in which the vacating member resided at the time of his or her election or appointment. The appointment to fill a vacancy in the House of Delegates is for the unexpired term.

(c) In the case of a state senator, the list shall be submitted by the party executive committee of the state senatorial district in which the vacating senator resided at the time of his or her election or appointment. The appointment to fill a vacancy in the state Senate is for the unexpired term, unless section one of this article requires a subsequent election to fill the remainder of the term, which shall follow the procedure set forth in said section.

§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.

~~(a) Any vacancy in the office of county commissioner or clerk of county commission shall be filled by the county commission of the county, unless the number of vacancies in a county commission deprive that body of a quorum, in which case the Governor of the state shall fill any vacancy in the county commission necessary to create a quorum thereof. Persons appointed shall be of the same political party as the officeholder vacating the office for the period stated by section one of this article. If a quorum of the county commission cannot agree upon a person to fill a vacancy in the office of county commissioner within thirty days of the date the vacancy first occurred, the county executive committee of the vacating county commissioner's political party shall select and name a person to fill the vacancy from the membership of the vacating county commissioner's political party. The clerk shall be appointed within thirty days of the vacancy appointment by the county commission of the county by a person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred: *Provided*, that any such person appointed must have been a member of that political party for at least sixty days prior to the occurrence of the vacancy.~~

(b) If a quorum of the county commission fails to appoint within thirty days, then the county executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred shall submit a list of three legally qualified persons to fill the vacancy. Upon receipt, the county commission shall make the appointment to fill the vacancy from the submitted list within fifteen days after the list is received. If the county commission fails to make the appointment within the specified time, then the county commissioner with the longest tenure shall eliminate one name from the submitted list, followed by the county commissioner with the second-longest tenure then eliminating one name from the submitted list. The name remaining after those names have been eliminated shall be deemed to be appointed by the county commission to fill the vacancy.

(c) If the number of vacancies in a county commission deprive that body of a quorum, the Governor shall fill any vacancy in the county commission necessary to create a quorum, from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The Governor shall make any appointments necessary, beginning with the vacancy first created, to create a quorum in accordance with the same procedures applicable to county commissions by subsection (a) of this section. Once a quorum of the county commission is reestablished by gubernatorial appointment, the authority to fill the remaining vacancies shall be filled in the manner prescribed in said section.

(d) An appointment made pursuant to this section is for the period stated by section one of this article.

~~(b)~~ (e) Notwithstanding any code provision to the contrary, a county commission may appoint a temporary successor to the office of clerk of the county commission until the requirements of this section have been met. The temporary successor may serve no more than thirty days from the date of the vacancy.

~~(c)~~ (f) If an election is necessary under section one of this article, the county commission, or the president thereof in vacation, shall be responsible for the proper proclamation, by order, and notice required by section one of this article.

~~(d)~~ (g) Section one of this article shall be followed with respect to any election needed to fill a vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the general cutoff date, candidates to fill the vacancy shall be nominated by the county executive committee in the manner provided in section nineteen, article five of this chapter, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission of the county shall be placed upon the ballot to be voted at the next general election.

~~(e)~~ (h) If the election for an unexpired term is held at the same time as the election for a full term for county commissioner, the full term shall be counted first and the unexpired term shall be counted second. If the candidate with the highest number of votes for the unexpired term resides in the same magisterial district as the candidate with the highest number of votes for the full term, the candidate for the full term shall be seated. The candidate with the next highest number of votes for the unexpired term residing in a different magisterial district shall be seated for the unexpired term.

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

Engrossed Committee Substitute for Senate Bill 255, as amended by the House of Delegates, was then put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 255 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—22.

The nays were: Beach, Facemire, Jeffries, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—12.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 255) passed with its title.

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

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

Eng. Senate Bill 256, Relating to prohibiting aiding and abetting of sexual abuse by school personnel.

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

Eng. Com. Sub. for Senate Bill 299, Supplementing, amending, decreasing and increasing items of appropriations from State Road Fund to DOH.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 339, Creating Legislative Coalition on Chronic Pain Management.

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

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

On page three, section three, line nineteen, after the word “code” by inserting the following: “who is appointed by the President of the Senate and the Speaker of the House of Delegates in consultation with the cochairs of the Joint Committee on Health”;

On page three, section three, after line nineteen, by inserting a new subdivision, designated subdivision (7), to read as follows:

(7) A Physical Therapist, licensed under Chapter 30, experienced in the area management of Chronic Pain by physical, behavioral and other non pharmacological means who is appointed by the President of the Senate and the Speaker of the House of Delegates in consultation with the cochairs of the Joint Committee on Health.;

And by renumbering the remaining subdivisions;

On page four, section four, after line seventeen, by inserting a new subdivision, designated subdivision (4), to read as follows:

(4) Consult with a quality improvement organization.”

And by renumbering the remaining subdivisions;

On page five, by striking out all of section five;

And by renumbering the remaining section;

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-52-1, §16-52-2, §16-52-3, §16-52-4 and §16-52-5, all to read as follows;;

And,

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 339—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-52-1, §16-52-2, §16-52-3, §16-52-4 and §16-52-5, all relating to creating a legislative coalition on chronic pain management; setting forth findings; setting forth a purpose; providing for administrative functions of the coalition; setting forth membership of the coalition; providing for appointments to be made by the President of the Senate; providing for appointments to be made by the Speaker of the

House of Delegates; setting forth powers of the coalition; setting forth duties of the coalition; setting forth required reporting; setting forth reporting data elements; and providing a sunset date.

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

Engrossed Committee Substitute for Committee Substitute for Senate Bill 339, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 339) passed with its House of Delegates amended title.

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

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 345, Allowing certain hunting and trapping on private lands on Sundays.

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

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

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

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

ARTICLE 2. WILDLIFE RESOURCES.

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

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

(1) Shoot at any wild bird or wild animal unless it is plainly visible;

(2) Dig out, cut out, smoke out, or in any manner take or attempt to take any live wild animal or wild bird out of its den or place of refuge;

(3) Use or attempt to use any artificial light or any night vision technology, including image intensification, thermal imaging or active illumination, while hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal: *Provided*, That it is lawful to hunt or take coyote, fox, raccoon, opossum or skunk by the use of artificial light or night vision technology;

Any person violating this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than \$100 nor more than \$500, and shall be confined in jail for not less than ten days nor more than one hundred days;

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

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

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

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

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

(9) Carry an uncased or loaded firearm in the woods of this state with the following permissible exceptions:

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

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

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

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

(10) Have in his or her possession a crossbow with a nocked bolt, or a rifle or shotgun with cartridges that have not been removed or a magazine that has not been detached, in or on any vehicle or conveyance, or its attachments. For the purposes of this section, a rifle or shotgun whose magazine readily detaches is considered unloaded if the magazine is detached and no cartridges remain in the rifle or shotgun itself. Except that between five o'clock post meridian of day one and seven o'clock ante meridian, Eastern Standard Time, of the following day, any unloaded firearm or crossbow may be carried only when in a case or taken apart and securely wrapped. During the period from July 1 to September 30, inclusive, of each year, the requirements relative to carrying unloaded firearms are permissible only from eight-thirty o'clock post meridian to five o'clock ante meridian, Eastern Standard Time: *Provided*, That the time periods for carrying unloaded and uncased firearms are extended for one hour after the post meridian times and one

hour before the ante meridian times established in this subdivision, if a person is transporting or transferring the firearms to or from a hunting site, campsite, home or other abode;

~~(11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o'clock ante meridian on Sunday on private land without the written consent of the landowner any wild animals or wild birds except when a big game season opens on a Monday, the Sunday prior to that opening day will be closed for any taking of wild animals or birds after five o'clock ante meridian on that Sunday: *Provided*, That traps previously and legally set may be tended after the hour of five o'clock ante meridian on Sunday and the person tending the traps may carry firearms for the purpose of humanely dispatching trapped animals. Any person violating this subdivision is guilty of a misdemeanor and, upon conviction thereof, in addition to any fines that may be imposed by this or other sections of this code, is subject to a \$100 fine;~~

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

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

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

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

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

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

~~(18)~~ (17) Use dynamite, explosives or any poison in any waters of the state for the purpose of killing or taking fish. Any person violating this subdivision is guilty of a felony and, upon conviction thereof, shall be fined not more than \$500 or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

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

~~(20)~~ (19) Have a crossbow in the woods or fields, or use a crossbow to hunt for, take or attempt to take any wildlife except as otherwise provided in sections five-g and forty-two-w of this article;

~~(24)~~ (20) Take or attempt to take turkey, bear, elk or deer with any arrow unless the arrow is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

~~(22)~~ (21) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

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

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

~~(25)~~ (24) Conduct or participate in a trial, including a field trial, shoot-to-retrieve field trial, water race or wild hunt: *Provided*, That any person, group of persons, club or organization may hold a trial upon obtaining a permit pursuant to section fifty-six of this article. The person responsible for obtaining the permit shall prepare and keep an accurate record of the names and addresses of all persons participating in the trial and make the records readily available for inspection by any natural resources police officer upon request;

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

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

~~(28) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement which wildlife can be taken, on private lands on Sunday after the hour of five o'clock ante meridian: *Provided*, That the provisions of this subdivision do not apply in any county until the county commission of the county holds an election on the question of whether the provisions of this subdivision prohibiting hunting on Sunday shall apply within the county and the voters approve the allowance of hunting on Sunday in the county. The election is determined by a vote of the resident voters of the county in which the hunting on Sunday is proposed to be authorized. The county commission of the county in which Sunday hunting is proposed shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication is the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.~~

~~On the local option election ballot shall be printed the following:~~

~~Shall hunting on Sunday be authorized on private lands only with the consent of the land owner in _____ County?~~

~~[] Yes~~

No

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

~~Any local option election to approve or disapprove of the proposed authorization of Sunday hunting within a county shall be in accordance with procedures adopted by the commission. The local option election may be held in conjunction with a primary or general election or at a special election. Approval shall be by a majority of the voters casting votes on the question of approval or disapproval of Sunday hunting at the election.~~

~~If a majority votes against allowing Sunday hunting, an election on the issue may not be held for a period of one hundred four weeks. If a majority votes "yes", an election reconsidering the action may not be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county in which Sunday hunting is authorized. The petition may be in any number of counterparts. The election shall take place at the next primary or general election scheduled more than ninety days following receipt by the county commission of the petition required by this subsection: *Provided*, That the issue may not be placed on the ballot until all statutory notice requirements have been met. No local law or regulation providing any penalty, disability, restriction, regulation or prohibition of Sunday hunting may be enacted and the provisions of this article preempt all regulations, rules, ordinances and laws of any county or municipality in conflict with this subdivision.~~

~~Amendments to this subdivision promulgated during the 2015 regular session of the Legislature shall have no effect upon the results of elections held prior to their enactment; and~~

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

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

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

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

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

A Class J license is a nonresident small game shooting preserve license and entitles the licensee to hunt small game on designated shooting preserves, except as prohibited by rules of the director or Natural Resources Commission and except when additional licenses, stamps or permits are required, for a period of six consecutive hunting days chosen by the licensee;

~~excluding Sunday in counties closed to Sunday hunting.~~ The fee for the license is \$10. This is a base license and does not require the purchase of a prerequisite license to participate in the activities specified in this section, except as noted.;

And,

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 345—A Bill to repeal §20-2-19a of the Code of West Virginia, 1931, as amended; to amend and reenact §20-2-5, §20-2-42g and §20-2-42h of said code; all relating to hunting; repealing limitations on trappers on Sundays; eliminating local option election regarding hunting on Sunday on private land; permitting hunting on Sunday on private land; clarifying hunting on Sunday on public lands is unlawful; and superseding ballot measures relating to Sunday hunting that have passed or failed prior to the effective date of the amendments.

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

Engrossed Committee Substitute for Committee Substitute for Senate Bill 345, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—30.

The nays were: Azinger, Karnes, Palumbo and Sypolt—4.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 345) passed with its House of Delegates amended title.

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

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 360, Creating Legislative Coalition on Diabetes Management.

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

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

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

“(2) Consult with a quality improvement organization;”

And by renumbering the remaining subdivisions;

On page four, by striking out all of section five;

And by renumbering the remaining section;

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-5Z-1, §16-5Z-2, §16-5Z-3, §16-5Z-4 and §16-5Z-5, all to read as follows::

And,

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 360—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-5Z-1, §16-5Z-2, §16-5Z-3, §16-5Z-4 and §16-5Z-5, all relating to creating the Legislative Coalition on Diabetes Management; setting forth findings and purpose; providing for administrative functions of the coalition to be performed by legislative staff; setting forth membership of the coalition; providing for appointments to be made by the President of the Senate and the Speaker of the House of Delegates; setting forth powers and duties of the coalition; setting forth required reporting; setting forth reporting data elements; requiring state entities to cooperate with the coalition in its duties; and providing a sunset date.

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

Engrossed Committee Substitute for Committee Substitute for Senate Bill 360, as amended by the House of Delegates, was then put upon its passage.

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

The nays were: Azinger—1.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 360) passed with its House of Delegates amended title.

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

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

Eng. Com. Sub. for Senate Bill 386, Creating WV Medical Cannabis Act.

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

Eng. Com. Sub. for Senate Bill 402, Relating to covenants not to compete between physicians and hospitals.

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

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §47-11E-1, §47-11E-2, §47-11E-3, §47-11E-4 and §47-11E-5, all to read as follows:

ARTICLE 11E. PHYSICIANS FREEDOM OF PRACTICE ACT.

§47-11E-1. Definitions.

As used in this article:

“Contract” means a written agreement between a physician and an employer.

“Covenant not to compete” means any contract that restricts the right of a physician to practice medicine in any geographic area of the state for any period of time following the expiration of the physician’s contract with his or her employer, or upon the termination of the physician’s contract by the physician’s employer.

“Employer” means any person employing at least one individual in the state or any agent of an employer employing at least one individual in the state.

“Person” means any individual, proprietorship, partnership, firm, association, corporation, labor organization, limited liability corporation or any other legal entity.

“Physician” means a doctor of allopathic or osteopathic medicine who is fully licensed to practice medicine and surgery pursuant to the provisions of either article three or fourteen of chapter thirty.

§47-11E-2. Limitation on contractual provisions in physician employment contract.

(a) A covenant not to compete contained in a contract between a physician and an employer shall be limited to not more than:

(1) One year in duration; and

(2) Thirty road miles from the physician’s primary place of practice with the employer.

(b) A covenant not to compete shall be void and unenforceable upon the termination of the physician’s employment by the employer.

§47-11E-3. Enforceability of other provisions.

Provided that the contract does not state otherwise, nothing in this article limits the enforceability of:

(1) Provisions prohibiting a physician from taking any property, patient lists or records of the employer with him or her upon the termination or expiration of the contract;

(2) Provisions requiring a physician to repay an employer all or a portion of:

(A) A loan;

(B) Relocation expenses;

(C) A signing bonus;

(D) Remuneration to induce the physician to relocate or establish a physician practice in a specific geographic area; or

(E) Recruiting, education and training expenses;

(3) A nondisclosure provision relating to confidential information and trade secrets;

(4) A nonsolicitation provision with respect to patients and employees of the employer;

(5) A provision for liquidated damages; or

(6) Any other provision of a contract that is not in violation of law.

§47-11E-4. Exemptions to limitations.

The limitations set forth in this article do not apply to any of the following unless the contract terms provide otherwise:

(1) In the case where the physician has sold his or her business or practice in the form of a sale of assets, stock, membership interests or otherwise to his or her employer; or

(2) To contracts between physicians who are shareholders, owners, partners, members or directors of a health care practice.

§47-11E-5. Applicability.

This article applies to any contract between a physician and his or her employer entered into, modified, renewed or extended on or after July 1, 2017: *Provided*, That the provisions of this article do not otherwise apply to or abrogate any contract in effect on or before June 30, 2017.

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

Engrossed Committee Substitute for Senate Bill 402, as amended by the House of Delegates, was then put upon its passage.

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

The nays were: Facemire, Ferns and Weld—3.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 402) passed with its title.

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

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

Eng. Com. Sub. for Senate Bill 454, Providing more efficient collection and submission of state moneys received from court transactions or court services.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 461, Exempting WV State Police from state purchasing requirements.

A message from The Clerk of the House of Delegates announced the amendment by that body to the title of the bill, passage as amended, to take effect July 1, 2017, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Com. Sub. Com. Sub. for Senate Bill 486, Relating to health care provider taxes.

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

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 486—A Bill to amend and reenact §11-27-38 of the Code of West Virginia, 1931, as amended, relating to health care provider taxes; making conforming amendments consistent with federal law; changing the rate of tax on eligible acute care hospitals for fiscal year 2018; modifying eligibility criteria for “eligible acute care hospital;” removing conditions precedent for taxation; changing condition precedent for the automatic suspension of taxation; specifying purposes for which funds may be collected; providing for distribution of remaining funds at the end of fiscal year; providing for an effective date; and extending the expiration date for the tax.

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

Engrossed Committee Substitute for Committee Substitute for Senate Bill 486, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 486) passed with its House of Delegates amended title.

Senator Ferns moved that the bill take effect July 1, 2017.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 486) takes effect July 1, 2017.

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

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

Eng. Senate Bill 490, Clarifying standard of liability for officers of corporation.

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

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

Eng. Senate Bill 490—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31D-8-842a, relating to the standard of liability for officers of a corporation; establishing standards of liability for officers of a corporation; providing an officer is not liable to the corporation or its shareholders for any decision to take or not to take action or any failure to take any action as an officer except in specified circumstances; providing standards a party seeking to hold an officer liable must establish when seeking money damages; providing standards a party seeking to hold an officer liable must establish when seeking other legal remedies; and clarifying that certain actions under different code sections or the United States code are unaffected.

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

Engrossed Senate Bill 490, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 490) passed with its House of Delegates amended title.

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

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

Eng. Senate Bill 578, Relating generally to copies of health care records furnished to patients.

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

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-8-28a, to read as follows:

That §16-29-1 and §16-29-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 29. HEALTH CARE RECORDS.

§16-29-1. Copies of health care records to be furnished to patients.

(a) Any licensed, certified or registered health care provider so licensed, certified or registered under the laws of this state shall, upon the written request of a patient, his or her personal representative, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and any rules promulgated pursuant to the act, and his or her authorized agent or authorized representative, within ~~a reasonable time~~ no more than thirty days from the receipt of the request, furnish a copy, in the form of a paper copy or, if requested and if the provider routinely stores records electronically and has the ability to so provide, a copy in an electronic format including, but not limited to, a downloadable format through a secure web portal, a copy saved upon a computer disc, an electronically mailed copy or a copy saved upon a portable memory device of all or a portion of the patient's record to the patient, his or her personal representative, or authorized agent or authorized representative subject to the following exceptions:

(1) In the case of a patient receiving treatment for psychiatric or psychological problems, a summary of the record shall be made available to the patient, personal representative, or his or her authorized agent or authorized representative following termination of the treatment program.

(2) The furnishing of a copy, as requested, of the reports of X-ray examinations, electrocardiograms and other diagnostic procedures shall be deemed to comply with the provisions of this article.

(b) Nothing in this article shall be construed to require a health care provider responsible for diagnosis, treatment or administering health care services in the case of minors for birth control, prenatal care, drug rehabilitation or related services or venereal disease according to any provision of this code, to release patient records of such diagnosis, treatment or provision of health care as aforesaid to a parent or guardian, without prior written consent therefor from the patient, nor shall anything in this article be construed to apply to persons regulated under the provisions of chapter eighteen of this code or the rules and regulations established thereunder.

(c) This article does not apply to records subpoenaed or otherwise requested through court process, except for the fee provisions in section two of this article, which do apply to subpoenaed records.

(d) The provisions of this article may be enforced by a patient, personal representative, authorized agent or authorized representative and any health care provider found to be in violation of this article shall pay any attorney fees and costs, including court costs incurred in the course of such enforcement.

(e) Nothing in this article shall be construed to apply to health care records maintained by health care providers governed by the AIDS-related Medical Testing and Records Confidentiality Act under the provisions of article three-c of this chapter.

§16-29-2. Reasonable expenses to be reimbursed.

(a) A provider may charge a patient or the patient's personal representative a fee consistent with HIPAA, as amended, and any rules promulgated pursuant to HIPAA, plus any applicable taxes.

~~(a)~~ (b) A person other than a patient or patient's personal representative requesting records from a health care provider shall place submit the request and HIPAA compliant authorization in writing and pay a reasonable, cost-based fee, at the time of delivery. Notwithstanding any other section of the code or rule, the fees shall be not exceed: based on the provider's cost of: (1) A search and handling fee of \$20 ~~Labor for copying the requested records if in paper, or for placing the records in electronic media;~~ (2) a per page fee of 40 cents for paper copies; ~~supplies for creating the paper copy or electronic media~~ and (3) postage, if the person requested that the records be mailed, plus any applicable taxes.

(c) If the requested record is stored by the health care provider in an electronic form, unless the person requesting the record specifically requests a paper copy, the records will be delivered in electronic or digital form and the per page fee for providing an electronic copy shall not exceed 20 cents per page but shall in no event exceed \$150 inclusive of all fees, including a search and handling fee, except for applicable taxes.

(d) Any person requesting a record be certified by affidavit pursuant to section four-e, article five, chapter fifty-seven of this code shall pay a fee of \$10 for such certification.

(e) If a person requests or agrees to an explanation or summary of the records, the provider may charge a reasonable cost-based fee for the labor cost if preparing the explanation or the summary; for the supplies for creating the explanation or summary; and for the cost of postage, if the person requested that the records be mailed, plus any applicable taxes. If the records are stored with a third party or a third party responds to the request for records in paper or electronic media, the provider may charge additionally for the actual charges incurred from the third party.

~~(b) (f) The labor per page fee for copying under this section shall not exceed twenty-five dollars per hour and shall be adjusted to reflect the consumer price index for medical care services such that the base amount shall be increased or decreased by the proportional consumer price index in effect as published of every October 1 starting October 1, 2017. of the calendar year in which the request was made, rounded to the nearest dollar~~

~~(e) (g) Notwithstanding the provisions of subsection (a) of this section, a provider shall not impose a charge on an indigent person or his or her authorized representative if the medical records are necessary for the purpose of supporting a claim or appeal under any provisions of the Social Security Act, 42 U. S. C. §301, et seq.~~

For purposes of this section, a person is considered indigent if he or she:

(1) Is represented by an organization or affiliated pro bono program that provides legal assistance to indigents; or

(2) Verifies on a medical records request and release form that the records are requested for purposes of supporting a Social Security claim or appeal and submits with the release form reasonable proof that the person is financially unable to pay full copying charges by reason of unemployment, disability, income below the federal poverty level or receipt of state or federal income assistance.

~~(d) (h) Any person requesting free copies of written medical records pursuant to the provisions of subsection (e) (g) of this section is limited to one set of copies per provider. Any additional requests for the same records from the same provider shall be subject to the fee provisions of subsection subsections (a), (b) and (c).~~

And,

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

Eng. Senate Bill 578—A Bill to amend and reenact §16-29-1 and §16-29-2 of the Code of West Virginia, 1931, as amended, all relating generally to copies of health care records; providing that health care records must be furnished no more than thirty days from the receipt of the request from a patient, his or her representative, authorized agent, or authorized representative; stating that electronic copies of health records may be provided in a downloadable format through a secure web portal; permitting a personal representative to act in lieu of a patient in certain circumstances; clarifying that fees shall apply to subpoenaed records; establishing fees for providing copies of health care records; and providing that the per page fee shall be adjusted annually according to the consumer price index.

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

Engrossed Senate Bill 578, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 578) passed with its House of Delegates amended title.

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

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

Eng. Com. Sub. for Senate Bill 602, Creating uniform system of recording and indexing fictitious names used by sole proprietors.

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

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

Eng. Com. Sub. for Senate Bill 602—A Bill to amend and reenact §47-8-2 and §47-8-3 of the Code of West Virginia, 1931, as amended, all relating to registering and indexing of fictitious names used by sole proprietors, individuals, or general partnerships; striking exemptions; and providing that the Secretary of State shall keep a searchable database for all persons filing forms to register and index fictitious names.

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

Engrossed Committee Substitute for Senate Bill 602, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 602) passed with its House of Delegates amended title.

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

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

Eng. Senate Bill 608, Clarifying lawful business structures are unaffected by enactment of prohibitory legislation.

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

Eng. Com. Sub. for Senate Bill 631, Prosecuting violations of municipal building code.

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

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

Eng. Com. Sub. for Senate Bill 631—A Bill to amend and reenact §8-12-13 and §8-12-16 of the Code of West Virginia, 1931, as amended, all relating generally to municipal ordinances and procedures; creating a procedure for misdemeanor prosecutions of violations of municipal ordinances; defining terms; providing for the designation of enforcement agencies; providing a procedure for code enforcement agency officials to enter premises for investigation or inspection of a structure, dwelling or building; granting plenary power to the governing body of every municipality to adopt an ordinance providing for the vacating, closing, removal or demolition of specific dwellings, structures or buildings by a municipality in the absence of owner agreement or court order with specific requirements; providing for notice to the owner of the right to apply to the circuit court for a temporary injunction or other similar relief; requiring a hearing to be held within twenty days if the owner makes such application to the circuit court; requiring an owner to pay a bond into court if the owner seeks a continuance of the hearing seeking a temporary injunction or other similar relief; allowing for the disbursement of moneys paid into court by an owner if a court finds that the property is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; permitting a governing body of a municipality to file a lien against the real property for an amount that reflects all costs incurred by a municipality for repairing, altering or improving, or of vacating and closing, removing or demolishing any dwelling or building; permitting a municipality to institute a civil action in circuit court against a landowner or other responsible party to obtain an order to take corrective action up to and including demolition of any structure, dwelling or building that is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare and permitting a municipality to recover all reasonable costs and expenses incurred by the municipality with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action; providing for service of notices of violations; and providing for a procedure to prosecute ordinances adopted under the section pertaining to regulating the repair, alteration, improvement, closing, demolition, etc., of structures, dwelling or buildings that are unsafe, unsanitary, dangerous or detrimental to the public safety or welfare.

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

Engrossed Committee Substitute for Senate Bill 631, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 631) passed with its House of Delegates amended title.

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

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

Eng. Com. Sub. for Senate Bill 636, Authorizing State Fire Commission establish program to address problems facing VFDs.

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

Eng. Senate Bill 658, Establishing procedure for retailing mobile and manufactured homes.

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

Eng. Senate Bill 667, Limiting authority of Attorney General to disclose certain information provided by Tax Commissioner.

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

Eng. Senate Bill 690, Authorizing WV State Police impose and collect fees for agencies and entities using their facilities.

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

Senate Concurrent Resolution 8, Donnie Adkins Memorial Bridge.

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

Senate Concurrent Resolution 11, USMC Lance Corporal Edwin Russell 'Snook' Danehart Memorial Bridge.

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

Senate Concurrent Resolution 13, US Army CPL James Russell Carter Memorial Road.

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

Senate Concurrent Resolution 14, US Army PVT Oren J. "Junior" Johnson Memorial Bridge.

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

Com. Sub. for Senate Concurrent Resolution 15, US Army CPL Herbert "Herb" Linkous Memorial Bridge.

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

Senate Concurrent Resolution 18, US Marine CPL Walter Vincent Filipek Memorial Bridge.

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

Senate Concurrent Resolution 21, US Army CPL Daniel Frederick Mehringer Memorial Bridge.

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

Com. Sub. for Senate Concurrent Resolution 23, Johnny O'Dell Linville Memorial Bridge.

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

Senate Concurrent Resolution 24, US Army PFC Joe Messe, Sr., Memorial Bridge.

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

Com. Sub. for Senate Concurrent Resolution 26, US Marine Corps SSG Beecher J. Rhoades Memorial Bridge.

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

Senate Concurrent Resolution 28, US Army SPC4 Randall W. Arbogast Memorial Road.

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

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

On page one, after the title, by striking out the remainder of the resolution and inserting in lieu thereof the following:

Whereas, Randall W. Arbogast was born at Valley Head, West Virginia, on February 12, 1945, the eldest son of the late Warren Everett Arbogast and Arizona Ware Arbogast. He was a graduate of Tygarts Valley High School Class of 1964 and was employed by Pioneer Lumber Company until entering the U. S. Army on September 29, 1965, and was one of 4,000 soldiers assigned to the elements of the 196th Light Infantry Brigade, the first "light" infantry brigade in U. S. military history; and

Whereas, U. S. Army SPC 4 Randall W. Arbogast was the only casualty of the Vietnam War from the southern Randolph County communities of Valley Head, Mingo and Monterville, West Virginia and was also the only graduate of Tygarts Valley High School to lose his life in the Vietnam War; and

Whereas, Randall served with B Company 4th Battalion 31 Infantry from September 29, 1965 thru February 11, 1967; on his 22nd birthday, February 12, 1967, he was transferred to B Company 1st Battalion Mechanized 5th Infantry 25th Infantry Division where he was assigned as an 11C10 Indirect Fire Infantryman M-60 Machine Gunner; and

Whereas, On May 3, 1967, Randall's squad was engaged in hostile action with the enemy in Hau Nghia Province when he was hit with a blast from a white phosphorous grenade and suffered sixty-eight percent total body burns with forty-seven percent being third degree burns; Randall was evacuated from the field and on May 8, 1967, arrived at Brook General Hospital, Fort Sam Houston, Texas, for treatment of his injuries; and

Whereas, U. S. Army SPC 4 Randall W. Arbogast died on May 31, 1967, of septicemia due to burns received in combat in Hau Nghia Province, Vietnam; he was awarded the Purple Heart, Bronze Star, the Republic of Vietnam Campaign Medal, the Vietnam Service Medal, the National Defense Medal and the Combat Infantry Badge; his name is listed on the Vietnam Memorial Wall in Washington, D. C.; and

Whereas, Randall was survived by two brothers, Stanley and Steve Arbogast, and six sisters, Lou Arbogast Burkhardt, Leanne Arbogast, Jean Arbogast Hesson, Janice Arbogast Hadley, Kayleen Arbogast Dunsmoor and Carol Arbogast; and

Whereas, The death of this brave American soldier and his sacrifice to his country, state and community should not go unnoticed and the naming of a section of U. S. Route 219, from its intersection with WV State Route 15 at Valley Head, West Virginia, south to the Pocahontas County line, the "U. S. Army SPC 4 Randall W. Arbogast Memorial Road" in Randolph County would be an appropriate tribute; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name a section of U. S. Route 219 from its intersection with WV State Route 15 at Valley Head, West Virginia, south to the Pocahontas County line in Randolph County, the "U. S. Army SPC 4 Randall W. Arbogast Memorial Road"; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the road as the “U. S. Army SPC 4 Randall W. Arbogast Memorial Road”; and, be it

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

And,

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

Senate Concurrent Resolution 28—Requesting the Division of Highways to name a section of U. S. Route 219 from its Intersection with WV State Route 15 at Valley Head, West Virginia, south to the Pocahontas County line in Randolph County, the “U. S. Army SPC 4 Randall W. Arbogast Memorial Road.

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

The question being on the adoption of the resolution, as amended by the House of Delegates, the same was put and prevailed.

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

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

Senate Concurrent Resolution 31, US Navy BT2 Mark Edward Hutchison Memorial Bridge.

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

Senate Concurrent Resolution 39, US Army PFC Kelva H. Justice Memorial Road.

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

Senate Concurrent Resolution 41, US Army PV2 Mandvial S. “Bunker” Bias Memorial Bridge.

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

Senate Concurrent Resolution 43, Eugene Lee “Gene” Burner Memorial Bridge.

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

Senate Concurrent Resolution 45, Home of Anna Lindquist, 1996 NHSPA Hall of Fame Inductee highway sign.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amended title, passage as amended, of

Eng. Com. Sub. for House Bill 2319, Relating to candidates or candidate committees for legislative office disclosing contributions.

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

Eng. Com. Sub. for House Bill 2364, Prohibiting electioneering within or near early voting locations during early voting periods.

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

Eng. Com. Sub. for House Bill 2373, Authorizing school bus drivers trained in administration of epinephrine auto-injectors to administer auto-injectors.

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

Eng. House Bill 2404, Barring persons who are convicted of certain criminal offenses from acquiring property from their victims.

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

Eng. House Bill 2446, Relating to the requirement that all executive branch agencies maintain a website that contains specific information.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amended title, passage as amended, of

Eng. Com. Sub. for House Bill 2494, Providing that statewide school report cards are only to be made available to custodial parents and guardians of students upon request.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, with its Senate amended title, to take effect January 1, 2018, and requested the concurrence of the Senate in the changed effective date, as to

Eng. Com. Sub. for House Bill 2619, Risk Management and Own Risk and Solvency Assessment Act.

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

On further motion of Senator Ferns, the Senate concurred in the changed effective date of the bill, that being to take effect January 1, 2018, instead of ninety days from passage.

Senator Ferns moved that the bill take effect January 1, 2018.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2619) takes effect January 1, 2018.

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

A message from The Clerk of the House of Delegates announced that that body had refused to concur in the Senate amendments to, and requested the Senate to recede therefrom, as to

Eng. Com. Sub. for House Bill 2721, Removing the cost limitation on projects completed by the Division of Highways.

On motion of Senator Ferns, the Senate refused to recede from its amendments to the bill and requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses.

Whereupon, Senator Carmichael (Mr. President) appointed the following conferees on the part of the Senate:

Senators Boso, Swope and Jeffries.

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

A message from The Clerk of the House of Delegates announced that that body had refused to concur in the Senate amendments to, and requested the Senate to recede therefrom, as to

Eng. Com. Sub. for House Bill 2722, Eliminating the financial limitations on utilizing the design-build program for highway construction.

On motion of Senator Ferns, the Senate refused to recede from its amendments to the bill and requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses.

Whereupon, Senator Carmichael (Mr. President) appointed the following conferees on the part of the Senate:

Senators Boso, Swope and Jeffries.

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

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

Eng. Com. Sub. for House Bill 2734, Authorizing a method for the collection and remittance of property taxes related to dealers' heavy equipment inventory.

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

Eng. Com. Sub. for House Bill 2948, Establishing timelines for taking final action on certain permits.

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

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

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

Eng. Com. Sub. for House Bill 2948—A Bill to amend and reenact §17C-17A-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §19-1A-3a of said code; to amend and reenact §19-2A-4 of said code; to amend and reenact §19-9A-3 of said code; to amend and reenact §19-12D-7 of said code; to amend and reenact §19-15-2 of said code; to amend and reenact §19-34-6 of said code; to amend and reenact §19-35-3 of said code; to amend and reenact §20-3-5 of said code; to amend and reenact §20-7A-5 of said code; to amend and reenact §21-10-7 of said code; to amend and reenact §21-12-7 of said code; to amend and reenact §21-15-10 of said code; to amend and reenact §24A-3-3 of said code; to amend and reenact §29-3-12 of said code; to amend and reenact §29-29-4 of said code; to amend and reenact §47-1A-10 of said code, all relating generally to the issuance of permits; establishing timelines for taking final action on certain permits; modifying procedures for the issuance of permits by the Public Service Commission for activities related to the commercial transportation of coal; modifying procedures for the issuance of permits by the Division of Forestry for activities related to growing or dealing ginseng; modifying procedures for the issuance of permits by the Commissioner of Agriculture to operate a public market; modifying procedures for the issuance of permits by the Commissioner of Agriculture to feed garbage to swine; modifying procedures for the issuance of permits by the Commissioner of Agriculture for activities related to noxious weeds; modifying procedures for the issuance of permits by the Commissioner of Agriculture for activities related to the manufacture or distribution of fertilizer; modifying procedures for the issuance of permits by the Dangerous Wild Animals Board; modifying procedures for the issuance of uniform farmers market vendor permits by local health departments; modifying procedures for the issuance of burning permits by the Director of the Division of Forestry; modifying procedures for the issuance of permits by the Director of the Division of Natural Resources for the excavation or removal of archaeological, paleontological, prehistoric and historic features; modifying procedures for the issuance of permits by the Division of Labor to operate an amusement ride or attraction, a commercial bungee jumping site, or a zipline or canopy tour; modifying procedures for the issuance of permits by the Public Service Commission to operate as a contract carrier by motor vehicle; modifying procedures for the issuance of permits by the State Fire Marshal; modifying procedures for the issuance of permits by a nonprofit youth organization; and modifying permit fees and procedures for the issuance of permits by the Commissioner of the Division of Labor for activities related to the regulation and control of bedding and upholstery businesses.

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

Engrossed Committee Substitute for House Bill 2948, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2948) passed with its House of Delegates amended title.

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

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amended title, passage as amended, of

Eng. Com. Sub. for House Bill 2961, Relating generally to charitable bingo games and charitable raffles.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amended title, passage as amended, of

Eng. House Bill 3037, Removing the Division of Energy as an independent agency.

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

House Concurrent Resolution 47—Requesting the Division of Highways to name the road from the beginning of Sand Creek Road on County Route 10/15 at the bend of the Guyandotte River and State Route 10 running one-half mile on Sand Creek Road in Lincoln County, the “U. S. Army CPL Wilson B. Lambert, Jr. Memorial Road”.

Referred to the Committee on Transportation and Infrastructure.

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

Com. Sub. for House Concurrent Resolution 53—Requesting the Division of Highways to name bridge number 04-5/6-7.33 (O4A193), (latitude 38.75026, longitude -80.74277), locally known as the Riffle Box Beam Bridge, carrying County Route 5/6 over Perkins Fork of Cedar Creek in Braxton County, as the “US Army CPL Jerry Lee Noble Memorial Bridge.

Referred to the Committee on Transportation and Infrastructure.

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

Com. Sub. for House Concurrent Resolution 64—Requesting the Division of Highways to name bridge number 17-50-14.25 (17A195) (39.28950, -80.35136), locally known as the Adamston Bridge, carrying U.S. 50 over the West Fork River in Harrison County, the “Gill Brothers World War II Veterans’ Memorial Bridge.”

Referred to the Committee on Transportation and Infrastructure.

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

Com. Sub. for House Concurrent Resolution 65—Requesting the Division of Highways to name Bridge No. 20-77-106.11 NB & SB (20A444, 20A445) (38.41306, -81.63047), locally known as I-77 Edens Fork Interchange Bridge, carrying Interstate 77 NB and SB over Kanawha Two-mile Creek and County Route 27 in Kanawha County, the “ U.S. Army Hobert G. ‘Hobie’ Underwood Memorial Bridge.”

Referred to the Committee on Transportation and Infrastructure.

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

Com. Sub. for House Concurrent Resolution 84—Requesting the Division of Highways to name Bridge Number 17-9-5.09 (17A350) (39.3443, -80.4013) locally known as Gregory Run Bridge carrying County Route 9 over Ten Mile Creek, in Harrison County, the “U.S. Army Air Force S/SGT Harold ‘Dean’ Baker Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

Com. Sub. for House Concurrent Resolution 93—Urging the Division of Highways to extend WV Route 93 from its current terminus at US Route 50 near Claysville, West Virginia through the junction of WV Route 927 and US Route 50 to create a new terminus at the junction of WV Route 972 and US Route 220, and to erect signs reflecting this change.

Referred to the Committee on Transportation and Infrastructure.

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

Com. Sub. for House Concurrent Resolution 98—Requesting the Division of Highways to name Bridge Number 20-77-83.31 (20A612) (38.19472, -81.47715), carrying I-77 (West Virginia Turnpike) over the CSX Railroad in Kanawha County, the “John H. Reed, Jr. Memorial Bridge.”

Referred to the Committee on Transportation and Infrastructure.

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

House Concurrent Resolution 118—Requesting the Division of Highways name bridge number 07-33-5.34 (07A057) (38.79415, -81.14055), locally known as the Arnoldsburg Bridge, carrying US 33 over the West Fork of Little Kanawha River in Calhoun County, the “Craddock Brothers Bridge”.

Referred to the Committee on Transportation and Infrastructure.

The Senate proceeded to the fourth order of business.

Senator Boso, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution 4, US Navy MM2 Carl E. Keeney and US Army PFC Carl M. Nicholas Memorial Bridge.

Senate Concurrent Resolution 52, US Army PFC Glenn S. Perdue, US Army Tec 5 Charley H. Perdue and US Army Air Corps SGT Carl Perdue Memorial Road.

House Concurrent Resolution 19, U.S. Army PFC Freeman Ray Meade Memorial Road.

House Concurrent Resolution 23, U.S. Army SSG Styish R. Morris Memorial Road.

House Concurrent Resolution 30, U.S. Army PFC Cornelious Wiley Memorial Bridge.

House Concurrent Resolution 41, Major Martin Robison Delany Memorial Bridge.

House Concurrent Resolution 48, U.S. Army SPC David H. Stamper Memorial Bridge.

Com. Sub. for House Concurrent Resolution 50, Lowe Mountain Memorial Highway.

And,

House Concurrent Resolution 92, U.S. Army SGT Eugene Dawson Memorial Highway.

And reports the same back with the recommendation that they each be adopted.

Respectfully submitted,

Gregory L. Boso,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the resolutions (S. C. R. 4 and 52, H. C. R. 19, 23, 30, 41, 48 and 92, and Com. Sub. for H. C. R. 50) contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

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

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

Senator Boso, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution 25, Jeffrey Alan Clovis Memorial Bridge.

And reports back a committee substitute for same as follows:

Com. Sub. for Senate Concurrent Resolution 25 (originating in the Committee on Transportation and Infrastructure)—Requesting the Division of Highways to name bridge number 31-7-7.58 (31A311) (39.70251, -80.30017), locally known as Wana Bridge, carrying WV 7 over West Virginia Fork of Dunkard Creek in Monongalia County, the “Jeffrey Alan Clovis Memorial Bridge”.

Whereas, Jeffrey Alan Clovis was born January 29, 1968, and was the first child of Donald Charles Clovis and Linda Kay Tucker of Morgantown, West Virginia, and stepson to Donna Clovis and Darrell Tucker; and

Whereas, Jeffrey Alan Clovis was a 1986 graduate of Clay-Battelle High School, a member of the Loyal Order of Moose in Waynesburg, PA, and member of the Kingdom Evangelical Church of Westover, West Virginia; and

Whereas, Jeffrey Alan Clovis was 27-year veteran towing operator, receiving a certification of achievement from Towing Recovery Association of America and was certified as a Nationally Certified Master Tower; and

Whereas, Jeffrey Alan Clovis was known for his good nature and quiet sacrifices in order to make others feel comfortable in whatever ordeal they may be enduring, all the while remaining vigilant in his professional responsibilities; and

Whereas, Jeffery Alan Clovis of Wadestown, West Virginia, tragically lost his life while responding to a service call along Interstate 79 on August 9, 2016; and

Whereas, Jeffrey Alan Clovis shall be remembered on the Wall of Fallen Heroes at the International Towing and Recovery Hall of Fame in Chattanooga, Tennessee; and

Whereas, Jeffrey Alan Clovis is survived by his wife, Sheila Clovis; daughter, Jennifer Clovis; step-daughter, Skyler Johnson; brother, Brent Clovis; and step-sister, Michelle Yost; and

Whereas, It is most fitting that the West Virginia State Senate pay tribute to the sacrifices and accomplishments of Jeffrey Alan Clovis by naming this bridge in his honor; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 31-7-7.58 (31A311) (39.70251, -80.30017), locally known as Wana Bridge, carrying WV 7 over West Virginia Fork of Dunkard Creek in Monongalia County, the “Jeffrey Alan Clovis Memorial Bridge”; and, be it

Further Resolved, That the Commissioner of the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "Jeffrey Alan Clovis Memorial Bridge"; and, be it

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

With the recommendation that the committee substitute be adopted.

Respectfully submitted,

Gregory L. Boso,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the resolution (Com. Sub. for S. C. R. 25) contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration.

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

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

Senator Boso, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

House Concurrent Resolution 21, 1SG Carl J. Crabtree Memorial Road.

And has amended same.

House Concurrent Resolution 35, Arnold Miller Memorial Bridge.

And has amended same.

House Concurrent Resolution 58, William C. Campbell Memorial Highway.

And has amended same.

And,

House Concurrent Resolution 73, U S Army Air Corps PVT William James Irwin, Memorial Bridge.

And has amended same.

And reports the same back with the recommendation that they each be adopted, as amended.

Respectfully submitted,

Gregory L. Boso,
Chair.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 2887, Relating to retirement and separation incentives.

With an amendment from the Committee on Education pending;

And has also amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on April 5, 2017;

And reports the same back with the recommendation that it do pass as last amended by the Committee on Finance.

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2887) contained in the preceding report from the Committee on Finance was taken up for immediate consideration and read a second time.

The following amendments to the bill, from the Committee on Finance, were reported by the Clerk, considered simultaneously, and adopted:

On page one, section one-d, line ten, by striking out the words “at least sixty days prior to the effective date of the policy” and inserting in lieu thereof the words “and approved before such policies are adopted”;

And,

On page three, section one-d, line fifty-seven, after the words “presented to” by inserting the words “and approved by”.

The bill (Eng. Com. Sub. for H. B. 2887), as amended, was then ordered to third reading.

The Senate proceeded to the sixth order of business.

Senators Sypolt, Plymale and Beach offered the following resolution:

Senate Concurrent Resolution 64—Requesting the Joint Committee on Government and Finance study the West Virginia Division of Purchasing, including the evolving demands of government agencies for the division’s services, the division’s current fitness for its intended purposes and the efficiency of current statutory and regulatory procedures for purchasing of goods and services.

Whereas, During the 2017 regular session of the Legislature, at least eighteen bills have been introduced to modify, restrict or create an exemption from, the powers and responsibilities of the

Division of Purchasing and year by year requests to create more exemptions are a perennial demand upon the Legislature; and

Whereas, Current law regarding the process of bidding, solicitation of vendors and contracting for goods and services is already subject to numerous exemptions and exclusions, such as the exemption for the substantial procurements of the State Board of Education; and

Whereas, Perceived delays in the procurement process and complex contract procedures have prompted demand for more exemptions and exclusions from current purchasing laws; and

Whereas, Current statutes and regulations originate in older, paper-based systems for oversight and tracking; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance study the West Virginia Division of Purchasing, including the evolving demands of government agencies for the division's services, the division's current fitness for its intended purposes and the efficiency and benefit of current statutory and regulatory procedures for purchasing of goods and services; and, be it

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

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

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution 63, Requesting study on options for financing construction and completion of Coalfields Expressway.

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

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for Senate Bill 476, Expiring funds from Revenue Shortfall Reserve Fund to General Revenue.

On third reading, coming up in regular order, was reported by the Clerk.

On motion of Senator Ferns, the bill was committed to the Committee on Rules.

Eng. Com. Sub. for House Bill 2366, Relating to selling Jackie Withrow Hospital.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Miller, Ojeda, Palumbo, Plymale, Prezioso, Rucker, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—28.

The nays were: Facemire, Jeffries, Maynard, Mullins, Romano and Smith—6.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2366) passed.

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

Eng. Com. Sub. for House Bill No. 2366—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-25, relating to the selling of a certain state owned health care facility and appurtenances by the Secretary of the Department of Health and Human Resources; ensuring the transfer of existing patients; providing for construction of a replacement facility; requiring new facility to have ninety beds; providing that other licensed bed of the existing hospital be decertified and delicensed; exempting certain laws; creating a fund; implementing a benefits package for employees; providing for an accounting; and providing statutory construction.

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

Eng. Com. Sub. for House Bill 2428, Establishing additional substance abuse treatment facilities.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2428) passed.

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

Eng. Com. Sub. for House Bill 2428—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-53-1, §16-53-2, and §16-53-3, all relating to ensuring additional beds for purposes of providing substance abuse treatment; requiring these beds are made available in locations throughout the state; providing duties of the

Secretary of the Department of Health and Human Resources; providing for requirements of facilities accepting funds; requiring facilities be appropriately licensed; creating the Ryan Brown Addiction Prevention and Recovery Fund; providing for administration of fund by the Secretary of the Department of Health and Human Resources; providing what moneys the fund shall consist of ; directing the transfer of money recovered on behalf of the state arising out of the settlement of a certain civil action to the fund; and providing for rulemaking.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2428) takes effect from passage.

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

Eng. Com. Sub. for House Bill 2546, Allowing replacement costs of employer provided property to be deducted from an employee's final paycheck if the property is not returned.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending and with the right having been granted on yesterday, Thursday, April 6, 2017, for amendments to be received on third reading, was reported by the Clerk.

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

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

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-1. Definitions.

As used in this article:

(a) The term "firm" includes any partnership, association, joint-stock company, trust, division of a corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee or successor of any of the same, or officer thereof, employing any person.

(b) The term "employee" or "employees" includes any person suffered or permitted to work by a person, firm or corporation.

(c) The term "wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission or other basis of calculation. As used in sections four, five, eight-a, ten and twelve of this article, the term "wages" shall also

include then accrued fringe benefits capable of calculation and payable directly to an employee: *Provided*, That nothing herein contained shall require fringe benefits to be calculated contrary to any agreement between an employer and his or her employees which does not contradict the provisions of this article.

(d) The term “commissioner” means Commissioner of Labor or his or her designated representative.

(e) The term “railroad company” includes any firm or corporation engaged primarily in the business of transportation by rail.

(f) The term “special agreement” means an arrangement filed with and approved by the commissioner whereby a person, firm or corporation is permitted upon a compelling showing of good cause to establish regular paydays less frequently than once in every two weeks: *Provided*, That in no event shall the employee be paid in full less frequently than once each calendar month on a regularly established schedule.

(g) The term “deductions” includes only those amounts required by law or Court order to be withheld, and those amounts ~~authorized for union or club dues, pension plans, payroll savings plans, credit unions, charities and hospitalization and medical insurance~~ required by the terms of an employer-sponsored or employer-provided plan or program providing fringe benefits in which the employee is a participant.

(h) The term “officer” shall include officers or agents in the management of a corporation or firm who knowingly permit the corporation or firm to violate the provisions of this article.

(i) The term “wages due” shall include at least all wages earned up to and including the twelfth day immediately preceding the regular payday.

(j) The term “construction” means the furnishing of work in the fulfillment of a contract for the construction, alteration, decoration, painting or improvement of a new or existing building, structure, roadway or pipeline, or any part thereof, or for the alteration, improvement or development of real property: *Provided*, That construction performed for the owner or lessee of a single family dwelling or a family farming enterprise is excluded.

(k) The term “minerals” means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metallurgical ore.

(l) The term “fringe benefits” means any benefit provided an employee or group of employees by an employer, or which is required by law, and includes ~~regular vacation, graduated vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses, sickness and accident benefits and benefits relating to medical and pension coverage~~ , but is not limited to, benefits provided pursuant to any welfare plan or pension plan subject to the Employee Retirement Income Security Act of 1974 in which the employee is a participant, benefits for medical, surgical or hospital care, sickness, accident, disability or death, unemployment, vacation, holidays, apprenticeship or training, day care, education, prepaid legal services, severance and retirement or post retirement.

(m) The term “employer” means any person, firm or corporation employing any employee.

(n) The term “doing business in this state” means having employees actively engaged in the intended principal activity of the person, firm or corporation in West Virginia.

(o) The term “employer provided property” means all property provided by an employer to an employee for use in the employer’s business, including but not limited to, equipment, phone, computer, supplies or uniforms.

(p) The term “actual cash value” means the lesser of fair market value of the employer provided property or the cost to replace employer provided property, minus depreciation taken or allowed.

§21-5-4. Cash orders; employees separated from payroll before paydays; employer provided property.

(a) In lieu of lawful money of the United States, any person, firm or corporation may compensate employees for services by cash order which may include checks, direct deposits or money orders on banks convenient to the place of employment where suitable arrangements have been made for the cashing of the checks by employees or deposit of funds for employees for the full amount of wages.

(b) Whenever a person, firm or corporation discharges an employee, or whenever an employee quits or resigns from employment, the person, firm or corporation shall pay the employee’s wages due for work that the employee performed prior to the separation of employment on or before the next regular payday on which the wages would otherwise be due and payable: *Provided*, That fringe benefits, as defined in section one of this article, that are provided an employee pursuant to an agreement between the employee and employer and that are due, but pursuant to the terms of the agreement, are to be paid at a future date or upon additional conditions which are ascertainable are not subject to this subsection and are not payable on or before the next regular payday, but shall be paid according to the terms of the agreement. For purposes of this section, “business day” means any day other than Saturday, Sunday or any legal holiday as set forth in section one, article two, chapter two of this code.

(c) Payment under this section may be made in person in any manner permissible under section three of this article, through the regular pay channels or, if requested by the employee, by mail. If the employee requests that payment under this section be made by mail, that payment shall be considered to have been made on the date the mailed payment is postmarked.

(d) When work of any employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, the person, firm or corporation shall pay in full to the employee not later than the next regular payday, either through the regular pay channels or by mail if requested by the employee, wages earned at the time of suspension or layoff.

(e) If a person, firm or corporation fails to pay an employee wages as required under this section, the person, firm or corporation, in addition to the amount which was unpaid when due, is liable to the employee for two times that unpaid amount as liquidated damages. This section regulates the timing of wage payments upon separation from employment and not whether overtime pay is due. Liquidated damages that can be awarded under this section are not available to employees claiming they were misclassified as exempt from overtime under state and federal wage and hour laws. Every employee shall have a lien and all other rights and remedies for the protection and enforcement of his or her salary or wages, as he or she would have been entitled to had he or she rendered service therefor in the manner as last employed; except that, for the

purpose of liquidated damages, the failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he or she is adjudicated bankrupt upon the petition.

(f)(1) Notwithstanding any provision in this article, including but not limited to section three-e of this article, to the contrary, if an employee fails to return employer provided property at the time of discharge, resignation or separation from employment under any circumstances, the employer may withhold, deduct or divert any portion of an employee's final wages up to an amount equal to but not to exceed the actual cash value of employer provided property, subject to the following:

(A) The employer provided property had been provided to the employee in the course of, and for use in, the employer's business;

(B) The employee had signed a written agreement with the employer contemporaneous with the obtaining of the employer provided property, or signed and ratified an agreement if property had been provided prior to the effective date of this provision; and such agreement contained, at a minimum, the following information:

(i) Specific itemization of the employer provided property, including the cost to the employer;

(ii) Clear statement that such items are to be returned immediately upon discharge, resignation or separation from employment under any circumstances; and

(iii) Clear statement, coupled with the employee's acknowledgement and agreement, that should the employee fail to timely return the specified item or items upon separation from employment, the actual cash value of such item or items may be deducted and recovered by the employer from the employee's final wages;

(C) The employer shall notify the employee in writing at the time of discharge, resignation or separation from employment under any circumstances by personal service, or as soon thereafter as practicable, by personal service or via certified mail with return receipt requested, as to the actual cash value of the items, make a demand for return of such employer provided property by a certain date, not to exceed ten business days from the notification, and advise the employee of his or her option under subdivision three of this subsection to object to the actual cash value amount to be deducted; and

(D) The employer shall relinquish any wages withheld, deducted or diverted under this section to the employee if the employee returns the employer's property, equipment, supplies and uniforms in a condition suitable for the age and usage of the items within the deadline specified in paragraph (C), subdivision (1) of this subsection.

(2) Nothing herein precludes an employee from voluntarily consenting in writing to an employer's withholding, deduction or diversion of a certain amount from the employee's final wages in satisfaction of subdivision (1) of this subsection.

(3) If an employee objects to the actual cash value amount to be deducted by an employer, and provides such written objection within the deadline specified in paragraph (C), subdivision (1) of this subsection, then the employer shall provide the wages owed under this section to the employee less the claimed actual cash value amount, and shall place the controverted amount in an interest bearing escrow account: *Provided*, That if the employee does not commence a civil

action in the appropriate court within three months of the date the written objection is made, the employee shall forfeit the amount in escrow and such money shall revert to the employer.

(4) Nothing in this subsection is intended, nor shall it be construed, to abolish or limit any other remedies available to an employer to recover employer provided property, damages related to employer provided property or any other damages or relief, equitable or otherwise, available under any applicable law.

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2546), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2546) passed.

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

Eng. Com. Sub. for House Bill 2546—A Bill to amend and reenact §21-5-1 and §21-5-4 of the Code of West Virginia, 1931, as amended, all relating to the Wage Payment and Collection Act; relating to allowing actual cash value of employer provided property to be deducted from an employee's final paycheck if the property is not returned; defining terms under the Wage Payment and Collection Act; clarifying and defining the terms "deductions", "fringe benefits", "employer provided property" and "actual cash value" under the Wage Payment and Collection Act; setting forth conditions upon which an employer may withhold, deduct or divert the actual cash value of employer provided property that has not been timely returned; requiring written agreements before withholding or deductions for the actual cash value of employer provided property may be made; specifying certain contents of such written agreements; authorizing withholding, deduction or diversion of actual cash value of employer provided property with consent of employee; requiring employer to provide notice of intent to withhold, deduct or divert actual cash value of employer provided property; specifying contents of that notice; requiring employer to relinquish withheld wages if the employee provides the employer provided property by the deadline contained in the notice; providing option to employee to object to actual cash value of employer provided property to be withheld, deducted or diverted; providing that employer place contested amounts in interest bearing escrow account; requiring employee to file civil action to recoup contested amounts within three months or contested amount in escrow account reverts to employer; and providing that new subsection does not abolish or limit any other remedies available to employers under law.

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

Eng. Com. Sub. for House Bill 2552, Increasing the pet food registration fee and directing that the additional money be deposited into the West Virginia Spay Neuter Assistance Fund.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Ferns, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Eng. Com. Sub. for House Bill 2561, Relating to public school support.

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

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—22.

The nays were: Beach, Facemire, Jeffries, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—12.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2561) passed.

On motion of Senator Trump, the following amendment to the title of the bill was reported by the Clerk and adopted:

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

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

Senator Ferns moved that the bill take effect July 1, 2017.

On this question, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Maroney, Maynard, Mullins, Rucker, Smith, Swope, Sypolt, Takubo, Weld and Carmichael (Mr. President)—20.

The nays were: Beach, Facemire, Jeffries, Mann, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Trump, Unger and Woelfel—14.

Absent: None.

So, less than two thirds of all the members elected to the Senate having voted in the affirmative, the President declared Senator Ferns' aforesated motion had not prevailed.

Senator Trump moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—22.

The nays were: Beach, Facemire, Jeffries, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—12.

Absent: None.

So, less than two thirds of all the members elected to the Senate having voted in the affirmative, the President declared Senator Trump's aforestated motion had not prevailed.

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

Eng. Com. Sub. for House Bill 2601, Relating to municipal policemen's or municipal firemen's pension and relief funds.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2601) passed.

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

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

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

On motion of Senator Ferns, the Senate recessed until 2 p.m. today.

Upon expiration of the recess, the Senate reconvened and, without objection, returned to the third order of business.

A message from The Clerk of the House of Delegates announced that that body had refused to concur in the Senate amendments to, and requested the Senate to recede therefrom, as to

Eng. Com. Sub. for House Bill 2868, Relating generally to Uniform Unclaimed Property Act.

On motion of Senator Ferns, the Senate refused to recede from its amendments to the bill and requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses.

Whereupon, Senator Carmichael (Mr. President) appointed the following conferees on the part of the Senate:

Senators Smith, Cline and Romano.

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

The Senate again proceeded to the eighth order of business, the next bill coming up in numerical sequence being

Eng. Com. Sub. for House Bill 2702, Relating to excused absences for personal illness from school.

Having been read a third time on yesterday, Thursday, April 6, 2017, and now coming up in regular order, was reported by the Clerk.

At the request of Senator Mann, unanimous consent was granted to offer an amendment to the bill on third reading.

Thereupon, on motion of Senator Mann, the following amendment to the bill was reported by the Clerk and adopted:

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

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2702), as just amended, was then read a third time and put upon its passage.

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

The nays were: None.

Absent: Gaunch, Karnes and Smith—3.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2702) passed.

At the request of Senator Mann, as chair of the Committee on Education, and by unanimous consent, the unreported Education committee amendment to the title of the bill was withdrawn.

On motion of Senator Mann, the following amendment to the title of the bill was reported by the Clerk and adopted:

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

Senator Ferns moved that the bill take effect July 1, 2017.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Hall, Jeffries, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—31.

The nays were: None.

Absent: Gaunch, Karnes and Smith—3.

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

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

Eng. Com. Sub. for House Bill 2708, Relating to a lawful method for a developmentally disabled person to purchase a base hunting license.

On third reading, coming up in regular order, with the unreported Natural Resources committee amendment pending and with the right having been granted on yesterday, Thursday, April 6, 2017, for amendments to be received on third reading, was reported by the Clerk.

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

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

That §20-2-27, §20-2-30a, §20-2-42a, §20-2-42q, §20-2-42s and §20-2-42v of the Code of West Virginia, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §20-3-3a, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

PART II.

LICENSES AND PERMITS.

§20-2-27. Necessity for license; contact information exempted.

~~Except as otherwise provided by law, no resident who has reached his or her fifteenth birthday and who has not reached his or her sixty-fifth birthday before January 1, 2012, and no nonresident shall at any time take, hunt, pursue, trap for, kill or chase any wild animals, wild birds, or fish for, take, kill or catch any fish, amphibians or aquatic life of any kind whatsoever in this state without first having secured a license or permit and then only during the respective open seasons, except that a nonresident who has not reached his or her fifteenth birthday may fish for, take, kill or catch any fish, amphibians or aquatic life of any kind whatsoever in this state without first having secured a license or permit. A person under the age of fifteen years shall not hunt or chase any wild animals or wild birds upon lands of another unless accompanied by a licensed adult.~~

(a) Except as otherwise provided by law, a resident between the ages of fifteen and sixty-five, and all nonresidents, may not hunt or take wildlife of any kind in this state without the requisite license, stamp or permit, and then only during the respective open seasons. A resident who is fourteen or younger may hunt and take wildlife without a license if accompanied by a licensed adult. A resident and nonresident who is fourteen or younger may fish for and take fish, amphibians or aquatic life without a license.

(b) Except as otherwise provided by law, A a resident or nonresident member of any club, organization or association, or persons owning or leasing a game preserve, or fish preserve, plant or pond in this state shall may not hunt or fish therein without first securing a the requisite license, stamp or permit as required by law: *Provided*, That resident landowners or their resident children, or bona fide resident tenants of land, may, without a ~~permit or license, stamp or permit~~, hunt and fish on their own land during the respective open seasons in accordance with laws and rules applying to such hunting and fishing unless the lands have been designated as a wildlife refuge or preserve.

(c) Licenses, stamps and permits shall be of the kinds and classes are set forth in this article and shall be conditioned upon the require payment of the requisite fees established for the licenses and permits.

(d) The list of names, addresses and other contact information of all licensees compiled and maintained by the division as a result of the sale and issuance of any resident or nonresident license, stamp or permit, as well as any electronic game information or other personal information obtained pursuant to this chapter, is exempt from disclosure by the division under the Freedom of Information Act, chapter twenty-nine-b of this code, and for any other purpose: *Provided*, That the records specified in this section shall be available to all law-enforcement agencies, courts or other governmental entities authorized to request or receive the records.

§20-2-30a. Certificate of training; falsifying, altering, forging, counterfeiting or uttering training certificate; modified certificate of training; penalties.

(a) Notwithstanding any other provisions of this article, ~~no~~ a base hunting license may not be issued to any person who was born on or after January 1, 1975, unless the person submits to ~~the person authorized to issue hunting licenses~~ a certificate of training as provided in this section or proof of completion of any course which that promotes as a major objective safety in the handling of firearms and of bow and arrows and which course is approved by the hunter education association or the director., ~~or provides a State of West Virginia~~ A resident or nonresident may show a hunting license from the previous hunting season that displays a certification of training, or ~~attests they may attest~~ they may attest that a hunter training course has been completed when purchasing a license or stamp online.: *Provided*, That after January 1, 2013, However, a person may be issued a Class AH, Class AHJ, Class AAH and Class AAHJ apprentice hunting and trapping license

pursuant to the provisions of section forty-two-y of this article ~~and is exempt from~~ without completing the hunter training requirements set forth herein.

(b)(1) The director shall establish a course in the safe handling of firearms and of bows and arrows, such as the course approved by the Hunter Education Association. This course shall be given at least once per year in each county in this state and shall be taught by instructors certified by the director. In establishing and conducting this course, the director may cooperate with any reputable association or organization which promotes as a major objective safety in the handling of firearms and of bows and arrows. ~~.- Provided, That any~~

(2) A person holding a Class A-L or AB-L lifetime resident license obtained prior to his or her fifteenth birthday shall be required to obtain a certificate of training as provided in this section before hunting or trapping pursuant to said license. This course of instruction shall be offered without charge, except for materials or ammunition consumed. Upon satisfactory completion of the course, each person instructed in the course shall be issued a certificate of training for the purposes of complying with the requirements of subsection (a) of this section. The certificate shall be in the form prescribed by the director and shall be valid for hunting license application purposes.

(c) (1) Upon satisfactory completion of this course, any person whose hunting license has been revoked for a violation of the provisions of this chapter may petition the director for a reduction of his or her revocation time. However, under no circumstances may the time be reduced to less than one year.

(2) Successful completion of this course shall be required to consider the reinstatement of a hunting license of any person whose license has been revoked due to a conviction for negligent shooting of a human being or of livestock under the provisions of section fifty-seven of this article, and who petitions the director for an early reinstatement of his or her hunting privileges. Such a petitioner shall also comply with the other requirements for consideration of reinstatement contained in section thirty-eight of this article.

(d) It is unlawful for any person to falsify, alter, forge, counterfeit or utter a certificate of training. Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000, or confined in jail for a period not to exceed one year, or both fined and imprisoned.

(e) ~~Nothing herein contained shall~~ This section does not mandate that any a county school district in the state be is responsible for implementing hunter safety education programs.

(f) (1) Notwithstanding the provisions of this section, a base hunting license may be issued to any person who has a developmental disability whose disability affects his or her ability to undertake a written test. The developmentally disabled person must attend an on-site hunter training course and must successfully complete all non-written aspects of the course to receive a modified certificate of training to purchase a base hunting license. For purposes of this section, "developmentally disabled" has the same meaning as prescribed in subsection (i), section twenty-eight of this article.

(2) As part of the application process for a license purchased under a modified certificate of training, a person with a developmental disability shall present to the division a written application form furnished by the director and signed by a licensed physician indicating that the person is:

(A) Unable to successfully complete a standard written test administered as part of the hunter training course;

(B) At all times capable of understanding and following directions given by another person; and

(C) Not a danger to himself or herself or others while engaged in hunting with a firearm.

(3) A person with a license purchased under a modified certificate of training may not hunt or trap unless he or she is in possession of all other required documentation and stamps and is accompanied and directly supervised by an adult eighteen years of age or older who either possesses a valid West Virginia hunting license or has the lawful privilege to hunt pursuant to the provisions of this chapter. For purposes of this subsection, "accompanied and directly supervised" means that a person maintains a close visual and verbal contact with, provides adequate direction to and can assume control of the firearm from the developmentally disabled person.

(4) Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, is subject to the punishment and penalties prescribed in section nine, article seven of this chapter.

§20-2-42a. Class A resident hunting and trapping license.

A Class A license is a resident hunting and trapping license and entitles the licensee to hunt and trap all legal species of wild animals and wild birds in all counties of the state, except that the licensee may not hunt deer during the deer archery, crossbow and muzzleloader seasons, or black bear, wild turkey or wild boar during the respective seasons, and except as prohibited by rules of the director or Natural Resources Commission and when additional licenses, stamps or permits are required. It shall be issued only to residents or aliens lawfully residing in the United States who have been domiciled residents of West Virginia for a period of thirty consecutive days or more immediately prior to the date of their application for a license. The fee for the license is \$18. This is a base license and does not require the purchase of a prerequisite license to participate in the activities specified in this section, except as noted.

§20-2-42q. Class RB resident and Class RRB nonresident archery deer hunting stamp for an additional deer.

The director has the authority to issue a Class RB resident and a Class RRB nonresident archery deer hunting stamp when deemed essential for the proper management of the wildlife resources. This stamp allows the licensee to hunt and take an additional deer during the deer archery or crossbow seasons as designated by the director. The fee for a Class RB stamp is \$20 and the fee for a Class RRB stamp is \$35. The director may promulgate rules in accordance with article three, chapter twenty-nine-a of this code governing the issuance and use of these stamps. These stamps require that the licensee purchase the appropriate base license before participating in the activities specified in this section, except as noted.

§20-2-42s. Class UU nonresident archery deer hunting stamp.

A Class UU stamp is a nonresident archery deer hunting stamp and entitles the licensee to hunt and take deer with a bow during the archery deer season or with a crossbow in the crossbow deer season in all counties of the state, except as prohibited by the rules of the director or Natural Resources Commission. The fee for a Class UU stamp is \$30. The stamp, issued in a form

prescribed by the director, shall be in addition to a Class E license. This stamp requires that the licensee purchase the appropriate base license before participating in the activities specified in this section, except as noted.

§20-2-42v. Class BG resident big game stamp.

A Class BG stamp is a resident big game stamp and entitles the Class A licensee to hunt deer during the deer archery, crossbow and muzzleloader seasons, and bear, wild turkey and wild boar during the respective seasons, except as prohibited by rules of the director or Natural Resources Commission: *Provided*, That the licensee possesses all other required permits and/or stamps. The fee for the stamp is \$10. The stamp, issued in a form prescribed by the director, shall be in addition to a Class A license. This stamp requires that the licensee purchase the appropriate base license before participating in the activities specified in this section, except as noted.

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

§20-3-3a. Cabwaylingo Pilot Project and Special Permit.

(a) The director shall establish a two-year pilot project permitting all-terrain vehicles (ATVs) and off-highway recreational vehicles (ORVs) to drive on roads and trails in Cabwaylingo State Forest, as designated and approved by the director. The director may establish special seasons and designate certain campgrounds and tent sites for ATV and ORV users in the forest.

(b) The director may establish a special permit for purchase by the ATV and ORV users for road and trail access, and may close any areas, or parts thereof, to public use. It is unlawful at any time to operate an ATV or ORV on any roads and trails in Cabwaylingo State Forest without the special permit.

(c) The provisions of article fifteen of this chapter shall apply to the division, participants, outfitters and licensees of the Cabwaylingo pilot project, though ORVs may be permitted.

(d) At the conclusion of the two-year pilot project, the Legislative Auditor shall review the pilot project and file a report with the Joint Committee on Government and Finance.

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2708), as just amended, was then read a third time and put upon its passage.

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

The nays were: None.

Absent: Gaunch and Karnes—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub for H. B. 2708) passed.

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

Eng. Com. Sub for House Bill 2708—A Bill to amend §20-2-27, §20-2-30a, §20-2-42a, §20-2-42q, §20-2-42s and §20-2-42v the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §20-3-3a, all relating to licenses and permits generally; exempting certain contact information for hunting and fishing license holders from public disclosure with certain exceptions; clarifying use of crossbows with certain licenses and stamps clarifying license requirements for disabled person; modifying certificate of training requirements for disabled person; providing criminal penalties for violations; creating a special permit for certain vehicles on certain roads and trails in Cabwaylingo State Forest; permitting the director discretion to establish special season and other aspects of two-year pilot project; applying the ATV, UTV and Motorcycle Responsibility Act to the project; requiring Legislative Auditor to review project and file report; and making technical corrections.

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

Eng. Com. Sub. for House Bill 2720, Allowing the School Building Authority to transfer funds allocated into the School Construction Fund.

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

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

The nays were: None.

Absent: Gaunch and Karnes—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2720) passed.

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

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

Senator Ferns moved that the bill take effect July 1, 2017.

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

The nays were: None.

Absent: Gaunch and Karnes—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2720) takes effect July 1, 2017.

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

Eng. Com. Sub. for House Bill 2724, Relating to creating a pilot program under the Herbert Henderson Office of Minority Affairs.

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

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

The nays were: None.

Absent: Gaunch and Karnes—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2724) passed with its title.

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

Eng. Com. Sub. for House Bill 2804, Removing chiropractors from the list of medical professions required to obtain continuing education on mental health conditions common to veterans and family members.

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

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

The nays were: Prezioso—1.

Absent: Gaunch and Karnes—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2804) passed with its title.

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

Eng. Com. Sub. for House Bill 2850, Relating to product liability actions.

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

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Hall, Mann, Maroney, Maynard, Mullins, Palumbo, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—23.

The nays were: Beach, Facemire, Jeffries, Miller, Ojeda, Plymale, Prezioso, Romano and Unger—9.

Absent: Gaunch and Karnes—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2850) passed with its title.

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

Eng. Com. Sub. for House Bill 2857, West Virginia Safer Workplaces Act.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2857 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Hall, Mann, Maroney, Maynard, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—19.

The nays were: Beach, Facemire, Jeffries, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—13.

Absent: Gaunch and Karnes—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2857) passed.

On motion of Senator Trump, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2857—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-3E-1, §21-3E-2, §21-3E-3, §21-3E-4, §21-3E-5, §21-3E-6, §21-3E-7, §21-3E-8, §21-3E-9, §21-3E-10, §21-3E-11, §21-3E-12, §21-3E-13, §21-3E-14, §21-3E-15 and §21-3E-16, all relating to creating West Virginia Safer Workplaces Act; permitting employers to test employees and prospective employees for drugs and alcohol under certain circumstances; providing a short title; defining terms; declaring public policy; providing for exceptions to the applicability of the West Virginia Safer Workplaces Act for employers covered by other drug and alcohol testing statutes; clarifying the right of privacy as defined by the West Virginia Supreme Court is outweighed by the public policy set forth in the West Virginia Safer Workplaces Act if an employer complies with the act; providing for the collection of samples, scheduling of tests and testing procedures; requiring employers to adhere to the accuracy and fairness safeguards of the West Virginia Safer Workplaces Act to qualify for the bar from being subjected to legal claims for acting in good faith on the results of a drug or alcohol test; providing for an employee’s ability to request split sample be tested to challenge a

positive test result; requiring employers to pay for certain drug or alcohol tests and transportation expenses, if any; requiring employer to conduct tests during or immediately before or after a regular work period; providing that testing by an employer is worked time for purposes of compensation and benefits for current employees; establishing responsibility for cost of split sample testing; setting forth testing policy requirements; requiring confirmatory tests before disciplinary action may be taken under the West Virginia Safer Workplaces Act; establishing requirements for confirmatory drug tests; providing for disciplinary procedures; addressing disciplinary action for sensitive employees; describing sensitive employees; providing employers who are obligated to perform drug testing under a federal or state mandated drug testing statute will be required to follow whatever additional requirements are mandated by those statutes; providing protection from liability for certain legal claims under certain circumstances; clarifying that no causes of action for certain acts exists under the West Virginia Safer Workplaces Act; addressing potential causes of action related to false positive test results; addressing claims for defamation arising from circumstances covered by the West Virginia Safer Workplaces Act; clarifying employers are not required to adopt a drug and alcohol testing policy or to conduct drug or alcohol tests of employees or prospective employees; providing for confidentiality and exceptions to confidentiality requirement; addressing discipline for positive drug or alcohol tests including but not limited to termination of employment; providing for forfeiture of certain benefits under certain circumstances including unemployment compensation and workers' compensation benefits; clarifying that the drug and alcohol testing provisions of the West Virginia Safer Workplace Act cannot be used to show intoxication pursuant to section two, article four, chapter twenty-three of this code; requiring employers to provide notice to employees of the potential forfeiture of certain benefits; providing employers waive the right to assert eligibility for benefits is forfeited if notice is not provided; and requiring employers to have written drug and alcohol testing policies and procedures when implementing drug and alcohol testing.

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

Eng. Com. Sub. for House Bill 2916, Authorizing certain first responders to carry firearms.

On third reading, coming up in regular order, was read a third time.

Pending discussion,

On motion of Senator Ferns, the bill was committed to the Committee on Rules.

Eng. House Bill 3018, Adding definition of correctional employee to the list of persons against whom an assault is a felony.

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

Pending discussion,

The question being "Shall Engrossed House Bill 3018 pass?"

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

The nays were: Azinger—1.

Absent: Gaunch and Karnes—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3018) passed.

At the request of Senator Trump, as chair of the Committee on the Judiciary, and by unanimous consent, the unreported Judiciary committee amendment to the title of the bill was withdrawn.

On motion of Senator Romano, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. House Bill 3018—A Bill to amend and reenact §61-2-10b of the Code of West Virginia, 1931, as amended, relating to crimes against the person; defining correctional employee; including correctional employees as persons to whom the criminal penalties for malicious assault, unlawful assault, battery and assault in this section apply; establishing penalties; and prohibiting certain persons so convicted from receiving concurrent sentences under certain circumstances.

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

Eng. Com. Sub. for House Bill 3020, Relating to criminal penalties for the offenses of hunting, trapping or fishing on the lands of another person.

On third reading, coming up in regular order, with the unreported Natural Resources committee amendment pending, and with the right having been granted on yesterday, Thursday, April 6, 2017, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Ferns, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's second reading calendar.

Eng. Com. Sub. for House Bill 3030, Relating to appeals as a matter of right in the West Virginia Supreme Court of Appeals.

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

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

The nays were: None.

Absent: Gaunch and Karnes—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3030) passed.

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

Eng. Com. Sub. for House Bill 3030—A Bill to amend and reenact §17C-5A-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §58-5-1 of said code, all relating to appeals as a matter of right; providing that parties to decisions of the Office of Administrative Hearings shall be entitled to appeal such decisions as a matter of right; setting time frame for requesting such appeal; specifying court to which appeal is to be made; requiring appeal before circuit court to be trial de novo; specifying that Office of Administrative Hearings is not to be made party to appeal; providing for stay of driver's license revocation or suspension pending appeal; and providing that all appeals in the West Virginia Supreme Court of Appeals shall be afforded a full and meaningful review and a written decision on the merits.

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

Eng. Com. Sub. for House Bill 3064, Allowing vehicles of a size and weight exceeding certain specifications to operate over specified routes.

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

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

The nays were: None.

Absent: Gaunch and Karnes—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3064) passed with its title.

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

Eng. Com. Sub. for House Bill 3093, Establishing Broadband Enhancement and Expansion Policies.

On third reading, coming up in regular order, with the unreported Government Organization committee amendment pending and with the right having been granted on yesterday, Thursday, April 6, 2017, for amendments to be received on third reading, was reported by the Clerk.

The following amendment to the bill, from the Committee on Government Organization, was reported by the Clerk:

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

That §31-15C-1, §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-6, §31-15C-7, §31-15C-8, §31-15C-9, §31-15C-12 and §31-15C-13 of the Code of West Virginia, 1931, as amended, be repealed; that §12-6C-11 of said code be amended and reenacted; that §31-15-8 of said code be amended and reenacted; and that said code be amended by adding thereto a new chapter, designated §31G-1-1, §31G-1-2, §31G-1-3, §31G-1-4, §31G-1-5, §31G-1-6, §31G-1-7, §31G-1-8, §31G-1-9, §31G-1-10, §31G-1-11, §31G-1-12, §31G-1-13; §31G-1-14, §31G-2-1, §31G-2-2, §31G-2-3, §31G-2-4, §31G-2-5, §31G-2-6, §31G-2-7, §31G-2-8, §31G-2-9, §31G-2-10, §31G-2-

11, §31G-2-12, §31G-2-13; §31G-2-14, §31G-2-15, §31G-2-16, §31G-2-17, §31G-2-18, §31G-2-19, §31G-2-20, §31G-2-21, §31G-2-22, §31G-2-23, §31G-2-24, §31G-2-25, §31G-2-26, §31G-2-27, §31G-3-1, §31G-3-2, §31G-4-1, §31G-4-2 and §31G-4-3, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

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

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

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

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

(d) The interest rates and maturity dates on the loans made by the West Virginia Economic Development Authority for business and industrial development projects authorized by section

seven, article fifteen, chapter thirty-one of this code shall be at competitive rates and maturities as determined by the West Virginia Economic Development Authority Board.

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

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

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

Fund, LLC, whether in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of which that board shall have a security interest to secure repayment of the loan to the West Virginia Economic Development Authority authorized by this subsection. In the event the amounts or returns received by the West Virginia Enterprise Corporation in respect to its investment in the West Virginia Enterprise Capital Fund, LLC, are not adequate to pay when due the principal or interest installments, or both, with respect to the loan authorized by this subsection by the board to the West Virginia Economic Development Authority, the principal or interest, or both, as the case may be, due on the loan made to the West Virginia Economic Development Authority pursuant to this subsection shall be deferred and any and all past due principal and interest payments shall promptly be paid to the fullest extent possible upon receipt by the West Virginia Enterprise Advancement Corporation of moneys in respect to its investments in the West Virginia Enterprise Capital Fund, LLC. The directors or the board shall bear no fiduciary responsibility as provided in section thirteen of this article with regard to the loan authorized by this subsection.

(h) Notwithstanding any provision in this code to the contrary, subject to a liquidity determination and cash availability, the board shall make available to the West Virginia Economic Development Authority, from the Consolidated Fund, in the form of a nonrecourse revolving loan, \$50 million, for the purpose of insuring the payment or repayment of all or any part of the principal, the redemption or prepayment premiums or penalties on, and interest on any form of debt instrument entered into by an enterprise, public body or authority of the state with a financial institution, including, but not limited to, banks, insurance companies and other institutions in the business of lending money, as authorized and as set forth in section eight, article fifteen, chapter thirty-one of this code, but only for the purpose of providing insurance on such debt instruments relating solely to the deployment of broadband under said section: *Provided*, That the West Virginia Economic Development Authority may not insure more than \$10 million for any one enterprise, public body or authority of the state in any single calendar year. The loan authorized by this subsection may not be included in the revolving fund loan principal balance for purposes of calculating the loan amortization in subsection (b) of this section. The loan authorized by this subsection shall be classified by the board as a long-term fixed income investment, and shall bear interest on the outstanding principal balance of the loan at a variable interest rate equal to the twelve-month average of the board's yield on its cash liquidity pool. The rate shall be set on July 1, 2017, and adjusted quarterly during each year thereafter. The maximum annual adjustment may not exceed one percent. Quarterly, the West Virginia Economic Development Authority shall make a payment sufficient to pay in full all accrued interests on the loan for the prior quarter. The loan authorized by this subsection is nonrecourse and is payable by the West Virginia Economic Development Authority solely from moneys received by the West Virginia Economic Development Authority in respect to insured debt instruments relating to providing broadband service under section eight, article fifteen, chapter thirty-one of this code. Upon payment in full of any said insured debt instruments, the West Virginia Economic Development Authority shall reduce the outstanding balance of the loan by a like amount. Additionally, quarterly, the West Virginia Economic Development Authority shall determine the outstanding balance of all such insured debt instruments and shall accordingly adjust the outstanding balance of the loan to equal the outstanding obligations of the West Virginia Economic Development Authority for all said insured debt instruments. The loan is hereby secured by a security interest that pledges and assigns the cash proceeds of all collateral securing all insurance agreements entered into by the authority respecting debt instruments relating to the deployment of broadband under said section. In the event moneys received by the West Virginia Economic Development Authority respecting any individual insured debt instrument relating to providing broadband service under said section is insufficient to pay when due the principal or interest installments, or both, with respect to the loan authorized by this subsection by the board to the authority, the principal or interest, or both, as

the case may be, due on the loan made to the authority pursuant to this subsection shall be deferred and any and all past-due principal and interest payments shall promptly be paid to the fullest extent possible upon receipt by the authority of all moneys respecting said debt instruments. The directors of the board bear no fiduciary responsibility as provided in section thirteen of this article with regard to the loan authorized by this subsection.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-8. Insurance fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Upon the filing of an application for loan insurance under this subsection, the broadband provider shall cause to be published as a Class II legal advertisement in compliance with article three, chapter fifty-nine of this code, notice of the filing of the application and that the authority may approve the same unless within ten business days after completion of publication a written objection is received by the authority from a person or persons challenging that the proposed broadband project does not satisfy the provisions of this subsection. The publication area for such notice is to be the county or counties in which any portion of the proposed broadband project is to be constructed. The notice shall be in such form as the authority shall direct, and shall include a map of the area or areas to be served by the proposed broadband project. The applicant shall also cause to be mailed by first class, on or before the first day of publication of the notice, a copy of the notice to all known current providers of broadband service within the area proposed to be served. If a challenge under this paragraph is timely received by the authority, the authority shall advise the Broadband Enhancement Council, established in article fifteen-c of chapter thirty-one of this code, in writing within five business days. The council shall set the matter for hearing on a date within thirty days of receipt of notice from the authority. The Broadband Enhancement Council shall issue a decision on whether the proposed project satisfies the requirements of this subsection or not within thirty days of completion of such hearing. Any party participating in said hearing may appeal the council's decision within thirty days of the issuance of said decision to the Circuit Court of Kanawha County. This provision shall apply to all applicants except to those broadband providers that plan on providing a downstream data rate of at least one gigabyte per second to the end user.

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

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

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

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

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

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.

ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.

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

The Legislature finds as follows:

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

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

(3) That the issues which have hindered the provision of broadband access to rural areas of the state especially disadvantage the elderly and low-income households.

(4) That fair and equitable access to twenty-first century technology is essential to maximize the functionality of educational resources and educational facilities that enable our children to receive the best of future teaching and learning is essential to the future development of this state. A quality educational system of the twenty-first century should have access to the best technology tools and processes. Administrators should have the electronic resources to monitor student performance, to manage data, and to communicate effectively. In the classroom, every teacher in every school should be provided with online access to and the ability to deliver the best available educational technology resources to the students of West Virginia. Schools of the twenty-first century require facilities that accommodate changing technologies.

(5) Accordingly, it is the purpose of the Legislature to provide for the development of policies, plans, processes and procedures to be employed and dedicated to extending broadband access to West Virginians, and to their families, by removing restraint on the development of those services and for encouraging and facilitating the construction of the necessary infrastructure to meet their needs and demands.

§31G-1-2. Definitions.

For the purposes of this article:

(1) "Broadband" or "broadband service" means any service providing advanced telecommunications capability with the same downstream data rate and upstream data rate as is

specified by the Federal Communications Commission and that does not require the end-user to dial up a connection, that has the capacity to always be on, and for which the transmission speeds are based on regular available bandwidth rates, not sporadic or burstable rates, with latency suitable for real-time applications and services such as voice-over Internet protocol and video conferencing, and with monthly usage capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban areas: *Provided*, That as the Federal Communications Commission updates the downstream data rate and the upstream data rate the council will publish the revised data rates in the State Register within sixty days of the federal update.

(2) "Council" means the Broadband Enhancement Council.

(3) "Downstream data rate" means the transmission speed from the service provider source to the end-user.

(4) "Internet protocol address" or "IP address" means a unique string of numbers separated by periods that identifies each computer using the Internet Protocol to communicate over a network.

(5) "Upstream data rate" means the transmission speed from the end-user to the service provider source.

(6) "Unserved area" means a community that has no access to broadband service.

§31G-1-3. Broadband Enhancement Council; members of council; administrative support.

(a) The Broadband Enhancement Council is hereby established and continued. The current members, funds, and personnel shall continue in effect and be wholly transferred; except as may be hereinafter provided. With regard to the terms of the public members appointed under subdivision five of subsection (d) of this section, at the next regular meeting of the council following July 1, 2017, the currently serving public members shall draw by lot for the length of their terms, three members to serve for one additional year, three members to serve for two additional years and the last three members to serve for three additional years, with all public members in future to serve for the duration of the term described below.

(b) The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties are considered and held to be, and are hereby determined to be, essential governmental functions and for a public purpose. The council is created under the Department of Commerce for administrative, personnel and technical support services only.

(c) The council shall consist of thirteen voting members, designated as follows:

(1) The Secretary of Commerce or his or her designee;

(2) The Chief Technology Officer or his or her designee;

(3) The Vice Chancellor for Administration of the Higher Education Policy Commission or his or her designee;

(4) The State Superintendent of Schools or his or her designee; and

(5) Nine public members that shall serve three year terms from the date of their appointment and are appointed by the Governor with the advice and consent of the Senate, as follows:

(i) One member representing users of large amounts of broadband services in this state;

(ii) One member from each congressional district representing rural business users in this state;

(iii) One member from each congressional district representing rural residential users in this state;

(iv) One member representing urban business users in this state; and

(v) One member representing urban residential users in this state.

(6) In addition to the thirteen voting members of the council, the President of the Senate shall name two senators from the West Virginia Senate, one from each party, and the Speaker of the House shall name two delegates from the West Virginia House of Delegates, one from each party, each to serve in the capacity of an ex officio, nonvoting advisory member of the council.

(d) The Secretary of Commerce shall chair the first meeting at which time a chair and vice chair shall be elected from the members of the council. In the absence of the chair, the vice chair shall serve as chair. The council shall appoint a secretary-treasurer who need not be a member of the council and who, among other tasks or functions designated by the council, shall keep records of its proceedings.

(e) The council may appoint committees or subcommittees to investigate and make recommendations to the full council. Members of these committees or subcommittees need not be members of the council.

(f) Seven voting members of the council constitute a quorum and the affirmative vote of a simple majority of those members present is necessary for any action taken by vote of the council.

(g) The gubernatorial appointed members shall be deemed part-time public officials, and may pursue and engage in another business or occupation or gainful employment. Any person employed by, owning an interest in or otherwise associated with a broadband deployment project, project sponsor or project participant may serve as a council member and is not disqualified from serving as a council member because of a conflict of interest prohibited under section five, article two, chapter six-b of this code and is not subject to prosecution for violation of said section when the violation is created solely as a result of his or her relationship with the broadband deployment project, project sponsor or project participant so long as the member recuses himself or herself from board participation regarding the conflicting issue in the manner set forth in section five, article two, chapter six-b of this code and the legislative rules promulgated by the West Virginia Ethics Commission.

(h) No member of the council who serves by virtue of his or her office may receive any compensation or reimbursement of expenses for serving as a member. The public members and members of any committees or subcommittees are entitled to be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of his or her official duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(i) No person is subject to antitrust or unfair competition liability based on membership or participation in the council, which provides an essential governmental function and enjoys state action immunity.

§31G-1-4. Powers and duties of the council generally.

(a) The council shall:

(1) Explore any and all ways to expand access to broadband services, including, but not limited to, middle mile, last mile and wireless applications;

(2) Gather data regarding the various speeds provided to consumers in comparison to what is advertised. The council may request the assistance of the Legislative Auditor in gathering this data;

(3) Explore the potential for increased use of broadband service for the purposes of education, career readiness, workforce preparation and alternative career training;

(4) Explore ways for encouraging state and municipal agencies to expand the development and use of broadband services for the purpose of better serving the public, including audio and video streaming, voice-over Internet protocol, teleconferencing and wireless networking; and

(5) Cooperate and assist in the expansion of electronic instruction and distance education services.

(b) In addition to the powers set forth elsewhere in this article, the council is hereby granted, has and may exercise the powers necessary or appropriate to carry out and effectuate the purpose and intent of this article, as enumerated herein. The council shall have the power and capacity to:

(1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any broadband deployment project;

(2) Promote awareness of public facilities that have community broadband access that can be used for distance education and workforce development;

(3) Advise on deployment of e-government portals such that all public bodies and political subdivisions have homepages, encourage one-stop government access and that all public entities stream audio and video of all public meetings;

(4) Make and execute contracts, commitments and other agreements necessary or convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to assist in the mapping of the state and categorization of areas within the state;

(5) Acquire by gift or purchase, hold or dispose of real property and personal property in the exercise of its powers and performance of its duties as set forth in this article;

(6) Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for and receive any funds, property or services from any person, governmental agency or organization to carry out its statutory duties;

(7) to oversee the use of conduit installed pursuant to section two of article three of this chapter; and to

(8) Perform any and all other activities in furtherance of its purpose.

(c) The council shall exercise its powers and authority to advise and make recommendations to the Legislature on bringing broadband service to unserved and underserved areas, as well as to propose statutory changes that may enhance and expand broadband in the state.

(d) The council shall report to the Joint Committee on Government and Finance on or before January 1 of each year. The report shall include the action that was taken by the council during the previous year in carrying out the provisions of this article. The council shall also make any other reports as may be required by the Legislature or the Governor.

§31G-1-5. Creation of the Broadband Enhancement Fund.

All moneys collected by the council, which may, in addition to appropriations, include gifts, bequests or donations, shall be deposited in a special revenue account in the State Treasury known as the Broadband Enhancement Fund. The fund shall be administered by and under the control of the Secretary of the Department of Commerce. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article two, chapter eleven-b of this code.

§31G-1-6. Mapping of areas within state.

(a) Based on its analysis of data, broadband demand, and other relevant information, the council shall establish a mapping of broadband services in the state. The council shall publish an annual assessment and map of the status of broadband, including specifically designations of unserved and underserved areas of the state.

(b) To the extent possible, and subject to limitations contained in subsection (f) of this section, the council may additionally establish an interactive public map reflecting estimated downstream data rate and upstream data rate in a particular region, area, community, street or location. Any such mapping may only specify data rates at a particular street address or physical location, and shall not make public the IP address or the name of the specific individual at such location. Such mapping may also contain data concerning capacity, based upon fiber count.

(c) The mapping provided for in this section may be based on information collected or received by the council, including but not limited to, data collected from (1) state and federal agencies or entities that collect data on broadband services; (2) industry provided information; and (3) consumer data provided to the council pursuant to section nine of this article.

(d) Any entity that has received or hereinafter receives state or Federal moneys, and which has used those moneys to install infrastructure used for broadband services, shall furnish detailed information concerning the location, type, and extent of such infrastructure to the council for use in mapping.

(e) The mapping and designations provided for under this section may be revised on a continuing basis by the council as warranted by the data and information provided.

(f) In addition to the provisions of section thirteen of this article, the mapping of broadband services may exclude from public accessibility and availability: (1) The location or identity of any critical infrastructure used by public or private entities in furtherance of their internet services; (2) personal name and personal IP addresses connected with particular data rates; and (3) information designated as confidential for public security reasons by either state or federal homeland security agencies: *Provided*, That it shall be duty of the public and private entities to make the council aware of such confidential designation: *Provided, however*, That unless the council determines good cause exists, the actual or estimated upstream and downstream data rates of an area or region of the state shall not be excluded from public or private availability.

§31G-1-7. Retention of outside expert consultant.

(a) In order to assist the council with the highly technical task of categorizing the areas of the state, the council may retain outside expert consultants to assist in the purposes of this article. The experts may assist the Council to map the state on the basis of broadband availability, to evaluate and categorize data, to assist in public outreach and education in order to stimulate demand and to provide other support and assistance as necessary to accomplish the purposes of this article.

(b) The retention and contracting of all expert consultants shall be transparent, including specifically, making publicly available any contracts, retention agreements, payments and invoicing for services.

§31G-1-8. Public awareness and education.

In order to implement and carry out the intent of this article, the council may take such actions as it deems necessary or advisable in order to increase awareness of issues concerning broadband services and to educate and inform the public.

§31G-1-9. Collection of data.

(a) In order to ascertain, categorize, analyze, map, and update the status of broadband in the state, as well as to enable the council to make informed policy and legislative recommendations, the council may establish a voluntary data collection program. The program may include voluntarily submitted data from internet service providers, including any home or region data rate meters utilized by the provider. The program may also utilize and collect voluntarily submitted data rate information submitted by any person reflecting the person's personal data rate at a particular IP address. This personal data rate may be based upon a web-based test or analysis program.

(b) Any and all data collected by the Council shall not be deemed public information and is not subject to public release or availability pursuant to chapter twenty-nine-b of this code.

(c) Any data collection program established by the council shall:

(1) Make clear to those providers or persons submitting information that the data rate speed may become public, including specific reference to the person's physical address;

(2) Make clear this is a voluntary data collection program and that submission of information shall be deemed consent to use and make public such data rate information; and

(3) Not include any person's personal web history or search information, or otherwise publicly identify the person's name in connection with an IP address or physical address.

(d) The council may establish guidelines and additional rules governing a data collection program through the legislative rulemaking process, pursuant to the provisions of article three, chapter twenty-nine-a of this code.

§31G-1-10. Pilot Project for cooperatives by political subdivisions.

(a) Notwithstanding any provision in the code to the contrary, the council may create guidelines and recommend to the legislature a pilot project for no more than three municipalities or counties, either individually or in conjunction with one another, to establish non-profit cooperative associations to provide high-speed internet and broadband services.

(b) Nothing herein shall preclude or prohibit the establishment of a cooperative association by non-political subdivisions outside the purview or authority of the council. It is not a requirement that a cooperative association established under article two of this chapter seek approval or guidance from the council, and such cooperative associations established under article two of this chapter shall not be under the authority of, nor subject to, the council.

§31G-1-11. Voluntary donation and easement programs.

(a) The council shall create guidelines for, and recommend to the Legislature a means of implementing a voluntary donation program to allow for pipeline, railroad, and other similar structures and rights-of-way in the state to be donated to the state for use by public or private entities to facilitate broadband service and availability through placement of fiber.

(b) The council shall create guidelines for, and recommend to the Legislature a means of implementing a program to allow for an easement program to be established to allow public or private entities to facilitate broadband service and availability through placement of fiber.

§31G-1-12. Grants.

In furtherance of the purposes of this article, the council is permitted to seek non-state funding and grants. The council may utilize funding and grants to support the responsibilities, initiatives and projects set forth this article. The council may additionally disburse such monies to fund projects and initiatives in furtherance of the enhancement and expansion of broadband services in this state, and the other purposes of this article.

§31G-1-13. Protection of proprietary business information.

(a) Broadband deployment information provided to the council or its consultants and other agents, including, but not limited to, physical plant locations, subscriber levels, and market penetration data, constitutes proprietary business information and, along with any other information that constitutes trade secrets, shall be exempt from disclosure under the provisions of chapter twenty-nine-b of this code: *Provided*, That the information is identified as confidential information when submitted to the council.

(b) Trade secrets or proprietary business information obtained by the council from broadband providers and other persons or entities shall be secured and safeguarded by the state. Such information or data shall not be disclosed to the public or to any firm, individual or agency other

than officials or authorized employees of the state. Any person who makes any unauthorized disclosure of such confidential information or data is guilty of a misdemeanor and, upon conviction thereof, may be fined not more than \$5,000 or confined in a correctional facility for not more than one year, or both.

(c) The official charged with securing and safeguarding trade secrets and proprietary data for the council is the Secretary of Administration, who is authorized to establish and administer appropriate security measures. The council chair shall designate two additional persons to share the responsibility of securing trade secrets or proprietary information. No person will be allowed access to trade secrets or proprietary information without written approval of a minimum of two of the three authorized persons specified above.

§31G-1-14. Legislative rule-making authority.

In order to implement and carry out the intent of this article, the Secretary of the Department of Commerce, at the direction and recommendation of the council, may propose rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code.

ARTICLE 2. COOPERATIVE ASSOCIATIONS.

§31G-2-1. Definitions.

As used in this article:

(1) “Cooperative association” or “association” means any corporation organized under this article. Each association shall also comply with the requisite business corporation provisions of chapter thirty-one-d or thirty-one-f of this code, or the nonprofit corporation provisions of chapter thirty-one-e of this code.

(2) “Internet services” means providing access to, and presence on, the internet and other services. Data may be transmitted using several technologies, including dial-up, DSL, cable modem, wireless, or dedicated high-speed interconnects.

(3) “Member” means a member of an association without capital stock and a holder of common stock in an association organized with capital stock.

(4) “Qualified person” means a person who is engaged in the use of internet services, either in an individual capacity or as a business.

(5) “Qualified activity” means using internet services.

§31G-2-2. Who may organize.

Notwithstanding any provision of this code to the contrary, twenty or more qualified persons engaged in the use of internet services may form a cooperative association, with or without capital stock, under this article.

§31G-2-3. Legislative findings and purposes.

(a) It is the finding of the Legislature that:

(1) West Virginia's cities, towns, and other concentrated population areas, areas of the state, mostly rural, remain unserved or underserved by broadband access; and

(2) The lack of affordable, accessible broadband service in the underserved and unserved areas in this state necessitates consideration of alternative means and methods of providing internet services.

(b) It is the purpose of this article that individuals and businesses be able to form cooperative associations for the purpose of obtaining internet services within their respective regions and communities.

§31G-2-4. Powers.

(a) A cooperative association shall have the following powers:

(1) To engage in any qualified activity in connection with any internet service; or any activity in connection with the purchase, providing or use by its members of internet services; or in the financing, directly, through the association of any qualified activities. All transactions with nonmembers shall be on terms fixed by the association and nonmembers shall not otherwise participate in any benefits derived from such transactions;

(2) To borrow money without limitation as to amount of corporate indebtedness or liability, and to make advance payments and advances to members; to execute, issue, draw, make, accept, endorse and guarantee, without limitation, promissory notes, bills of exchange, drafts, warrants, certificates, mortgages, and any other form of obligation or negotiable or transferable bills of any kind; to become the surety, guarantor, maker, and/or endorser for accommodation or otherwise of bills, notes, securities and other evidences of debt of any association or person, anything in any other statutes or law of this state to the contrary notwithstanding;

(3) To act as the agent or representative of any member or members in any of the above-mentioned activities;

(4) To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership in, and to sell, transfer or pledge, or guarantee the payment of dividends or interest on, or the retirement or redemption of, shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the providing and marketing of any of the products handled by the association;

(5) To establish reserves and to invest the funds thereof in bonds or in such other property as may be provided in the bylaws;

(6) To buy, hold and exercise all privileges of ownership over real or personal property as may be necessary or convenient for the conduct and operation of any of the business of the association, or incidental thereto;

(7) To establish, secure, own and develop patents, trademarks and copyrights; and

(8) To do each and every thing necessary, suitable, or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the subjects herein enumerated, or conducive to or not contrary to the interest or benefit of the association; and to contract accordingly; and, in addition, to exercise and possess all powers, rights and privileges necessary

or incidental to the purposes for which the association is organized or to the activities in which it is engaged, and any other rights, powers, and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the purposes of this article.

§31G-2-5. Members.

(a) Under the terms and conditions prescribed in the bylaws adopted by it, a cooperative association may admit as members, or issue common stock to, only qualified persons.

(b) If a member of a nonstock association be other than a natural person, the member may be represented by an individual, associate, officer or manager or member thereof, duly authorized in writing.

(c) One association organized hereunder may become a member or stockholder of any other association or associations organized under this article or similar laws of any state.

§31G-2-6. Articles of incorporation.

Each association formed under this article shall prepare and file articles of incorporation, setting forth:

(1) The name of the association, which shall include the words "cooperative," "co-operative," or "co-op," and words or abbreviations designating a corporation;

(2) The purposes for which it is formed;

(3) The place where its principal business will be transacted;

(4) The period, if any prescribed, for the duration of the corporation;

(5) The number of incorporators which is not less than twenty, the number of directors which is not less than twenty and any number in excess of those minimums, or it may be set forth that the number of directors will be fixed by the bylaws;

(6) If organized without capital stock, whether the property rights and interest of each member are equal or unequal; and if unequal, the general rules applicable to the classes of members whose property rights and interest are determined and fixed; and provision for the admission of new members who may be entitled to share in the property of the association with the old members, in accordance with the general rules. This provision of the articles of incorporation may not be altered, amended or repealed except by the written consent or vote of three fourths of the members;

(7) If organized with capital stock and authorized to issue only one class of stock, the total number of shares of stock which the association has authority to issue, including: (A) The par value of each of the shares; or (B) a statement that all the shares are to be without par value;

(8) If the association is authorized to issue more than one class of stock, the total number of shares of all classes of stock which the association may issue, including: (A) The number of shares of each class that have a par value and the par value of each share by class; (B) the number of shares that are to be without par value; and (C) a statement of the powers, preferences, rights, qualifications, limitations or restrictions that are permitted by section thirteen of this article

in respect to a class of stock fixed by the articles of incorporation or by resolution of the board of directors;

(9) The articles shall be signed and filed in accordance with the provisions of the business or nonprofit corporation laws of this state; and

(10) The articles may also contain any provisions managing, defining, limiting or regulating the powers and affairs of the association, the directors, the stockholders or members of the association.

§31G-2-7. Amendments to articles of incorporation.

The articles of incorporation may be altered or amended at any regular meeting or any special meeting called for that purpose. An amendment must first be approved by two thirds of the directors and then adopted by a vote representing a majority of all the members of the association. Amendments to the articles of incorporation, when so adopted, shall be filed in accordance with the provisions of the general corporation laws of this state.

§31G-2-8. Bylaws.

Each association incorporated under this article, must, within thirty days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted by this article. A majority vote of the members or stockholders, or their written assent, is necessary to adopt such bylaws. Each association, under its bylaws, may provide for any or all of the following matters:

(1) The time, place and manner of calling and conducting its meetings;

(2) The number of stockholders or members constituting a quorum;

(3) The right of members or stockholders to vote by proxy or by mail or both; and the conditions, manner, form, and effect of such votes;

(4) The number of directors constituting a quorum; and, if authority therefor is given in the articles of incorporation, the total number of directors;

(5) The qualifications, compensation, duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof;

(6) Penalties for violation of the bylaws;

(7) The amount of entrance, organization and membership fees, if any; the manner and method of collecting the same; and the purposes for which they may be used;

(8) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member or stockholder for services rendered by the association to him or her and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign; and

(9) The number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members and of the shares of common stock; the conditions upon which and time when membership of any member shall cease; the automatic suspension of the rights of a member when he or she ceases to be eligible to membership in the association; the mode, manner and effect of the expulsion of a member; the manner of determining the value of a member's interest, and provision for its purchase by the association, at its option, upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his or her membership, or, at the option of the association, the purchase at a price fixed by conclusive appraisal by the board of directors, or at the election of the board, such property interests may be sold at public auction to the association itself, or to any person eligible to membership in such association and the proceeds of such sale paid over to the personal representative of such deceased member, or to the member withdrawing or expelled, as the case may be.

§31G-2-9. General and special meetings.

In its bylaws, each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time; and ten percent of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting: *Provided*, That the bylaws may require instead that such notice may be given as provided by this section, namely, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty- nine of this code, and the publication area for such publication shall be the county in which the principal place of business of the association is located.

§31G-2-10. Directors.

(a) The affairs of the association shall be managed by a board of not less than three directors, elected by the members or stockholders.

(b) The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors be elected either directly or by district delegates elected by the members in that district. The bylaws shall specify the number of directors to be elected by each district, the manner of reapportioning the directors and the method of redistricting the territory covered by the association. The bylaws may provide that primary elections shall be held in each district to elect the directors apportioned to the districts and that the results of all the primary elections may be ratified during the next regular meeting of the association or may be considered final.

(c) The bylaws may provide that one or more directors may be appointed by a public official, commission or by the other directors. These public directors shall represent the interest of the general public in the associations. The public directors need not be members or stockholders of the association, but shall have the same powers and rights as other directors. The directors shall not number more than one fifth of the entire number of directors.

(d) An association may provide a fair remuneration for the time actually spent by its officers and directors in its service and for the service of the members of its executive committee. No

director, during the term of his or her office, shall be a party to a contract for profit with the association differing from the contractual terms accorded regular members or holders of common stock of the association.

(e) The bylaws may provide that no director, except the president and secretary, shall occupy a position in the association on regular salary or substantially full-time pay.

(f) The bylaws may provide for an executive committee and may allot to the committee all the functions and powers of the board of directors, subject to the general direction and control of the board.

(g) When a vacancy on the board of directors occurs other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, unless the bylaws provide for an election of directors by district. In that case the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy.

§31G-2-11. Officers.

The directors shall elect from their number a president and one or more vice presidents. They shall also elect a secretary and a treasurer, who need not be directors or members of the association; and they may combine the two latter offices and designate the combined office as secretary-treasurer; or unite both functions and titles in one person. The treasurer may be a bank or any depository, and, as such, shall not be considered an officer, but as a function of the board of directors. In such case, the secretary shall perform the usual accounting duties of the treasurer, except that the funds shall be deposited only as and where authorized by the board of directors.

§31G-2-12. Officers, employees and agents to be bonded.

Every officer, employee and agent handling funds or negotiable instruments or property of or for any association created hereunder shall be required to execute and deliver adequate bonds for the faithful performance of his or her duties and obligations.

§31G-2-13. Stock; membership certificate; voting; liability; limitations on transfer and ownership.

(a) When a member of an association established without capital stock has paid his or her membership fee in full, he or she shall receive a certificate of membership. An association shall have power to issue one or more classes of stock, or one or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value, with such voting powers, full or limited, or without voting powers and in such series, and with such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the articles of incorporation, or in any amendment thereto, or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation or of any amendment thereto.

(b) No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note; but such retention as security shall not affect the member's right to vote.

(c) No member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his or her membership fee or his or her subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

(d) An association in its bylaws may limit the amount of common stock which one member may own. No member or stockholder shall be entitled to more than one vote, regardless of the number of shares of common stock owned by him or her.

(e) Any association organized with stock under this article may issue preferred stock, with or without the right to vote. Such stock may be sold to any person, member or nonmember, and may be redeemable or retireable by the association on such terms and conditions as may be provided for by the articles of incorporation and printed on the face of the certificate. The bylaws shall prohibit the transfer of the common stock of the association to persons who are not qualified persons, or organizations that are not engaged in qualified activities handled by the association, or to persons or organizations that are not members of credit associations financing such products; and such restrictions shall be printed upon every certificate of stock subject thereto.

(f) Other kinds and classes of stock may be issued in compliance with the provisions of the articles of incorporation, the terms of the bylaws, or special resolutions of the board of directors.

(g) The association may, at any time, as specified in the bylaws, except when the debts of the association exceed fifty percent of the assets thereof, buy in or purchase its common stock at the book value thereof, as conclusively determined by the board of directors, and pay for it in cash within one year thereafter.

§31G-2-14. Removal of officer or director.

(a) Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by five percent of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association and, by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person or persons bringing the charges against him or her shall have the same opportunity.

(b) In case the bylaws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by twenty percent of the members residing in the district from which he or she was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director; and by a vote of the majority of the members of that district the director in question shall be removed from office.

§31G-2-15. Referendum.

Upon demand of one third of the entire board of directors, made immediately and so recorded, at the same meeting at which the original motion was passed, any matter of policy that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting; and a special meeting may be called for the purpose.

§31G-2-16. Marketing contract.

The association and its members may take and execute marketing contracts, requiring the members, for any period of time not over five years, to use, receive or provide all or any specified part of an internet service exclusively to or through the association, or any facilities to be created by the association. If they contract a sale to the association, it shall be conclusively held that title to the products, goods and services passes absolutely and unreservedly, except for recorded liens, to the association upon delivery, or at any other specified time if expressly and definitely agreed in such contract. The contract may provide, among other things, that the association may sell or resell the products, goods and services delivered by its members, with or without taking title thereto, and pay over to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest or dividends on stock, not exceeding eight percent per annum, and reserves for retiring the stock, if any; and any other proper reserves; or any other deductions.

§31G-2-17. Remedies for breach of contract.

The bylaws or the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him or her of any provision of the marketing contract regarding the sale or delivery or withholding of internet services, and may further provide that the member will pay all costs, premiums for bonds, expenses and fees, in case the association shall prevail in any action brought by it upon the contract; and any such provisions shall be valid and enforceable in the courts of this state; and such clauses providing for liquidated damages shall be enforceable as such and shall not be regarded as penalties.

In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association may be entitled to a temporary restraining order and preliminary injunction against the member.

In any action upon such marketing agreement, it shall be presumed as between the parties that the landowner, landlord or lessor claiming therein so to be is able to control the delivery of internet services produced on his or her land by tenants or others, whose tenancy or possession or work on such land or the terms of whose tenancy or possession or labor thereon were created or changed after execution by the landowner, landlord or lessor of such marketing agreement; and in such actions the foregoing remedies for nondelivery or breach shall lie and be enforceable against such landowner, landlord or lessor.

§31G-2-18. Purchasing property of other associations, persons, firms or corporations.

Whenever an association, organized under this article with preferred capital stock, shall purchase the stock of any property, or any interest in any property, or any person, firm or corporation or association, it may discharge the obligations so incurred, wholly or in part, by exchanging for the acquired interest shares of its preferred capital stock to an amount which at par value would equal the fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued.

§31G-2-19. Annual reports.

Each association formed under this article shall prepare an annual report on forms provided by and filed with the Secretary of State pursuant to the requirements of section two-a, article one, chapter fifty-nine of this code.

§31G-2-20. Conflicting laws not to apply.

Any provisions of law which are in conflict with this article shall be construed as not applying to the association herein provided for.

§31G-2-21. Interest in other corporations or associations.

An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engaged in qualified activities regarding internet services.

§31G-2-22. Contracts and agreements with other associations.

Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other cooperative corporation, association or associations, formed in this or in any other state, for the cooperative and more economical carrying on of its business or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using, or may separately employ and use, the same personnel, methods, means and agencies for carrying on and conducting their respective business.

§31G-2-23. Rights and remedies apply to similar associations of other states.

Any corporation or association heretofore or hereafter organized under generally similar laws of another state shall be allowed to carry on any proper activities, operations and functions in this state upon compliance with the general regulations applicable to foreign corporations desiring to do business in this state, and all contracts made by or with such associations, which could be made by any association incorporated hereunder, shall be legal and valid and enforceable in this state with all of the remedies set forth in this article.

§31G-2-24. Associations heretofore organized may adopt provisions of article.

Any corporation or association organized in this state under previously existing statutes may, by a majority vote of its stockholders or members, be brought under the provisions of this article by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors to the effect that the corporation or association has, by a majority vote of the stockholders or members, decided to accept the benefits and be bound by the provisions of this article and has authorized all changes accordingly. Articles of incorporation shall be filed as required in section six of this article, except that they shall be signed by the members of the then board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation.

Where any association may be incorporated under this article, all contracts made prior to the date of incorporation, by or on behalf of such association by the promoters thereof in anticipation

of its becoming incorporated under the laws of this state, whether or not such contracts be made by or in the name of some corporation organized elsewhere, and when they would have been valid if entered into subsequent to such date, shall be held valid as if made after such date.

§31G-2-25. Liability as to delivery of products in violation of marketing agreements.

Any person who solicits, persuades or permits any member of any association organized hereunder to breach his or her marketing contract with the association or one association with another, by accepting or receiving such member's products for sale or for auction or for display for sale, contrary to the terms of any marketing agreement of which such person has knowledge or notice, shall be liable to the association aggrieved in a civil suit for damages therefor. Courts of equity shall have jurisdiction to enjoin further breaches of such contract.

§31G-2-26. Associations to be deemed not in restraint of trade.

No association organized under this article and complying with the terms thereof shall be deemed to be a conspiracy or a combination in restraint of trade or an illegal monopoly or an attempt to lessen competition or to fix prices arbitrarily; nor shall the marketing contract and agreements between the association and its members or any agreements authorized in this article be considered illegal as such or in unlawful restraint of trade or as part of a conspiracy or combination to accomplish an improper or illegal purpose.

§31G-2-27. Application of business corporation laws; nonprofit corporation laws.

The provisions of the business corporation laws in chapter thirty-one-d or the nonprofit corporation laws in chapter thirty-one-e of this code and all powers and rights thereunder shall apply to the associations organized under this article and may be used by them, except when the provisions are in conflict with or inconsistent with the express provisions of this article.

ARTICLE 3. CONDUIT INSTALLATION; MICROTRENCHING.

§31G-3-1. Definitions.

"Microtrenching" means a technique of deploying cables, including specifically for broadband networks, using a cutting wheel to cut a trench with smaller dimensions than can be achieved with conventional trench digging equipment; with the trench dimensions being no greater than three inches in width, and a depth between one and two feet.

§31G-3-2. Microtrenching permitted; notification.

(a) A person may perform microtrenching, where such is feasible, to the extent allowed by a permit issued by the appropriate municipality, county or state agency. All microtrenching work performed must be in accordance with the National Electrical Safety Code and other generally accepted safety codes.

(b) A person must install conduit in a way that will readily permit another owner to add length to the microtrenching by connecting its own conduit to the first owner's conduit. Where an owner connects its own conduit to another owner's previously installed conduit, the owner must install conduit that has the same number of pathways or pipes as the previous owner's conduit.

(c) A person must install a vacant conduit of the same size as its own conduit when performing microtrenching operations. Other persons desiring use of conduit in the same area may make use of this vacant conduit upon application to the Broadband Enhancement Council.

(d) When applying for a permit a person must notify the appropriate permitting entity of the intended dates of the start and completion of microtrenching construction. Notification must be made on a form and in a format prescribed by the appropriate permitting entity. No fee shall be charged for such application, as the installation of additional vacant conduit under the provisions of this section shall function in lieu of a fee. The person shall submit the following documents to the appropriate permitting entity:

(1) Proof of insurance; or

(2) An indemnification agreement.

(e) Promptly after completion of microtrenching construction, but no longer than forty calendar days after issuance of the permit for microtrenching, the entity must file a document with the appropriate permitting entity containing the following information:

(1) An “as-built” drawing of the conduit installed. The “as-built” drawing will be treated as proprietary and confidential, to the extent permitted by law.

(2) A map showing the street location of the conduit including the side of the street the conduit is on, the beginning and ending points of the conduit, the number of ducts in the conduit, and the number of ducts of excess capacity in the conduit. The map must accurately reflect the addresses of buildings that are passed by the conduit.

ARTICLE 4. MAKE-READY POLE ACCESS.

§31G-4-1. Definitions.

As used in this article, the following terms are defined as follows:

(1) “Attacher” means any person, corporation, or other entity, or the agents or contractors of such seeking to permanently or temporarily fasten or affix any type of equipment, antenna, line or facility of any kind to a utility pole in the right of way or its adjacent ground space.

(2) “Attachment Application” means the application made by an Attacher to a Pole Owner for attachment of equipment, antenna, line or facility of any kind to a utility pole. It shall include

(A) Proof of insurance; or

(B) An indemnification agreement prepared by the Pole Owner.

(3) “Make Ready Costs” means the costs incurred by an Attacher associated with the transfer of the facilities, antenna, lines or equipment of a Pre-Existing Third Party User, undertaken by an Attacher to enable attachment to the utility pole or similar structure. Make-Ready Costs that are to be paid by an Attacher include, without limitation, all costs and expenses to relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be necessary to accommodate an Attacher’s attachment.

(4) "Pole Owner" means a person, corporation or entity having ownership of a pole or similar structure in the right of way to which utilities, including without limitation, electric and communications facilities, are located or may be located whether such ownership is in fee simple or by franchise.

(5) "Pre-Existing Third Party User" means the owner of any currently operating facilities, antenna, lines or equipment on a pole or its adjacent ground space in the right of way.

§31G-4-2. Attachment to third party facilities.

(a) Upon approval of an Attachment Application, an Attacher may relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be necessary to accommodate an Attacher's attachment using Pole Owner approved contractors; provided, however, that an Attacher will not effectuate a relocation or alteration of a Pre-Existing Third Party User's facilities that causes or would reasonably be expected to cause a customer outage without first providing forty-five days prior written notice to the Pre-Existing Third Party User, in order to permit the Pre-Existing Third Party User to relocate its facilities on its own.

(b) In the event the Pre-Existing Third Party Users of such other facilities fail to transfer or rearrange their facilities within forty-five days from receipt of notice of relocation or alteration of a Pre-Existing Third Party User's facilities that causes or would reasonably be expected to cause a customer outage, an Attacher may undertake such work.

(c) Within thirty days of the completion of any relocation or alteration, an Attacher shall send notice of the move and as-built reports to the Pre-Existing Third Party User and the owner of all poles or other structures on which such relocations or alterations were made. The as-built reports shall include a unique field label identifier, and an address or coordinates.

(d) Upon receipt of the as-built reports, the Pre-Existing Third Party User and pole or structure owner(s) may conduct an inspection within fourteen days at an Attacher's expense. An Attacher shall pay the actual, reasonable, and documented expenses incurred by the Pre-Existing Third Party User and pole or structure owner for the inspection. If any such relocation or alteration results in the facilities of the Pre-Existing Third Party User on the pole or other structure failing to conform with the applicable safety Pole Owner's standards, the Pre-Existing Third Party User shall, within seven days of the inspection, notify an Attacher of such failure to conform.

(e) In a notice, the Pre-Existing Third Party User may elect to either:

(1) Perform the correction itself and bill the Attacher for the actual, reasonable and documented costs of the correction, or

(2) Instruct the Attacher to correct such conditions at Attacher's expense. Any post-inspection corrections performed by the Attacher must be completed within thirty days of such notification.

(f) As a condition of exercising the ability to relocate, rearrange, or alter a Pre-Existing Third Party User's facilities pursuant to this section, an Attacher shall indemnify, defend and hold harmless the owner or owners of all poles or other structures on which such relocation, rearrangement or alteration takes place, the affiliates of such owner or owners, and the officers, directors and employees of such owner or owners and their affiliates, each being deemed an Indemnatee, from and against all third party damage, loss, claim, demand, suit, liability, penalty or forfeiture of every kind and nature, including, but not limited to, costs and expenses of defending

against the same, payment of any settlement or judgment therefor and reasonable attorney's fees, that are actually and reasonably incurred by an Indemnitee, by reason of any claim by an affected Pre-Existing Third Party User or any person or entity claiming through such Pre-Existing Third Party User arising from such relocation, rearrangement or alteration.

(g) All work performed must be in accordance with the National Electrical Safety Code and other generally accepted safety codes.

§31G-4-3. Exceptions.

(a) Notwithstanding any provision of this code to the contrary, the provisions of this article shall not apply to:

(1) Facilities located above the "Communication Worker Safety Zone" as such term is defined in the National Electrical Safety Code; or

(2) Any electric supply facilities wherever located.

(b) This article does not authorize any activity requiring an electric supply outage.

(Senator Trump in the Chair.)

On motion of Senator Blair, the following amendment to the Government Organization committee amendment to the bill (Eng. Com. Sub. for H. B. 3093) was reported by the Clerk:

On pages nine and ten, by striking out all of subdivision (6) and inserting in lieu thereof the following:

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

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

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

The authority may not insure the payment or repayment of any part of the principal of and interest on any form of debt instrument under this subdivision, unless the participating financial institution provides written certification to the authority that, but for the authority's insuring the debt instrument, the financial institution would not otherwise make the loan based solely on the

creditworthiness of the loan applicant: Provided, That nothing contained in this subsection or any other provision of this article may be construed as permitting the authority to insure the refinancing of existing debt.

Upon the filing of an application for loan insurance under this subsection, the broadband provider shall cause to be published as a Class II legal advertisement in compliance with article three, chapter fifty-nine of this code, notice of the filing of the application and that the authority may approve the same unless within ten business days after completion of publication a written objection is received by the authority from a person or persons challenging that the proposed broadband project does not satisfy the provisions of this subsection. The publication area for such notice is to be the county or counties in which any portion of the proposed broadband project is to be constructed. The notice shall be in such form as the authority shall direct, and shall include a map of the area or areas to be served by the proposed broadband project. The applicant shall also cause to be mailed by first class, on or before the first day of publication of the notice, a copy of the notice to all known current providers of broadband service within the area proposed to be served. If a challenge under this paragraph is timely received by the authority, the authority shall advise the Broadband Enhancement Council, established in article one of chapter thirty-one-g of this code, in writing within five business days. The council shall set the matter for hearing on a date within thirty days of receipt of notice from the authority. The Broadband Enhancement Council shall issue a decision on whether the proposed project satisfies the requirements of this subsection or not within thirty days of completion of such hearing. Any party participating in said hearing may appeal the council's decision within thirty days of the issuance of said decision to the Circuit Court of Kanawha County. This provision shall apply to all applicants except to those broadband providers that plan on providing a downstream data rate of at least one gigabyte per second to the end user.

Senator Carmichael (Mr. President) requested a ruling from the Chair as to whether he should be excused from voting under Senate Rule 43.

The Chair replied that any impact on Senator Carmichael (Mr. President) would be as a member of a class of persons and that he would be required to vote.

Senator Smith requested a ruling from the Chair as to whether he should be excused from voting under Senate Rule 43.

The Chair replied that any impact on Senator Smith would be as a member of a class of persons and that he would be required to vote.

The question being on the adoption of Senator Blair's amendment to the Government Organization committee amendment to the bill, the same was put and prevailed.

The question now being on the adoption of the Government Organization committee amendment, as amended, the same was put and prevailed.

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 3093) , as just amended, was then read a third time and put upon its passage.

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

Pending extended discussion,

Senator Plymale moved the previous question, which motion prevailed.

The previous question having been ordered, that being on the passage of Engrossed Committee Substitute for House Bill 3093.

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

The nays were: Romano—1.

Absent: Gaunch and Karnes—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3093) passed.

On motion of Senator Blair, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 3093—A Bill to repeal §31-15C-1, §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-6, §31-15C-7, §31-15C-8, §31-15C-9, §31-15C-12 and §31-15C-13 of the Code of West Virginia, 1931, as amended; to amend and reenact §12-6C-11 of said code; to amend and reenact §31-15-8 of said code; and to amend said code by adding thereto a new chapter, designated §31G-1-1, §31G-1-2, §31G-1-3, §31G-1-4, §31G-1-5, §31G-1-6, §31G-1-7, §31G-1-8, §31G-1-9, §31G-1-10, §31G-1-11, §31G-1-12, §31G-1-13, §31G-1-14, §31G-2-1, §31G-2-2, §31G-2-3, §31G-2-4, §31G-2-5, §31G-2-6, §31G-2-7, §31G-2-8, §31G-2-9, §31G-2-10, §31G-2-11, §31G-2-12, §31G-2-13, §31G-2-14, §31G-2-15, §31G-2-16, §31G-2-17, §31G-2-18, §31G-2-19, §31G-2-20, §31G-2-21, §31G-2-22, §31G-2-23, §31G-2-24, §31G-2-25, §31G-2-26, §31G-2-27; §31G-3-1, §31G-3-2, §31G-4-1, §31G-4-2 and §31G-4-3, all relating to broadband services generally; requiring the Board of Treasury Investments make funds available to the West Virginia Economic Development Authority for the purpose of providing loan insurance for commercial loans used for the expansion of broadband service to unserved or underserved areas; establishing limits and conditions on the insuring of loans; establishing interest rates; establishing amortization periods; providing for security interests; providing for responsibilities of the West Virginia Economic Development Authority, the West Virginia Board of Treasury Investments and the Broadband Enhancement Council; providing that the members of the West Virginia Board of Treasury Investments do not have a fiduciary responsibility with regard to the loans; providing for notice for loan insurance; providing for hearings and appeal; establishing Broadband Enhancement and Expansion Policies; re-establishing and continuing the Broadband Enhancement Council; defining terms; revising council powers and duties; directing council to publish an annual assessment and map of broadband in the state; authorizing council to create an interactive map of broadband services; revising terms for retention of expert consultants; authorizing collection of data by council; authorizing creation of guidelines and recommendations to the Legislature for pilot project for municipalities and counties to form non-profit cooperative associations for internet services; authorizing creation of guidelines and recommendations to the Legislature for voluntary pipeline donation program to facilitate broadband services; authorizing creation of guidelines and recommendations to the Legislature for easement program to facilitate broadband services; authorizing council to seek, utilize and dispense non-state funding and

grants; providing for legislative rulemaking authority; authorizing formation of cooperative associations for internet services; providing for who may organize a cooperative association; defining terms; setting forth legislative findings and purpose; establishing the powers of such associations; setting forth all conditions, rights and responsibilities of such cooperative associations; declaring that cooperative association not deemed a restraint in trade; providing for the application of corporation laws; providing for microtrenching; defining terms; providing for make-ready pole access; defining terms; setting forth procedure for attaching items to third-party facilities and poles; and providing for exceptions to make-ready pole access.

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

At the request of Senator Stollings, and by unanimous consent, the Senate returned to the second order of business and the introduction of guests.

The Senate again proceeded to the eighth order of business, the next bill coming up in numerical sequence being

Eng. Com. Sub. for House Bill 3102, Relating to selling Hopemont Hospital.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 3102 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Clements, Cline, Facemire, Ferns, Hall, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Rucker, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—25.

The nays were: Beach, Boso, Jeffries, Miller, Romano, Smith and Unger—7.

Absent: Gaunch and Karnes—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3102) passed.

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

Eng. Com. Sub. for House Bill 3102—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-26, relating to the selling of a certain state owned health care facility and appurtenances by the Secretary of the Department of Health and Human Resources; ensuring the transfer of existing patients; providing for construction of a replacement facility on the land occupied by the existing hospital; requiring new facility to have sixty beds; providing that other licensed bed of the existing hospital be decertified and delicensed; exempting certain laws; creating a fund; implementing a benefits package for employees; providing for an accounting; and providing statutory construction.

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

Thereafter, at the request of Senator Beach, and by unanimous consent, the remarks by Senator Smith regarding the passage of Engrossed Committee Substitute for House Bill 3102 were ordered printed in the Appendix to the Journal.

The Senate proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill 2002, Relating to parental notification of abortions performed on unemancipated minors.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the unreported Health and Human Resources committee amendment pending and the right for further amendments to be considered on that reading.

Eng. Com. Sub. for House Bill 2018, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Ferns, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's second reading calendar, following consideration of Engrossed Committee Substitute for House Bill 3020, already placed in that position.

Eng. Com. Sub. for House Bill 2109, Relating to the West Virginia Land Reuse Agency Authorization Act.

On second reading, coming up in regular order, was read a second time.

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

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

That §31-18E-3 and §31-18E-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 18E. WEST VIRGINIA LAND REUSE AGENCY AUTHORIZATION ACT.

§31-18E-3. Definitions.

As used in this article:

- (1) "Board" means the board of directors of a land reuse agency;
- (2) "Deconstruct" means to attempt to remove salvageable pieces of a housing unit prior to or as part of demolition or renovation;
- (3) "Financial institution" means a bank, savings association, operating subsidiary of a bank or savings association, credit union, association licensed to originate mortgage loans or an assignee of a mortgage or note originated by such an institution;

(4) “Land reuse agency” means a public body established under this article;

(5) “Land reuse jurisdiction” means: (A) A county or municipality in this state; or (B) two or more municipalities or counties that enter into an intergovernmental cooperation agreement to establish and maintain a land reuse agency;

(6) “Municipal land bank” means a department or agency of a municipality, or an entity lawfully created by a municipality, engaged in activities designed to address issues related to vacant, abandoned and tax-delinquent real property, including but not limited to, the purchase, rehabilitation, improvement or sale of such properties for the purpose of eliminating blight and returning those properties to productive use.

~~(6)~~ (7) “Municipality” means a municipality as defined in section two, article one, chapter eight of this code; and

~~(7)~~ (8) “Real property” means all lands, including improvements and fixtures on them and property of any nature appurtenant to them or used in connection with them and every estate, interest and right, legal or equitable, in them, including terms of years and liens by way of judgment, mortgage or otherwise, and indebtedness secured by the liens.

§31-18E-9. Acquisition of property.

(a) *Title to be held in its name.* – A land reuse agency or municipal land bank shall hold in its own name all real property it acquires.

(b) *Tax exemption.* – (1) Except as set forth in subdivision (2) of this subsection, the real property of a land reuse agency or municipal land bank and its income and operations are exempt from property tax.

(2) Subdivision (1) of this subsection does not apply to real property of a land reuse agency or municipal land bank after the fifth consecutive year in which the real property is continuously leased to a private third party. However, real property continues to be exempt from property taxes if it is leased to a nonprofit or governmental agency at substantially less than fair market value.

(c) *Methods of acquisition.* – A land reuse agency or municipal land bank may acquire real property or interests in real property by any means on terms and conditions and in a manner the land reuse agency considers proper: *Provided*, That a land reuse agency or municipal land bank may not acquire any interest in oil, gas or minerals which have been severed from the realty.

(d) *Acquisitions from municipalities or counties.* – (1) A land reuse agency or municipal land bank may acquire real property by purchase contracts, lease purchase agreements, installment sales contracts and land contracts and may accept transfers from municipalities or counties upon terms and conditions as agreed to by the land reuse agency or municipal land bank and the municipality or county.

(2) A municipality or county may transfer to a land reuse agency or municipal land bank real property and interests in real property of the municipality or county on terms and conditions and according to procedures determined by the municipality or county as long as the real property is located within the jurisdiction of the land reuse agency or municipal land bank.

(3) An urban renewal authority, as defined in section four, article eighteen, chapter sixteen of this code, located within a land reuse jurisdiction established under this article may, with the consent of the local governing body and without a redevelopment contract, convey property to the land reuse agency. A conveyance under this subdivision shall be with fee simple title, free of all liens and encumbrances.

(e) *Maintenance.* – A land reuse agency or municipal land bank shall maintain all of its real property in accordance with the statutes and ordinances of the jurisdiction in which the real property is located.

(f) *Prohibition.* – (1) Subject to the provisions of subdivision (2) of this subsection, a land reuse agency or municipal land bank may not own or hold real property located outside the jurisdictional boundaries of the entities which created the land reuse agency under subsection (c), section four of this article.

(2) A land reuse agency or municipal land bank may be granted authority pursuant to an intergovernmental cooperation agreement with a municipality or county to manage and maintain real property located within the jurisdiction of the municipality or county.

(g) *Acquisition of tax delinquent properties.* – (1) Notwithstanding any other provision of this code to the contrary, if authorized by the land reuse jurisdiction which created a land reuse agency or municipal land bank or otherwise by intergovernmental cooperation agreement, a land reuse agency or municipal land bank may acquire an interest in tax delinquent property through the provisions of chapter eleven-a of this code. Notwithstanding the provisions of section eight, article three, chapter eleven-a of this code, if no person present at the tax sale bids the amount of the taxes, interest and charges due on any unredeemed tract or lot or undivided interest in real estate offered for sale, the sheriff shall, prior to certifying the real estate to the Auditor for disposition pursuant to section forty-four, article three, chapter eleven-a of this code, provide a list of all of said real estate within a land reuse or municipal land bank jurisdiction to the land reuse agency or municipal land bank and the land reuse agency or municipal land bank shall be given an opportunity to purchase the tax lien and pay the taxes, interest and charges due for any unredeemed tract or lot or undivided interest therein as if the land reuse agency or municipal land bank were an individual who purchased the tax lien at the tax sale.

(2) Notwithstanding any other provision of this code to the contrary, if authorized by the land reuse jurisdiction which created a land reuse agency or municipal land bank or otherwise by intergovernmental cooperation agreement, the land reuse agency or municipal land bank shall have the right of first refusal to purchase any tax-delinquent property which is within municipal limits, and has an assessed value of \$25,000 or less or has been condemned: *Provided*, That the land reuse agency or municipal land bank satisfies the requirements of subdivision (3) of this subsection. A list of properties which meet the criteria of this subdivision shall regularly be compiled by the sheriff of the county, and a land reuse agency or municipal land bank may purchase any qualifying tax-delinquent property for an amount equal to the taxes owed and any related fees before such property is placed for public auction.

(3) When a land reuse agency or municipal land bank exercises a right of first refusal in accordance with subdivision (2) of this section, the land reuse agency or municipal land bank shall, within fifteen days, provide written notice to all owners of real property that is adjacent to the tax-delinquent property. Any such property owner shall have a period of 120 days from the receipt of notice, actual or constructive, to exercise a right to purchase the tax-delinquent property from the land reuse agency or municipal land bank for an amount equal to the amount paid for

the property by the land reuse agency or municipal land bank: *Provided*, That in the event more than one adjacent land owner desires to purchase the tax-delinquent property, it shall be sold to the adjacent property owner offering the highest bid. It is the duty of the adjacent property owner to establish that he or she is the actual owner of property that is adjacent to the tax-delinquent property and all state and local taxes and all fees on his or her adjacent property are current and non-delinquent.

(3) Effective July 1, 2020, the provisions of subdivisions (2) and (3) of this subsection shall sunset and have no further force and effect.

(4) Prior to January 1, 2020, any land reuse agency or municipal land bank which exercises the authority granted by this subsection may submit to the Joint Committee on Government and Finance a report on the entity's activities related to the purchase of tax-delinquent properties and any benefits realized from the authority granted by this subsection.

The bill (Eng. Com. Sub. for H. B. 2109), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2196, Relating to the secondary schools athletic commission.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Trump, as a member of the Committee on Education, and by unanimous consent, the unreported Education committee amendments to the bill were withdrawn.

On motion of Senator Mann, the following amendments to the bill were reported by the Clerk and considered simultaneously:

On page two, section twenty-five, line thirty-six, by striking out the word "extracurricular" and inserting in lieu thereof the word "interscholastic";

On page two, section twenty-five, line thirty-eight, after the word "code" by inserting the words: "along with students who are enrolled in a registered private or parochial school that does not have interscholastic programs";

On page three, section twenty-five, line forty-six, after the word "home-schooled" by inserting a comma and the words "private or parochial";

On page three, section twenty-five, line fifty-two, by striking out the words "school serving" and inserting in lieu thereof a comma and the words "private or parochial school serving";

On page three, section twenty-five, lines fifty-four and fifty-five, by striking out the words: "Reasonable fees may be charged to the student to cover the costs of participation in interscholastic programs." and inserting in lieu thereof the following: Homeschool, private, and parochial school students participating in interscholastic programs shall be required to pay the same amount that public school students pay when participating in these programs.;

And,

On page three, section twenty-five, after line fifty-five, by inserting the following: One year following the effective date of this bill, the West Virginia State Board of Education shall determine the additional costs, on a per student basis, of non-enrolled students participating in

interscholastic programs, and shall make recommendations to the legislature how the costs of these non-enrolled students have affected the school aid formula.

Following discussion,

The question being on the adoption of Senator Mann's amendments to the bill, the same was put and prevailed.

On motion of Senator Rucker, the following amendment to the bill (Eng. Com. Sub. for H. B. 2196) was next reported by the Clerk and adopted:

On page one, section twenty-five, line three, after the word "those" by inserting the word "public".

The bill (Eng. Com. Sub. for H. B. 2196), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2359, Relating to offenses and penalties for practicing osteopathic medicine without a license.

On second reading, coming up in regular order, was read a second time.

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-3-18; that §30-14-12 be amended and reenacted; and that said code be amended by adding thereto a new section, designated §30-14-16, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-18. Combining staff functions with West Virginia Board of Osteopathic Medicine.

The West Virginia Board of Medicine may employ investigators, attorneys, clerks and administrative staff in collaboration with the West Virginia Board of Osteopathic Medicine to share duties and functions between the two boards when it may be efficient and practical for the functioning of the boards. Any sharing of staff or staff resources shall be documented and performed pursuant to the provisions of section nineteen, article one of this chapter.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-16. Combining staff functions with West Virginia Board of Medicine.

The West Virginia Board of Osteopathic Medicine may employ investigators, attorneys, clerks and administrative staff in collaboration with the West Virginia Board of Medicine to share duties and functions between the two boards when it may be efficient and practical for the functioning of the boards. Any sharing of staff or staff resources shall be documented and performed pursuant to the provisions of section nineteen, article one of this chapter.

§30-14-12. Offenses; penalties.

(a) Each of the following acts ~~shall constitute~~ constitutes a misdemeanor, punishable upon conviction by a fine of not less than \$1,000 nor more than \$10,000:

~~(a) The practice or attempting to practice as an osteopathic physician and surgeon without a license or permit;~~

~~(b) (1) The obtaining of or an attempt to obtain a license or permit to practice in the profession for money or any other thing of value, by fraudulent misrepresentation;~~

~~(c) (2) The making of any willfully false oath or affirmation whenever an oath or affirmation is required by this article; and~~

~~(d) (3) Advertising, practicing or attempting to practice under a name other than one's own.~~

(b) Any person who practices or attempts to practice osteopathic medicine without a license or permit is guilty of a felony and, upon conviction, shall be fined not more than \$10,000, or imprisoned in a correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

The bill (Eng. Com. Sub. for H. B. 2359), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2520, Prohibiting the use of a tanning device by a person under the age of eighteen.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2620, West Virginia Drug Overdose Monitoring Act.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Plymale, the bill was referred to the Committee on Rules, with the unreported Judiciary committee amendment pending.

Eng. Com. Sub. for House Bill 2637, Relating to employment of retired teachers and prospective employable professional personnel in areas of critical need and shortage.

On second reading, coming up in regular order, was read a second time.

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

On page six, section three, lines one hundred nineteen through one hundred twenty-six, by striking out all of subdivision (5) and inserting in lieu thereof a new subdivision, designated subdivision (5), to read as follows:

(5) Regular employment status for prospective employable professional personnel may be obtained only upon recommendation by the superintendent and approval by the county board following consideration of the qualifications of the candidate in accordance with the applicable provisions of section seven-a, article four of this chapter. Upon board approval, prospective

employable professional personnel may be placed into a critical needs position if the job has been posted at least once in accordance with paragraph (B), subdivision (1) of this subsection resulting in no qualified applicants. Employment of the prospective employable professional personnel pursuant to this subsection may occur without the need for additional postings and without the need for additional faculty senate involvement other than the initial faculty senate involvement required in the case of a classroom teaching position pursuant to section seven-a, article four of this chapter.

The bill (Eng. Com. Sub. for H. B. 2637), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2648, Increasing penalties for manufacturing or transportation of a controlled substance in the presence of a minor.

On second reading, coming up in regular order, was read a second time.

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-8D-4b, to read as follows:

ARTICLE 8D. CHILD ABUSE.

§61-8D-4b. Child neglect by voluntary intoxication; offenses; penalties.

(a) Any person who voluntarily becomes intoxicated by the illegal use of a controlled substance, drug or other intoxicant while engaging in the care, custody and control of a minor under the age of twelve and thereby renders himself or herself incapable of exercising a minimum degree of care to assure the minor's physical safety or health is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a jail for not more than six months.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who voluntarily becomes intoxicated by the illegal use of a controlled substance, drug or other intoxicant while engaging in the care, custody and control of a minor under the age of twelve and thereby renders himself or herself incapable of exercising a minimum degree of care to assure the minor's physical safety or health and who has previously been convicted of a violation of subsection (a) of this section or a law of another state or the federal government with the same essential elements is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year.

(c) Any person who voluntarily becomes intoxicated by the illegal use of a controlled substance, drug or other intoxicant while engaging in the care, custody and control of a minor under the age of twelve and thereby renders himself or herself incapable of exercising a minimum degree of care to assure the minor's physical safety or health and who has two or more convictions for a violation of subsection (a) of this section or a law of another state or the federal government with the same essential elements is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate term of not more than five years.

The bill (Eng. Com. Sub. for H. B. 2648), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2651, Relating generally to standardized testing requirements for nonpublic schools.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2674, Relating to access to and receipt of certain information regarding a protected person.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill 2675, Relating to primary elections and nominating procedures.

On second reading, coming up in regular order, was read a second time.

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

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

That §3-1-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §3-4A-11a of said code be amended and reenacted; that §3-5-3, §3-5-13 and §3-5-13a of said code be amended and reenacted; that §3-10-1 and §3-10-8 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §3-10-8a, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-17. Election of circuit judges; county and district officers; magistrates.

(a) There shall be elected, at the time of the primary election to be held in 2016, and every eighth year thereafter, one judge of the circuit court of every judicial circuit entitled to one judge, and one judge for each numbered division of the judicial circuit in those judicial circuits entitled to two or more circuit judges; and at the time of the primary election to be held in 2016, and in every fourth year thereafter, the number of magistrates prescribed by law for the county. Beginning with the election held in the year 2016, an election for the purpose of electing judges of the circuit court, or an election for the purpose of electing magistrates, shall be upon a nonpartisan ballot printed for the purpose.

(b) There shall be elected, at the general election to be held in 1992, and every fourth year thereafter, a sheriff, prosecuting attorney, surveyor of lands and the number of assessors prescribed by law for the county; at the general election to be held in 1990, and every second year thereafter, a commissioner of the county commission for each county; and at the general election to be held in 1992, and every sixth year thereafter, a clerk of the county commission and a clerk of the circuit court for each county.

(c) Effective with the primary election of 2016, all elections for judge of the circuit courts in the respective circuits and magistrates in each county will be elected on a nonpartisan basis and by division as set forth more fully in article five of this chapter.

(d) Effective with the general election of 2020, all elections for surveyor of lands will be on a nonpartisan basis.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

(a) The board of ballot commissioners in counties using ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil and which marks are tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the electronic voting system for use in elections.

(b)(1) For the primary election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and arrangement of candidates within each office are to conform as nearly as possible to sections thirteen and thirteen-a, article five of this chapter.

(2) For the general election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and the arrangement of candidates within each office are to conform as nearly as possible to section two, article six of this chapter, except as otherwise provided in this article.

(3) ~~Effective with the primary election held in 2016, and thereafter, the~~ The following nonpartisan elections are to be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election and constituting a separate ballot wherever a separate ballot is required under this chapter:

(A) Nonpartisan elections for judicial offices, by division, of:

(i) Justice of the Supreme Court of Appeals;

(ii) Judge of the circuit court;

(iii) Family court judge; and

(iv) Magistrate;

(B) Nonpartisan elections for board of education;

(C) Nonpartisan election for county surveyor; and

~~(C)-(D)~~ (D) Any question to be voted upon;_

(4) Both the face and the reverse side of the ballot may contain the names of candidates only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

(5) The arrangement of candidates within each office is to be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes are to be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words "WRITE-IN, IF ANY" are to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a position to mark the vote.

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are to be printed in the color of ink specified by the Secretary of State for the various political parties, and the general election ballot is to be printed in black ink. For electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary ballots and the general election ballot are to be printed in black ink. All ballots are to be printed, where applicable, on white paper suitable for automatic tabulation and are to contain a perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the same manner as provided in section thirteen, article five of this chapter, or are to be displayed on the screens of the electronic voting system upon which votes are recorded by means of a stylus or touch. The number of ballots printed and the packaging of ballots for the precincts are to conform to the requirements for paper ballots provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-3. Presidential preference.

(a) In presidential election years, in addition to the candidates required to be nominated at the primary election, the qualified voters of each political party shall have the opportunity of voting for their choice among those aspiring to be the candidates of their respective parties for president of the United States. The names of such aspirants shall be printed on the official election ballot of their respective parties, as provided in section thirteen of this article, upon the filing with the Secretary of State of the certificate of announcement as provided in section seven of this article and the filing fee or petition in lieu of filing fee as provided in sections eight and eight-a of this article, and the ballot shall be marked and the vote shall be counted, canvassed and returned under the same conditions as to names, certificates and other matters, as the names and certificates of the party aspirants for the party nomination for the office of Governor.

(b) Every ballot upon which appears the names of persons aspiring to be the candidates of their respective parties for president of the United States shall contain an additional line equivalent to the lines on which the candidates' names appear and placed at the end of the group of lines containing the names of those persons aspiring to be candidates of their respective parties for president of the United States. The additional line shall permit the voter to express a choice of that line in the same manner as the voter would express a choice of a candidate, and the line shall read "None of these candidates". Only votes cast for the named candidates shall be counted in determining presidential nominations, but the number of ballots on which the additional line was chosen shall be listed following the names of the candidates and the number of their votes in every posting, publication, abstract and proclamation of the results of the primary election. Every sample ballot or other instruction to voters prescribed or approved by the Secretary of State,

County Clerk, or board of ballot commissioners for each county shall clearly explain that the voter may mark the choice of the line "None of these candidates" only if the voter has not voted for any candidate for the office.

§3-5-13. Form and contents of ballots.

The following provisions apply to the form and contents of election ballots:

(1) The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

(2) The heading of every ballot is to be printed in display type. The heading is to contain a ballot title, the name of the county, the state, the words "Primary Election" and the month, day and year of the election. The ballot title of the political party ballots is to contain the words "Official Ballot of the (Name) Party" and the official symbol of the political party may be included in the heading.

(A) The ballot title of any ~~separate paper ballot or~~ portion of any electronic or voting machine ballot for ~~all~~ any judicial officers shall commence with the words "~~Nonpartisan Ballot of Election of Judicial Officers~~" specified in this section and each such office shall be listed in the ~~following order specified in section thirteen-a of this article:~~

(i) The ballot title of any ~~separate paper ballot or~~ portion of any electronic or voting machine ballot for ~~all~~ justices of the Supreme Court of Appeals shall contain the words "Nonpartisan Ballot of Election of Justice(s) of the Supreme Court of Appeals of West Virginia". The names of the candidates for the Supreme Court of Appeals shall be printed by division without references to political party affiliation or registration.

(ii) The ballot title of any ~~separate paper ballot or~~ portion of any electronic or voting machine ballot for ~~all~~ circuit court judges in the respective circuits shall contain the words "Nonpartisan Ballot of Election of Circuit Court Judge(s)". The names of the candidates for the respective circuit court judge office shall be printed by division without references to political party affiliation or registration.

(iii) The ballot title of any ~~separate paper ballot or~~ portion of any electronic or voting machine ballot for ~~all~~ family court judges in the respective circuits shall contain the words "Nonpartisan Ballot of Election of Family Court Judge(s)". The names of the candidates for the respective family court judge office shall be printed by division without references to political party affiliation or registration.

(iv) The ballot title of any ~~separate paper ballot or~~ portion of any electronic or voting machine ballot for all magistrates in the respective circuits shall contain the words "Nonpartisan Ballot of Election of Magistrate(s)". The names of the candidates for the respective magistrate office shall be printed by division without references to political party affiliation or registration.

(B) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for the Board of Education is to contain the words "Nonpartisan Ballot of Election of Members of the _____ County Board of Education". The districts for which less than two candidates may be elected and the number of available seats are to be specified and the names of the candidates are to be printed without reference to political party affiliation and without designation as to a particular term of office.

(C) The ballot title of any portion of any electronic or voting machine ballot for county surveyor is to contain the words "Nonpartisan Ballot of Election of County Surveyor for _____ County".

~~(D)~~ (D) Any other ballot or portion of a ballot on a question is to have a heading which clearly states the purpose of the election according to the statutory requirements for that question.

(3) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the ballot by heavy lines and the offices shall be arranged in columns with the following headings, from left to right across the ballot: "National Ticket", "State Ticket", "County Ticket" and, in a presidential election year, "National Convention" or, in a nonpresidential election year, "District Ticket". The columns are to be separated by heavy lines. Within the columns, the offices are to be arranged in the order prescribed in section thirteen-a of this article.

(B) For voting machines, electronic voting devices and any ballot tabulated by electronic means, the offices are to appear in the same sequence as prescribed in section thirteen-a of this article and under the same headings as prescribed in paragraph (A) of this subdivision. The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements subject to approval by the Secretary of State.

(C) The title of each office is to be separated from preceding offices or candidates by a line and is to be printed in bold type no smaller than eight point. Below the office is to be printed the number of the district, if any, the number of the division, if any, and the words "Vote for _____" with the number to be nominated or elected or "Vote For Not More Than _____" in multicandidate elections. For offices in which there are limitations relating to the number of candidates which may be nominated, elected or appointed to or hold office at one time from a political subdivision within the district or county in which they are elected, there is to be a clear explanation of the limitation, as prescribed by the Secretary of State, printed in bold type immediately preceding the names of the candidates for those offices on the ballot in every voting system. For counties in which the number of county commissioners exceeds three and the total number of members of the county commission is equal to the number of magisterial districts within the county, the office of county commission is to be listed separately for each district to be filled with the name of the magisterial district and the words "Vote for One" printed below the name of the office: *Provided*, That the office title and applicable instructions may span the width of the ballot so as it is centered among the respective columns.

(D) The location for indicating the voter's choices on the ballot is to be clearly shown. For paper ballots, other than those tabulated electronically, the official primary ballot is to contain a square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular column of squares before each column of names.

(4) (A) The name of every candidate certified by the Secretary of State or the board of ballot commissioners is to be printed in capital letters in no smaller than eight point type on the ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State, the name of each candidate is to appear in the form set out by the candidate on the certificate of announcement, but in no case may the name misrepresent the identity of the candidate nor may the name include any title, position, rank, degree or nickname implying or inferring any status as a member of a class or group or affiliation with any system of belief.

(B) The city of residence of every candidate, the state of residence of every candidate residing outside the state, the county of residence of every candidate for an office on the ballot in more than one county and the magisterial district of residence of every candidate for an office subject

to magisterial district limitations are to be printed in lower case letters beneath the names of the candidates.

(C) The arrangement of names within each office must be determined as prescribed in section thirteen-a of this article.

(D) If the number of candidates for an office exceeds the space available on a column or ballot page and requires that candidates for a single office be separated, to the extent possible, the number of candidates for the office on separate columns or pages are to be nearly equal and clear instructions given the voter that the candidates for the office are continued on the following column or page.

(5) When an insufficient number of candidates has filed for a party to make the number of nominations allowed for the office or for the voters to elect sufficient members to the Board of Education or to executive committees, the vacant positions on the ballot shall be filled with the words "No Candidate Filed": *Provided*, That in paper ballot systems which allow for write-ins to be made directly on the ballot, a blank line shall be placed in any vacant position in the office of Board of Education or for election to any party executive committee. A line shall separate each candidate from every other candidate for the same office. Notwithstanding any other provision of this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be filled with the words "No Candidate Filed" may be replaced with a brief detailed description, approved by the Secretary of State, indicating that there are no candidates listed for the vacant positions.

(6) In presidential election years, the words "For election in accordance with the plan adopted by the party and filed with the Secretary of State" is to be printed following the names of all candidates for delegate to the national convention.

(7) All paper ballots are to be printed in black ink on paper sufficiently thick so that the printing or marking cannot be discernible from the back: *Provided*, That no paper ballot voted pursuant to the provisions of 42 U. S. C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, or federal write-in absentee ballot may be rejected due to paper type, envelope type, or notarization requirement. Ballot cards and paper for printing ballots using electronically sensible ink are to meet minimum requirements of the tabulating systems and are to conform in size and weight to ensure ease in tabulation.

(8) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with unique sequential numbers from one to the highest number representing the total number of ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth of an inch wide and the ballot is to be trimmed to within one-half inch of that border.

(9) On the back of every official ballot or ballot card the words "Official Ballot" with the name of the county and the date of the election are to be printed. Beneath the date of the election there are to be two blank lines followed by the words "Poll Clerks".

(10) The face of sample paper ballots and sample ballot labels are to be like other official ballots or ballot labels except that the word "sample" is to be prominently printed across the front of the ballot in a manner that ensures the names of candidates are not obscured and the word "sample" may be printed in red ink. No printing may be placed on the back of the sample.

§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.

(a) The order of offices for state and county elections on all ballots within the state shall be as prescribed herein. When the office does not appear on the ballot in an election, then it shall be omitted from the sequence. When an unexpired term for an office appears on the ballot along with a full term, the unexpired term shall appear immediately below the full term.

NATIONAL TICKET: President (and Vice President in the general election), United States Senator, member of the United States House of Representatives

STATE TICKET: Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture, Attorney General, Nonpartisan Ballot of Election of Justice(s) of the Supreme Court of Appeals of West Virginia, State Senator, member of the House of Delegates, Nonpartisan Ballot of Election of Circuit Court Judge(s), Nonpartisan Ballot of Election of Family Court Judge(s), any other multicounty office, state executive committee.

COUNTY TICKET: Clerk of the circuit court, county commissioner, clerk of the county commission, prosecuting attorney, sheriff, assessor, Nonpartisan Ballot of Election of surveyor, Nonpartisan Ballot of Election of Magistrate(s), congressional district executive committee, senatorial district executive committee in multicounty districts, delegate district executive committee in multicounty districts.

NATIONAL CONVENTION: Delegate to the national convention — at-large, delegate to the national convention — congressional district

DISTRICT TICKET: County executive committee.

(b) Except for office divisions in which no more than one person has filed a certificate of announcement, the arrangement of names for all offices shall be determined by lot according to the following provisions:

(1) On the fourth Tuesday following the close of the candidate filing, beginning at nine o'clock a. m., a drawing by lot shall be conducted in the office of the clerk of the county commission in each county. Notice of the drawing shall be given on the form for the certificate of announcement and no further notice shall be required. The clerk of the county commission shall superintend and conduct the drawing and the method of conducting the drawing shall be prescribed by the Secretary of State.

(2) Except as provided herein, the position of each candidate within each office division shall be determined by the position drawn for that candidate individually: *Provided*, That if fewer candidates file for an office division than the total number to be nominated or elected, the vacant positions shall appear following the names of all candidates for the office.

(3) Candidates for delegate to national convention who have filed a commitment to a candidate for president shall be listed alphabetically within the group of candidates committed to the same candidate for president and uncommitted candidates shall be listed alphabetically in an uncommitted category. The position of each group of committed candidates and uncommitted candidates shall be determined by lot by drawing the names of the presidential candidates and for an uncommitted category.

(4) A candidate or the candidate's representative may attend the drawings.

ARTICLE 10. FILLING VACANCIES.

§3-10-1. Elections to fill vacancies.

(a) When a vacancy occurs in an elected office of the state or county, it shall be filled according to the processes set forth in this article. As used in this article, unless otherwise indicated by the context:

(1) "General cutoff date" means the eighty-fourth day before the general election that immediately precedes the general election where the office would be on the ballot for election if there were not a vacancy; and

(2) "Primary cutoff date" means the eighty-fourth day before the primary election that immediately precedes the general cutoff date.

(b) When this article requires an appointment to fill a vacancy in an elected office, the appointment shall be made within thirty days of the vacancy, unless this code specifically states a different time period for the specific office. The term that the appointee holds the office shall depend on when the vacancy occurs, as follows:

(1) If the vacancy occurs after the primary cutoff date, then that appointee shall hold the office until the end of the term of office: *Provided*, That if the vacancy for any county office or United States Senate occurs during the window after the primary cutoff date, but before the general cutoff date, the process contained in sections four, six, seven, and eight and eight-a of this article, depending on the specific office vacated, shall be followed; or

(2) If the vacancy occurs on or before the primary cutoff date, then the office shall be filled at the following regular primary and subsequent general election pursuant to this article and the appointee shall hold the office until a qualified replacement is elected and certified at that general election. The elected replacement shall hold the office until the end of the original term of office.

(c) If an election is required to fill the vacancy by subsection (b) of this section and the other provisions of this article, the election shall proceed depending on when the vacancy occurs and in which office it occurs. Elections to fill vacancies shall be held at the same places, and superintended, conducted and returned, and the result ascertained, certified and declared, in the same manner, and by the same officers, as in general elections, unless otherwise stated in this article.

(1) For a vacancy in the Office of Governor, the times for the special elections contained in section two of this article shall control. The proclamation entered pursuant to section two of this article by the person acting as Governor shall include the dates for the special candidate filing period, if necessary, and shall follow the requirements set forth in this section. All aspects of this section, where not in conflict with section two of this article, shall also be followed. If a regularly scheduled primary or general election fits within the times for the special elections contained in section two of this article, the special elections shall be conducted in conjunction with the regularly scheduled election or elections. If a special election is required by section two of this article and it cannot be held in conjunction with the regular election dates, then the compensation of election officers shall be reimbursed pursuant to section nine of this article.

(2) For a vacancy in the offices of United States House of Representatives or United States Senate, the times for the special election, if necessary, contained in section four of this article shall control. All aspects of this section, where not in conflict with section four of this article, shall also be followed.

(A) With regard to United States House of Representatives, the proclamation entered pursuant to section four of this article by the Governor shall include the dates for the special candidate filing period, if necessary, and shall follow the requirements set forth in this section. If a regularly scheduled primary or general election fits within the times for the special elections contained in section four of this article, the special elections shall be conducted in conjunction with the regularly scheduled election or elections. If a special election is required by section two of this article and it cannot be held in conjunction with the regular election dates, then the compensation of election officers shall be reimbursed pursuant to section nine of this article.

(B) With regard to United States Senate, if a special general election following the regular general election is required by section four of this article, and it cannot be held in conjunction with the regular election dates, then the compensation of election officers shall be reimbursed pursuant to section nine of this article.

(3) For all other offices, the Governor, or other person granted authority by this article, shall issue a proclamation stating that the office will appear on the next regular primary election and subsequent general election, in order to fill the vacancy: *Provided*, That if the vacancy for any county office occurs during the window after the primary cutoff date, but before the general cutoff date, the process contained in sections six, seven, and eight and eight-a of this article shall be followed. If the candidate filing period for the next regular primary election has closed or has less than one week remaining, the proclamation shall provide for a special primary candidate filing period. If there are less than eighty-four days between the vacancy and the next regular primary election, then the proclamation shall state that the office will appear on the subsequent regular primary election and corresponding general election following the next regular primary election.

(d)(1) If a special candidate filing period is necessary, it shall begin no sooner than the day after the proclamation and shall close no earlier than close of business on the fourteenth day following the proclamation. A notarized declaration of candidacy and filing fee provided by section seven, article five of this chapter shall be filed either in person, by United States mail, electronic means or any other means authorized by the Secretary of State and received by the appropriate office before the close of the filing period. For petition in lieu of payment of filing fees, a candidate seeking nomination for the vacancy may utilize the process set forth in section eight-a, article five of this chapter: *Provided*, That the minimum number of signatures required is equivalent to one qualified signature per one whole dollar of the filing fee for that office.

(2) If a primary election is required by the provisions of this article:

(A) For all statewide, multicounty and legislative elections, drawing for the primary election ballot position will take place at the Secretary of State's office twenty-four hours after the end of the filing period. For each major political party on the ballot, a single drawing by lot shall determine the candidate ballot position for ballots statewide. This drawing shall be witnessed by four clerks of the county commission chosen by the West Virginia Association of County Clerks, with no more than two clerks representing a single political party.

(B) For county elections, drawing for the primary election ballot position will take place at the county clerk's office twenty-four hours after the end of the filing period. For each major political party on the ballot, a single drawing by lot shall determine the candidate ballot position for ballots statewide. This drawing shall be witnessed by the chairperson of the county democratic and republican executive committees or their designee, and the president of the county commission or his or her designee.

(3) Ballot position for a general election required by this article shall be determined pursuant to subdivision (3), subsection (c), section two, article six of this chapter. If a general election required by this article occurs in conjunction with a regularly scheduled primary election, the general election shall be listed along with the nonpartisan portion of each ballot in the order of offices provided for regular ballots in this chapter.

(e) When an election is required to fill a vacancy, the date of the election and offices to be elected, as well as any other information required in the proclamation, shall be published prior to such election as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county of the state that is eligible to vote in the election for those offices.

(f) If an election is required by this article, citizens having no party organization or affiliation may nominate candidates as provided by sections twenty-three and twenty-four, article five of this chapter: *Provided*, That when an election is required by the provisions of this article to be held at some time other than with a regularly scheduled election, all certificates nominating candidates shall be filed with the appropriate official no later than ninety days before the election.

(g) The persons elected, having first duly qualified, shall enter upon the duties of their respective offices. The elected replacement shall hold the office until the end of the original term of office.

§3-10-8. Vacancies in offices of prosecuting attorney, sheriff and assessor ~~and surveyor~~.

(a) Any vacancy occurring in the office of prosecuting attorney, sheriff or assessor ~~or county surveyor~~ shall be filled by the county commission within thirty days of the vacancy by appointment of a person of the same political party as the officeholder vacating the office. The appointed person shall hold the office for the period stated by section one of this article.

(b) Notwithstanding any code provision to the contrary, a county commission may appoint a temporary successor to the office of prosecuting attorney, sheriff or assessor ~~or county surveyor~~ until the requirements of this section have been met. The temporary successor may serve no more than thirty days from the date of the vacancy.

(c) If an election is necessary under section one of this article, the county commission, or the president thereof in vacation, shall be responsible for the proper proclamation, by order, and notice required by section one of this article.

(d) Section one of this article shall be followed with respect to any election needed to fill a vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the general cutoff date, candidates to fill the vacancy shall be nominated by the county executive committee in the manner provided in section nineteen, article five of this chapter, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission of the county, shall be placed upon the ballot to be voted at the next general election.

§3-10-8a. Vacancies in office of county surveyor.

(a) Any vacancy occurring in the office of county surveyor shall be filled by the county commission within thirty days of the vacancy. The appointed person shall hold the office for the period stated by section one of this article.

(b) Notwithstanding the provisions of subsection (a) of this section, a county commission may appoint a temporary successor to the office of county surveyor until the requirements of this section have been met. The temporary successor may serve no more than thirty days from the date of the vacancy.

(c) If an election is necessary under section one of this article, the county commission, or the president thereof in vacation, shall be responsible for the proper proclamation, by order, and notice required by section one of this article.

The bill (Eng. H. B. 2675), as amended, was then ordered to third reading.

Eng. House Bill 2684, Imposing penalties for repeat violations of the prohibition against driving under the influence on a suspended license.

On second reading, coming up in regular order, was read a second time.

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

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

ARTICLE 4. VIOLATION OF LICENSE PROVISIONS.

§17B-4-3. Driving while license suspended or revoked; driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of eight hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents.

(a) Except as otherwise provided in subsection (b) or (d) of this section, any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully suspended or revoked by this state or any other jurisdiction is, for the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500; for the second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500; for the third or any subsequent offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than thirty days nor more than ninety days and shall be fined not less than \$150 nor more than \$500.

(b) Any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully revoked for driving under the influence of alcohol, controlled substances or other drugs, or any combination thereof, or for driving while having an alcoholic concentration in his or her blood of eight hundredths of one percent or more, by weight, or for refusing to take a secondary chemical test of blood alcohol content, is, for the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than thirty days nor more than six months and shall be fined not less than \$100 nor more than \$500; for the second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than six months nor more than one year and shall be fined not less than \$1,000 nor more than \$3,000; for the third or any subsequent offense, the person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than three years and, in addition to the mandatory prison sentence, shall be fined not less than \$3,000 nor more than \$5,000.

(c) Upon receiving a record of the first or subsequent conviction of any person under subsection (b) of this section upon a charge of driving a vehicle while the license of that person was lawfully suspended or revoked, the division shall extend the period of the suspension or revocation for an additional period of six months which may be served concurrently with any other suspension or revocation. Upon receiving a record of the second or subsequent conviction of any person under subsection (a) of this section upon a charge of driving a vehicle while the license of that person was lawfully suspended or revoked, the division shall extend the period of the suspension or revocation for an additional period of ninety days which may be served concurrently with any other suspension or revocation.

(d) Any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully suspended for driving while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours or shall be fined not less than \$50 nor more than \$500, or both; for the second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than thirty days nor more than six months and shall be fined not less than \$100 nor more than \$500; for the third or any subsequent offense, the person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than three years and fined not less than \$1,000 nor more than \$5,000.

Upon receiving a record of a first or subsequent conviction under this subsection for a charge of driving a vehicle while the license of that person was lawfully suspended or revoked, the division shall extend the period of the suspension or revocation for an additional period of six months which may be served concurrently with any other suspension or revocation.

(e) An order for home detention by the court pursuant to the provisions of article eleven-b, chapter sixty-two of this code may be used as an alternative sentence to any period of incarceration required by this section.

The bill (Eng. H. B. 2684), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2694, Relating to the development and implementation of a program to facilitate commercial sponsorship of rest areas.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the right for amendments to be considered on that reading.

Eng. Com. Sub. for House Bill 2704, Prohibiting persons convicted of sexual offenses against children with whom they hold positions of trust from holding certification or license valid in public schools.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on the Judiciary, were reported by the Clerk, considered simultaneously, and adopted:

On page two, section ten, line one, by striking out the words "Beginning January 1, 2002, any" and inserting in lieu thereof the word "Any";

On page three, section ten, line twenty-six after the words "by the" by inserting the words "West Virginia";

And,

On page three, section ten, line twenty-eight, after the word "check" by inserting a period.

The bill (Eng. Com. Sub. for H. B. 2704), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2711, Abolishing regional educational service agencies and providing for the transfer of property and records.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Education, were reported by the Clerk and considered simultaneously:

On page nine, after the article heading, by inserting the following:

§18-2E-1a. Standards, Assessment ~~assessment~~ and accountability programs; duties of the state board.

(a) ~~In order to further the purpose of this article, on or before the first day of January, one thousand nine hundred ninety-nine, Prior to adoption or revision of academic standards in mathematics, English language arts, science and social studies, the state board shall develop and recommend to the~~ constructively engage with the legislative oversight commission on education accountability ~~as outlined in subsection (b). Prior to adoption of a new statewide summative assessment, the state board shall constructively engage with the legislative oversight commission on education accountability on the~~ ~~an~~ assessment program it intends to adopt to measure the progress of public school students in attaining a high quality education. ~~In addition, to further the purposes of this article, on or before the first day of January, one thousand nine hundred ninety-nine, the~~ Prior to the full implementation of a new accountability system, state board shall develop and recommend to the legislative oversight commission on education accountability an accountability program to help ensure a thorough and efficient system of schools. In developing the standards, assessment program and the accountability program, the state board shall take into consideration recommendations arising from any legislative interim study undertaken at the direction of the joint committee on government and finance and also shall take into consideration any recommendations made by the legislative oversight commission on education accountability.

(b) As part of their on-going responsibility for developing and implementing a program of standards, assessments and a program of accountability, the state board ~~shall perform the following functions:~~

(1) Is prohibited from implementing the Common Core academic standards;

(2) Shall allow West Virginia educators the opportunity to participate in the development of the academic standards;

(3) Shall provide by rule for a cyclical review, by West Virginia educators, of any academic standards that are proposed by the state board;

~~(2) Review~~ (4) Shall review assessment tools, including tests of student performance and measures of school and school system performance, and determine when any improvements or additions are necessary;

~~(3) Consider~~ (5) Shall consider multiple assessments, including, but not limited to, a state testing program developed in conjunction with the state's professional educators with assistance from such knowledgeable consultants as may be necessary, which may include criterion referenced tests;

(6) Is prohibited from adopting the Smarter Balanced Assessment system or the PARCC assessment system as the statewide summative assessment;

~~(4) Review~~ (7) Shall review all accountability measures, such as the accreditation and personnel evaluation systems and consider any improvements or additions deemed necessary; and

~~(5) Ensure~~ (8) Shall ensure that all statewide assessments of student performance are secure.

(c) The state board shall not adopt any national or regional testing program tied to federal funding, or national or regional academic standards tied to federal funding, without oversight by the legislative oversight commission on education accountability.

On page nine, section five, line nineteen, after the word "Legislature" by inserting the words "as provided in section one, article two-h of this chapter";

On page eleven, section five, line sixty-nine, by striking out the word "Curriculum" and inserting in lieu thereof the words "Academic standards";

On page thirteen, section five, line one hundred one, by striking out the word "nine" and inserting in lieu thereof the word "eight";

On page thirteen, section five, line one hundred one, by striking out the word "ten" and inserting in lieu thereof the word "nine";

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

(3) In accordance with articles two and two-e, chapter eighteen of this code, the state board shall review or develop, and adopt a college and career readiness assessment to be administered in grade eleven: *Provided*, That the adopted college and career readiness assessment administered in grade eleven counts toward the statewide student assessment and must be used by a significant number of regionally accredited higher education institutions for determining college admissions.;

On page thirteen, section five, line one hundred twenty-two, by striking out the word "and";

On page fourteen, section five, line one hundred twenty-five, by changing the period to a semicolon and adding the word "and";

On page fourteen, section five, after line one hundred twenty-five, by inserting four new subdivisions, designated subdivisions (7), (8), (9) and (10), to read as follows:

(7) The comprehensive statewide student assessment adopted prior to the testing window of the 2017-2018 school year shall continue to be used for at least a total of four consecutive years;

(8) No summative assessment approved by the state board may take more than two percent of a student's instructional time;

(9) No student may be required to complete a greater number of summative assessments than is required by the Every Student Succeeds Act except as otherwise required by this subsection; and

(10) Collection of personal data as part of the assessment process except for what is necessary for the student's instruction, academic and college and career search needs is prohibited.;

On page twenty-nine, section five, line five hundred eight, by striking out the words "Providing or recommending to" and inserting in lieu thereof the word "Recommending";

On page twenty-nine, section five, line five hundred thirteen by striking out the words "Allocating funds" and inserting in lieu thereof the words "Directing educational expertise and support services";

On pages forty through forty-six, by striking out all of section thirteen-c and inserting in lieu thereof a new section thirteen-c, to read as follows:

§18-5-13c. Educational services cooperatives; purpose; establishment; governance; authorized functions and services.

(a) Pursuant to subsection (q), section thirteen of this article, a county board is authorized to enter into a cooperative agreement with one or more other county boards to establish educational services cooperatives which shall serve as regional units to provide for high quality, cost effective lifelong education programs and services to students, schools, school systems, and communities in accordance with this section. Each educational services cooperative may serve as a regional public multi-service agency to develop, manage, and provide such services or programs as determined by its governing council and as provided in this section or otherwise provided in this code. All references in this code to regional education service agencies or RESA's mean an educational services cooperative as authorized under this section.

(b) The regional education service agencies previously established by section twenty-six, article two of this chapter and W. Va. 126CSR72, filed October 15, 2015, and effective November 16, 2015, shall remain and may continue to operate in accordance with said section and rule unless and until modified by a cooperative agreement entered into by county boards within the boundaries of the agency or dissolved by said county boards: *Provided*, That on July 1, 2018, the regional education service agencies as provided under prior provisions of section twenty-six, article two of this chapter are dissolved. If a regional education service agency is reconfigured pursuant to a cooperative agreement or is dissolved, all property, equipment and records held by the regional education service agency necessary to effectuate the purposes of this section shall be transferred or liquidated and disbursed in accordance with the following priority order: (1) To any successor educational services cooperative substantially covering the same geographical

area; (2) To the county boards who were members of the regional education service agency as agreed upon by those counties; or (3) To the state board or to other appropriate entities as provided by law.

(c) An educational services cooperative shall be under the direction and control of a governing council consisting of the following members:

(1) The county superintendent of each county participating in the cooperative agreement;

(2) A member of the board of education from each county participating in the cooperative agreement selected by the county board of education as provided in the bylaws of the governing council of the educational services cooperative; and

(3) The following representatives, if any, to be selected by the educational services cooperative administrator with the consent of the governing council:

(A) Representatives of institutions of higher education and community and technical colleges serving the geographical area covered by the educational services cooperative;

(B) One non-superintendent chief instructional leader employed by a member county;

(C) One school principal employed by a member county;

(D) One teacher employed by a member county; and

(E) Additional members representing business and industry, or other appropriate entities, as the governing council determines fit to meet its responsibilities.

(d) The governing council of an educational services cooperative:

(1) Shall adopt bylaws concerning the appointment and terms of its members, including the authorization of designees by its members, the selection of officers and their terms, the filling of vacancies, the appointment of task forces and study groups, the evaluation of the executive director and staff and any other provisions necessary for the operation of the educational services cooperative. A quorum for governing council meetings shall be a simple majority of the number of members of each governing council;

(2) Shall appoint an individual to serve as the educational services cooperative administrator who shall serve at the will and pleasure of the governing council and shall implement the policies of the governing council.

(3) May employ regular full-time and part-time staff, as necessary, after a majority of the members of a governing council, by vote, verify that such employment is necessary for effective provision of services and to perform services or other projects that may require staff and support services for effective implementation. Staff who are hired into a position that requires a specified certification must maintain the certification for the duration of employment. The governing council is the sole employer of the educational services cooperative's personnel it employs and shall be responsible for any benefit and liability programs necessitated by such employment. Employees of the educational services cooperative are considered state employees for the purposes of participation in the state's public employees' insurance and retirement programs. A recipient of

personnel services from the educational services cooperative is not deemed an employer because of the exercise of supervision or control over any personnel services provided;

(4) May purchase, hold, encumber and dispose of real property, in the name of the educational services cooperative, for use as its office or for any educational service provided by the educational services cooperative if a resolution to do so is adopted by a two-thirds vote of the members of the governing council and then approved by three-fourths of the county boards in the educational services cooperative by majority vote of each county board;

(5) Shall operate as Local Educational Agencies (LEA's) for financial purposes, including grants and cooperative purchasing, and collectively as essential agencies responsible for performing service functions to the total community. An educational services cooperative is eligible as an LEA to participate in partnership with or on behalf of any county school system or school in those programs that will accomplish implementation of the strategic plan and/or state education initiative of the system or school, or to further statutory priorities consistent with educational services cooperative operations;

(6) May receive, expend and disburse funds from the state and federal governments, from member counties, or from gifts and grants and may contract with county boards of education, the West Virginia Department of Education, institutions of higher education, persons, companies, or other agencies to implement programs and services at the direction of the council. The state board, department of education, or any member county board may request implementation of programs and services by the educational services cooperative. An educational services cooperative may also receive funds from profit-generating enterprises, the funds of which will contribute to the educational services cooperative initiatives. Each educational services cooperative is encouraged to partner with member school systems, particularly those designated as low-performing, and other organizations as appropriate to attract and leverage resources available from federal programs to maximize its capacity for meeting the needs of member schools and school systems. Educational services cooperatives are recognized as eligible LEA's for the purposes of applying, on behalf of school systems, for grant funds consistent with performing regional services and functions and/or supportive of education initiatives of the educational services cooperative;

(7) Upon the request of one or more county boards of education, or by the state board as permitted or contracted, and if directed by law, an educational services cooperative may assume responsibility for one or more functions otherwise performed by one or more county boards of education;

(8) May offer technical assistance, including targeted comprehensive staff development services, or other technical assistance to any member school or school system, and give priority to those schools and school systems that are found to be out of compliance with a state law or federal law;

(9) May serve as repositories of research-based teaching and learning practices, and shall use technology, particularly web-based technology, to ensure maximum access to such practices by public schools in the region and state; and

(10) Shall develop and/or implement any other programs or services as directed by law or the governing council, or requested by individual member counties or groups of member counties subject to available funds. The Legislature expects that the assistance and programs developed

and/or implemented by the educational services cooperatives may differ among the schools, counties and educational services cooperatives.

(d) The administrator of each educational services cooperative shall submit annually a plan to the governing council that identifies the programs and services which are suggested for implementation by the educational services cooperative during the following year. The plan shall contain components of long-range planning determined by the governing council. These programs and services may include, but are not limited to, the following areas:

(1) Administrative services;

(2) Curriculum development;

(3) Data processing;

(4) Distance learning and other telecommunication services;

(5) Evaluation and research;

(6) Staff development;

(7) Media and technology centers;

(8) Publication and dissemination of materials;

(9) Pupil personnel services;

(10) Planning;

(11) Secondary, postsecondary, community, adult, and adult vocational education;

(12) Teaching and learning services, including services for students with special talents and special needs;

(13) Employee personnel and employment services;

(14) Vocational rehabilitation;

(15) Health, diagnostic, and child development services and centers;

(16) Leadership or direction in early childhood and family education;

(17) Community services;

(18) Fiscal services and risk management programs;

(19) Legal services;

(20) Technology planning, training, and support services;

(21) Health and safety services;

(22) Student academic challenges;

(23) Cooperative purchasing services; and

(24) Other programs and services as may be provided pursuant to other provisions of this Code.

(e) The educational services cooperative administrator, with advice and assistance of the governing council, may select as its fiscal agent one of the county boards of education comprising the educational services cooperative. The county board so selected may maintain a separate bank account or accounts for the receipt and disbursement of all educational services cooperative funds and perform the accounting functions specified in the policies adopted by the state board. A county board of education serving as a fiscal agent may not initiate action, direct the programs or substitute its judgment for that of the educational services cooperative administrator as advised by the governing council. The county board of education may reject an action of the educational services cooperative administrator if sufficient funds are not available, or if it perceives a legal conflict. The educational services cooperative administrator shall make arrangements for an annual audit to be conducted in accordance with the requirements of the OMB Uniform Guidance⁴ (2 C.F.R. 200) and the cost of the audit shall be incurred by the educational services cooperative. Prior to making those arrangements, the educational services cooperative administrator must coordinate with the respective fiscal agent to ensure the audit addresses all applicable issues.

(f) Notwithstanding any other provision of this code to the contrary, employees of educational services cooperatives shall be reimbursed for travel, meals and lodging at the same rate as state employees under the travel management office of the Department of Administration.

(g) Notwithstanding any other provision of this code to the contrary, county board members serving on governing councils of educational services cooperatives may receive compensation at a rate not to exceed \$100 per meeting attended, not to exceed fifteen meetings per year. County board members serving on governing councils may be reimbursed for travel at the same rate as state employees under the rules of the travel management office of the Department of Administration. A county board member may not be an employee of an educational services cooperative.;

On pages forty-six through fifty-one, by striking out all of section forty-five and inserting in lieu thereof a new section forty-five, to read as follows:

§18-5-45. School calendar.

(a) As used in this section:

(1) "Instructional day" means a day within the instructional term which meets the following criteria:

(A) Instruction is offered to students for at least the minimum amount of hours provided by a state board rule;

(B) Instructional time is used for instruction and cocurricular activities; and

(C) Other criteria as the state board determines appropriate.

(2) Cocurricular activities are activities that are closely related to identifiable academic programs or areas of study that serve to complement academic curricula as further defined by the state board.

(b) *Findings.* —

(1) The primary purpose of the school system is to provide instruction for students.

(2) The school calendar, as defined in this section, is designed to define the school term both for employees and for instruction.

(3) The school calendar shall provide for one hundred eighty ~~separate~~ instructional days.

(c) The county board shall provide a school term for its schools that contains the following:

(1) An employment term that excludes Saturdays and Sundays and consists of at least two hundred days, which need not be successive. The beginning and closing dates of the employment term may not exceed forty-eight weeks;

(2) Within the employment term, an instructional term for students of no less than one hundred eighty ~~separate~~ instructional days, which includes an inclement weather and emergencies plan designed to guarantee an instructional term for students of no less than one hundred eighty ~~separate~~ instructional days;

(3) Within the employment term, noninstructional days shall total twenty and shall be comprised of the following:

(A) Seven paid holidays;

(B) Election day as specified in section two, article five, chapter eighteen-a of this code;

(C) Six days to be designated by the county board to be used by the employees outside the school environment, with at least four outside the school environment days scheduled to occur after the one hundred thirtieth instructional day of the school calendar; ~~and~~

(D) One day to be designated by the county board to be used by the employees for preparation for opening school and one day to be designated by the county board to be used by the employees for preparation for closing school: *Provided*, That the school preparation days may be used for the purposes set forth in paragraph (E) of this subdivision at the teacher's discretion; and

~~(D)~~ (E) The remaining days to be designated by the county board for purposes to include, but not be limited to:

(i) Curriculum development;

~~(ii) Preparation for opening and closing school;~~

~~(iii)~~ (ii) Professional development;

~~(iv)~~ (iii) Teacher-pupil-parent conferences;

~~(v)~~ (iv) Professional meetings;

~~(vi)~~ (v) Making up days when instruction was scheduled but not conducted; and

~~(vii)~~ (vi) At least ~~four~~ six two-hour blocks of time for faculty senate meetings with ~~each a~~ at least one two-hour block of time scheduled in the first month of the employment term, at least one two-hour block of time scheduled in the last month of the employment term and ~~once at least every forty-five instructional days~~ at least one two-hour block of time scheduled in each of the months of October, December, February and April; and

(4) Scheduled out-of-calendar days that are to be used for instructional days in the event school is canceled for any reason.

(d) A county board of education shall develop a policy that requires additional minutes of instruction in the school day or additional days of instruction to recover time lost due to late arrivals and early dismissals first. Any remaining minutes accrued may be used for instructional minutes or days lost due to inclement weather or emergencies.

(e) If it is not possible to complete one hundred eighty ~~separate~~ instructional days with the current school calendar, the county board shall schedule instruction on any available noninstructional day, regardless of the purpose for which the day originally was scheduled, or an out-of-calendar day and the day will be used for instruction of students: *Provided*, That the provisions of this subsection do not apply to:

(A) Holidays;

(B) Election day;

(C) Saturdays and Sundays.

(f) The instructional term shall commence and terminate on a date selected by the county board.

(g) The state board may not schedule the primary statewide assessment program more than thirty days prior to the end of the instructional year unless the state board determines that the nature of the test mandates an earlier testing date.

(h) The following applies to cocurricular activities:

(1) The state board shall determine what activities may be considered cocurricular;

(2) The state board shall determine the amount of instructional time that may be consumed by cocurricular activities; and

(3) Other requirements or restrictions the state board may provide in the rule required to be promulgated by this section.

(i) Extracurricular activities may not be used for instructional time.

(j) Noninstructional interruptions to the instructional day shall be minimized to allow the classroom teacher to teach.

(k) Prior to implementing the school calendar, the county board shall secure approval of its proposed calendar from the state board or, if so designated by the state board, from the state superintendent.

(l) In formulation of a school's calendar, a county school board shall hold at least two public meetings that allow parents, teachers, teacher organizations, businesses and other interested parties within the county to discuss the school calendar. The public notice of the date, time and place of the public hearing must be published in a local newspaper of general circulation in the area as a Class II legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.

(m) The county board may contract with all or part of the personnel for a longer term of employment.

(n) The minimum instructional term may be decreased by order of the state superintendent in any county declared a federal disaster area and where the event causing the declaration is substantially related to a reduction of instructional days.

(o) Notwithstanding any provision of this code to the contrary, the state board may grant a waiver to a county board for its noncompliance with provisions of chapter eighteen, eighteen-a, eighteen-b and eighteen-c of this code to maintain compliance in reaching the mandatory one hundred eighty ~~separate~~ instructional days established in this section.

(p) The use of reimagining student instructional days to achieve the one hundred eighty instructional day requirement is strongly encouraged in order to minimize scheduling instructional days too early or late in the school year.

~~(p)~~ (q) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purpose of implementing the provisions of this section.

~~(q) The amendments to this section during the 2013 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2014, and the provisions of this section existing immediately prior to the 2013 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2014.~~

On page fifty-one, after line one hundred twenty-four, by inserting the following:

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

(a) There is established at every public school in this state a faculty senate which is comprised of all permanent, full-time professional educators employed at the school who shall all be voting members. "Professional educators", as used in this section, means "professional educators" as defined in chapter eighteen-a of this code. A quorum of more than one half of the voting members of the faculty shall be present at any meeting of the faculty senate at which official business is conducted. Prior to the beginning of the instructional term each year, but within the employment term, the principal shall convene a meeting of the faculty senate to elect a chair, vice chair and secretary and discuss matters relevant to the beginning of the school year. The vice chair shall

preside at meetings when the chair is absent. Meetings of the faculty senate shall be held during the times provided in accordance with subdivision (12), subsection (b) of this section as determined by the faculty senate. Emergency meetings may be held during noninstructional time at the call of the chair or a majority of the voting members by petition submitted to the chair and vice chair. An agenda of matters to be considered at a scheduled meeting of the faculty senate shall be available to the members at least two employment days prior to the meeting. For emergency meetings the agenda shall be available as soon as possible prior to the meeting. The chair of the faculty senate may appoint such committees as may be desirable to study and submit recommendations to the full faculty senate, but the acts of the faculty senate shall be voted upon by the full body.

(b) In addition to any other powers and duties conferred by law, or authorized by policies adopted by the state or county board or bylaws which may be adopted by the faculty senate not inconsistent with law, the powers and duties listed in this subsection are specifically reserved for the faculty senate. The intent of these provisions is neither to restrict nor to require the activities of every faculty senate to the enumerated items except as otherwise stated. Each faculty senate shall organize its activities as it considers most effective and efficient based on school size, departmental structure and other relevant factors.

(1) Each faculty senate shall control funds allocated to the school from legislative appropriations pursuant to section nine, article nine-a of this chapter. From those funds, each classroom teacher and librarian shall be allotted \$100 for expenditure during the instructional year for academic materials, supplies or equipment which, in the judgment of the teacher or librarian, will assist him or her in providing instruction in his or her assigned academic subjects or shall be returned to the faculty senate: *Provided*, That nothing contained herein prohibits the funds from being used for programs and materials that, in the opinion of the teacher, enhance student behavior, increase academic achievement, improve self-esteem and address the problems of students at risk. The remainder of funds shall be expended for academic materials, supplies or equipment in accordance with a budget approved by the faculty senate. Notwithstanding any other provisions of the law to the contrary, funds not expended in one school year are available for expenditure in the next school year: *Provided, however*, That the amount of county funds budgeted in a fiscal year may not be reduced throughout the year as a result of the faculty appropriations in the same fiscal year for such materials, supplies and equipment. Accounts shall be maintained of the allocations and expenditures of such funds for the purpose of financial audit. Academic materials, supplies or equipment shall be interpreted broadly, but does not include materials, supplies or equipment which will be used in or connected with interscholastic athletic events.

(2) A faculty senate may establish a process for members to interview or otherwise obtain information regarding applicants for classroom teaching vacancies that will enable the faculty senate to submit recommendations regarding employment to the principal. To facilitate the establishment of a process that is timely, effective, consistent among schools and counties, and designed to avoid litigation or grievance, the state board shall promulgate a rule pursuant to article three-b, chapter twenty-nine-a of this code to implement the provisions of this subdivision. The rule may include the following:

(A) A process or alternative processes that a faculty senate may adopt;

(B) If determined necessary, a requirement and procedure for training for principals and faculty senate members or their designees who may participate in interviews and provisions that may

provide for the compensation based on the appropriate daily rate of a classroom teacher who directly participates in the training for periods beyond his or her individual contract;

(C) Time lines that will assure the timely completion of the recommendation or the forfeiture of the right to make a recommendation upon the failure to complete a recommendation within a reasonable time;

(D) The authorization of the faculty senate to delegate the process for making a recommendation to a committee of no less than three members of the faculty senate; and

(E) Such other provisions as the state board determines are necessary or beneficial for the process to be established by the faculty senate.

(3) A faculty senate may nominate teachers for recognition as outstanding teachers under state and local teacher recognition programs and other personnel at the school, including parents, for recognition under other appropriate recognition programs and may establish such programs for operation at the school.

(4) A faculty senate may submit recommendations to the principal regarding the assignment scheduling of secretaries, clerks, aides and paraprofessionals at the school.

(5) A faculty senate may submit recommendations to the principal regarding establishment of the master curriculum schedule for the next ensuing school year.

(6) A faculty senate may establish a process for the review and comment on sabbatical leave requests submitted by employees at the school pursuant to section eleven, article two of this chapter.

(7) Each faculty senate shall elect three faculty representatives to the local school improvement council established pursuant to section two of this article.

(8) Each faculty senate may nominate a member for election to the county staff development council pursuant to section eight, article three, chapter eighteen-a of this code.

(9) Each faculty senate shall have an opportunity to make recommendations on the selection of faculty to serve as mentors for beginning teachers under beginning teacher internship programs at the school.

(10) A faculty senate may solicit, accept and expend any grants, gifts, bequests, donations and any other funds made available to the faculty senate: *Provided*, That the faculty senate shall select a member who has the duty of maintaining a record of all funds received and expended by the faculty senate, which record shall be kept in the school office and is subject to normal auditing procedures.

(11) Any faculty senate may review the evaluation procedure as conducted in their school to ascertain whether the evaluations were conducted in accordance with the written system required pursuant to section twelve, article two, chapter eighteen-a of this code or pursuant to section two, article three-c, chapter eighteen-a of this code, as applicable, and the general intent of this Legislature regarding meaningful performance evaluations of school personnel. If a majority of members of the faculty senate determine that such evaluations were not so conducted, they shall

submit a report in writing to the State Board of Education: *Provided*, That nothing herein creates any new right of access to or review of any individual's evaluations.

(12) A local board shall provide to each faculty senate a at least six two-hour block blocks of time for a faculty senate meeting meetings on a day scheduled for the opening of school prior to the beginning of the instructional term and at least four additional two-hour blocks of time during noninstructional days, with each two-hour block of time scheduled once at least every forty-five instructional days with at least one two-hour block of time scheduled in the first month of the employment term, one two-hour block of time scheduled in the last month of the employment term and at least one two-hour block of time scheduled in each of the months of October, December, February and April. A faculty senate may meet for an unlimited block of time during noninstructional days to discuss and plan strategies to improve student instruction and to conduct other faculty senate business. A faculty senate meeting scheduled on a noninstructional day shall be considered as part of the purpose for which the noninstructional day is scheduled. This time may be used and determined at the local school level and includes, but is not limited to, faculty senate meetings.

(13) Each faculty senate shall develop a strategic plan to manage the integration of special needs students into the regular classroom at their respective schools and submit the strategic plan to the superintendent of the county board periodically pursuant to guidelines developed by the State Department of Education. Each faculty senate shall encourage the participation of local school improvement councils, parents and the community at large in developing the strategic plan for each school.

Each strategic plan developed by the faculty senate shall include at least: (A) A mission statement; (B) goals; (C) needs; (D) objectives and activities to implement plans relating to each goal; (E) work in progress to implement the strategic plan; (F) guidelines for placing additional staff into integrated classrooms to meet the needs of exceptional needs students without diminishing the services rendered to the other students in integrated classrooms; (G) guidelines for implementation of collaborative planning and instruction; and (H) training for all regular classroom teachers who serve students with exceptional needs in integrated classrooms.;

On page fifty-two, section fourteen, line fifteen, by striking out everything after the period and inserting in lieu thereof the following: Educators shall receive uninterrupted time for planning periods each week. Administrators may not require a teacher to use the planning period time allotted to complete duties beyond instructional planning, including, but not limited to, administrative tasks and meetings.;

And,

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

That §18-2-26a of the Code of West Virginia, 1931, as amended, be repealed; that §18-2-26 of said code be amended and reenacted; that §18-2E-1a and §18-2E-5 of said code be amended and reenacted; that §18-5-13 and §18-5-45 of said code be amended and reenacted; that said code be further amended by adding thereto two new sections designated, §18-5-13b and §18-5-13c; that §18-5A-5 of said code be amended and reenacted; that §18-9A-8a of said code be amended and reenacted; and that §18A-4-14 of said code be amended and reenacted, all to read as follows:.

On motion of Senator Mann, the following amendment to the Education committee amendments to the bill (Eng. Com. Sub. for H. B. 2711) was reported by the Clerk and adopted:

On page nineteen, line one hundred twenty-two, by striking out the word "week" and inserting in lieu thereof the word "day".

The question now being on the adoption of the Education committee amendments to the bill, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2711), as amended, was then ordered to third reading.

Eng. House Bill 2745, Adding the examination of Advanced Care Technician.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2781, Requiring a person desiring to vote to present documentation identifying the voter to one of the poll clerks.

On second reading, coming up in regular order, was read a second time.

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

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

That §3-2-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-11. Registration in conjunction with driver licensing.

(a) The Division of Motor Vehicles or other division or department that may be established by law to perform motor vehicle driver licensing services shall obtain, as an integral and simultaneous part of every process of application for the issuance, renewal or change of address of a motor vehicle driver's license or official identification card pursuant to the provisions of article two, chapter seventeen-b of this code, when the division's regional offices are open for regular business, the following information from each qualified registrant:

- (1) Full name, including first, middle, last and any premarital names;
- (2) Date of birth;
- (3) Residence address and mailing address, if different;
- (4) The applicant's electronic signature;
- (5) Telephone number, if available;
- (6) Email address, if available;

(7) Political party membership, if any;

(8) Driver's license number and last four digits of social security number;

(9) A notation that the applicant has attested that he or she meets all voter eligibility requirements, including United States citizenship;

(10) Whether the applicant affirmatively declined to become registered to vote during the transaction with the Division of Motor Vehicles;

(11) Date of application; and

(12) Any other information specified in rules adopted to implement this section.

(b) Unless the applicant affirmatively declines to become registered to vote or update their voter registration during the transaction with the Division of Motor Vehicles, the Division of Motor Vehicles shall release all of the information obtained pursuant to subsection (a) of this section, to the Secretary of State, who shall forward the information to the county clerk for the relevant county to process the newly registered voter or updated information for the already-registered voter pursuant to law. ~~Notwithstanding any other provision of this code to the contrary, if the applicant affirmatively declines to become registered to vote, the Division of Motor Vehicles is required to release the first name, middle name, last name, premarital name, if applicable, complete residence address, complete date of birth of an applicant and the applicant's electronic signature, entered in the division's records for driver license or nonoperator identification purposes to the Secretary of State in order to facilitate any future attempt of the applicant to register to vote online, along with the notation that the applicant affirmatively declined to become registered at that time.~~ The Division of Motor Vehicles shall notify that applicant that by submitting his or her signature, the applicant grants written consent for the submission of the information obtained and required to be submitted to the Secretary of State pursuant to this section.

(c) Information regarding a person's failure to sign the voter registration application is confidential and may not be used for any purpose other than to determine voter registration.

(d) A qualified voter who submits the required information or update to his or her voter registration, pursuant to the provisions of subsection (a) of this section, in person at a driver licensing facility at the time of applying for, obtaining, renewing or transferring his or her driver's license or official identification card and who presents identification and proof of age at that time is not required to make his or her first vote in person or to again present identification in order to make that registration valid.

(e) A qualified voter who submits by mail or by delivery by a third party an application for registration on the form used in conjunction with driver licensing is required to make his or her first vote in person and present identification as required for other mail registration in accordance with the provisions of subsection (g), section ten of this article. If the applicant has been previously registered in the jurisdiction and the application is for a change of address, change of name, change of political party affiliation or other correction, the presentation of identification and first vote in person is not required.

(f) An application for voter registration submitted pursuant to the provisions of this section updates a previous voter registration by the applicant and authorizes the cancellation of registration in any other county or state in which the applicant was previously registered.

(g) A change of address from one residence to another within the same county which is submitted for driver licensing or nonoperator's identification purposes in accordance with applicable law serves as a notice of change of address for voter registration purposes if requested by the applicant after notice and written consent of the applicant.

(h) Completed applications for voter registration or change of address for voting purposes received by an office providing driver licensing services shall be forwarded to the Secretary of State within five days of receipt unless other means are available for a more expedited transmission. The Secretary of State shall remove and file any forms which have not been signed by the applicant and shall forward completed, signed applications to the clerk of the appropriate county commission within five days of receipt.

(i) Voter registration application forms containing voter information which are returned to a driver licensing office unsigned shall be collected by the Division of Motor Vehicles, submitted to the Secretary of State and maintained by the Secretary of State's office according to the retention policy adopted by the Secretary of State.

(j) The Secretary of State shall establish procedures to protect the confidentiality of the information obtained from the Division of Motor Vehicles, including any information otherwise required to be confidential by other provisions of this code.

(k) A person registered to vote pursuant to this section may cancel his or her voter registration at any time by any method available to any other registered voter.

(l) This section shall not be construed as requiring the Division of Motor Vehicles to determine eligibility for voter registration and voting.

(m) The changes made to this section during the 2016 Regular Legislative Session shall become effective on July 1, ~~2017-2019~~, and any costs associated therewith shall be paid by the Division of Motor Vehicles. If the Division of Motor Vehicles is unable to meet the requirements of this section by February 1, ~~2017-2019~~, it shall make a presentation to the Joint Committee on Government and Finance explaining any resources necessary to meet the requirements or any changes to the code that it recommends immediately prior to the ~~2017-2019~~ Regular Legislative Session: Provided, That the Division of Motor Vehicles shall report to the Joint Committee on Government and Finance by January 1, 2018 with a full and complete list of all infrastructure they require to achieve the purposes of this section.

(n) The Secretary of State shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code in order to implement the requirements of this section.

The bill (Eng. Com. Sub. for H. B. 2781), as amended, was then ordered to third reading.

Without objection, the Senate returned to the third order of business.

Executive Communications

Senator Carmichael (Mr. President) laid before the Senate the following communication from His Excellency, the Governor:

Jim Justice
Governor of West Virginia

April 7, 2017

**Senate Executive Message No. 7
Regular Session 2017**

TO: The Honorable Members of the
West Virginia Senate

Ladies and Gentlemen:

I respectfully withdraw the following nomination from Senate Executive Message No. 6, Regular Session 2017, the nominee resigned effective today:

- 26. For Member, West Virginia Board of Education, Harold L. Hatfield, Jr., Hurricane, Putnam County, for the term ending November 4, 2025.

Thank you for correcting your records.

Sincerely,

Jim Justice
Governor

Cc: Secretary of State
Senate Clerk

Which communication was received and referred to the Committee on Confirmations.

On motion of Senator Ferns, the Senate recessed until 6 p.m. today.

Upon expiration of the recess, the Senate reconvened and again proceeded to the ninth order of business, the next bill coming up in numerical sequence being

Eng. Com. Sub. for House Bill 2799, Prohibiting the superintendent of schools from requiring a physical examination to be included to the application for a minor's work permit.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2801, Expiring funds to the unappropriated balance in the State Fund from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Hall, the following amendment to the bill was reported by the Clerk and adopted:

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

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated February 8, 2017, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2016, and further included the estimate of revenues for the fiscal year 2017, less net appropriation balances forwarded and regular appropriations for the fiscal year 2017; and

Whereas, The Secretary of the Department of Revenue has submitted a monthly General Revenue Fund Collections Report for the first nine months of fiscal year 2017 as prepared by the State Budget Office; and

Whereas, This report demonstrates that the State of West Virginia has experienced a revenue shortfall of approximately \$79 million for the first nine months of fiscal year 2017, as compared to the monthly revenue estimates for the first nine months of the fiscal year 2017; and

Whereas, Current economic and fiscal trends are anticipated to result in projected year-end revenue deficits, including potential significant shortfalls in Personal Income Tax, Consumers Sales and Use Tax, and Corporation Net Income Tax; and

Whereas, Projected year-end revenue surpluses in various other General Revenue sources will only offset a small portion of these deficits; and

Whereas, The total projected year-end revenue deficit for the General Revenue Fund is estimated at \$192 million; and

Whereas, On November 4, 2016, the Governor issued Executive Order 8-16 which redirected certain revenues pursuant to the terms of SB 419 for fiscal year 2017 of approximately \$25.5 million; and

Whereas, On November 15, 2016, the Governor issued Executive Order 9-16 which directed a spending reduction for General Revenue appropriations for fiscal year 2017 of approximately \$59.8 million; and

Whereas, On December 30, 2016, the remaining balance of \$5,000,000 in the Personal Income Tax Reserve Fund was utilized to ensure timely payment of tax refunds; and

Whereas, The Governor finds that the account balances in the listed accounts exceed that which is necessary for the purposes for which the accounts were established; and

Whereas, The Revenue Shortfall Reserve Fund may be drawn on in the event of a revenue shortfall in lieu of imposing additional reductions in appropriations; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2017, in the Legislative, Senate, fund 0165, fiscal year 2012, organization 2100, appropriation 02100, be decreased by expiring the amount of \$2,000,000, in the Legislative, Senate, fund 0165, fiscal year 2012, organization 2100, appropriation 06400, be decreased by expiring the amount of \$1,000,000, in the Legislative, House of Delegates, fund 0170, fiscal year 2015, organization 2200, appropriation 00500, be decreased by expiring the amount of \$500,000, in the Legislative, House of Delegates, fund 0170, fiscal year 2015, organization 2200, appropriation 02100, be decreased by expiring the amount of \$1,500,000, in the Legislative, Joint Expenses, fund 0175,

fiscal year 2015, organization 2300, appropriation 10400, be decreased by expiring the amount of \$500,000, in the Executive, Governor's Office, fund 0101, fiscal year 2005, organization 0100, appropriation 66500, be decreased by expiring the amount of \$2,000,000, in the Executive, Governor's Office – Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 08400, be decreased by expiring the amount of \$800,000, in the Executive, Governor's Office – Civil Contingent Fund, fund 0105, fiscal year 2008, organization 0100, appropriation 11400, be decreased by expiring the amount of \$200,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2009, organization 0307, appropriation 13100, be decreased by expiring the amount of \$400,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, appropriation 13100, be decreased by expiring the amount of \$400,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 13100, be decreased by expiring the amount of \$200,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2007, organization 0307, appropriation 81900, be decreased by expiring the amount of \$500,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2008, organization 0307, appropriation 81900, be decreased by expiring the amount of \$500,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2009, organization 0307, appropriation 81900, be decreased by expiring the amount of \$500,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2010, organization 0307, appropriation 81900, be decreased by expiring the amount of \$1,600,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, appropriation 81900, be decreased by expiring the amount of \$1,500,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 81900, be decreased by expiring the amount of \$640,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2014, organization 0307, appropriation 81900, be decreased by expiring the amount of \$628,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2015, organization 0307, appropriation 81900, be decreased by expiring the amount of \$932,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 94100, be decreased by expiring the amount of \$650,000, in the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2011, organization 0402, appropriation 16100, be decreased by expiring the amount of \$150,000, in the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2012, organization 0402, appropriation 16100, be decreased by expiring the amount of \$400,000, in the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2013, organization 0402, appropriation 16100, be decreased by expiring the amount of \$400,000, in the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2014, organization 0402, appropriation 16100, be decreased by expiring the amount of \$150,000, in the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2014, organization 0402, appropriation 88600, be decreased by expiring the amount of \$500,000, in the Department of Health and Human Resources – Office of the Secretary, fund 0400, fiscal year 2015, organization 0501, appropriation 19100, be decreased by expiring the amount of \$40,000, in the Department of Health and Human Resources – Office of the Secretary, fund 0400, fiscal year 2016, organization 0501, appropriation 19100, be decreased by expiring the amount of \$60,000, in the Department of Health and Human Resources, Consolidated Medical Services Fund, fund 0525, fiscal year 2014, organization 0506, appropriation 21900, be decreased by expiring the amount of \$1,000,000, in the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2011, organization 0608, appropriation 09700, be decreased by expiring the amount of \$200,000, in the Department of Military Affairs

and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 09700, be decreased by expiring the amount of \$200,000, in the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 66100, be decreased by expiring the amount of \$480,000, in the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 67700, be decreased by expiring the amount of \$1,000,000, in the Department of Military Affairs and Public Safety, Division of Justice and Community Services, fund 0546, fiscal year 2014, organization 0620, appropriation 56100, be decreased by expiring the amount of \$500,000, in the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2011, organization 0621, appropriation 75500, be decreased by expiring the amount of \$100,000, in the Department of Revenue, State Budget Office, fund 0595, fiscal year 2009, organization 0703, appropriation 09900, be decreased by expiring the amount of \$80,000, in the Department of Transportation, Aeronautics Commission, fund 0582, fiscal year 2013, organization 0807, appropriation 13000, be decreased by expiring the amount of \$300,000, in the Department of Veterans' Assistance, fund 0456, fiscal year 2013, organization 0613, appropriation 28600, be decreased by expiring the amount of \$200,000, in the Department of Veterans' Assistance, fund 0456, fiscal year 2014, organization 0613, appropriation 28600, be decreased by expiring the amount of \$100,000, in the West Virginia Council for Community and Technical College Education – Control Account, fund 0596, fiscal year 2012, organization 0420, appropriation 66100, be decreased by expiring the amount of \$500,000, in the Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2012, organization 0441, appropriation 09700, be decreased by expiring the amount of \$200,000, in the Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2012, organization 0441, appropriation 66100, be decreased by expiring the amount of \$1,000,000, in the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2017, organization 0701, be decreased by expiring the amount of \$40,404,684.31, in the Department of Revenue, Insurance Commissioner – Insurance Commission Fund, fund 7152, fiscal year 2017, organization 0704, be decreased by expiring the amount of \$20,000,000, in the State Board of Education, fund 3951, fiscal year 2007, organization 0402, appropriation 09900, be decreased by expiring the amount of \$100,000, in the State Board of Education, fund 3951, fiscal year 2008, organization 0402, appropriation 09900, be decreased by expiring the amount of \$300,000, in the State Board of Education, fund 3951, fiscal year 2012, organization 0402, appropriation 09900, be decreased by expiring the amount of \$500,000, in the State Board of Education, fund 3951, fiscal year 2013, organization 0402, appropriation 39600, be decreased by expiring the amount of \$500,000, in the State Board of Education, fund 3951, fiscal year 2014, organization 0402, appropriation 39600, be decreased by expiring the amount of \$500,000, in the State Board of Education, fund 3951, fiscal year 2014, organization 0402, appropriation 93300, be decreased by expiring the amount of \$1,000,000, in the Division of Culture and History – Lottery Education Fund, fund 3534, fiscal year 2003, organization 0432, appropriation 86500, be decreased by expiring the amount of \$150,000, in the Division of Culture and History – Lottery Education Fund, fund 3534, fiscal year 2012, organization 0432, appropriation 62400, be decreased by expiring the amount of \$40,000, in the Library Commission – Lottery Education Fund, fund 3559, fiscal year 2011, organization 0433, appropriation 62500, be decreased by expiring the amount of \$150,000, in the Library Commission – Lottery Education Fund, fund 3559, fiscal year 2012, organization 0433, appropriation 62500, be decreased by expiring the amount of \$250,000, in the Bureau of Senior Services – Lottery Senior Citizens Fund, fund 5405, fiscal year 2011, organization 0508, appropriation 46200, be decreased by expiring the amount of \$150,000, in the Bureau of Senior Services – Lottery Senior Citizens Fund, fund 5405, fiscal year 2012, organization 0508, appropriation 46200, be decreased by expiring the amount of \$350,000, in the Bureau of Senior Services – Lottery Senior Citizens Fund, fund 5405,

fiscal year 2013, organization 0508, appropriation 46200, be decreased by expiring the amount of \$550,000, in the West Virginia Development Office, fund 3170, fiscal year 2007, organization 0307, appropriation 92300, be decreased by expiring the amount of \$50,000, in the West Virginia Development Office, fund 3170, fiscal year 2008, organization 0307, appropriation 25300, be decreased by expiring the amount of \$2,500,000, in the West Virginia Development Office, fund 3170, fiscal year 2013, organization 0307, appropriation 09600, be decreased by expiring the amount of \$400,000, in the Division of Corrections – Correctional Units, fund 6283, fiscal year 2010, organization 0608, appropriation 75500, be decreased by expiring the amount of \$1,000,000, in the Office of the Treasurer – Financial Electronic Communication Fund, fund 1345, fiscal year 2017, organization 1300 be decreased by expiring the amount of \$500,000, in the Attorney General, Consumer Protection Recovery Fund, fund 1509, fiscal year 2017, organization 1500, be decreased by expiring the amount of \$1,000,000, in the Department of Administration, Board of Risk and Insurance Management, Premium Tax Savings Fund, fund 2367, fiscal year 2017, organization 0218, be decreased by expiring the amount of \$2,000,000, in the Department of Administration, Capitol Complex Garage Fund, fund 2461, fiscal year 2017, organization 0211, be decreased by expiring the amount of \$110,467.62, in the Department of Environmental Protect, Dam Safety Rehabilitation Fund, fund 3025, fiscal year 2017, organization 0313, be decreased by expiring the amount of \$184,848.07, in the Department of Health and Human Resources, Healthcare Authority Fund, fund 5375, fiscal year 2017, organization 0507, be decreased by expiring the amount of \$500,000 and in the Public Service Commission, Public Service Commission Fund, fund 8623, fiscal year 2017, organization 0926, be decreased by expiring the amount of \$4,000,000, all to the unappropriated balance of the State Fund, General Revenue, to be available during the fiscal year ending June 30, 2017 ,all to the unappropriated balance of the State Fund, General Revenue, to be available during the fiscal year ending June 30, 2017.

The bill (Eng. Com. Sub. for H. B. 2801), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2846, Including high school students participating in a competency based pharmacy technician education and training program as persons qualifying to be a pharmacy technician trainee.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2851, Updating fee structure provisions for broker-dealers.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the unreported Finance committee amendment pending and the right for further amendments to be considered on that reading.

Eng. Com. Sub. for House Bill 2935, Relating to state flood protection planning.

On second reading, coming up in regular order, was read a second time.

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

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

CHAPTER 4. THE LEGISLATURE.**ARTICLE 15. JOINT LEGISLATIVE COMMITTEE ON FLOODING.****§4-15-1. Establishing a Joint Legislative Committee on Flooding.**

(a) The President of the Senate and the Speaker of the House of Delegates shall each appoint five members of their respective houses, at least two of whom shall be members of the minority party, and at least one shall be a member of the Committee on Government Organization, to serve an interim committee charged with studying flood damage reduction and flood plain management. The President and the Speaker shall each designate a Chair from among the five committee members of their respective houses. This committee shall be known as the "Joint Legislative Committee on Flooding" and shall study all activities relating to flood protection and shall make recommendations to the Joint Committee on Government and Finance, which offer solutions to reduce the reality and threat of future loss of life and property damages associated with flooding.

(b) The expenses of the committee are to be approved by the Joint Committee on Government and Finance and paid from legislative appropriations.

(c) The Chair of the State Resiliency Office, created pursuant to article thirty, chapter twenty-nine of this code, shall report quarterly to the committee, and shall prepare an annual report to the committee no later than December 31 of each year.

(d) The Chairs of the committee shall report annually, each January, to the Joint Committee on Government and Finance, with any proposals or legislation as may be deemed necessary to prevent or reduce the risk of flooding in this state.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**ARTICLE 30. STATE RESILIENCY AND FLOOD PROTECTION PLAN ACT.****§29-30-1. Short title; legislative findings; purpose.**

(a) This article may be known and cited as the "Resiliency and Flood Protection Planning Act".

(b) The West Virginia Legislature finds that:

(1) Flooding has affected each of the fifty-five counties and thirty-two major watersheds within the state;

(2) Over the past fifty-two years, more than two hundred and eighty-two West Virginians have died in floods;

(3) Between January 1996 and January 2017, there have been twenty-seven federal disaster declarations in West Virginia involving flooding; and

(4) In June 2016 much of West Virginia suffered devastating flooding.

(5) Despite the many state and federal flood protection programs and projects, flooding continues to be West Virginia's most common and widespread natural disaster.

(c) It is the purpose of this article to provide a comprehensive and coordinated statewide resiliency and flood protection planning program to save lives, and develop community and economic resiliency plans including, but not limited to, reducing or mitigating flood damage while supporting economic growth and protecting the environment.

§29-30-2. State Resiliency Office.

(a) The State Resiliency Office is hereby created. The office shall be organized within the Development Office in the Department of Commerce as the recipient of disaster recovery and resiliency funds, excluding federal Stafford Act funds, and the coordinating agency of recovery and resiliency efforts, including matching funds for other disaster recovery programs, excluding those funds and efforts under the direct control of the State Coordinating Officer designated by the Governor for a particular event. The State Resiliency Office Board is also established and shall consist of the following eight members: the Secretary of the Department of Commerce or his or her designee; The Director of the Division of Natural Resources or his or her designee; the Secretary of the Department of Environmental Protection or his or her designee; the Executive Director of the State Conservation Agency or his or her designee; the Secretary of the Department of Military Affairs and Public Safety or his or her designee; the Secretary of Transportation or his or her designee; the Adjutant General of the West Virginia National Guard or his or her designee; and the Director of the Division of Homeland Security and Emergency Management within the Department of Military Affairs and Public Safety or his or her designee.

(b) The Secretary of the Department of Commerce shall be the chair of the State Resiliency Office Board. In the absence of the chair, any member designated by the members present may act as chair.

(c) The board shall meet no less than once each calendar quarter at the time and place designated by the chair. All decisions of the board shall be decided by a majority vote of the members.

(d) The chair shall provide adequate staff from their respective office, to ensure the meetings of the board are properly noticed, meetings of the board are facilitated, board meeting minutes are taken, records and correspondence kept and that reports of the board are produced timely.

§29-30-3. Authority of State Resiliency Office; authority of board.

The State Resiliency Office, through its board may:

(1) Serve as coordinator of all economic and community resiliency planning and implementation efforts, including but not limited to flood protection programs and activities in the state;

(2) Annually review the state flood protection plan and update the plan no less than biannually;

(3) Recommend legislation to reduce or mitigate flood damage;

(4) Report to the Joint Legislative Committee on Flooding at least quarterly;

(5) Catalog, maintain and monitor a listing of current and proposed capital expenditures to reduce or mitigate flood damage or other resiliency efforts;

(6) Coordinate planning of flood projects with federal agencies;

(7) Improve professional management of flood plains;

(8) Provide education and outreach on flooding issues to the citizens of this state;

(9) Establish a single web site integrating all agency flood information;

(10) Monitor federal funds and initiatives that become available for disaster recovery and economic and community resiliency;

(11) Pursue additional funds and resources to assist not only with long term recovery efforts but also long term community and state wide resiliency efforts;

(12) Coordinate, integrate and expand planning efforts in the state for hazard mitigation, long-term disaster recovery and economic diversification;

(13) Coordinate long-term disaster recovery efforts in response to disasters as they occur;

(14) Establish and facilitate regular communication between federal, state, local and private sector agencies and organizations to further economic and disaster resilience; and

(15) Take all other actions necessary and proper to effectuate the purposes of this article.

§29-30-4. Reporting to the Joint Legislative Committee on Flooding.

(a) The chair of the board of the State Resiliency Office shall report, at a minimum of quarterly, to the Joint Legislative Committee on Flooding, created pursuant to article fifteen, chapter four of this code, in sufficient detail for the committee to be aware of the activities of the board to assure progress toward reducing and mitigating flood damage within this state while respecting and complying with the Takings Clause of the United States Constitution, the West Virginia Constitution, and related precedential court opinions, and to develop legislative recommendations.

(b) The chair of the council shall submit an annual report to the committee by December 31 of each year, along with any recommended legislation, budget requests and a summary of the activities of the board for the previous year.

The bill (Eng. Com. Sub. for H. B. 2935), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2936, Requiring purchases to be made at lowest retail price available at level of quality sought by the spending unit.

On second reading, coming up in regular order, was read a second time.

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

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

That §5A-3-11, §5A-3-19 and §5A-3-37 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. PURCHASING DIVISION.**§5A-3-11. Purchasing in open market on competitive bids; debarment; bids to be based on written specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; requirements of vendors to pay taxes, fees and debts; exception; grant exemption.**

(a) The director may make a purchase of commodities, printing and services of \$25,000 or less in amount in the open market, but the purchase shall, wherever possible, be based on at least three competitive bids, and shall include the cost of maintenance and expected life of the commodities if the director determines there are nationally accepted industry standards for the commodities being purchased: Provided, That the Office of Technology may engage in the procurement of technical infrastructure as defined in the provisions of section two, article six, chapter five-a of the code, up to \$500,000 without the approval of the director of division but subject to the promulgation of a legislative rule by the Office of Technology. The rule shall include the procedures for technical infrastructure procurement and while recognizing the language of technology procurement in government is rapidly and profoundly changing, nationally recognized technology procurement terminology should also be incorporated. Provided, however, That the Chief Technology Officer of the Office of Technology shall determine if a request for proposal or a request for quotation would be the best method of procurement for technical infrastructure up to \$500,000.

~~(b) The director may authorize spending units~~ Spending units shall not be required to obtain written bids to purchase commodities, printing and services in the amount of \$2,500 or less, in the open market without competitive bids but the spending unit must, when practical, purchase the commodities, printing or services at the lowest available price, whether purchased online or within a reasonable geographic area for that spending unit, for the commodities, printing or services, at the level of quality specified by the spending unit: Provided, That the cost of maintenance and expected life of the commodities must be taken into consideration if the director determines there are nationally accepted industry standards for the commodities being purchased: Provided, however, That the preference for non-profit workshops pursuant to section ten of this article and article three-a of this chapter shall be preserved.

(c) Bids shall be based on the written specifications in the advertised bid request and may not be altered or withdrawn after the appointed hour for the opening of the bids.

(d) A vendor who has been debarred pursuant to the provisions of sections thirty-three-b through thirty-three-f of this article may not bid on or be awarded a contract under this section.

(e) All open market orders, purchases based on advertised bid requests or contracts made by the director or by a state department shall be awarded to the lowest responsible bidder or bidders, taking into consideration the qualities of the commodities or services to be supplied, their conformity with specifications, their suitability to the requirements of the government, the delivery terms and, if the director determines there are nationally accepted industry standards, cost of maintenance and the expected life of the commodities: *Provided, That state bids on school buses shall be accepted from all bidders who shall then be awarded contracts if they meet the state board's Minimum Standards for Design and Equipment of School Buses. County boards of education may select from those bidders who have been awarded contracts and shall pay the difference between the state aid formula amount and the actual cost of bus replacement. Any or all bids may be rejected.*

(f) If all bids received on a pending contract are for the same unit price or total amount, the director has the authority to reject all bids, and to purchase the required commodities, printing and services in the open market, if the price paid in the open market does not exceed the bid prices.

(g) The bid must be received by the Purchasing Division prior to the specified date and time of the bid opening. The failure to deliver or the nonreceipt of the bid by the Purchasing Division prior to the appointed date and hour shall result in the rejection of the bid. The vendor is solely responsible for the receipt of bid by the Purchasing Division prior to the appointed date and hour of the bid opening. All bids will be opened publicly by two or more persons from the Purchasing Division. Vendors will be given notice of the day, time and place of the public bid opening. Bids may be viewed immediately after being opened.

(h) After the award of the order or contract, the director, or someone appointed by him or her for that purpose, shall indicate upon the successful bid that it was the successful bid. Thereafter, the copy of each bid in the possession of the director shall be maintained as a public record, shall be open to public inspection in the office of the director and may not be destroyed without the written consent of the Legislative Auditor.

(i)(1) A grant awarded by the state is exempt from the competitive bidding requirements set forth in this chapter, unless the grant is used to procure commodities or services that directly benefit a spending unit.

(2) If a grant awarded to the state requires the procurement of commodities or services that will directly benefit a spending unit, the procurement is not exempt from the competitive bidding and lowest price purchase requirements set forth in this chapter.

(3) If a grant awarded to the state requires the state to transfer some or all of the grant to an individual, entity or vendor as a subgrant to accomplish a public purpose, and no contract for commodities or services directly benefitting a spending unit will result, the subgrant is not subject to the competitive bidding requirements set forth in this chapter.

§5A-3-19. Purchases from federal government and other sources.

(a) Notwithstanding any other provision of this article, the director may, upon the recommendation of a state spending unit, participate in, sponsor, conduct, or administer a cooperative purchasing agreement or consortium for the purchase of commodities or services with agencies of the federal government, agencies of other states, other public bodies or other state agencies, if available and financially advantageous: Provided, That the director shall, upon the recommendation of the Office of Technology, participate in, sponsor, conduct, or administer a cooperative purchasing agreement or consortium for the purchase of technical infrastructure, as defined in the provisions of section two, article six, chapter five-a of the code, with agencies of the federal government, agencies of other states, other public bodies or other state agencies, if available. At the discretion of the director, bids may be solicited to determine whether participation in such a cooperative purchasing agreement or consortium is financially advantageous.

(b) The Department of Administration may approve administrative fees, not to exceed the amount of \$50,000, necessary to participate in a cooperative purchasing agreement. Fees which exceed \$50,000 are subject to the competitive bid requirements of this article.

§5A-3-37. Preference for resident vendors; preference for vendors employing state residents; preference for veteran residents; reciprocal preference; exceptions.

(a) Effective beginning July 1, 1992, in any instance that a purchase of commodities or printing by the director or by a state department is required under the provisions of this article to be made upon competitive bids, the successful bid shall be determined as provided in this section. The Secretary of the Department of Revenue shall promulgate any rules necessary to: (i) Determine that vendors have met the residence requirements described in this section; (ii) establish the procedure for vendors to certify the residency requirements at the time of submitting their bids; (iii) establish a procedure to audit bids which make a claim for preference permitted by this section and to reject noncomplying bids; and (iv) otherwise accomplish the objectives of this section. In prescribing the rules, the secretary shall use a strict construction of the residence requirements set forth in this section. For purposes of this section, a successful bid shall be determined and accepted as follows:

(1) From an individual resident vendor who has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted or from a partnership, association, corporation resident vendor, or from a corporation nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for four years immediately preceding the date on which the bid is submitted, if the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has made written claim for the preference at the time the bid was submitted: *Provided*, That for purposes of this subdivision, any partnership, association or corporation resident vendor of this state, which does not meet the requirements of this subdivision solely because of the continuous four-year residence requirement, shall be considered to meet the requirement if at least eighty percent of the ownership interest of the resident vendor is held by another individual, partnership, association or corporation resident vendor who otherwise meets the requirements of this subdivision, including the continuous four-year residency requirement: *Provided, however*, That the Secretary of the Department of Revenue shall promulgate rules relating to attribution of ownership among several resident vendors for purposes of determining the eighty percent ownership requirement; or

(2) From a resident vendor, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years, and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this subdivision and made written claim for the preference, at the time the bid was submitted; or

(3) From a nonresident vendor, ~~which that~~ which that employs a minimum of one hundred state residents, a nonresident vendor of information technology equipment or services that maintains at least one office within West Virginia and employs a minimum of twenty-five state residents, or a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia and which employs a minimum of one hundred state residents, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees or the vendor's affiliates or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two

immediately preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this subdivision and made written claim for the preference, at the time the bid was submitted; or

(4) From a vendor who meets either the requirements of both subdivisions (1) and (2) of this subsection or subdivisions (1) and (3) of this subsection, if the bid does not exceed the lowest qualified bid from a nonresident vendor by more than five percent of the latter bid, and if the vendor has certified the residency requirements above and made written claim for the preference at the time the bid was submitted; or

(5) From an individual resident vendor who is a veteran of the United States Armed Forces, the Reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted, if the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than three and one-half percent of the latter bid, and if the vendor has made written claim for the preference at the time the bid was submitted; or

(6) From a resident vendor who is a veteran of the United States Armed Forces, the Reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than three and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this subdivision and made written claim for the preference, at the time the bid was submitted; or

(7) Notwithstanding any provisions of subdivisions (1), (2), (3), (4), (5) or (6) of this subsection to the contrary, if any nonresident vendor that is bidding on the purchase of commodities or printing by the director or by a state department is also certified as a small, women or minority-owned business pursuant to section fifty-nine of this article, the nonresident vendor shall be provided the same preference made available to any resident vendor under the provisions of this subsection.

(b) In any instance that a purchase of commodities or printing by the director or by a state spending unit is required under the provisions of this article to be made upon competitive bids, preference shall be given to resident vendors of West Virginia against a nonresident vendor from any state that gives or requires a preference to bidders from that state. The amount of the preference shall be equal to the amount of the preference given or required by the state of the nonresident vendor for that particular supply.

~~(b)~~ (c) If the Secretary of the Department of Revenue determines under any audit procedure that a vendor who received a preference under this section fails to continue to meet the requirements for the preference at any time during the term of the project for which the preference was received the secretary may: (1) Reject the vendor's bid; or (2) assess a penalty against the vendor of not more than five percent of the vendor's bid on the project.

~~(c)~~ (d) Political subdivisions of the state including county boards of education may grant the same preferences to any vendor of this state who has made a written claim for the preference at the time a bid is submitted, but for the purposes of this subsection, in determining the lowest bid,

any political subdivision shall exclude from the bid the amount of business occupation taxes which must be paid by a resident vendor to any municipality within the county comprising or located within the political subdivision as a result of being awarded the contract which is the object of the bid; in the case of a bid received by a municipality, the municipality shall exclude only the business and occupation taxes as will be paid to the municipality: *Provided*, That prior to soliciting any competitive bids, any political subdivision may, by majority vote of all its members in a public meeting where all the votes are recorded, elect not to exclude from the bid the amount of business and occupation taxes as provided in this subsection.

~~(d)~~ (e) If any of the requirements or provisions set forth in this section jeopardize the receipt of federal funds, then the requirement or provisions are void and of no force and effect for that specific project.

~~(e)~~ (f) If any provision or clause of this section or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

~~(f)~~ (g) This section may be cited as the "Jobs for West Virginians Act of 1990."

The bill (Eng. Com. Sub. for H. B. 2936), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 3061, Encouraging mastery-based education through the Innovation In Schools program.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 3095, Allowing retired teachers to be employed by a higher education institution.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 3096, Relating to operation and regulation of certain water and sewer utilities owned or operated by political subdivisions of the state.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Government Organization, were reported by the Clerk and considered simultaneously:

On page seven, section nine, lines seventy-five through eighty-seven, by striking out all of paragraph (G) and inserting in lieu thereof a new paragraph, designated paragraph (G), to read as follows:

(G) The public service district, or a customer aggrieved by the changed rates or charges who presents to the circuit court a petition signed by not less than twenty-five percent of the customers served by the public service district, when dissatisfied by the approval, modification, or rejection by the county commission of the proposed rates, fees and charges under the provisions of this subsection (2) may file a complaint regarding the rates, fees and charges resulting from the action

of, or failure to act by, the county commission in the circuit court of the county in which the county commission sits: *Provided*, That any complaint or petition filed hereunder shall be filed within 30 days of the county commission's final action approving, modifying or rejecting such rates, fees and charges, or the expiration of the 45 day period from the receipt by the county commission, in writing, of the rates, fees and charges approved by resolution of the board, without final action by the county commission to approve, modify or reject such rates, fees and charges, and the circuit court shall resolve said complaint: *Provided, however*, That the rates, fees and charges so fixed by the county commission, or those adopted by the district upon which the county commission failed to act, shall remain in full force and effect, until set aside, altered or amended by the circuit court in an order to be followed in the future.;

On page eighteen, section one, after line one hundred forty-eight, by adding two new subsections, designated subsections (e) and (d), to read as follows:

(e) The commission shall not have jurisdiction of Internet protocol-enabled service or voice-over Internet protocol-enabled service. As used in this subsection:

(1) "Internet protocol-enabled service" means any service, capability, functionality or application provided using Internet protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet protocol format, or any successor format, regardless of whether the communication is voice, data or video.

(2) "Voice-over Internet protocol service" means any service that:

(i) Enables real-time two-way voice communications that originate or terminate from the user's location using Internet protocol or a successor protocol; and

(ii) Uses a broadband connection from the user's location.

(3) The term "voice-over Internet protocol service" includes any service that permits users to receive calls that originate on the public-switched telephone network and to terminate calls on the public-switched telephone network.

(f) Notwithstanding any other provisions of this article, the commission shall not have jurisdiction to review or approve any transaction involving a telephone company otherwise subject to sections twelve and twelve-a, article two, chapter twenty-four of this code if all entities involved in the transaction are under common ownership.;

And,

On page thirty, section eleven, after line one hundred twenty-seven, by adding a new subdivision, designated subdivision (8), to read as follows:

(8) A public service district, or a customer aggrieved by the changed rates or charges who presents to the circuit court a petition signed by not less than twenty-five percent of the customers served by the public service district, when dissatisfied by the approval, modification, or rejection by the county commission of the proposed rates, fees and charges under the provisions of this subsection (l) may file a complaint regarding the rates, fees and charges resulting from the action of, or failure to act by, the county commission in the circuit court of the county in which the county commission sits: *Provided*, any complaint or petition filed hereunder shall be filed within 30 days of the county commission's final action approving, modifying or rejecting such rates, fees and

charges, or the expiration of the 45 day period from the receipt by the county commission, in writing, of the rates, fees and charges approved by resolution of the board, without final action by the county commission to approve, modify or reject such rates, fees and charges, and the circuit court shall resolve said complaint within 120 days of filing: Provided further, the rates, fees and charges so fixed by the county commission, or those adopted by the district upon which the county commission failed to act, shall remain in full force and effect, until set aside, altered or amended by the circuit court in an order to be followed in the future.

Following discussion,

At the request of Senator Blair, and by unanimous consent, the bill was advanced to third reading with the Government Organization committee amendments pending and the right for further amendments to be considered on that reading.

Eng. House Bill 3103, Making a supplementary appropriation to the Department of Health and Human Resources.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Finance, were reported by the Clerk, considered simultaneously, and adopted:

On page two, section one, line fourteen, by striking out "2" and inserting in lieu thereof "3";

On page two, section one, line fifteen, by striking out "8" and inserting in lieu thereof "10";

And,

On page three, section one, line thirteen, by striking out "17a" and inserting lieu thereof "23a".

The bill (Eng. H. B. 3103), as amended, was then ordered to third reading.

The end of today's second reading calendar having been reached, the Senate returned to the consideration of

Eng. Com. Sub. for House Bill 3020, Relating to criminal penalties for the offenses of hunting, trapping or fishing on the lands of another person.

On third reading, coming up in deferred order, with the unreported Natural Resources committee amendment pending, and with the right having been granted on yesterday, Thursday, April 6, 2017, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Ferns, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Consideration of Engrossed Committee Substitute for House Bill 3020 having been concluded, the Senate proceeded to the consideration of

Eng. Com. Sub. for House Bill 2018, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution.

On second reading, coming up in deferred order, was read a second time.

At the request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the right for amendments to be considered on that reading.

Without objection, the Senate returned to the third order of business.

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

Eng. Senate Bill 444, Establishing Court Advanced Technology Subscription Fund.

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

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

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

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-22. Court Advanced Technology Subscription Fund created.

(a) The West Virginia Supreme Court of Appeals may charge fees from subscribers using the court's advanced technology systems pursuant to a schedule of fees published pursuant to administrative order of the Court. All fees charged shall be deposited into the state treasury in accordance with the provisions of this section. There is created within the State Treasury a special revenue fund designated the Court Advanced Technology Subscription Fund to be administered by the West Virginia Supreme Court of Appeals.

(b) The fund shall consist of moneys received from subscribers using the court's advanced technology systems including, but not limited to, the E-filing system and the Unified Judicial Application Information System: *Provided*, that until the E-filing system or any other advanced technology is mandatory in all fifty-five counties of the state there may be no subscriber fee or other fee charged for use of the E-filing system beyond the fees required in counties not yet using the E-filing system or other advanced technology, so that the costs of the using the Courts in this state are equal regardless of where a person may use the Courts.

(c) One half of all moneys collected from subscribers are to be deposited into the State Treasury and credited to the Court Advanced Technology Subscription Fund shall be used to pay the costs associated with maintaining and administering the court's advanced technology systems. One half of all moneys collected from subscribers are to be deposited into the general revenue fund.

(d) All moneys collected by the administrator of the Supreme Court of Appeals for the use of the court's advanced technology shall be deposited into the Court Advanced Technology Subscription Fund. Expenditures from the fund shall be for the purposes set forth in subsection (c) of this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature in accordance with article three, chapter twelve of this code and upon fulfillment of the requirements of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending June 30, 2017, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.;

And,

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

Eng. Senate Bill 444—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §51-1-22, relating to authorizing the West Virginia Supreme Court of Appeals to charge fees from subscribers using advanced technology systems pursuant to a schedule of fees published pursuant to administrative order of the Court; establishing the Court Advanced Technology Subscription Fund; requiring one half of all moneys collected from subscribers be credited to the fund and used to pay the costs associated with maintaining and administering the court's advanced technology systems; requiring one half of all moneys collected from subscribers be deposited into the general revenue fund; limiting the imposition of certain subscriber fees pending condition precedent; and prescribing legislative appropriations of the fund.

On motion of Senator Ferns, the Senate refused to concur in the foregoing House amendments to the bill (Eng. S. B. 444) and requested the House of Delegates to recede therefrom.

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

Pending announcement of a meeting of the Committee on Rules,

On motion of Senator Ferns, the Senate adjourned until tomorrow, Saturday, April 8, 2017, at 11 a.m.

SENATE CALENDAR

**Saturday, April 08, 2017
11:00 AM**

SPECIAL ORDER OF BUSINESS Saturday, April 08, 2017 – 11:00 AM

Consideration of executive nominations

UNFINISHED BUSINESS

- S. C. R. 64 - Requesting study of Division of Purchasing
- H. C. R. 21 - 1SG Carl J. Crabtree Memorial Road - (Com. amends. pending)
- H. C. R. 35 - Arnold Miller Memorial Bridge - (Com. amends. pending)
- H. C. R. 58 - William C. Campbell Memorial Highway - (Com. amends. pending)
- H. C. R. 73 - U S Army Air Corps PVT William James Irwin, Memorial Bridge - (Com. amends. pending)

THIRD READING

- Eng. Com. Sub. for H. B. 2002 - Relating to parental notification of abortions performed on unemancipated minors - (Com. amend. and title amend. pending) - (With right to amend) (original similar to HB2053, SB424)
- Eng. Com. Sub. for H. B. 2018 - Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution - (With right to amend)
- Eng. Com. Sub. for H. B. 2109 - Relating to the West Virginia Land Reuse Agency Authorization Act
- Eng. Com. Sub. for H. B. 2196 - Relating to the secondary schools athletic commission
- Eng. Com. Sub. for H. B. 2359 - Relating to offenses and penalties for practicing osteopathic medicine without a license - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 2520 - Prohibiting the use of a tanning device by a person under the age of eighteen (original similar to SB672)
- Eng. Com. Sub. for H. B. 2552 - Increasing the pet food registration fee and directing that the additional money be deposited into the West Virginia Spay Neuter Assistance Fund

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| Eng. Com. Sub. for H. B. 2637 - | Relating to employment of retired teachers and prospective employable professional personnel in areas of critical need and shortage - (Com. title amend. pending) |
| Eng. Com. Sub. for H. B. 2648 - | Increasing penalties for manufacturing or transportation of a controlled substance in the presence of a minor - (Com. title amend. pending) (original similar to HB2448, HB2671) |
| Eng. Com. Sub. for H. B. 2651 - | Relating generally to standardized testing requirements for nonpublic schools |
| Eng. Com. Sub. for H. B. 2674 - | Relating to access to and receipt of certain information regarding a protected person - (Com. title amend. pending) |
| Eng. H. B. 2675 - | Relating to primary elections and nominating procedures - (Com. title amend. pending) |
| Eng. H. B. 2684 - | Imposing penalties for repeat violations of the prohibition against driving under the influence on a suspended license - (Com. title amend. pending) |
| Eng. Com. Sub. for H. B. 2694 - | Relating to the development and implementation of a program to facilitate commercial sponsorship of rest areas - (With right to amend) |
| Eng. Com. Sub. for H. B. 2704 - | Prohibiting persons convicted of sexual offenses against children with whom they hold positions of trust from holding certification or license valid in public schools - (Com. title amend. pending) |
| Eng. Com. Sub. for H. B. 2711 - | Abolishing regional educational service agencies and providing for the transfer of property and records - (Com. title amend. pending) |
| Eng. H. B. 2745 - | Adding the examination of Advanced Care Technician |
| Eng. Com. Sub. for H. B. 2781 - | Requiring a person desiring to vote to present documentation identifying the voter to one of the poll clerks - (Com. title amend. pending) |
| Eng. Com. Sub. for H. B. 2799 - | Prohibiting the superintendent of schools from requiring a physical examination to be included to the application for a minor's work permit |
| Eng. Com. Sub. for H. B. 2801 - | Expiring funds to the unappropriated balance in the State Fund from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund |
| Eng. Com. Sub. for H. B. 2846 - | Including high school students participating in a competency based pharmacy technician education and training program as persons qualifying to be a pharmacy technician trainee |
| Eng. Com. Sub. for H. B. 2851 - | Updating fee structure provisions for broker-dealers - (Com. amends. and title amend. pending) - (With right to amend) |

- Eng. Com. Sub. for H. B. 2887 - Relating to retirement and separation incentives - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 2935 - Relating to state flood protection planning
- Eng. Com. Sub. for H. B. 2936 - Requiring purchases to be made at lowest retail price available at level of quality sought by the spending unit
- Eng. Com. Sub. for H. B. 3020 - Relating to criminal penalties for the offenses of hunting, trapping or fishing on the lands of another person - (Com. amend. and title amend. pending) – (With right to amend)
- Eng. Com. Sub. for H. B. 3061 - Encouraging mastery-based education through the Innovation In Schools program
- Eng. Com. Sub. for H. B. 3095 - Allowing retired teachers to be employed by a higher education institution
- Eng. Com. Sub. for H. B. 3096 - Relating to operation and regulation of certain water and sewer utilities owned or operated by political subdivisions of the state - (Com. amends. pending) - (With right to amend) (original similar to SB657).
- Eng. H. B. 3103 - Making a supplementary appropriation to the Department of Health and Human Resources