

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2855

BY DELEGATES STORCH, GEARHEART, PETHTEL, EVANS, ANDERSON, GRAVES

AND J. PACK

(BY REQUEST OF THE CONSOLIDATED PUBLIC RETIREMENT BOARD)

[Passed March 24, 2021; in effect ninety days from passage.]

1 AN ACT to amend and reenact §20-18-2, §20-18-8, §20-18-20, §20-18-23, and §20-18-27 of the
2 Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a
3 new section, designated §20-18-37, all relating to the Natural Resources Police Officers
4 Retirement System; defining terms; clarifying concurrent employer contribution rate;
5 clarifying preretirement death benefits; clarifying certain survivor benefits; amending
6 conflicting statutory provisions; and adding a severability clause.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 18. WEST VIRGINIA DIVISION OF NATURAL RESOURCES POLICE
OFFICER RETIREMENT SYSTEM.**

§20-18-2. Definitions.

1 As used in this article, unless a federal law or regulation or the context clearly requires a
2 different meaning:

3 (a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the
4 member's final average salary multiplied by the member's years of credited service: *Provided*,
5 That members who retire after July 1, 2025, shall have an accrued benefit of two and one-half
6 percent of the member's final average salary multiplied by the member's years of credited service.
7 A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue
8 Code and is subject to the provisions of §20-18-13 of this code.

9 (b) "Accumulated contributions" means the sum of all amounts deducted from the annual
10 compensation of a member or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code,
11 either pursuant to §20-18-8(a) or §5-10-29 of this code as a result of covered employment
12 together with regular interest on the deducted amounts.

13 (c) "Active member" means a member who is active and contributing to the plan.

14 (d) "Active military duty" means full-time active duty with any branch of the armed forces
15 of the United States, including service with the National Guard or reserve military forces when the

16 member has been called to active full-time duty and has received no compensation during the
17 period of that duty from any board or employer other than the armed forces.

18 (e) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the
19 mortality table and interest rates as set and adopted by the retirement board in accordance with
20 the provisions of this article: *Provided*, That when used in the context of compliance with the
21 federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial
22 equivalent" shall be computed using the mortality tables and interest rates required to comply with
23 those requirements.

24 (f) "Annual compensation" means the wages paid to the member during covered
25 employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined
26 without regard to any rules that limit the remuneration included in wages based upon the nature
27 or location of employment or services performed during the plan year plus amounts excluded
28 under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense
29 allowances, cash or noncash fringe benefits or both, deferred compensation, and welfare benefits.
30 Annual compensation for determining benefits during any determination period may not exceed
31 the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of
32 this code and Section 401(a)(17) of the Internal Revenue Code.

33 (g) "Annual leave service" means accrued annual leave.

34 (h) "Annuity starting date" means the first day of the first calendar month following receipt
35 of the retirement application by the board or the required beginning date, if earlier: *Provided*, That
36 the member has ceased covered employment and reached normal retirement age.

37 (i) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity
38 or other benefit payable by the plan.

39 (j) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-
40 1 *et seq.* of this code.

41 (k) "Covered employment" means either: (1) Employment as a Natural Resources Police
42 Officer and the active performance of the duties required of a Natural Resources Police Officer;
43 (2) the period of time which active duties are not performed but disability benefits are received
44 under §20-18-21 or §20-18-22 of this code; or (3) concurrent employment by a Natural Resources
45 Police Officer in a job or jobs in addition to his or her employment as a Natural Resources Police
46 Officer where the secondary employment requires the Natural Resources Police Officer to be a
47 member of another retirement system which is administered by the Consolidated Public
48 Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the Natural
49 Resources Police Officer contributes to the fund created in §20-18-7 of this code the amount
50 specified as the Natural Resource Police Officer's contribution in §20-18-8 of this code.

51 (l) "Credited service" means the sum of a member's years of service, active military duty,
52 disability service, eligible annual and sick leave service.

53 (m) "Dependent child" means either:

54 (1) An unmarried person under age 18 who is:

55 (A) A natural child of the member;

56 (B) A legally adopted child of the member;

57 (C) A child who at the time of the member's death was living with the member while the
58 member was an adopting parent during any period of probation; or

59 (D) A stepchild of the member residing in the member's household at the time of the
60 member's death; or

61 (2) Any unmarried child under age 23:

62 (A) Who is enrolled as a full-time student in an accredited college or university;

63 (B) Who was claimed as a dependent by the member for federal income tax purposes at
64 the time of the member's death; and

65 (C) Whose relationship with the member is described in subparagraph (A), (B), or (C),
66 paragraph (1) of this subdivision.

67 (n) "Dependent parent" means the father or mother of the member who was claimed as a
68 dependent by the member for Federal Income Tax purposes at the time of the member's death.

69 (o) "Director" means Director of the Division of Natural Resources.

70 (p) "Disability service" means service credit received by a member, expressed in whole
71 years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both,
72 during which time a member receives disability benefits under §20-18-21 or §20-18-22 of this
73 code.

74 (q) "Division of Natural Resources" or "division" means the West Virginia Division of
75 Natural Resources.

76 (r) "Effective date" means January 2, 2021.

77 (s) "Employer error" means an omission, misrepresentation, or violation of relevant
78 provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant
79 provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the
80 participating public employer that has resulted in an underpayment or overpayment of
81 contributions required. A deliberate act contrary to the provisions of this section by a participating
82 public employer does not constitute employer error.

83 (t) "Final average salary" means the average of the highest annual compensation received
84 for covered employment by the member during any five consecutive plan years within the
85 member's last 10 years of service. If the member did not have annual compensation for the five
86 full plan years preceding the member's attainment of normal retirement age and during that period
87 the member received disability benefits under §20-18-21 or §20-18-22 of this code then "final
88 average salary" means the average of the monthly salary determined paid to the member during
89 that period determined as if the disability first commenced after the effective date of this article
90 with monthly compensation equal to that average monthly compensation which the member was
91 receiving in the plan year prior to the initial disability multiplied by 12.

92 (u) "Fund" means the West Virginia Natural Resources Police Officer Retirement Fund
93 created pursuant to §20-18-7 of this code.

94 (v) "Hour of service" means:

95 (1) Each hour for which a member is paid;

96 (2) Each hour for which a member is paid but where no duties are performed due to
97 vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of
98 absence, or any combination thereof, and without regard to whether the employment relationship
99 has terminated. Hours under this paragraph shall be calculated and credited pursuant to West
100 Virginia Division of Labor rules. A member will not be credited with any hours of service for any
101 period of time he or she is receiving benefits under §20-18-21 or §20-18-22 of this code; and

102 (3) Each hour for which back pay is either awarded or agreed to be paid by the Division of
103 Natural Resources, irrespective of mitigation of damages. The same hours of service may not be
104 credited both under this subdivision and subdivision (1) or (2) of this subsection. Hours under this
105 paragraph shall be credited to the member for the plan year or years to which the award or
106 agreement pertains rather than the plan year in which the award, agreement, or payment is made.

107 (w) "Member" means a person first hired as a Natural Resources Police Officer, as defined
108 in subsection (y) of this section, on or after January 2, 2021, or a Natural Resources Police Officer
109 first hired prior to the effective date and who elects to become a member pursuant to §20-18-6 of
110 this code. A member shall remain a member until the benefits to which he or she is entitled under
111 this article are paid or forfeited or until cessation of membership pursuant to §20-18-6 of this code.

112 (x) "Monthly salary" means the portion of a member's gross annual compensation which
113 is paid to him or her per month.

114 (y) "Natural Resources Police Officer" means any person regularly employed in the service
115 of the division as a law-enforcement officer on or after the effective date of this article, and who
116 is eligible to participate in the fund. The term shall not include Emergency Natural Resources
117 Police Officers as defined in §20-7-1(c) of this code, Special Natural Resources Police Officers

118 as defined in §20-7-1(d) of this code, Forestry Special Natural Resources Police Officers as
119 defined in §20-7-1(e) of this code, or Federal Law Enforcement Officer as defined in §20-7-1b of
120 this code.

121 (z) "Normal form" means a monthly annuity which is 1/12 of the amount of the member's
122 accrued benefit which is payable for the member's life. If the member dies before the sum of the
123 payments he or she receives equals his or her accumulated contributions on the annuity starting
124 date, the named beneficiary or beneficiaries shall receive in one lump sum the difference between
125 the accumulated contributions at the annuity starting date and the total of the retirement income
126 payments made to the member.

127 (aa) "Normal retirement age" means the first to occur of the following: (1) Attainment of
128 age 55 years and the completion of 15 or more years of service; (2) while still in covered
129 employment, attainment of at least age 55 years, and when the sum of current age plus years of
130 service equals or exceeds 70 years; or (3) attainment of at least age 62 years, and completion of
131 10 years of service: *Provided*, That any member shall in qualifying for retirement pursuant to this
132 article have 10 or more years of service, all of which years shall be actual, contributory ones.

133 (bb) "Partially disabled" means a member's inability to engage in the duties of a Natural
134 Resources Police Officer by reason of any medically determinable physical or mental impairment
135 that can be expected to result in death or that has lasted or can be expected to last for a
136 continuous period of not less than 12 months. A member may be determined partially disabled
137 for the purposes of this article and maintain the ability to engage in other gainful employment
138 which exists within the state but which ability would not enable him or her to earn an amount at
139 least equal to two thirds of the average annual compensation earned by all active members of
140 this plan during the plan year ending as of the most recent June 30, as of which plan data has
141 been assembled and used for the actuarial valuation of the plan.

142 (cc) "Plan" means the West Virginia Natural Resources Police Officers Retirement System
143 established by this article.

144 (dd) "Plan year" means the 12-month period commencing on July 1 of any designated
145 year and ending the following June 30.

146 (ee) "Public Employees Retirement System" means the West Virginia Public Employees
147 Retirement System created by §5-10-1 *et seq.* of this code.

148 (ff) "Qualified public safety employee" means any employee of the division who provides
149 police protection, fire-fighting services, or emergency medical services for any area within the
150 jurisdiction of the state or political subdivision, or such other meaning given to the term by Section
151 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they
152 may be amended from time to time.

153 (gg) "Regular interest" means the rate or rates of interest per annum, compounded
154 annually, as the board adopts in accordance with the provisions of this article.

155 (hh) "Required beginning date" means April 1 of the calendar year following the later of:
156 (i) The calendar year in which the member attains age 72; or (ii) the calendar year in which he or
157 she retires or otherwise separates from covered employment.

158 (ii) "Retirant" means any member who commences an annuity payable by the retirement
159 system.

160 (jj) "Retire" or "retirement" means a member's termination from the employ of a
161 participating public employer and the commencement of an annuity by the plan.

162 (kk) "Retirement income payments" means the annual retirement income payments
163 payable under the plan.

164 (ll) "Spouse" means the person to whom the member is legally married on the annuity
165 starting date.

166 (mm) "Substantial gainful employment" or "gainful employment" means employment in
167 which an individual may earn up to an amount that is determined by the United States Social
168 Security Administration as substantial gainful activity and still receive total disability benefits.

169 (nn) "Surviving spouse" means the person to whom the member was legally married at
170 the time of the member's death and who survived the member.

171 (oo) "Totally disabled" means a member's inability to engage in substantial gainful activity
172 by reason of any medically determined physical or mental impairment that can be expected to
173 result in death or that has lasted or can be expected to last for a continuous period of not less
174 than 12 months. For purposes of this subdivision:

175 (1) A member is totally disabled only if his or her physical or mental impairment or
176 impairments are so severe that he or she is not only unable to perform his or her previous work
177 as a Natural Resources Police Officer but also cannot, considering his or her age, education, and
178 work experience, engage in any other kind of substantial gainful employment which exists in the
179 state regardless of whether: (A) The work exists in the immediate area in which the member lives;
180 (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

181 (2) "Physical or mental impairment" is an impairment that results from an anatomical,
182 physiological, or psychological abnormality that is demonstrated by medically accepted clinical
183 and laboratory diagnostic techniques. A member's receipt of Social Security disability benefits
184 creates a rebuttable presumption that the member is totally disabled for purposes of this plan.
185 Substantial gainful employment rebuts the presumption of total disability.

186 (pp) "Year of service." A member shall, except in his or her first and last years of covered
187 employment, or within the plan year of the effective date, be credited with year of service credit,
188 based upon the hours of service performed as covered employment and credited to the member
189 during the plan year based upon the following schedule:

190 Hours of Service	Years of Service Credited
191 Less than 500	0
192 500 to 999	1/3
193 1,000 to 1,499	2/3
194 1,500 or more	1

195 During a member's first and last years of covered employment or within the plan year of
196 the effective date, the member shall be credited with 1/12 of a year of service for each month
197 during the plan year in which the member is credited with an hour of service. A member is not
198 entitled to credit for years of service for any time period during which he or she received disability
199 payments under §20-18-21 or §20-18-22 of this code. Except as specifically excluded, years of
200 service include covered employment prior to the effective date. Years of service which are
201 credited to a member prior to his or her receipt of accumulated contributions upon termination of
202 employment pursuant to §20-18-20 or §5-10-30 of this code, shall be disregarded for all purposes
203 under this plan unless the member repays the accumulated contributions with interest pursuant
204 to §20-18-20 of this code or had prior to the effective date made the repayment pursuant to §5-
205 10-18 of this code.

§20-18-8. Members' contributions; employer contributions.

1 (a) There shall be deducted from the monthly salary of each member and paid into the
2 fund an amount equal to nine and one-half percent of his or her monthly salary.

3 (b) An additional 12 percent of the monthly salary of each member shall be paid to the
4 fund by the employer.

5 (c) If the board finds that the benefits provided by this article can be actuarially funded with
6 a lesser contribution, then the board shall reduce the required member or employer contributions
7 or both. The sums withheld each pay date shall be paid to the fund no later than 15 days following
8 the end of the pay date.

9 (d) Any active member who has concurrent employment in an additional job or jobs and
10 the additional employment requires the Natural Resources Police Officer to be a member of
11 another retirement system which is administered by the Consolidated Public Retirement Board
12 pursuant to §5-10D-1 *et seq.* of this code shall make an additional contribution to the fund of nine
13 and one-half percent of his or her monthly salary earned from any additional employment which
14 requires the Natural Resources Police Officer to be a member of another retirement system which

15 is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this
16 code. An additional employer contribution shall be paid to the fund by the concurrent employer
17 for which the member is employed in an amount equal to 12 percent of his or her monthly salary.
18 If the board finds that the benefits provided by this article can be funded with a lesser contribution,
19 then the board shall reduce the required member, or employer contributions or both. The sums
20 withheld each calendar month shall be paid to the fund no later than 15 days following the end of
21 the calendar month.

§20-18-20. Refunds to certain members upon discharge or resignation; deferred retirement; preretirement death; forfeitures.

1 (a) Any member who terminates covered employment and is not eligible to receive
2 disability or retirement income benefits under this article is, by written request filed with the board,
3 entitled to receive from the fund the member's accumulated contributions. Except as provided in
4 subsection (b) of this section, upon withdrawal the member shall forfeit his or her accrued benefit
5 and cease to be a member.

6 (b) Any member of this plan who ceases employment in covered employment and active
7 participation in this plan, and who thereafter becomes reemployed in covered employment may
8 not receive any credited service for any prior withdrawn accumulated contributions from either
9 this plan or the Public Employees Retirement System relating to the prior covered employment
10 unless following his or her return to covered employment and active participation in this plan, the
11 member redeposits in this plan the amount of the withdrawn accumulated contributions submitted
12 on salary earned while a Natural Resources Police Officer, together with interest on the
13 accumulated contributions at the rate determined by the board from the date of withdrawal to the
14 date of redeposit. Upon repayment he or she shall receive the same credit on account of his or
15 her former service in covered employment as if no refund had been made. The repayment
16 authorized by this subsection shall be made in a lump sum within 60 months of the Natural

17 Resources Police Officer's reemployment in covered employment or if later, within 60 months of
18 the effective date of this article.

19 (c) A member of this plan who has elected to transfer from the Public Employees
20 Retirement System into this plan pursuant to §20-18-6(b) of this code may not, after having
21 transferred into and become an active member of this plan, reinstate to his or her credit in this
22 plan any service credit relating to periods of non-Natural Resources Police Officer service which
23 were withdrawn from the Public Employees Retirement System plan prior to his or her elective
24 transfer into this plan.

25 (d) Any member of this plan who: (1) Was employed as a Natural Resource Police Officer
26 prior to the effective date of this article; and (2) was not employed as a Natural Resource Police
27 Officer on the effective date of this article; and (3) thereafter becomes reemployed in covered
28 employment, may not receive any credited service for any previously withdrawn accumulated
29 contributions from either this plan or the Public Employees Retirement System relating to the prior
30 covered employment unless, following his or her return to covered employment and active
31 participation in this plan, the member redeposits in this plan the amount of the withdrawn
32 accumulated contributions submitted on salary earned while a Natural Resources Police Officer,
33 together with interest on the accumulated contributions at the rate determined by the board from
34 the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same
35 credit for his or her former service in covered employment as if no refund had been made. The
36 repayment required by this subsection shall be made in a lump sum within 60 months of the
37 Natural Resource Police Officers reemployment in covered employment.

38 (e) In the event a member dies from any cause other than those specified in §20-18-25 of
39 this code and does not have ten or more years of credited service, the member's accumulated
40 contributions may be paid to a named beneficiary or beneficiaries. If no beneficiary is named,
41 then the accumulated contributions shall be paid to the estate of the deceased member.

42 (f) Every member who completes 120 months of covered employment is eligible, upon
43 cessation of covered employment, to either withdraw his or her accumulated contributions in
44 accordance with subsection (a) of this section, or to choose not to withdraw his or her accumulated
45 contribution and to receive retirement income payments upon attaining normal retirement age.

46 (g) Notwithstanding any other provision of this article, forfeitures under the plan may not
47 be applied to increase the benefits any member would otherwise receive under the plan.

§20-18-23. Awards and benefits for disability — Physical examinations; termination of disability.

1 (a) The board may require any member who has applied for or any retirant who is receiving
2 disability benefits under this article to submit to a physical examination, mental examination or
3 both, by a physician or physicians selected or approved by the board and may cause all costs
4 incident to the examination and approved by the board to be paid from the fund. The costs may
5 include hospital, laboratory, X ray, medical, and physicians' fees. A report of the findings of any
6 physician shall be submitted in writing to the board for its consideration. If, from the report,
7 independent information, or from the report and any hearing on the report, the board is of the
8 opinion and finds that: (1) The member has become reemployed as a law-enforcement officer;
9 (2) two physicians who have examined the member have found that considering the opportunities
10 for law enforcement in West Virginia, the member could be so employed as a Natural Resources
11 Police Officer; or (3) other facts exist to demonstrate that the member is no longer totally disabled
12 or partially disabled as the case may be, then the disability benefits shall cease. If the member
13 was totally disabled and is found to have recovered, the board shall determine whether the
14 member continues to be partially disabled. If the board finds that the member is no longer totally
15 disabled but is partially disabled, then the member shall continue to receive partial disability
16 benefits in accordance with this article. Benefits shall cease once the member has been found to
17 be no longer either totally or partially disabled: *Provided*, That the board shall require
18 recertification for each partial or total disability at regular intervals.

19 (b) If from the report, or from the report and hearing on the report, the board is of the
20 opinion and finds that the disabled retirant has recovered from the disability to the extent that he
21 or she is able to perform adequately the duties of a law-enforcement officer, the board shall within
22 five working days provide written notice of the finding to the Director of the Division of Natural
23 Resources, who shall reinstate the retirant to active duty as a member of the department at his or
24 her rank or classification and assigned to his or her area of assignment prior to the disability
25 retirement within 45 days of the finding, unless the retirant declines to be reinstated.

26 (c) A disability retirant who is returned to active duty as a Natural Resources Police Officer
27 for the West Virginia Division of Natural Resources shall again become a member of the
28 retirement system in which he or she was enrolled and the retirant's credited service shall be
29 restored.

30 (d) If a retirant refuses to submit to a medical examination or submit a statement by his or
31 her physician certifying continued disability in any period, his or her disability annuity may be
32 discontinued by the board until the retirant complies. If the refusal continues for one year, all the
33 retirant's rights in and to the annuity may be revoked by the board.

§20-18-27. Additional death benefits and scholarships - Dependent children.

1 (a) In addition to the spouse death benefits in §20-18-25 and §20-18-26 of this code, the
2 surviving spouse is entitled to receive and there shall be paid to the spouse \$100 monthly for
3 each dependent child.

4 (b) If the surviving spouse dies while receiving death benefits provided in §20-18-25 or
5 §20-18-26 of this code, or if there is no surviving spouse, the fund shall pay monthly to each
6 dependent child a sum equal to one fourth of the surviving spouse's entitlement under either §20-
7 18-25 or §20-18-26 of this code. If there is neither a surviving spouse nor a dependent child, the
8 fund shall pay in equal monthly installments to the dependent parents of the deceased member
9 during their joint lifetimes a sum equal to the amount which a surviving spouse, without children,
10 would have received: *Provided*, That when there is only one dependent parent surviving, that

11 parent is entitled to receive during his or her lifetime one-half the amount which both parents, if
12 living, would have been entitled to receive: *Provided, however,* That if there is no surviving
13 spouse, dependent child nor dependent parent of the deceased member the accumulated
14 contributions shall be paid to a named beneficiary or beneficiaries: *Provided further,* That if there
15 is no surviving spouse, dependent child, nor dependent parent of the deceased member, nor any
16 named beneficiary or beneficiaries then the accumulated contributions shall be paid to the estate
17 of the deceased member.

18 (c) Any person qualifying as a dependent child under this section, in addition to any other
19 benefits due under this or other sections of this article, is entitled to receive a scholarship to be
20 applied to the career development education of that person. This sum, up to but not exceeding
21 \$7,500 per year, shall be paid from the fund to any higher education institution in this state, career-
22 technical education provider in this state, or other entity in this state approved by the board, to
23 offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of
24 study at any of these institutions so long as the recipient makes application to the board on an
25 approved form and under such rules as the board may provide, and maintains scholastic eligibility
26 as defined by the institution or the board. The board may propose legislative rules for promulgation
27 in accordance with §29A-3-1 *et seq.* of this code which define age requirements, physical and
28 mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and
29 other requirements as necessary and not inconsistent with this section. Scholarship benefits
30 awarded pursuant to this subsection are not subject to division or payable to an alternate payee
31 by any Qualified Domestic Relations Order.

§20-18-37. Severability.

1 If any part of this article is declared unconstitutional by a court of competent jurisdiction,
2 such decision shall not affect the validity of the remaining provisions of this article, or the article
3 in its entirety.

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

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2021.

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Governor