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February 22, 2022  
FORTY-SECOND DAY



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Tuesday, February 22, 2022

**FORTY-SECOND DAY**

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

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

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

The Clerk proceeded to read the Journal of Monday, February 21, 2022, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**Reordering of the Calendar**

Pursuant to the action of the Committee on Rules, Delegate Summers announced that Com. Sub. for H. B. 4625 on Second Reading, Special Calendar, had been transferred to the House Calendar; H. J. R. 102, on Third Reading, House Calendar, had been moved to the Special Calendar; and H. B. 4627 on First Reading, House Calendar, had been transferred to the Special Calendar.

**Committee Reports**

Delegate Steele, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 4492**, Creating the Division of Multimodal Transportation,

And reports back a committee substitute therefor, as follows:

**Com. Sub. for H. B. 4492** - "A Bill to repeal §17-16B-1, §17-16B-2, §17-16B-3, §17-16B-5, §17-16B-6, §17-16B-7, §17-16B-7a, §17-16B-7b, §17-16B-8, §17-16B-9, §17-16B-10, §17-16B-11, §17-16B-12, §17-16B-13, §17-16B-14, §17-16B-15, §17-16B-16, §17-16B-17, §17-16B-18, §17-16B-19, §17-16B-20, §17-16B-21, and §17-16B-22 of the Code of West Virginia, 1931, as amended; to repeal §17-16C-1, §17-16C-2, §17-16C-3, and §17-16C-5 of the Code of West Virginia, 1931, as amended; to repeal §29-2A-1, §29-2A-2, §29-2A-3, §29-2A-4, §29-2A-5, §29-2A-6, §29-2A-7, §29-2A-8, §29-2A-10, §29-2A-11, §29-2A-11a, §29-2A-11b, §29-2A-11c, §29-2A-11d, §29-2A-11e, §29-2A-11f, §29-2A-12, §29-2A-13, §29-2A-14, and §29-2A-20 of said code; to repeal §29-18-1, §29-18-2, §29-18-3, §29-18-4, §29-18-4a, §29-18-5, §29-18-6, §29-18-7, §29-18-8, §29-18-9, §29-18-10, §29-18-11, §29-18-12, §29-18-13, §29-18-14, §29-18-15, §29-18-16, §29-18-17, §29-18-18, §29-18-19, §29-18-20, §29-18-21, §29-18-22, §29-18-23, §29-18-24, and §29-18-25 of said code; and to amend said code by adding thereto a new article, designated §17-16F-1, §17-16F-2, §17-16F-3, §17-16F-4, §17-16F-5, §17-16F-6, §17-16F-7, §17-16F-8, §17-16F-9, §17-16F-10, §17-16F-11, §17-16F-12, §17-16F-13, §17-16F-14, §17-16F-15, §17-16F-16, §17-16F-17, §17-16F-18, §17-16F-19, §17-16F-20, §17-16F-21, §17-16F-22, §17-16F-23, §17-16F-24, §17-16F-25, §17-16F-26, §17-16F-27, §17-16F-28, §17-16F-29, §17-16F-30, §17-16F-31, §17-16F-32, §17-16F-33, and §17-16F-34, all relating to creating the Division of Multimodal Transportation and combining the powers and duties and eliminating certain references to the Public Port Authority, the West Virginia State Rail Authority and

the state Aeronautics Commission; providing for legislative findings and creation of the division; transferring employees, equipment, assets, liabilities, contracts, agreements, functions and duties to the division or its sections; providing for all property currently held by the Public Port Authority, the West Virginia State Rail Authority and the state Aeronautics Commission to be transferred to the division; authorizing the Secretary of the Department of Transportation to appoint the commissioner; establishing general powers and duties of the commissioner; defining terms; establishing the powers and duties of the division generally; requiring the division to promote, supervise and support safe, adequate and efficient transportation, preserve rail, water and airway facilities and promote economic development and tourism; authorizing division to work cooperatively with similar entities within and without the state; providing for siting, development and operation of facilities; authorizing employment of trained and qualified staff and consultants and compensating therefor; providing the right to enter into contracts and agreements; authorizing acquisition of various types and interests in property to be held in the name of the state; authorizing use of eminent domain; authorizing acquisition and disposal of property by various means; authorizing interagency cooperation; authorizing division to act on behalf of the state in planning, financing, development, construction and operation of port, railroad and aeronautic projects or facilities; reporting annually to Legislature on status of projects, operations, finances and related information; authorizing study and assessment of state transportation needs; authorizing use of various financing options including issuing revenue bonds and receipt of grants and loans; authorizing division to make grants and loans to governmental agencies and persons for multimodal transportation projects; permitting collection of reasonable fees and charges connected to making and servicing loans, notes, bonds and other obligations; granting rule-making authority to the division; continuing all rules, policies and orders of the combined entities until revised and reissued by the division; requiring strategic plan and reports to the Governor and the Legislature; requiring collection and analysis of shipping through state ports; providing for confidentiality of collected information and providing criminal penalty for violation; providing that division employees may not have direct or indirect financial interest in contracts, sale of property of the division and providing criminal penalty for violation; providing that activities of division are for public purpose; authorizing the division to use certain property or facilities of a public utility, common carrier, public road or railroad for certain public projects; requiring the division to relocate any such property or facilities; providing for rules regarding relocation or removal of railroad or public utility located on division property; requiring the division to pay for said relocation or removal; encouraging participation of private enterprise in construction and operation of facilities; authorizing lease back to division; authorizing development of foreign trade zones, free trade zones, ports of entry and customs zones; providing for specific duties related to port projects; authorizing the division to act on behalf of the state in developing, operating, improving and maintaining ports; authorizing the division to coordinate and cooperate with other port entities; creating the West Virginia Multimodal Operations Fund and transference of funds and liabilities of the West Virginia Public Port Authority Operations Fund; providing for specific duties related to rail projects; authorizing the exercise of powers necessary to qualify for federal subsidies; authorizing various means to carry out rail projects that are consistent with state plan with other entities; providing authority for the division to establish, fund, construct, reconstruct, acquire, repair, replace, operate, maintain and make available to other entities railroad projects; providing that research and development of railroads may be conducted; providing that contracts may be entered into to acquire various rolling stock, equipment or trackage and providing the requirements therefor; providing for the authority to enter into agreements that are beneficial to railroad projects notwithstanding other code provisions, including the authority to reject bids; authorizing division to purchase various types of insurance; authorizing the collection of fees for use of rail projects; providing for the administration and coordination of a state plan, including the distribution of federal subsidies; providing for investigation, research, promotion and development with public participation; authorizing the provision of fiscal assurances and adoption of accounting procedures necessary to continue subsidies; authorizing compliance with applicable federal regulations; authorizing all actions necessary to maximize federal assistance for rail subsidies; providing powers necessary to coordinate with the Maryland Transit Administration for continued

operation in the state, including negotiation and contracting authority; providing that any commuter rail operation agreement will meet certain service standards; providing that any track access fees to be paid pursuant to the agreement shall be paid from the West Virginia Commuter Rail Access Fund; authorizing sale or transfer of interest in rail property with federal approval when required; authorizing assistance to entities seeking federal railroad service certification, including the provision of any necessary assurances or guarantees; authorizing division to retain attorney or others to title ownership of rail properties within the state; requiring rail properties offered for sale within the state to be offered first to the state; providing that division may acquire railroad rights in other states and may cooperate with other states in so purchasing any rail properties; providing for the division to give consideration to county or municipality interest in acquiring abandoned property interest and providing for the division to acquire any such abandoned property for subsequent conveyance to a county or municipality; authorizing the division to apply for and utilize federal funds or loans in carrying out its purposes of this article; authorizing the purchase of any railroad rolling stock, equipment and machinery necessary for the operation and maintenance of state rail properties and authorizing contracts with the Division of Highways for maintenance or purchase of vehicles; authorizing maintenance, rebuilding or relocation of state rail properties and authorizing expenditures for the modernization, rebuilding and relocation of any rail properties owned by the state or private carrier; providing for contracting with domestic or foreign entities to provide, maintain or improve rail transportation service on state rail properties; providing for transfer of rail properties to other entities within the state when permitted by the Governor; authorizing the division to resolve conflicts when multiple entities want to utilize the same rail property; providing for proceeds from the sale of state rail property to be deposited in Railroad Maintenance Fund; terminating Railroad Maintenance Authority Fund and creating a Railroad Maintenance Fund for proceeds and expenditures related to division's purpose; authorizing expenditure from any fund for study of proposed rail projects and use of funds from Railroad Maintenance Fund for study and engineering costs; authorizing the issuance of railroad maintenance revenue bonds and notes for costs of rail projects, including issuance of renewal notes and bond refund, with aggregate amount of all issues of bonds and notes outstanding at one time not exceeding amount capable of being serviced by revenues received; providing that issues of bonds or notes are negotiable instruments and are obligations of the division and are payable out of the revenues which are pledged for such payment; providing for maturity date, terms of execution, sale, redemption and delivery; authorizing the establishment of various conditions necessary to secure sufficient funds to protect bonds or notes; providing that person executing bonds or notes is not personally liable therefor; providing for trust agreement to secure bonds issued by division and creating conditions therefor, not including mortgage of any rail project; allocating expenses of bond issuance or trust agreement to rail projects; providing for civil action for bondholders seeking to enforce rights granted; providing that bonds are payable from division revenues and are not a debt of state or political subdivision; restricting division from incurring debt on behalf of state or political subdivision; authorizing use of proceeds from bonds to carry out division's powers and prohibiting commingling with other funds; providing for the investment of excess funds by West Virginia State Board of Investments; authorizing division to collect rents or revenues for use of rail projects; providing for cooperation with other governmental agencies to effect acquisition of rail project or bond issuance; authorizing division to maintain rail projects in good repair; providing that railroad maintenance bonds are lawful investments for various entities; continuing West Virginia Commuter Rail Access Fund which is administered by division commissioner; requiring division to establish a state rail plan that complies with federal requirements for funding; providing specific powers and duties for director of public transit; designation of public transit as the agency of the state responsible for administering all federal and state programs related to public transportation; providing for assistance and cooperation of other state agencies with all multimodal sections; providing for specific duties related to aeronautics projects; authorizing division to advance development of aeronautics in cooperation with municipalities; authorizing rules necessary for public safety related to airports and aeronautics; authorizing division to fund grants for public airport authorities; authorizing division to receive federal funding to support airports or air navigation facilities; providing

for procedures and conditions for use of federal funds; requiring a federal license to operate an aircraft; allowing for the use of state and municipal facilities and services; disposing of fees collected under this code section and providing a severability clause,”

**H. B. 4634**, Relating to occupational licensing or other authorization to practice,

And reports back a committee substitute therefor, as follows:

**Com. Sub. for H. B. 4634** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-17-1, §21-17-2, §21-17-3, §21-17-4, §21-17-5, §21-17-6, §21-17-7, §21-17-8, §21-17-9, §21-17-10, §21-17-11, and §21-17-12; to amend said code by adding thereto a new article, designated §29-33-1, §29-33-2, §29-33-3, §29-33-4, §29-33-5, §29-33-6, §29-33-7, §29-33-8, §29-33-9, §29-33-10, §29-33-11, and §29-33-12; all relating to occupational licensing or other authorization to practice; providing for definitions; providing for an application method for persons with a valid license in another state to be licensed in this state; providing that a person applying for licensure in this state has worked in the licensed occupation for at least one year; providing for other criteria a person must satisfy when applying for licensure in this state; establishing that an applicant seeking licensure in this state not have ever had a license revoked or suspended in another state; providing that an applicant seeking licensure in this state not have any pending investigations or disciplinary proceedings in another state; providing that the boards in every state where a person is licensed hold the applicant in good standing for licensure in this state; providing that an applicant pay all applicable fees; providing that an applicant meet all state bonding requirements for licensure in this state; providing for an application fee that may be assessed by the board; providing for 60 days for a board to take action on a completed application; providing for an appeal mechanism for a person to appeal any decision of a board relating to occupational licensure; providing for state law preemption against any township, municipality, county, or other government to regulate occupational licensure; providing for certain exempted professions; and providing for rulemaking authority to any board affected to carry out the provisions of the article,”

And,

**H. B. 4731**, To establish the Occupational Therapy Licensure Compact,

And reports back a committee substitute therefor, as follows:

**Com. Sub. for H. B. 4731** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-28A-1, §30-28A-2, §30-28A-3, §30-28A-4, §30-28A-5, §30-28A-6, §30-28A-7, §30-28A-8, §30-28A-9, §30-28A-10, §30-28A-11, §30-28A-12, §30-28A-13, and §30-28A-14, all relating to establishing an occupational therapy compact; providing for the purpose in creating the compact; providing for definitions relating to the compact; establishing guidelines for state participation in the compact; creating a compact privilege; creating a means to obtain a state home license through the compact; defining active duty military personnel and their spouses for purposes of the compact; defining adverse actions; establishing the Occupational Therapy Compact Commission; creating a data system; providing for rulemaking; providing for oversight, dispute resolution, and enforcement; creating a date of implementation of the interstate commission for occupational therapy practice and associated rules, withdrawal, and amendment; providing for the construction and severability of the compact; and establishing the binding effect of the compact and other laws,”

With the recommendation that the committee substitutes each do pass.

Delegate Steele, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 4499**, Relating to making the procurement process more efficient by modifying and updating outdated processes and requirements,

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

In accordance with the former direction of the Speaker, the bill (H. B. 4499) was referred to the Committee on the Judiciary.

On motion for leave, a bill was introduced (Originating in the Committee on Education and reported with the recommendation that it do pass), which was read by its title, as follows:

**By Delegates Statler, Walker, Bridges, Wamsley, J. Kelly, Hornbuckle, Tully, Clark, Hamrick, Griffith and Evans:**

**H. B. 4828** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-10-1d, all relating to granting in-state resident status to economic development participants for the purpose of determining the rate of tuition to be charged for attendance at state institutions of higher education; establishing criteria that must be met to meet the definition of economic development participant; and setting forth time frame for recognition of resident status."

Pursuant to House Rule 80, the Speaker referred the bill to the Committee on Finance.

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

Your Committee on Education has had under consideration:

**H. B. 2092**, Requiring each high school student to complete a full credit course of study in personal finance,

And reports back a committee substitute therefor, as follows:

**Com. Sub. for H. B. 2092** - "A Bill to amend and reenact §18-2-7c and §18-2-9 of the Code of West Virginia, 1931, as amended; and to further amend said code by adding thereto a new section, designated §18-2-8c, all relating to required instruction in public schools; requiring one credit required course of study with end-of-course exam in personal finance in high school beginning 2023 - 2024; requiring state board to develop curriculum; requiring cursive to be taught in certain grades; requiring state board to develop a program of instruction on the Holocaust and other genocides integrated into curriculum of appropriate course or courses in the middle and high school grades,"

And,

**H. B. 4510**, To provide that third grade students be competent in reading and math before moving on to fourth grade,

And reports back a committee substitute therefor, as follows:

**Com. Sub. for H. B. 4510** - "A Bill to amend and reenact §18-2E-10 of the Code of West Virginia, 1931, as amended, relating to providing for a multi-tiered system of support intervention for grade level literacy and numeracy by end of third grade; making findings; replacing transformative

intervention framework with multi-tiered system of support; addressing both reading and mathematics; requiring early learning reporting system and specifying uses; specifying minimum information and notice to parent or guardian; providing for professional learning for certain teachers and specifying subjects; ensuring certain training and instruction be provided by education preparation programs that prepare candidates seeking licensure for elementary education; removing redundant language; providing for data from the early learning reporting system to be used to inform classroom teacher's recommendation regarding grade level retention; requiring county board implementation; requiring reports by state board; requiring certain legislative appropriation and other funds be used for implementation; requiring retention in third grade of public school and public charter school student who demonstrate minimal grade level understanding and ability upon recommendation of teacher and student assistance team; providing exceptions; requiring students starting in the fourth grade who score below proficient in English language arts or mathematics on general summative assessment to continue to be provided intervention until grade level proficient,"

With the recommendation that the committee substitutes each do pass.

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

Your Committee on Education has had under consideration:

**H. B. 3073**, Relating to the West Virginia Emergency School Food Act,

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

In accordance with the former direction of the Speaker, the bill (H. B. 3073) was referred to the Committee on Finance.

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

Your Committee on Education has had under consideration:

**H. B. 2806**, To allow parents to retain their child without losing a year of sports eligibility,

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

In accordance with the former direction of the Speaker, the bill (H. B. 2806) was referred to the Committee on Finance.

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

Your Committee on the Judiciary has had under consideration:

**H. B. 4675**, Relating to autonomous delivery vehicles,

And reports back a committee substitute therefor, as follows:

**Com. Sub. for H. B. 4675** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17C-24-1 and §17C-24-2, all relating to autonomous



delivery vehicles; authorizing operation of low-speed autonomous delivery vehicle on certain streets and roads; authorizing operation of low-speed autonomous delivery vehicle on streets or roads with posted speed limit of up to a specified number of miles per hour under specified conditions,”

With the recommendation that the committee substitute do pass.

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

Your Committee on the Judiciary has had under consideration:

**H. B. 4743**, Relating to security and surveillance requirements of medical cannabis organization facilities,

And,

**H. B. 4773**, Adoption of the FCC customer service and technical standards and requiring certain cable operators to operate an in-state customer call center,

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

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

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 25**, Updating provisions of Medical Professional Liability Act,

And,

**Com. Sub. for S. B. 452**, Permitting civil remedies for unauthorized disclosure of intimate images,

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

### **Messages from the Executive**

A communication from His Excellency, the Governor, advised that on February 21, 2022, he approved **S. B. 279**, **S. B. 450**, **S. B. 451**, **H. B. 2325**, **Com. Sub. for H. B. 4062** and **Com. Sub. for H. B. 4074**.

### **Messages from the Senate**

A message from the Senate, by

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

**H. B. 4060**, Repealing outdated sections of code relating to health.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 221** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-28A-1, §30-28A-2, §30-28A-3, §30-28A-4, §30-28A-5, §30-28A-6, §30-28A-7, §30-28A-8, §30-28A-9, §30-28A-10, §30-28A-11, §30-28A-12, §30-28A-13, and §30-28A-14, all relating to establishing an occupational therapy compact; providing for the purpose in creating the compact; providing for definitions relating to the compact; establishing guidelines for state participation in the compact; creating a compact privilege; creating a means to obtain a state home license through the compact; defining active duty military personnel and their spouses for purposes of the compact; defining adverse actions; establishing the Occupational Therapy Compact Commission; creating a data system; providing for rulemaking; providing for oversight, dispute resolution, and enforcement; creating a date of implementation of the interstate commission for occupational therapy practice and associated rules, withdrawal, and amendment; providing for the construction and severability of the compact; and establishing the binding effect of the compact and other laws."

At the request of Delegate Summers, and by unanimous consent, the bill was taken up for immediate consideration and reference to a committee was dispensed with.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 274** - "A Bill to amend and reenact §9-2-6 of the Code of West Virginia, 1931, as amended, relating to requiring the secretary of the Department of Health and Human Resources to allocate Child Protective Services workers by the Bureau of Social Services' district annually; and reporting this allocation process to the Legislative Oversight Commission on Health and Human Resources Accountability annually"; which was referred to the Committee on Health and Human Resources.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, and requested the concurrence of the House of Delegates in the passage, of

**S. B. 414** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-8-5a; and to amend and reenact §5A-8-7 of said code, all generally relating to creating a special revenue account for the statewide records management program; and authorizing the State Records Administrator to collect fees for services provided"; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, and requested the concurrence of the House of Delegates in the passage, of

**S. B. 480** - "A Bill to amend and reenact §22-6-2 and §22-6-29 of the Code of West Virginia, 1931, as amended, all relating to the Office of Oil and Gas of the Department of Environmental Protection; establishing annual oversight fee for wells producing more than 10,000 cubic feet of gas per day; and providing that those fees, if not used for other purposes, may be moved to the Oil and Gas Reclamation Fund"; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 494** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31G-1A-8, relating to creating the Broadband Carrier Neutral and Open Access Infrastructure Development Fund; providing for the administration of the fund, sources of funding for the fund, and the purposes for expenditures from the fund; and authorizing expenditures from the fund from collections and pursuant to legislative appropriations”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, and requested the concurrence of the House of Delegates in the passage, of

**S. B. 529** - “A Bill to amend and reenact §18-2-12 of the Code of West Virginia, 1931, as amended, relating to computer science education in West Virginia schools; recognizing a need to provide coursework on computational thinking, block-based programming, text-based programming, network communication, computer architecture, and cyber security; and requiring the board to update and build upon prior computer science education plans to include additional subject matter”; which was referred to the Committee on Education then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 534** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §2-1-3, relating to clarifying secondary sources are not the law and public policy of West Virginia in certain instances; and permitting the use of certified questions on issues of first impression in certain circumstances”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, and requested the concurrence of the House of Delegates in the passage, of

**S. B. 541** - “A Bill to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating to requiring the results of a homeschooled child’s academic assessment be submitted by June 30 of the first year in which the child was homeschooled rather than at grades three, five, eight, and 11; and providing that when the results indicate that the child is making adequate academic progress, no further assessment results must be submitted”; which was referred to the Committee on Education.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 568** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-16-3c; to amend said code by adding thereto a new section, designated §33-24-6a; to amend said code by adding thereto a new section, designated §33-25-10a; and to amend said code by adding thereto a new section, designated §33-25A-7b, all relating to health insurance loss ratio information; defining term; and requiring disclosure of loss ratio information upon request”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 571** - “A Bill finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 573** - “A Bill to amend and reenact §50-1-13 of the Code of West Virginia, 1931, as amended, relating to requesting the Chief Justice of the Supreme Court of Appeals develop a rule creating a system in which magistrates may be assigned on a temporary rotating basis outside the county of their election or appointment to preside over initial appearances, petitions for domestic violence, emergency protective orders, emergency mental hygiene petitions, emergency juvenile delinquency petitions, and applications for issuance of search warrants in counties in which he or she was not elected or appointed during non-court hours; granting the court authority to organize the system on a circuit-wide or regional basis as the court chooses; clarifying that magistrates may preside remotely if the Supreme Court of Appeals determines it appropriate; and eliminating antiquated language”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 575** - “A Bill to amend and reenact §61-8B-10 of the Code of West Virginia, 1931, as amended, relating to the felony offense of imposition of sexual acts by any employee or volunteer on persons incarcerated, detained, or under supervision by the Division of Corrections and Rehabilitation, or the West Virginia Supreme Court of Appeals, or by any person acting pursuant to or under the authority of any sheriff, county commission, municipality, or court to ensure compliance with the provisions of §62-11B-1 *et seq.* of this code; clarifying that the felony offense applies to a person working at a juvenile facility or working for a municipal home incarceration alternative sentencing program; providing that the felony offense applies to sexual imposition on persons detained at or committed to a facility; establishing criminal penalties; and clarifying the definition of “incarcerated or detained in this state” to include adult and juvenile offenders sentenced, detained, committed, or serving a period of supervision pursuant to §62-11B-1 *et seq.* of this code”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 593** - “A Bill to amend and reenact §15-2B-3 of the Code of West Virginia, 1931, as amended, relating to the Legislature and State Police designating the Forensic Analysis Laboratory at the Marshall University Science Center as a criminal justice agency to allow its participation in the West Virginia DNA Database for certain purposes”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 595** - “A Bill to amend and reenact §27-6A-13 of the Code of West Virginia, 1931, as amended, relating to the Dangerousness Assessment Advisory Board; barring the

subpoenaing of board members to testify in proceedings about which the board issues advice, guidance, or opinion; and requiring in lieu of testifying that the board provides copies of all documents and materials used in providing its advice, guidance, or opinion upon request of the circuit court”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 598** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §9A-5-1, §9A-5-2, and §9A-5-3, all relating to specifically authorizing programs to assist at-risk veterans through partnerships with service organizations, government agencies, military organizations, or private entities engaged with their local veteran communities to connect veterans and their families with existing resources to combat suicide, and its contributing factors, among the veteran population in this state; providing legislative fundings and purpose; authorizing programs to assist at-risk veterans through partnerships with service organizations to combat suicide and its contributing factors among the veteran population; and providing for funding and grant-making from the Department of Veterans’ Assistance to partner service organizations, government agencies, military organizations, or private entities and for the purposes of this article”; which was referred to the Committee on Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 609** - “A Bill to amend and reenact §17-2A-15 of the Code of West Virginia, 1931, as amended, relating to authorizing the Commissioner of Highways to accept ownership of equipment that was rented or leased; and setting forth requirements related to acquiring and reporting ownership of equipment”; which was referred to the Committee on Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 611** - “A Bill to amend and reenact §17-4-20 of the Code of West Virginia, 1931, as amended, relating to removing the cap on contract bidder’s surety or collateral bond; and updating outdated language”; which was referred to the Committee on Government Organization.

### Resolutions Introduced

Delegates Paynter, Toney, Steele, Bridges, Mazzocchi, Gearheart, Smith, Dean, Kessinger, Fast and Cooper offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 88** - “Requesting the Division of Highways name a portion of road, being the offramp beginning at the Mullins/Sophia Exit on the Coalfields Expressway, to the end of the offramp at its intersection with WV 54 in Mullens, Wyoming County, the ‘Lewis Joseph D’Antoni Memorial Road’.”

Whereas, Lewis Joseph D’Antoni was born in McComas, WV, December 31, 1913, to Andrea and Flora D’Antoni; he was the eldest of four children; and

Whereas, Lewis Joseph D’Antoni graduated from Mullens High School and received a Bachelor’s of Science degree from Concord College where he was president of the freshmen class and of Phi

Delta Pi Fraternity, was a four year letterman in football and basketball (leading scorer all four years) and captain of both teams in 1936, selected for the WVIC All Conference Football Team (1936) and WVIC All Tournament Basketball Team (1935 and 1936) and later selected to the All-Timers WIVAC Football and Basketball Team; thereafter, he earned his Master's Degree from Marshall University; and

Whereas, Upon graduation from college, Lewis Joseph D'Antoni began his teaching and coaching career in Pineville, while playing D League professional baseball in the summers; and

Whereas, In 1942, Lewis enlisted in the U. S. Navy during World War II; he served 44 months, 15 of those months in the Pacific, as a Lieutenant JG; and

Whereas, Lewis Joseph D'Antoni married the former Betty Jo Bailey and they had four children: Kathy Jo, Lewis Joseph D'Antoni II "Danny," Michael Andrew and Mark Bailey; and

Whereas, Both before and after his military service, Lewis Joseph D'Antoni was a high school teacher and principal and enjoyed an outstanding career as a basketball, football, and baseball coach, including: at Pineville High School, 6 man football coach (1938), basketball coach (1937 - 1941); Mullens High School- football coach (1946 -1950), basketball coach (1942 - 1959 with a record: W 223, L 75); selected baseball coach, South All-Stars (1951 assistant coach; 1952- 1955 head coach); coached in five state basketball tournaments, including state runner-up basketball champions (1954); state basketball champions (1955); selected West Virginia High School Coach of the Year (1955); his basketball coaching career record is 450 wins, and 200 losses; and

Whereas, Lewis Joseph D'Antoni was also involved in community sports in Mullens; he organized the Little League, Babe Ruth League, and the basketball summer leagues in Mullens, and introduced marble tournaments in the area that produced a national champion; and

Whereas, After re-locating as head basketball coach at Chesapeake High School in Ohio, Lewis Joseph D'Antoni continued his successful coaching career, including coaching six Ohio Valley Conference winners; was selected Ohio Valley Conference Coach of the Year 6 times, head coach of the Ohio Valley High School All-Stars in 1980, and 1982, winning both years; and

Whereas, Lewis Joseph D'Antoni was the recipient of numerous awards; he was inducted into the Mullens, Chesapeake and West Virginia Sports Halls of Fame and was distinguished as a charter member in the Concord University Hall of Fame. In 1992, 2010 and 2014, he was awarded the distinguished West Virginian Award; and

Whereas, Lewis Joseph D'Antoni died on October 28, 2017; he was preceded in death by his wife, Betty Jo, and is survived by his children, Kathy Jo, Lewis Joseph II (Danny), Michael Andrew, and Mark Bailey, his grandchildren, Matthew, Andrew, Nicholas, Morgan, Michael, Bailey, Parker, Kennedy, and three great-grandchildren, Nicholas, Jackson and William.

Whereas, It is fitting that an enduring memorial be established to commemorate Lewis Joseph D'Antoni and his contributions to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name a portion of road, being the offramp beginning at the Mullins/Sophia Exit on the Coalfields Expressway, to the end of the offramp at its intersection with WV 54 in Mullens, Wyoming County, the "Lewis Joseph D'Antoni Memorial Road"; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs at both ends identifying the portion of road as the “Lewis Joseph D’Antoni Memorial Road”; and, be it

*Further Resolved*, That the Clerk of the House forward a copy of this resolution to the Commissioner of the Division of Highways.

### **Special Calendar**

#### **Unfinished Business**

The following resolutions, coming up in regular order, as unfinished business, were reported by the Clerk:

**H. R. 12**, Supporting the signing of a Bilateral Trade Agreement (BTA) between the United States and the Republic of China (Taiwan),

And,

**H. C. R. 42**, Urging U.S. universities to relocate Chinese language programs from mainland China to Taiwan.

At the request of Delegate Summers, and by unanimous consent, the resolutions were postponed one day.

#### **Third Reading**

**H. J. R. 102**, Clarifying that the policy-making and rule-making authority of the State Board of Education is subject to legislative review, approval, amendment, or rejection; on third reading, coming up in regular order, was read a third time.

On the adoption of the resolution, the yeas and nays were taken (**Roll No. 194**), and there were—yeas 80, nays 18, absent and not voting 2, with the yeas, nays, and absent and not voting being as follows:

Yeas: Anderson, Barnhart, Barrett, Bates, Booth, Bridges, Brown, Burkhammer, Capito, Clark, Conley, Cooper, Criss, Crouse, Dean, Doyle, Ellington, Espinosa, Fast, Ferrell, Forsht, Foster, Gearheart, Graves, Hamrick, Hanna, Hardy, Haynes, Holstein, Honaker, Horst, Hott, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, Keaton, D. Kelly, J. Kelly, Kessinger, Kimble, Kimes, Linville, Longanacre, Mallow, Mandt, Martin, Maynard, Maynor, Mazzocchi, McGeehan, Miller, Nestor, Pack, Paynter, Phillips, Pinson, Pritt, Queen, Reed, Reynolds, Riley, Rohrbach, Rowan, Smith, Statler, Steele, Storch, Summers, Sypolt, Toney, Tully, Wamsley, B. Ward, G. Ward, Westfall, Worrell, Zatezalo and Hanshaw (Mr. Speaker).

Nays: Barach, Boggs, Diserio, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Lovejoy, Pethtel, Pushkin, Rowe, Skaff, Walker, Williams, Young and Zukoff.

Absent and Not Voting: Evans and Thompson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the resolution (H. J. R. 102) adopted, as follows:

**H. J. R. 102** - "Proposing an amendment to the Constitution of the State of West Virginia, amending section 2, article XII thereof, relating to education and the supervision of free schools; clarifying that the policy-making and rule-making authority of the State Board of Education is subject to legislative review, approval, amendment, or rejection; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment."

*Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:*

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2022, which proposed amendment is that section 2, article XII thereof, be amended and reenacted to read as follows:

## **ARTICLE XII. EDUCATION.**

### **§2. Supervision of free schools.**

Subject to the provisions of this section, The the general supervision of the free schools of the State is shall be vested in the West Virginia Board of Education which shall perform the such duties as may be prescribed by law. Under its supervisory duties, the West Virginia Board of Education may promulgate rules or policies which shall be submitted to the Legislature for its review and approval, amendment, or rejection, in whole or in part, in the manner prescribed by general law. The board shall consist of nine members to be appointed by the Governor, by and with the advice and consent of the Senate, for overlapping terms of nine years. ~~except that the original appointments shall be for terms of one, two, three, four, five, six, seven, eight, and nine years, respectively~~ No more than five members of the board shall belong to the same political party, and in addition to the general qualifications otherwise required by the Legislature may require other specific qualifications for membership on the board. No member of the board may be removed from office by the Governor except for official misconduct, incompetence, neglect of duty, or gross immorality, and then only in the manner prescribed by law for the removal by the Governor of state elective officers.

The West Virginia Board of Education shall, in the manner prescribed by law, select the State Superintendent of Free Schools who shall serve at its will and pleasure. He or she shall be the chief school officer of the state and shall ~~have such powers and shall perform the such~~ duties as may be prescribed by law.

The State Superintendent of Free Schools shall be a member of the Board of Public Works as provided by subsection B, section fifty-one, article VI of this Constitution.

*Resolved further,* That in accordance with the provisions of §33-11-1 *et seq.* of the Code of West Virginia, 1931, as amended, the amendment is hereby numbered "Amendment No. 1" and designated as the "Education Accountability Amendment" and the purpose of the proposed amendment is summarized as follows: "The purpose of this amendment is to clarify that the rules and policies promulgated by the State Board of Education, are subject to legislative review, approval, amendments, or rejection."

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

In the absence of objection, the House proceeded to consideration of H. B. 4264.



**H. B. 4264**, Change designation of Glenville State College to “Glenville State University”; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 195**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Evans and Thompson.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (H. B. 4264) passed.

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

On this question, the yeas and nays were taken (**Roll No. 196**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Evans and Thompson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4264) takes effect from its passage.

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

**Com. Sub. for H. B. 2096**, Reinstating the film investment tax credit; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 197**), and there were—yeas 87, nays 11, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Burkhammer, Dean, Foster, J. Jeffries, Jennings, Maynard, McGeehan, Paynter, Pinson, Pritt and Steele.

Absent and Not Voting: Evans and Thompson.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2096) passed.

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

**Com. Sub. for H. B. 3223**, Prohibit state, county, and municipal governments from dedicating or naming any public structure for a public official who is holding office at the time; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 198**), and there were—yeas 95, nays 3, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Jennings, Miller and Summers.

Absent and Not Voting: Evans and Thompson.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3223) passed.

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

**H. B. 4019**, Relating to deadlines for public charter schools; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 199**), and there were—yeas 75, nays 20, absent and not voting 5, with the nays and the absent and not voting being as follows:

Nays: Barach, Boggs, Brown, Dean, Diserio, Ferrell, Fleischauer, Fluharty, Garcia, Hansen, Miller, Paynter, Pethtel, Pushkin, Rowe, Toney, Walker, Williams, Young and Zukoff.

Absent and Not Voting: Evans, Foster, McGeehan, Skaff and Thompson.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (H. B. 4019) passed.

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

On this question, the yeas and nays were taken (**Roll No. 200**), and there were—yeas 74, nays 20, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: Barach, Boggs, Dean, Diserio, Doyle, Ferrell, Fleischauer, Fluharty, Garcia, Hansen, Miller, Paynter, Pethtel, Pushkin, Rowe, Toney, Walker, Williams, Young and Zukoff.

Absent and Not Voting: Evans, Foster, McGeehan, Nestor, Skaff and Thompson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4019) takes effect from its passage.

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

**Com. Sub. for H. B. 4262**, Relating to licensure for polygraph examiners; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 201**), and there were—yeas 65, nays 31, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Barach, Barrett, Boggs, Booth, Bridges, Brown, Diserio, Doyle, Ferrell, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Hott, D. Kelly, J. Kelly, Lovejoy, Miller, Nestor, Pethtel, Pushkin, Reynolds, Rowe, Skaff, Walker, Williams, Worrell, Young and Zukoff.

Absent and Not Voting: Crouse, Evans, McGeehan and Thompson.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4262) passed.

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

**Com. Sub. for H. B. 4262** – “A Bill to amend and reenact §21-5-5c and §21-5-5d of the Code of West Virginia, 1931, as amended; all relating to licensure for polygraph examiners; removing state licensure requirements for polygraph examiners; creating national membership requirements for polygraph examiners; and updating criminal penalties associated with removing state licensure.”

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

**H. B. 4566**, Creating the Economic Enhancement Grant Fund; on third reading, coming up in regular order, was read a third time.

Delegate Riley requested to be excused from voting under the provisions of House Rule 49.

The Speaker ruled that the Delegate belongs to a class of less than five possibly to be affected by the bill and excused the Member from voting on the passage of the bill.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 202**), and there were—yeas 95, nays none, excused 1, and absent and not voting 4, with the excused and absent and not voting being as follows:

Excused: Riley.

Absent and Not Voting: Evans, McGeehan, Thompson and Westfall.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (H. B. 4566) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

**H. B. 4566** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22C-1-6a, relating generally to additional powers of the West Virginia Water Development Authority; providing for the creation and administration of the Economic Enhancement Grant Fund; establishing sources of revenue for the fund; allowing administration costs; establishing a matching grant subaccount; establishing an enhancement grant subaccount; providing purposes for the fund and the subaccounts; providing for the participation of the West Virginia Infrastructure and Jobs Development Council, the West Virginia Department of Economic Development and the Secretary of Tourism; authorizing the Water Development Authority to enter into certain grant agreements; and requiring audit process and report to the Legislature.”

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

**Com. Sub. for H. B. 4567**, Relating to business and occupation or privilege tax; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 203**), and there were—yeas 83, nays 13, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Barach, Doyle, Fleischauer, Griffith, Hornbuckle, Pethtel, Pushkin, Reynolds, Rowe, Skaff, Walker, Young and Zukoff.

Absent and Not Voting: Evans, McGeehan, Thompson and Westfall.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4567) passed.

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

**H. B. 4591**, Relating to accelerating the conversion of the state excise tax on the privilege of transferring real property into a county excise tax; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 204**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Evans, McGeehan, Thompson and Westfall.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (H. B. 4591) passed.

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

**H. B. 4604**, Relating to abolishing the Workforce Development Initiative Program Advisory Council; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 205**), and there were—yeas 90, nays 6, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Fleischauer, Fluharty, Pushkin, Walker, Young and Zukoff.

Absent and Not Voting: Evans, McGeehan, Thompson and Westfall.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (H. B. 4604) passed.

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

**H. B. 4606**, Authorizing programs to assist at-risk veterans and their families with existing resources to combat suicide; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 206**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Evans, McGeehan, Thompson and Westfall.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (H. B. 4606) passed.

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

**Com. Sub. for H. B. 4644**, Prohibiting the restriction, regulation, use or administration of lawn care and pest care products; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 207**), and there were—yeas 87, nays 9, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Doyle, Fleischauer, Fluharty, Hansen, Pushkin, Rowe, Walker, Williams and Zukoff.

Absent and Not Voting: Evans, McGeehan, Thompson and Westfall.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4644) passed.

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

### Second Reading

**H. B. 3082**, Stabilizing funding sources for the DEP Division of Air Quality; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4344**, Relating to foster care; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Zukoff, the bill was amended on page 7, section 111d, line 1, following the period, by striking out the word “The” and inserting in lieu thereof, the following:

“By January 1, 2023, the”.

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 4345**, Relating to motor vehicle registration cards by establishing electronic or mobile registration cards; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 4391**, Relating generally to school nurses; on second reading, coming up in regular order, was read a second time.

Delegate Pushkin moved to amend the bill on page 2, section 22, line 22 following the words “this subsection”, by striking out the remainder of the sentence and inserting in lieu thereof, the following:

“must be a registered professional nurse or licensed practical nurse working under the supervision of a registered professional nurse. Licensed practical nurses may be hired in addition to the ratio provided by this subsection to assist the registered professional nurses and be supervised pursuant to standards developed by the Council of School Nurses as established in subsection (h) of this section. The Council, prior to promulgation of a rule, shall consult with the Board of Examiners for Registered Professional Nurses.”

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

The yeas and nays having been ordered, they were taken (**Roll No. 208**), and there were—yeas 29, nays 66, absent and not voting 5, with the yeas and the absent and not voting being as follows:

Yeas: Barach, Barrett, Boggs, Brown, Diserio, Doyle, Ferrell, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Holstein, Hornbuckle, Howell, Lovejoy, Nestor, Pethtel, Pushkin, Queen, Rowe, Skaff, Walker, Wamsley, G. Ward, Westfall, Williams, Young and Zukoff.

Absent and Not Voting: Evans, Hardy, McGeehan, Thompson and Worrell.

So, a majority of the members present not having voted in the affirmative, the amendment was rejected.

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 4479**, Establishing the Coalfield Communities Grant Facilitation Commission; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 4496**, Allowing interest and earnings on federal COVID-19 relief moneys to be retained in the funds or accounts where those moneys are invested; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4607**, To remove opioid treatment programs from requiring a certificate of need; on second reading, coming up in regular order, was read a second time.

Delegates Steele, Bates, and Pack moved to amend the bill by striking out the title and substituting therefor a new title, to read as follows:

**H. B. 4607** – “A Bill to amend and reenact §16-2D-9 and §16-2D-11 of the Code of West Virginia, 1931, as amended, relating to certificate of need requirements for an opioid treatment program.”

Delegate Linville arose to a point of order regarding consideration of a title amendment during second reading.

The Speaker ruled that, pursuant to House Rule 124 and Jefferson’s Manual, a title amendment was not in order at that time.

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 4636**, Clarifying when business and occupation taxes owed to a city or municipality are considered to be remitted on time; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 4643**, Exempting certain health services from certificate of need; on second reading, coming up in regular order, was read a second time.

Delegates Steele, Bates, and Pack moved to amend the bill on page 7, section 10, line 56, following the underlined words “or establishing a birthing center” by inserting the following:

“Provided, That a hospital and a physician who renders any medical service to an individual as a result of birth complications at a birthing center is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the medical service at the hospital unless the act or omission was the result of the physician’s gross negligence or willful misconduct. Any birthing center operating in West Virginia shall require adequate liability coverage for each of its providers in an amount no less than \$1 million per occurrence, and be required to maintain liability coverage for the facility of not less than \$3 million per occurrence.”

Delegate Bates obtained unanimous consent to withdraw a pending title amendment which he cosponsored with Delegates Steele and Pack.

Delegate Ellington requested to be excused from voting under the provisions of House Rule 49.

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

Delegate Steele asked and obtained unanimous consent that the amendment be reformed as follows:

Delegates Steele, Bates, and Pack moved to amend the bill on page 7, section 10, line 56, following the underlined words “or establishing a birthing center” by inserting the following:

“Provided, That a hospital and a physician, or other medical professional who renders any medical service to an individual as a result of birth complications at a birthing center is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the medical service at the hospital unless the act or omission was the result of the physician’s gross negligence or willful misconduct. Any birthing center operating in West Virginia shall require adequate liability coverage for each of its providers in an amount no less than \$1 million per occurrence, and be required to maintain liability coverage for the facility of not less than \$3 million per occurrence.”

Delegate Steele subsequently obtained unanimous consent to further reform the amendment as follows:

Delegates Steele, Bates, and Pack moved to amend the bill on page 7, section 10, line 56, following the underlined words “or establishing a birthing center” by inserting the following:

“Provided, That a hospital and a physician, or other medical professional who renders any medical service to an individual as a result of birth complications at a birthing center is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the medical service at the hospital unless the act or omission was the result of the physician’s, or other medical professional gross negligence or willful misconduct. Any birthing center operating in West Virginia shall require adequate liability coverage for each of its providers in an amount no less than \$1 million per occurrence, and be required to maintain liability coverage for the facility of not less than \$3 million per occurrence.”

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

The yeas and nays having been ordered, they were taken (**Roll No. 209**), and there were—yeas 41, nays 48, absent and not voting 11, with the yeas and the absent and not voting being as follows:

Yeas: Bates, Booth, Burkhammer, Capito, Clark, Conley, Cooper, Dean, Ellington, Ferrell, Griffith, Hanna, Haynes, Holstein, Honaker, Hott, D. Jeffries, Keaton, Kessinger, Martin, Maynard, Maynor, Mazzocchi, Nestor, Pack, Pinson, Queen, Reed, Reynolds, Riley, Rohrbach, Smith, Statler, Steele, Storch, Toney, Wamsley, B. Ward, G. Ward, Westfall and Hanshaw (Mr. Speaker).

Absent and Not Voting: Boggs, Bridges, Evans, Fleischauer, Garcia, D. Kelly, Kimes, McGeehan, Phillips, Thompson and Worrell.

So, a majority of the members present not having voted in the affirmative, the amendment was rejected.

The Speaker announced there were four strike and insert amendments and adoption of one would preclude the adoption of the others and, in the absence of objection, Delegate Summers was recognized to explain the amendments en masse.

The House then proceeded to consider the following amendments:

Delegates Summers, Tully, Dean, and J. Jefferies moved to amend the bill on page 1, by striking everything after the enacting clause and inserting in lieu thereof the following:

**“ARTICLE 2D. CERTIFICATE OF NEED.**

**§16-2D-8. Proposed health services that require a certificate of need.**

~~(a) Except as provided in §16-2D-9 §16-2D-10, and §16-2D-11 of this code, the following proposed health services may not be acquired, offered, or developed within this state except upon approval of and receipt of a certificate of need as provided by this article:~~

~~(1) The construction, development, acquisition, or other establishment of a health care facility;~~

~~(2) The partial or total closure of a health care facility with which a capital expenditure is associated;~~

~~(3) (A) An obligation for a capital expenditure incurred by or on behalf of a health care facility in excess of the expenditure minimum; or~~

~~(B) An obligation for a capital expenditure incurred by a person to acquire a health care facility.~~

~~(4) An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility:~~

~~(A) When a valid contract is entered into by or on behalf of the health care facility for the construction, acquisition, lease, or financing of a capital asset;~~

~~(B) When the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or~~

~~(C) In the case of donated property, on the date on which the gift is completed under state law.~~



~~(5) A substantial change to the bed capacity of a health care facility with which a capital expenditure is associated;~~

~~(6) The addition of ventilator services by a hospital;~~

~~(7) The elimination of health services previously offered on a regular basis by or on behalf of a health care facility which is associated with a capital expenditure;~~

~~(8) (A) A substantial change to the bed capacity or health services offered by or on behalf of a health care facility, whether or not the change is associated with a proposed capital expenditure;~~

~~(B) If the change is associated with a previous capital expenditure for which a certificate of need was issued; and~~

~~(C) If the change will occur within two years after the date the activity which was associated with the previously approved capital expenditure was undertaken.~~

~~(9) The acquisition of major medical equipment;~~

~~(10) A substantial change in an approved health service for which a certificate of need is in effect;~~

~~(11) An expansion of the service area for hospice or home health agency regardless of the time period in which the expansion is contemplated or made. and~~

~~(12) The addition of health services offered by or on behalf of a health care facility which were not offered on a regular basis by or on behalf of the health care facility within the 12-month period prior to the time the services would be offered.~~

~~(b) The following health services are required to obtain a certificate of need regardless of the minimum expenditure:~~

~~(1) Constructing, developing, acquiring, or establishing a birthing center;~~

~~(2) Providing radiation therapy;~~

~~(3) Providing computed tomography;~~

~~(4) Providing positron emission tomography;~~

~~(5) Providing cardiac surgery;~~

~~(6) Providing fixed magnetic resonance imaging;~~

~~(7) Providing comprehensive medical rehabilitation;~~

~~(8) Establishing an ambulatory care center;~~

~~(9) Establishing an ambulatory surgical center;~~

~~(10) Providing diagnostic imaging;~~

~~(11) Providing cardiac catheterization services;~~

~~(12) Constructing, developing, acquiring, or establishing kidney disease treatment centers, including freestanding hemodialysis units;~~

~~(13) Providing megavoltage radiation therapy;~~

~~(14) Providing surgical services;~~

~~(15) Establishing operating rooms;~~

~~(16) Adding acute care beds;~~

~~(17) Providing intellectual developmental disabilities services;~~

~~(18) Providing organ and tissue transplants;~~

~~(19) Establishing an intermediate care facility for individuals with intellectual disabilities;~~

~~(20) Providing inpatient services;~~

~~(21) (1) Providing hospice services;~~

~~(22) (2) Establishing a home health agency; and~~

~~(23) (3) Providing personal care services. and~~

~~(24) (A) Establishing no more than six four bed transitional intermediate care facilities: *Provided*, That none of the four bed sites shall be within five miles of another or adjacent to another behavioral health facility. This subdivision terminates upon the approval of the sixth four bed intermediate care facility.~~

~~(B) Only individuals living in more restrictive institutional settings, in similar settings covered by state only dollars, or at risk of being institutionalized will be given the choice to move, and they will be placed on the Individuals with Intellectual and Developmental Disabilities (IDD) Waiver Managed Enrollment List. Individuals already on the IDD Waiver Managed Enrollment List who live in a hospital or are in an out-of state placement will continue to progress toward home and community based waiver status and will also be considered for all other community based options, including, but not limited to, specialized family care and personal care.~~

~~(C) The department shall work to find the most integrated placement based upon an individualized assessment. Individuals already on the IDD waiver will not be considered for placement in the 24 new intermediate care beds.~~

~~(D) A monitoring committee of not more than 10 members, including a designee of Mountain State Justice, a designee of Disability Rights of West Virginia, a designee of the Statewide Independent Living Council, two members or family of members of the IDD waiver, the Developmental Disabilities Council, the Commissioner of the Bureau of Health and Health Facilities, the Commissioner of the Bureau for Medical Services, and the Commissioner of the Bureau for Children and Families. The secretary of the department shall chair the first meeting of the committee at which time the members shall elect a chairperson. The monitoring committee shall provide guidance on the department's transitional plans for residents in the 24 intermediate care facility beds and monitor progress toward home and community based waiver status and/or utilizing other community based options and securing the most integrated setting for each individual.~~

~~(E) Any savings resulting from individuals moving from more expensive institutional care or out-of-state placements shall be reinvested into home and community based services for individuals with intellectual developmental disabilities.~~

~~(c) A certificate of need previously approved under this article remains in effect unless revoked by the authority. Effective July 1, 2022, a certificate of need is not required.~~

#### **§16-2D-10. Exemptions from certificate of need.**

~~Notwithstanding §16-2D-8 a person may provide the following health services without obtaining a certificate of need or applying to the authority for approval:~~

~~(1) The creation of a private office of one or more licensed health professionals to practice in this state pursuant to chapter thirty of this code;~~

~~(2) Dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees that does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four hours;~~

~~(3) A place that provides remedial care or treatment of residents or patients conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination;~~

~~(4) Telehealth;~~

~~(5) A facility owned or operated by one or more health professionals authorized or organized pursuant to chapter thirty or ambulatory health care facility which offers laboratory services or diagnostic imaging to patients regardless of the cost associated with the proposal. To qualify for this exemption seventy-five percent of the laboratory services are for the patients of the practice or ambulatory health care facility of the total laboratory services performed and seventy-five percent of diagnostic imaging services are for the patients of the practice or ambulatory health care facility of the total imaging services performed. The authority may, at any time, request from the entity information concerning the number of patients who have been provided laboratory services or diagnostic imaging;~~

~~(6) (A) Notwithstanding the provisions of section seventeen of this article, any hospital that holds a valid certificate of need issued pursuant to this article, may transfer that certificate of need to a person purchasing that hospital, or all or substantially all of its assets, if the hospital is financially distressed. A hospital is financially distressed if, at the time of its purchase:~~

~~(i) It has filed a petition for voluntary bankruptcy;~~

~~(ii) It has been the subject of an involuntary petition for bankruptcy;~~

~~(iii) It is in receivership;~~

~~(iv) It is operating under a forbearance agreement with one or more of its major creditors;~~

~~(v) It is in default of its obligations to pay one or more of its major creditors and is in violation of the material, substantive terms of its debt instruments with one or more of its major creditors; or~~

~~(vi) It is insolvent: evidenced by balance sheet insolvency and/or the inability to pay its debts as they come due in the ordinary course of business.~~

~~(B) A financially distressed hospital which is being purchased pursuant to the provisions of this subsection shall give notice to the authority of the sale thirty days prior to the closing of the transaction and shall file simultaneous with that notice evidence of its financial status. The financial status or distressed condition of a hospital shall be evidenced by the filing of any of the following:~~

~~(i) A copy of a forbearance agreement;~~

~~(ii) A copy of a petition for voluntary or involuntary bankruptcy;~~

~~(iii) Written evidence of receivership, or~~

~~(iv) Documentation establishing the requirements of subparagraph (v) or (vi), paragraph (A) of this subdivision. The names of creditors may be redacted by the filing party.~~

~~(C) Any substantial change to the capacity of services offered in that hospital made subsequent to that transaction would remain subject to the requirements for the issuance of a certificate of need as otherwise set forth in this article.~~

~~(D) Any person purchasing a financially distressed hospital, or all or substantially all of its assets, that has applied for a certificate of need after January 1, 2017, shall qualify for an exemption from certificate of need;~~

~~(7) The acquisition by a qualified hospital which is party to an approved cooperative agreement as provided in section twenty-eight, article twenty-nine b, chapter sixteen of this code, of a hospital located within a distance of twenty highway miles of the main campus of the qualified hospital; and~~

~~(8) The acquisition by a hospital of a physician practice group which owns an ambulatory surgical center as defined in this article.~~

[Repealed]

#### **§16-2D-11. Exemptions from Certificate of Need which require the submission of information to the authority.**

~~(a) To obtain an exemption under this section a person shall:~~

~~(1) File an exemption application; and~~

~~(2) Provide a statement detailing which exemption applies and the circumstances justifying the exemption.~~

~~(b) Notwithstanding section eight and ten and except as provided in section nine of this article, the Legislature finds that a need exists and these health services are exempt from the certificate of need process:~~

~~(1) The acquisition and utilization of one computed tomography scanner with a purchase price up to \$750,000 that is installed in a private office practice where at minimum seventy-five percent of the scans are performed on the patients of the practice. The private office practice shall obtain and maintain accreditation from the American College of Radiology prior to, and at all times during, the offering of this service. The authority may at any time request from the private office practice information relating to the number of patients who have been provided scans and proof of active and continuous accreditation from the American College of Radiology. If a physician owns or operates a private office practice in more than one location, this exemption shall only apply to the physician's~~

~~primary place of business and if a physician wants to expand the offering of this service to include more than one computed topography scanner, he or she shall be required to obtain a certificate of need prior to expanding this service. All current certificates of need issued for computed tomography services, with a required percentage threshold of scans to be performed on patients of the practice in excess of seventy five percent, shall be reduced to seventy five percent: *Provided*, That these limitations on the exemption for a private office practice with more than one location shall not apply to a private office practice with more than twenty locations in the state on April 8, 2017.~~

~~(2) (A) A birthing center established by a nonprofit primary care center that has a community board and provides primary care services to people in their community without regard to ability to pay; or~~

~~(B) A birthing center established by a nonprofit hospital with less than one hundred licensed acute care beds.~~

~~(i) To qualify for this exemption, an applicant shall be located in an area that is underserved with respect to low-risk obstetrical services; and~~

~~(ii) Provide a proposed health service area.~~

~~(3) (A) A health care facility acquiring major medical equipment, adding health services or obligating a capital expenditure to be used solely for research;~~

~~(B) To qualify for this exemption, the health care facility shall show that the acquisition, offering or obligation will not:~~

~~(i) Affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research;~~

~~(ii) Result in a substantial change to the bed capacity of the facility; or~~

~~(iii) Result in a substantial change to the health services of the facility.~~

~~(C) For purposes of this subdivision, the term "solely for research" includes patient care provided on an occasional and irregular basis and not as part of a research program;~~

~~(4) The obligation of a capital expenditure to acquire, either by purchase, lease or comparable arrangement, the real property, equipment or operations of a skilled nursing facility: *Provided*, That a skilled nursing facility developed pursuant to subdivision (17) of this section and subsequently acquired pursuant to this subdivision may not transfer or sell any of the skilled nursing home beds of the acquired skilled nursing facility until the skilled nursing facility has been in operation for at least ten years.~~

~~(5) Shared health services between two or more hospitals licensed in West Virginia providing health services made available through existing technology that can reasonably be mobile. This exemption does not include providing mobile cardiac catheterization;~~

~~(6) The acquisition, development or establishment of a certified interoperable electronic health record or electronic medical record system;~~

~~(7) The addition of forensic beds in a health care facility;~~

~~(8) A behavioral health service selected by the Department of Health and Human Resources in response to its request for application for services intended to return children currently placed in out-of-state facilities to the state or to prevent placement of children in out-of-state facilities is not subject to a certificate of need;~~

~~(9) The replacement of major medical equipment with like equipment, only if the replacement major medical equipment cost is more than the expenditure minimum;~~

~~(10) Renovations within a hospital, only if the renovation cost is more than the expenditure minimum. The renovations may not expand the health care facility's current square footage, incur a substantial change to the health services, or a substantial change to the bed capacity;~~

~~(11) Renovations to a skilled nursing facility;~~

~~(12) The donation of major medical equipment to replace like equipment for which a certificate of need has been issued and the replacement does not result in a substantial change to health services. This exemption does not include the donation of major medical equipment made to a health care facility by a related organization;~~

~~(13) A person providing specialized foster care personal care services to one individual and those services are delivered in the provider's home;~~

~~(14) A hospital converting the use of beds except a hospital may not convert a bed to a skilled nursing home bed and conversion of beds may not result in a substantial change to health services provided by the hospital;~~

~~(15) The construction, renovation, maintenance or operation of a state owned veterans skilled nursing facilities established pursuant to the provisions of article one b of this chapter;~~

~~(16) To develop and operate a skilled nursing facility with no more than thirty six beds in a county that currently is without a skilled nursing facility;~~

~~(17) A critical access hospital, designated by the state as a critical access hospital, after meeting all federal eligibility criteria, previously licensed as a hospital and subsequently closed, if it reopens within ten years of its closure;~~

~~(18) The establishing of a health care facility or offering of health services for children under one year of age suffering from Neonatal Abstinence Syndrome;~~

~~(19) The construction, development, acquisition or other establishment of community mental health and intellectual disability facility;~~

~~(20) Providing behavioral health facilities and services;~~

~~(21) The construction, development, acquisition or other establishment of kidney disease treatment centers, including freestanding hemodialysis units but only to a medically underserved population;~~

~~(22) The transfer, purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility providing intermediate care and skilled nursing services. The Department of Health and Human Resources may not create a policy which limits the transfer, purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital. The~~

~~transferred beds shall retain the same certification status that existed at the nursing home or hospital skilled nursing unit from which they were acquired. If construction is required to place the transferred beds into the acquiring nursing home, the acquiring nursing home has one year from the date of purchase to commence construction;~~

~~(23) The construction, development, acquisition or other establishment by a health care facility of a nonhealth related project, only if the nonhealth related project cost is more than the expenditure minimum;~~

~~(24) The construction, development, acquisition or other establishment of an alcohol or drug treatment facility and drug and alcohol treatment services unless the construction, development, acquisition or other establishment is an opioid treatment facility or programs as set forth in subdivision (4) of section nine of this article;~~

~~(25) Assisted living facilities and services;~~

~~(26) The creation, construction, acquisition or expansion of a community based nonprofit organization with a community board that provides or will provide primary care services to people without regard to ability to pay and receives approval from the Health Resources and Services Administration; and~~

~~(27) The acquisition and utilization of one computed tomography scanner and/or one magnetic resonance imaging scanner with a purchase price of up to \$750,000 by a hospital."~~

Delegate Pack requested to be excused from voting under the provisions of House Rule 49.

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

Delegate Summers asked unanimous consent that amendment be withdrawn, which consent was not obtained, objection being heard.

Delegate Summers then so moved.

On this motion, the yeas and nays were demanded, which demand was sustained.

Having been ordered, the yeas and nays were taken (**Roll No. 210**), and there were—yeas 85, nays 9, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: Diserio, Doyle, Fleischauer, Fluharty, Hansen, Hornbuckle, J. Jeffries, Skaff and Walker.

Absent and Not Voting: Boggs, Bridges, Evans, McGeehan, Thompson and Worrell.

So, a majority of the members present having voted in the affirmative, the amendment was withdrawn.

Delegates Summers, Tully, Dean and J. Jefferies moved to amend the bill on page 1, by striking everything after the enacting clause and inserting in lieu thereof the following:

## **ARTICLE 2D. CERTIFICATE OF NEED.**

### **§16-2D-8. Proposed health services that require a certificate of need.**

(a) Except as provided in ~~§16-2D-9 §16-2D-10, and §16-2D-11~~ of this code, the following proposed health services may not be acquired, expanded, offered, or developed within this state except upon approval of and receipt of a certificate of need as provided by this article:

~~(1) The construction, development, acquisition, or other establishment of a health care facility;~~

~~(2) The partial or total closure of a health care facility with which a capital expenditure is associated;~~

~~(3) (A) An obligation for a capital expenditure incurred by or on behalf of a health care facility in excess of the expenditure minimum; or~~

~~(B) An obligation for a capital expenditure incurred by a person to acquire a health care facility.~~

~~(4) An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility:~~

~~(A) When a valid contract is entered into by or on behalf of the health care facility for the construction, acquisition, lease, or financing of a capital asset;~~

~~(B) When the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or~~

~~(C) In the case of donated property, on the date on which the gift is completed under state law.~~

~~(5) A substantial change to the bed capacity of a health care facility with which a capital expenditure is associated;~~

~~(6) The addition of ventilator services by a hospital;~~

~~(7) The elimination of health services previously offered on a regular basis by or on behalf of a health care facility which is associated with a capital expenditure;~~

~~(8) (A) A substantial change to the bed capacity or health services offered by or on behalf of a health care facility, whether or not the change is associated with a proposed capital expenditure;~~

~~(B) If the change is associated with a previous capital expenditure for which a certificate of need was issued; and~~

~~(C) If the change will occur within two years after the date the activity which was associated with the previously approved capital expenditure was undertaken.~~

~~(9) The acquisition of major medical equipment;~~

~~(10) A substantial change in an approved health service for which a certificate of need is in effect;~~

~~(11) An expansion of the service area for hospice or home health agency regardless of the time period in which the expansion is contemplated or made. and~~

~~(12) The addition of health services offered by or on behalf of a health care facility which were not offered on a regular basis by or on behalf of the health care facility within the 12-month period prior to the time the services would be offered.~~



~~(b) The following health services are required to obtain a certificate of need regardless of the minimum expenditure:~~

- ~~(1) Constructing, developing, acquiring, or establishing a birthing center;~~
- ~~(2) Providing radiation therapy;~~
- ~~(3) Providing computed tomography;~~
- ~~(4) Providing positron emission tomography;~~
- ~~(5) Providing cardiac surgery;~~
- ~~(6) Providing fixed magnetic resonance imaging;~~
- ~~(7) Providing comprehensive medical rehabilitation;~~
- ~~(8) Establishing an ambulatory care center;~~
- ~~(9) Establishing an ambulatory surgical center;~~
- ~~(10) Providing diagnostic imaging;~~
- ~~(11) Providing cardiac catheterization services;~~
- ~~(12) Constructing, developing, acquiring, or establishing kidney disease treatment centers, including freestanding hemodialysis units;~~
- ~~(13) Providing megavoltage radiation therapy;~~
- ~~(14) Providing surgical services;~~
- ~~(15) Establishing operating rooms;~~
- ~~(16) Adding acute care beds;~~
- ~~(17) Providing intellectual developmental disabilities services;~~
- ~~(18) Providing organ and tissue transplants;~~
- ~~(19) Establishing an intermediate care facility for individuals with intellectual disabilities;~~
- ~~(20) Providing inpatient services;~~
- ~~(21) (1) Providing hospice services;~~
- ~~(22) (2) Establishing a home health agency; and~~
- ~~(23) (3) Providing personal care services. and~~
- ~~(24) (A) Establishing no more than six four bed transitional intermediate care facilities: *Provided*, That none of the four bed sites shall be within five miles of another or adjacent to another behavioral~~

health facility. This subdivision terminates upon the approval of the sixth four-bed intermediate care facility.

~~(B) Only individuals living in more restrictive institutional settings, in similar settings covered by state-only dollars, or at risk of being institutionalized will be given the choice to move, and they will be placed on the Individuals with Intellectual and Developmental Disabilities (IDD) Waiver Managed Enrollment List. Individuals already on the IDD Waiver Managed Enrollment List who live in a hospital or are in an out-of-state placement will continue to progress toward home and community-based waiver status and will also be considered for all other community-based options, including, but not limited to, specialized family care and personal care.~~

~~(C) The department shall work to find the most integrated placement based upon an individualized assessment. Individuals already on the IDD waiver will not be considered for placement in the 24 new intermediate care beds.~~

~~(D) A monitoring committee of not more than 10 members, including a designee of Mountain State Justice, a designee of Disability Rights of West Virginia, a designee of the Statewide Independent Living Council, two members or family of members of the IDD waiver, the Developmental Disabilities Council, the Commissioner of the Bureau of Health and Health Facilities, the Commissioner of the Bureau for Medical Services, and the Commissioner of the Bureau for Children and Families. The secretary of the department shall chair the first meeting of the committee at which time the members shall elect a chairperson. The monitoring committee shall provide guidance on the department's transitional plans for residents in the 24 intermediate care facility beds and monitor progress toward home and community-based waiver status and/or utilizing other community-based options and securing the most integrated setting for each individual.~~

~~(E) Any savings resulting from individuals moving from more expensive institutional care or out-of-state placements shall be reinvested into home and community-based services for individuals with intellectual developmental disabilities.~~

(c) A certificate of need previously approved under this article remains in effect unless revoked by the authority.

#### **§16-2D-10. Exemptions from certificate of need.**

Notwithstanding ~~§16-2D-8~~ §16-2D-9, a person may provide the following health services without obtaining a certificate of need or applying to the authority for approval.

(1) The transfer, purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility providing intermediate care and skilled nursing services. The Department of Health and Human Resources may not create a policy which limits the transfer, purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital. The transferred beds shall retain the same certification status that existed at the nursing home or hospital skilled nursing unit from which they were acquired. If construction is required to place the transferred beds into the acquiring nursing home, the acquiring nursing home has one year from the date of purchase to commence construction;

(2) Renovations to a skilled nursing facility;

(3) The construction, renovation, maintenance or operation of a state owned veterans skilled nursing facilities established pursuant to the provisions of article one-b of this chapter.

~~(1) The creation of a private office of one or more licensed health professionals to practice in this state pursuant to chapter thirty of this code;~~

~~(2) Dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees that does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four hours;~~

~~(3) A place that provides remedial care or treatment of residents or patients conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination;~~

~~(4) Telehealth;~~

~~(5) A facility owned or operated by one or more health professionals authorized or organized pursuant to chapter thirty or ambulatory health care facility which offers laboratory services or diagnostic imaging to patients regardless of the cost associated with the proposal. To qualify for this exemption seventy-five percent of the laboratory services are for the patients of the practice or ambulatory health care facility of the total laboratory services performed and seventy-five percent of diagnostic imaging services are for the patients of the practice or ambulatory health care facility of the total imaging services performed. The authority may, at any time, request from the entity information concerning the number of patients who have been provided laboratory services or diagnostic imaging;~~

~~(6) (A) Notwithstanding the provisions of section seventeen of this article, any hospital that holds a valid certificate of need issued pursuant to this article, may transfer that certificate of need to a person purchasing that hospital, or all or substantially all of its assets, if the hospital is financially distressed. A hospital is financially distressed if, at the time of its purchase:~~

~~(i) It has filed a petition for voluntary bankruptcy;~~

~~(ii) It has been the subject of an involuntary petition for bankruptcy;~~

~~(iii) It is in receivership;~~

~~(iv) It is operating under a forbearance agreement with one or more of its major creditors;~~

~~(v) It is in default of its obligations to pay one or more of its major creditors and is in violation of the material, substantive terms of its debt instruments with one or more of its major creditors; or~~

~~(vi) It is insolvent: evidenced by balance sheet insolvency and/or the inability to pay its debts as they come due in the ordinary course of business.~~

~~(B) A financially distressed hospital which is being purchased pursuant to the provisions of this subsection shall give notice to the authority of the sale thirty days prior to the closing of the transaction and shall file simultaneous with that notice evidence of its financial status. The financial status or distressed condition of a hospital shall be evidenced by the filing of any of the following:~~

~~(i) A copy of a forbearance agreement;~~

~~(ii) A copy of a petition for voluntary or involuntary bankruptcy;~~

~~(iii) Written evidence of receivership, or~~

~~(iv) Documentation establishing the requirements of subparagraph (v) or (vi), paragraph (A) of this subdivision. The names of creditors may be redacted by the filing party.~~

~~(C) Any substantial change to the capacity of services offered in that hospital made subsequent to that transaction would remain subject to the requirements for the issuance of a certificate of need as otherwise set forth in this article.~~

~~(D) Any person purchasing a financially distressed hospital, or all or substantially all of its assets, that has applied for a certificate of need after January 1, 2017, shall qualify for an exemption from certificate of need;~~

~~(7) The acquisition by a qualified hospital which is party to an approved cooperative agreement as provided in section twenty eight, article twenty nine b, chapter sixteen of this code, of a hospital located within a distance of twenty highway miles of the main campus of the qualified hospital; and~~

~~(8) The acquisition by a hospital of a physician practice group which owns an ambulatory surgical center as defined in this article.~~

#### **§16-2D-11. Exemptions from Certificate of Need which require the submission of information to the authority.**

~~(a) To obtain an exemption under this section a person shall:~~

~~(1) File an exemption application; and~~

~~(2) Provide a statement detailing which exemption applies and the circumstances justifying the exemption.~~

~~(b) Notwithstanding section eight and ten and except as provided in section nine of this article, the Legislature finds that a need exists and these health services are exempt from the certificate of need process:~~

~~(1) The acquisition and utilization of one computed tomography scanner with a purchase price up to \$750,000 that is installed in a private office practice where at minimum seventy five percent of the scans are performed on the patients of the practice. The private office practice shall obtain and maintain accreditation from the American College of Radiology prior to, and at all times during, the offering of this service. The authority may at any time request from the private office practice information relating to the number of patients who have been provided scans and proof of active and continuous accreditation from the American College of Radiology. If a physician owns or operates a private office practice in more than one location, this exemption shall only apply to the physician's primary place of business and if a physician wants to expand the offering of this service to include more than one computed topography scanner, he or she shall be required to obtain a certificate of need prior to expanding this service. All current certificates of need issued for computed tomography services, with a required percentage threshold of scans to be performed on patients of the practice in excess of seventy five percent, shall be reduced to seventy five percent: *Provided*, That these limitations on the exemption for a private office practice with more than one location shall not apply to a private office practice with more than twenty locations in the state on April 8, 2017.~~

~~(2) (A) A birthing center established by a nonprofit primary care center that has a community board and provides primary care services to people in their community without regard to ability to pay; or~~

~~(B) A birthing center established by a nonprofit hospital with less than one hundred licensed acute care beds.~~

~~(i) To qualify for this exemption, an applicant shall be located in an area that is underserved with respect to low-risk obstetrical services; and~~

~~(ii) Provide a proposed health service area.~~

~~(3) (A) A health care facility acquiring major medical equipment, adding health services or obligating a capital expenditure to be used solely for research;~~

~~(B) To qualify for this exemption, the health care facility shall show that the acquisition, offering or obligation will not:~~

~~(i) Affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research;~~

~~(ii) Result in a substantial change to the bed capacity of the facility; or~~

~~(iii) Result in a substantial change to the health services of the facility.~~

~~(C) For purposes of this subdivision, the term "solely for research" includes patient care provided on an occasional and irregular basis and not as part of a research program;~~

~~(4) The obligation of a capital expenditure to acquire, either by purchase, lease or comparable arrangement, the real property, equipment or operations of a skilled nursing facility: *Provided*, That a skilled nursing facility developed pursuant to subdivision (17) of this section and subsequently acquired pursuant to this subdivision may not transfer or sell any of the skilled nursing home beds of the acquired skilled nursing facility until the skilled nursing facility has been in operation for at least ten years.~~

~~(5) Shared health services between two or more hospitals licensed in West Virginia providing health services made available through existing technology that can reasonably be mobile. This exemption does not include providing mobile cardiac catheterization;~~

~~(6) The acquisition, development or establishment of a certified interoperable electronic health record or electronic medical record system;~~

~~(7) The addition of forensic beds in a health care facility;~~

~~(8) A behavioral health service selected by the Department of Health and Human Resources in response to its request for application for services intended to return children currently placed in out-of-state facilities to the state or to prevent placement of children in out-of-state facilities is not subject to a certificate of need;~~

~~(9) The replacement of major medical equipment with like equipment, only if the replacement major medical equipment cost is more than the expenditure minimum;~~

~~(10) Renovations within a hospital, only if the renovation cost is more than the expenditure minimum. The renovations may not expand the health care facility's current square footage, incur a substantial change to the health services, or a substantial change to the bed capacity;~~

~~(11) Renovations to a skilled nursing facility;~~

~~(12) The donation of major medical equipment to replace like equipment for which a certificate of need has been issued and the replacement does not result in a substantial change to health services. This exemption does not include the donation of major medical equipment made to a health care facility by a related organization;~~

~~(13) A person providing specialized foster care personal care services to one individual and those services are delivered in the provider's home;~~

~~(14) A hospital converting the use of beds except a hospital may not convert a bed to a skilled nursing home bed and conversion of beds may not result in a substantial change to health services provided by the hospital;~~

~~(15) The construction, renovation, maintenance or operation of a state owned veterans skilled nursing facilities established pursuant to the provisions of article one b of this chapter;~~

~~(16) To develop and operate a skilled nursing facility with no more than thirty six beds in a county that currently is without a skilled nursing facility;~~

~~(17) A critical access hospital, designated by the state as a critical access hospital, after meeting all federal eligibility criteria, previously licensed as a hospital and subsequently closed, if it reopens within ten years of its closure;~~

~~(18) The establishing of a health care facility or offering of health services for children under one year of age suffering from Neonatal Abstinence Syndrome;~~

~~(19) The construction, development, acquisition or other establishment of community mental health and intellectual disability facility;~~

~~(20) Providing behavioral health facilities and services;~~

~~(21) The construction, development, acquisition or other establishment of kidney disease treatment centers, including freestanding hemodialysis units but only to a medically underserved population;~~

~~(22) The transfer, purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility providing intermediate care and skilled nursing services. The Department of Health and Human Resources may not create a policy which limits the transfer, purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital. The transferred beds shall retain the same certification status that existed at the nursing home or hospital skilled nursing unit from which they were acquired. If construction is required to place the transferred beds into the acquiring nursing home, the acquiring nursing home has one year from the date of purchase to commence construction;~~

~~(23) The construction, development, acquisition or other establishment by a health care facility of a nonhealth related project, only if the nonhealth related project cost is more than the expenditure minimum;~~

~~(24) The construction, development, acquisition or other establishment of an alcohol or drug treatment facility and drug and alcohol treatment services unless the construction, development, acquisition or other establishment is an opioid treatment facility or programs as set forth in subdivision (4) of section nine of this article;~~

~~(25) Assisted living facilities and services;~~

~~(26) The creation, construction, acquisition or expansion of a community based nonprofit organization with a community board that provides or will provide primary care services to people without regard to ability to pay and receives approval from the Health Resources and Services Administration; and~~

~~(27) The acquisition and utilization of one computed tomography scanner and/or one magnetic resonance imaging scanner with a purchase price of up to \$750,000 by a hospital.~~

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

The yeas and nays having been ordered, they were taken (**Roll No. 211**), and there were—yeas 38, nays 59, absent and not voting 3, with the yeas and the absent and not voting being as follows:

Yeas: Barnhart, Barrett, Clark, Conley, Cooper, Crouse, Dean, Ellington, Espinosa, Fast, Ferrell, Forsht, Foster, Gearheart, Graves, Hamrick, Hardy, Horst, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, Kessinger, Kimble, Kimes, Linville, Longanacre, Mallow, Mazzocchi, Miller, Paynter, Pritt, Rowan, Summers, Sypolt, Tully and Hanshaw (Mr. Speaker).

Absent and Not Voting: Evans, McGeehan and Thompson.

So, a majority of the members present not having voted in the affirmative, the amendment was rejected.

Delegates Summers, Tully, Dean and J. Jefferies moved to amend the bill on page 1, by striking everything after the enacting clause and inserting in lieu thereof the following:

## **ARTICLE 2D. CERTIFICATE OF NEED.**

### **§16-2D-8. Proposed health services that require a certificate of need.**

(a) Except as provided in §16-2D-9, §16-2D-10, and §16-2D-11 of this code, the following proposed health services may not be acquired, offered, or developed within this state except upon approval of and receipt of a certificate of need as provided by this article:

(1) The construction, development, acquisition, or other establishment of a health care facility: Provided, That the construction, development, acquisition, or renovation on the campus of an existing health care facility is not subject to review;

~~(2) The partial or total closure of a health care facility with which a capital expenditure is associated;~~

~~(3) (A) An obligation for a capital expenditure incurred by or on behalf of a health care facility in excess of the expenditure minimum; or~~

~~(B) An obligation for a capital expenditure incurred by a person to acquire a health care facility.~~

~~(4) An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility:~~

~~(A) When a valid contract is entered into by or on behalf of the health care facility for the construction, acquisition, lease, or financing of a capital asset;~~

~~(B) When the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or~~

~~(C) In the case of donated property, on the date on which the gift is completed under state law.~~

~~(5) A substantial change to the bed capacity of a health care facility with which a capital expenditure is associated;~~

~~(6) The addition of ventilator services by a hospital;~~

~~(7) The elimination of health services previously offered on a regular basis by or on behalf of a health care facility which is associated with a capital expenditure;~~

~~(8) (A) A substantial change to the bed capacity or health services offered by or on behalf of a health care facility, whether or not the change is associated with a proposed capital expenditure;~~

~~(B) If the change is associated with a previous capital expenditure for which a certificate of need was issued; and~~

~~(C) If the change will occur within two years after the date the activity which was associated with the previously approved capital expenditure was undertaken.~~

~~(9) The acquisition of major medical equipment;~~

~~(10) A substantial change in an approved health service for which a certificate of need is in effect~~

~~(11) (2) An expansion of the service area for hospice or home health agency regardless of the time period in which the expansion is contemplated or made; and~~

~~(12) The addition of health services offered by or on behalf of a health care facility which were not offered on a regular basis by or on behalf of the health care facility within the 12-month period prior to the time the services would be offered.~~

(b) The following health services are required to obtain a certificate of need regardless of the minimum expenditure:

~~(1) Constructing, developing, acquiring, or establishing a birthing center;~~

~~(2) Providing radiation therapy;~~

~~(3) Providing computed tomography;~~

~~(4) Providing positron emission tomography;~~

~~(5) Providing cardiac surgery;~~

~~(6) Providing fixed magnetic resonance imaging;~~

~~(7) Providing comprehensive medical rehabilitation~~



~~(8)~~ (2) Establishing an ambulatory care center;

~~(9)~~ (3) Establishing an ambulatory surgical center;

~~(10)~~(4) Providing diagnostic imaging;

~~(11)~~ ~~Providing cardiac catheterization services;~~

~~(12)~~ (6) Constructing, developing, acquiring, or establishing kidney disease treatment centers, including freestanding hemodialysis units: Provided, That the development, establishment, acquisition, or renovation of kidney disease treatment center located in a hospital is not subject to review;

~~(13)~~ ~~Providing megavoltage radiation therapy;~~

~~(14)~~ ~~Providing surgical services;~~

~~(15)~~ ~~Establishing operating rooms;~~

~~(16)~~ ~~Adding acute care beds;~~

~~(17)~~ (7) Providing intellectual developmental disabilities services;

~~(18)~~ ~~Providing organ and tissue transplants;~~

~~(19)~~ (8) Establishing an intermediate care facility for individuals with intellectual disabilities;

~~(20)~~ ~~Providing inpatient services;~~

~~(21)~~ (9) Providing hospice services;

~~(22)~~ (10) Establishing a home health agency; and

~~(23)~~ (11) Providing personal care services. and

~~(24)~~ (A) Establishing no more than six four-bed transitional intermediate care facilities: *Provided,* That none of the four-bed sites shall be within five miles of another or adjacent to another behavioral health facility. This subdivision terminates upon the approval of the sixth four-bed intermediate care facility.

~~(B)~~ Only individuals living in more restrictive institutional settings, in similar settings covered by state-only dollars, or at risk of being institutionalized will be given the choice to move, and they will be placed on the Individuals with Intellectual and Developmental Disabilities (IDD) Waiver Managed Enrollment List. Individuals already on the IDD Waiver Managed Enrollment List who live in a hospital or are in an out-of-state placement will continue to progress toward home- and community-based waiver status and will also be considered for all other community-based options, including, but not limited to, specialized family care and personal care.

~~(C)~~ The department shall work to find the most integrated placement based upon an individualized assessment. Individuals already on the IDD waiver will not be considered for placement in the 24 new intermediate care beds.

~~(D) A monitoring committee of not more than 10 members, including a designee of Mountain State Justice, a designee of Disability Rights of West Virginia, a designee of the Statewide Independent Living Council, two members or family of members of the IDD waiver, the Developmental Disabilities Council, the Commissioner of the Bureau of Health and Health Facilities, the Commissioner of the Bureau for Medical Services, and the Commissioner of the Bureau for Children and Families. The secretary of the department shall chair the first meeting of the committee at which time the members shall elect a chairperson. The monitoring committee shall provide guidance on the department's transitional plans for residents in the 24 intermediate care facility beds and monitor progress toward home and community-based waiver status and/or utilizing other community based options and securing the most integrated setting for each individual.~~

~~(E) Any savings resulting from individuals moving from more expensive institutional care or out-of-state placements shall be reinvested into home and community based services for individuals with intellectual developmental disabilities.~~

(c) A certificate of need previously approved under this article remains in effect unless revoked by the authority.

#### **§16-2D-10. Exemptions from certificate of need.**

Notwithstanding §16-2D-8 of this code, a person may provide the following health services without obtaining a certificate of need or applying to the authority for approval:

(1) The creation of a private office of one or more licensed health professionals to practice in this state pursuant to Chapter 30 of this code;

(2) Dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees that does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than 24 hours;

(3) A place that provides remedial care or treatment of residents or patients conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination;

(4) Telehealth;

(5) A facility owned or operated by one or more health professionals authorized or organized pursuant to chapter thirty or ambulatory health care facility which offers laboratory services or diagnostic imaging to patients regardless of the cost associated with the proposal. To qualify for this exemption 75% of the laboratory services are for the patients of the practice or ambulatory health care facility of the total laboratory services performed and seventy-five percent of diagnostic imaging services are for the patients of the practice or ambulatory health care facility of the total imaging services performed. The authority may, at any time, request from the entity information concerning the number of patients who have been provided laboratory services or diagnostic imaging;

(6) (A) Notwithstanding the provisions of §16-2D-17 of this code, any hospital that holds a valid certificate of need issued pursuant to this article, may transfer that certificate of need to a person purchasing that hospital, or all or substantially all of its assets, if the hospital is financially distressed. A hospital is financially distressed if, at the time of its purchase:

(i) It has filed a petition for voluntary bankruptcy;

(ii) It has been the subject of an involuntary petition for bankruptcy;

(iii) It is in receivership;

(iv) It is operating under a forbearance agreement with one or more of its major creditors;

(v) It is in default of its obligations to pay one or more of its major creditors and is in violation of the material, substantive terms of its debt instruments with one or more of its major creditors; or

(vi) It is insolvent: evidenced by balance sheet insolvency and/or the inability to pay its debts as they come due in the ordinary course of business.

(B) A financially distressed hospital which is being purchased pursuant to the provisions of this subsection shall give notice to the authority of the sale 30 days prior to the closing of the transaction and shall file simultaneous with that notice evidence of its financial status. The financial status or distressed condition of a hospital shall be evidenced by the filing of any of the following:

(i) A copy of a forbearance agreement;

(ii) A copy of a petition for voluntary or involuntary bankruptcy;

(iii) Written evidence of receivership, or

(iv) Documentation establishing the requirements of subparagraph (v) or (vi), paragraph (A) of this subdivision. The names of creditors may be redacted by the filing party.

(C) Any substantial change to the capacity of services offered in that hospital made subsequent to that transaction would remain subject to the requirements for the issuance of a certificate of need as otherwise set forth in this article.

(D) Any person purchasing a financially distressed hospital, or all or substantially all of its assets, that has applied for a certificate of need after January 1, 2017, shall qualify for an exemption from certificate of need;

(7) The acquisition by a qualified hospital which is party to an approved cooperative agreement as provided in §16-29B-28 of this code, of a hospital located within a distance of twenty highway miles of the main campus of the qualified hospital; and

(8) The acquisition by a hospital of a physician practice group which owns an ambulatory surgical center as defined in this article.

(9) The construction, development, acquisition, or renovation on the campus of an existing health care facility is not subject to review.

(10) The partial or total closure of a health care facility with which a capital expenditure is associated.

(11) (A) An obligation for a capital expenditure incurred by or on behalf of a health care facility in excess of the expenditure minimum; or

(B) An obligation for a capital expenditure incurred by a person to acquire a health care facility.

(12) An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility;

(A) When a valid contract is entered into by or on behalf of the health care facility for the construction, acquisition, lease, or financing of a capital asset;

(B) When the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or

(C) When donated property, on the date on which the gift is completed under state law.

(13) A substantial change to the bed capacity of a health care facility with which a capital expenditure is associated.

(14) The addition of ventilator services by a hospital.

(15) The elimination of health services previously offered on a regular basis by or on behalf of a health care facility which is associated with a capital expenditure.

(16) (A) A substantial change to the bed capacity or health services offered by or on behalf of a health care facility, whether or not the change is associated with a proposed capital expenditure;

(B) If the change is associated with a previous capital expenditure for which a certificate of need was issued; and

(C) If the change will occur within two years after the date the activity which was associated with the previously approved capital expenditure was undertaken.

(17) The acquisition of major medical equipment.

(18) A substantial change in an approved health service for which a certificate of need is in effect.

(19) Constructing, developing, acquiring, or establishing a birthing center;

(20) Providing radiation therapy;

(21) Providing computed tomography;

(22) Providing positron emission tomography;

(23) Providing comprehensive medical rehabilitation;

(24) The development, establishment, acquisition, or renovation of kidney disease treatment center located in a hospital is not subject to review;

(25) Providing megavoltage radiation therapy;

(26) Providing surgical services;

(27) Establishing operating rooms;

(28) Adding acute care beds;

(29) Providing organ and tissue transplants;

(30) Providing inpatient services;

(31) Providing cardiac surgery; and

(32) Providing cardiac catheterization services.

**§16-2D-11. Exemptions from Certificate of Need which require the submission of information to the authority.**

(a) To obtain an exemption under this section a person shall:

(1) File an exemption application; and

(2) Provide a statement detailing which exemption applies and the circumstances justifying the exemption.

(b) Notwithstanding §16-2D-8 and §16-2D-10 and except as provided in §16-2D-9 of this code, the Legislature finds that a need exists, and these health services are exempt from the certificate of need process:

~~(1) The acquisition and utilization of one computed tomography scanner with a purchase price up to \$750,000 that is installed in a private office practice where at minimum seventy five percent of the scans are performed on the patients of the practice. The private office practice shall obtain and maintain accreditation from the American College of Radiology prior to, and at all times during, the offering of this service. The authority may at any time request from the private office practice information relating to the number of patients who have been provided scans and proof of active and continuous accreditation from the American College of Radiology. If a physician owns or operates a private office practice in more than one location, this exemption shall only apply to the physician's primary place of business and if a physician wants to expand the offering of this service to include more than one computed topography scanner, he or she shall be required to obtain a certificate of need prior to expanding this service. All current certificates of need issued for computed tomography services, with a required percentage threshold of scans to be performed on patients of the practice in excess of seventy five percent, shall be reduced to seventy five percent: *Provided*, That these limitations on the exemption for a private office practice with more than one location shall not apply to a private office practice with more than twenty locations in the state on April 8, 2017.~~

~~(2) (A) A birthing center established by a nonprofit primary care center that has a community board and provides primary care services to people in their community without regard to ability to pay; or~~

~~(B) A birthing center established by a nonprofit hospital with less than one hundred licensed acute care beds.~~

~~(i) To qualify for this exemption, an applicant shall be located in an area that is underserved with respect to low-risk obstetrical services; and~~

~~(ii) Provide a proposed health service area.~~

~~(3) (A) A health care facility acquiring major medical equipment, adding health services or obligating a capital expenditure to be used solely for research;~~

~~(B) To qualify for this exemption, the health care facility shall show that the acquisition, offering or obligation will not:~~

~~(i) Affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research;~~

~~(ii) Result in a substantial change to the bed capacity of the facility; or~~

~~(iii) Result in a substantial change to the health services of the facility.~~

~~(C) For purposes of this subdivision, the term "solely for research" includes patient care provided on an occasional and irregular basis and not as part of a research program;~~

~~(4) The obligation of a capital expenditure to acquire, either by purchase, lease or comparable arrangement, the real property, equipment or operations of a skilled nursing facility: *Provided*, That a skilled nursing facility developed pursuant to subdivision (17) of this section and subsequently acquired pursuant to this subdivision may not transfer or sell any of the skilled nursing home beds of the acquired skilled nursing facility until the skilled nursing facility has been in operation for at least ten years.~~

~~(5) Shared health services between two or more hospitals licensed in West Virginia providing health services made available through existing technology that can reasonably be mobile. This exemption does not include providing mobile cardiac catheterization~~

~~(6) (1) The acquisition, development or establishment of a certified interoperable electronic health record or electronic medical record system;~~

~~(7) (2) The addition of forensic beds in a health care facility;~~

~~(8) (3) A behavioral health service selected by the Department of Health and Human Resources in response to its request for application for services intended to return children currently placed in out-of-state facilities to the state or to prevent placement of children in out-of-state facilities is not subject to a certificate of need;~~

~~(9) (4) The replacement of major medical equipment with like equipment, only if the replacement major medical equipment cost is more than the expenditure minimum;~~

~~(10) Renovations within a hospital, only if the renovation cost is more than the expenditure minimum. The renovations may not expand the health care facility's current square footage, incur a substantial change to the health services, or a substantial change to the bed capacity;~~

~~(11) (5) Renovations to a skilled nursing facility;~~

~~(12) The donation of major medical equipment to replace like equipment for which a certificate of need has been issued and the replacement does not result in a substantial change to health services. This exemption does not include the donation of major medical equipment made to a health care facility by a related organization~~

~~(13) (6) A person providing specialized foster care personal care services to one individual and those services are delivered in the provider's home;~~

~~(14) A hospital converting the use of beds except a hospital may not convert a bed to a skilled nursing home bed and conversion of beds may not result in a substantial change to health services provided by the hospital~~

~~(15)~~ (7) The construction, renovation, maintenance, or operation of a state owned veterans skilled nursing facilities established pursuant to the provisions of §16-1B-1 *et seq.* of this code;

~~(16)~~ To develop and operate a skilled nursing facility with no more than thirty six beds in a county that currently is without a skilled nursing facility

(17) (8) A critical access hospital, designated by the state as a critical access hospital, after meeting all federal eligibility criteria, previously licensed as a hospital and subsequently closed, if it reopens within 10 years of its closure;

(18) (9) The establishing of a health care facility or offering of health services for children under one year of age suffering from Neonatal Abstinence Syndrome;

(19) (10) The construction, development, acquisition or other establishment of community mental health and intellectual disability facility;

(20) (11) Providing behavioral health facilities and services;

(21) (12) The construction, development, acquisition, or other establishment of kidney disease treatment centers, including freestanding hemodialysis units but only to a medically underserved population;

(22) (13) The transfer, purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility providing intermediate care and skilled nursing services. The Department of Health and Human Resources may not create a policy which limits the transfer, purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital. The transferred beds shall retain the same certification status that existed at the nursing home or hospital skilled nursing unit from which they were acquired. If construction is required to place the transferred beds into the acquiring nursing home, the acquiring nursing home has one year from the date of purchase to commence construction;

~~(23)~~ The construction, development, acquisition or other establishment by a health care facility of a nonhealth related project, only if the nonhealth related project cost is more than the expenditure minimum;

(24) (14) The construction, development, acquisition or other establishment of an alcohol or drug treatment facility and drug and alcohol treatment services unless the construction, development, acquisition, or other establishment is an opioid treatment facility or programs as set forth in §16-2D-9 (4) of this code;

~~(25)~~ (15) Assisted living facilities and services; and

(26) (16) The creation, construction, acquisition, or expansion of a community-based nonprofit organization with a community board that provides or will provide primary care services to people without regard to ability to pay and receives approval from the Health Resources and Services Administration. and

~~(27)~~ The acquisition and utilization of one computed tomography scanner and/or one magnetic resonance imaging scanner with a purchase price of up to \$750,000 by a hospital.

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

The yeas and nays having been ordered, they were taken (**Roll No. 212**), and there were—yeas 38, nays 59, absent and not voting 3, with the yeas and the absent and not voting being as follows:

Yeas: Barnhart, Barrett, Clark, Conley, Cooper, Crouse, Dean, Ellington, Espinosa, Fast, Ferrell, Forsht, Foster, Gearheart, Graves, Hamrick, Hardy, Horst, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, Kessinger, Kimble, Kimes, Linville, Longanacre, Mallow, Mazzocchi, Miller, Paynter, Pritt, Rowan, Summers, Sypolt, Tully and Hanshaw (Mr. Speaker).

Absent and Not Voting: Evans, McGeehan and Thompson.

So, a majority of the members present not having voted in the affirmative, the amendment was rejected.

Delegates Summers, Tully, Dean, and J. Jefferies moved to amend the bill on page 1, by striking everything after the enacting clause and inserting in lieu thereof the following:

## **ARTICLE 2D. CERTIFICATE OF NEED.**

### **§16-2D-8. Proposed health services that require a certificate of need.**

(a) Except as provided in §16-2D-9 §16-2D-10, and §16-2D-11—of this code, the following proposed health services may not be acquired, expanded, offered, or developed within this state except upon approval of and receipt of a certificate of need as provided by this article:

(1) The construction, development, acquisition, or other establishment of a health care facility;

(2) The partial or total closure of a health care facility with which a capital expenditure is associated;

(3) (A) An obligation for a capital expenditure incurred by or on behalf of a health care facility in excess of the expenditure minimum; or

(B) An obligation for a capital expenditure incurred by a person to acquire a health care facility.

(4) An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility:

(A) When a valid contract is entered into by or on behalf of the health care facility for the construction, acquisition, lease, or financing of a capital asset;

(B) When the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or

(C) In the case of donated property, on the date on which the gift is completed under state law.

~~(5) A substantial change to the bed capacity of a health care facility with which a capital expenditure is associated;~~

~~(6) The addition of ventilator services by a hospital;~~



~~(7) (5) The elimination of health services previously offered on a regular basis by or on behalf of a health care facility which is associated with a capital expenditure;~~

~~(8) (A) A substantial change to the bed capacity or health services offered by or on behalf of a health care facility, whether or not the change is associated with a proposed capital expenditure;~~

~~(B) If the change is associated with a previous capital expenditure for which a certificate of need was issued; and~~

~~(C) If the change will occur within two years after the date the activity which was associated with the previously approved capital expenditure was undertaken.~~

~~(9) (6) The acquisition of major medical equipment; and~~

~~(10) A substantial change in an approved health service for which a certificate of need is in effect;~~

~~(11) (7) An expansion of the service area for hospice or home health agency regardless of the time period in which the expansion is contemplated or made. and~~

~~(12) The addition of health services offered by or on behalf of a health care facility which were not offered on a regular basis by or on behalf of the health care facility within the 12-month period prior to the time the services would be offered.~~

(b) The following health services are required to obtain a certificate of need regardless of the minimum expenditure:

~~(1) Constructing, developing, acquiring, or establishing a birthing center;~~

~~(2) (1) Providing radiation therapy;~~

~~(3) (2) Providing computed tomography;~~

~~(4) (3) Providing positron emission tomography;~~

~~(5) (4) Providing cardiac surgery;~~

~~(6) (5) Providing fixed magnetic resonance imaging;~~

~~(7) (6) Providing comprehensive medical rehabilitation;~~

~~(8) (7) Establishing an ambulatory care center;~~

~~(9) (8) Establishing an ambulatory surgical center;~~

~~(10) (9) Providing diagnostic imaging;~~

~~(11) (10) Providing cardiac catheterization services;~~

~~(12) (11) Constructing, developing, acquiring, or establishing kidney disease treatment centers, including freestanding hemodialysis units;~~

~~(13) (12) Providing megavoltage radiation therapy;~~

~~(14)~~ ~~Providing surgical services;~~

~~(15)~~ ~~Establishing operating rooms;~~

~~(16)~~ (13) Adding acute care beds;

~~(17)~~ (14) Providing intellectual developmental disabilities services;

~~(18)~~ (15) Providing organ and tissue transplants;

~~(19)~~ (16) Establishing an intermediate care facility for individuals with intellectual disabilities;

~~(20)~~ ~~Providing inpatient services;~~

~~(21)~~ (17) Providing hospice services;

~~(22)~~ (18) Establishing a home health agency; and

~~(23)~~ (19) Providing personal care services. and

~~(24)~~ (20) (A) Establishing no more than six four-bed transitional intermediate care facilities: *Provided*, That none of the four-bed sites shall be within five miles of another or adjacent to another behavioral health facility. This subdivision terminates upon the approval of the sixth four-bed intermediate care facility.

(B) Only individuals living in more restrictive institutional settings, in similar settings covered by state-only dollars, or at risk of being institutionalized will be given the choice to move, and they will be placed on the Individuals with Intellectual and Developmental Disabilities (IDD) Waiver Managed Enrollment List. Individuals already on the IDD Waiver Managed Enrollment List who live in a hospital or are in an out-of-state placement will continue to progress toward home- and community-based waiver status and will also be considered for all other community-based options, including, but not limited to, specialized family care and personal care.

(C) The department shall work to find the most integrated placement based upon an individualized assessment. Individuals already on the IDD waiver will not be considered for placement in the 24 new intermediate care beds.

(D) A monitoring committee of not more than 10 members, including a designee of Mountain State Justice, a designee of Disability Rights of West Virginia, a designee of the Statewide Independent Living Council, two members or family of members of the IDD waiver, the Developmental Disabilities Council, the Commissioner of the Bureau of Health and Health Facilities, the Commissioner of the Bureau for Medical Services, and the Commissioner of the Bureau for Children and Families. The secretary of the department shall chair the first meeting of the committee at which time the members shall elect a chairperson. The monitoring committee shall provide guidance on the department's transitional plans for residents in the 24 intermediate care facility beds and monitor progress toward home- and community-based waiver status and/or utilizing other community-based options and securing the most integrated setting for each individual.

(E) Any savings resulting from individuals moving from more expensive institutional care or out-of-state placements shall be reinvested into home- and community-based services for individuals with intellectual developmental disabilities.

(c) A certificate of need previously approved under this article remains in effect unless revoked by the authority.

**§16-2D-10. Exemptions from certificate of need.**

Notwithstanding §16-2D-8, a person may provide the following health services without obtaining a certificate of need or applying to the authority for approval.

(1) The creation of a private office of one or more licensed health professionals to practice in this state pursuant to chapter thirty of this code;

(2) Dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees that does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four hours;

(3) A place that provides remedial care or treatment of residents or patients conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination;

(4) Telehealth;

(5) A facility owned or operated by one or more health professionals authorized or organized pursuant to chapter thirty or ambulatory health care facility which offers laboratory services or diagnostic imaging to patients regardless of the cost associated with the proposal. To qualify for this exemption seventy-five percent of the laboratory services are for the patients of the practice or ambulatory health care facility of the total laboratory services performed and seventy-five percent of diagnostic imaging services are for the patients of the practice or ambulatory health care facility of the total imaging services performed. The authority may, at any time, request from the entity information concerning the number of patients who have been provided laboratory services or diagnostic imaging;

(6) (A) Notwithstanding the provisions of section seventeen of this article, any hospital that holds a valid certificate of need issued pursuant to this article, may transfer that certificate of need to a person purchasing that hospital, or all or substantially all of its assets, if the hospital is financially distressed. A hospital is financially distressed if, at the time of its purchase:

(i) It has filed a petition for voluntary bankruptcy;

(ii) It has been the subject of an involuntary petition for bankruptcy;

(iii) It is in receivership;

(iv) It is operating under a forbearance agreement with one or more of its major creditors;

(v) It is in default of its obligations to pay one or more of its major creditors and is in violation of the material, substantive terms of its debt instruments with one or more of its major creditors; or

(vi) It is insolvent: evidenced by balance sheet insolvency and/or the inability to pay its debts as they come due in the ordinary course of business.

(B) A financially distressed hospital which is being purchased pursuant to the provisions of this subsection shall give notice to the authority of the sale thirty days prior to the closing of the transaction

and shall file simultaneous with that notice evidence of its financial status. The financial status or distressed condition of a hospital shall be evidenced by the filing of any of the following:

(i) A copy of a forbearance agreement;

(ii) A copy of a petition for voluntary or involuntary bankruptcy;

(iii) Written evidence of receivership, or

(iv) Documentation establishing the requirements of subparagraph (v) or (vi), paragraph (A) of this subdivision. The names of creditors may be redacted by the filing party.

(C) Any substantial change to the capacity of services offered in that hospital made subsequent to that transaction would remain subject to the requirements for the issuance of a certificate of need as otherwise set forth in this article.

(D) Any person purchasing a financially distressed hospital, or all or substantially all of its assets, that has applied for a certificate of need after January 1, 2017, shall qualify for an exemption from certificate of need;

(7) The acquisition by a qualified hospital which is party to an approved cooperative agreement as provided in §16-29B-28 of this code, of a hospital located within a distance of twenty highway miles of the main campus of the qualified hospital; and

(8) The acquisition by a hospital of a physician practice group which owns an ambulatory surgical center as defined in this article;

(9) A substantial change in an approved health service for which a certificate of need is in effect;

(10) The addition of health services offered by or on behalf of a health care facility which were not offered on a regular basis by or on behalf of the health care facility within the 12-month period prior to the time the services would be offered.

(11) Constructing, developing, acquiring, or establishing a birthing center;

(12) Providing surgical services;

(13) Establishing operating rooms;

(14) The addition of ventilator services by a hospital; and

(15) Providing inpatient services.

**§16-2D-11. Exemptions from Certificate of Need which require the submission of information to the authority.**

(a) To obtain an exemption under this section a person shall:

(1) File an exemption application; and

(2) Provide a statement detailing which exemption applies and the circumstances justifying the exemption.

(b) Notwithstanding section eight and ten and except as provided in section nine of this article, the Legislature finds that a need exists and these health services are exempt from the certificate of need process:

(1) The acquisition and utilization of one computed tomography scanner with a purchase price up to \$750,000 that is installed in a private office practice where at minimum seventy-five percent of the scans are performed on the patients of the practice. The private office practice shall obtain and maintain accreditation from the American College of Radiology prior to, and at all times during, the offering of this service. The authority may at any time request from the private office practice information relating to the number of patients who have been provided scans and proof of active and continuous accreditation from the American College of Radiology. If a physician owns or operates a private office practice in more than one location, this exemption shall only apply to the physician's primary place of business and if a physician wants to expand the offering of this service to include more than one computed topography scanner, he or she shall be required to obtain a certificate of need prior to expanding this service. All current certificates of need issued for computed tomography services, with a required percentage threshold of scans to be performed on patients of the practice in excess of seventy-five percent, shall be reduced to seventy-five percent: *Provided*, That these limitations on the exemption for a private office practice with more than one location shall not apply to a private office practice with more than twenty locations in the state on April 8, 2017.

~~(2) (A) A birthing center established by a nonprofit primary care center that has a community board and provides primary care services to people in their community without regard to ability to pay; or~~

~~(B) A birthing center established by a nonprofit hospital with less than one hundred licensed acute care beds.~~

~~(i) To qualify for this exemption, an applicant shall be located in an area that is underserved with respect to low-risk obstetrical services; and~~

~~(ii) Provide a proposed health service area.~~

~~(3) (A) A health care facility acquiring major medical equipment, adding health services or obligating a capital expenditure to be used solely for research;~~

~~(B) To qualify for this exemption, the health care facility shall show that the acquisition, offering or obligation will not:~~

~~(i) Affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research;~~

~~(ii) Result in a substantial change to the bed capacity of the facility; or~~

~~(iii) Result in a substantial change to the health services of the facility.~~

~~(C) For purposes of this subdivision, the term "solely for research" includes patient care provided on an occasional and irregular basis and not as part of a research program;~~

~~(4) (3) The obligation of a capital expenditure to acquire, either by purchase, lease or comparable arrangement, the real property, equipment or operations of a skilled nursing facility: *Provided*, That a skilled nursing facility developed pursuant to subdivision (17) of this section and subsequently acquired pursuant to this subdivision may not transfer or sell any of the skilled nursing home beds of~~

the acquired skilled nursing facility until the skilled nursing facility has been in operation for at least ten years.

~~(5)~~ (4) Shared health services between two or more hospitals licensed in West Virginia providing health services made available through existing technology that can reasonably be mobile. This exemption does not include providing mobile cardiac catheterization;

~~(6)~~ (5) The acquisition, development or establishment of a certified interoperable electronic health record or electronic medical record system;

~~(7)~~ (6) The addition of forensic beds in a health care facility;

~~(8)~~ (7) A behavioral health service selected by the Department of Health and Human Resources in response to its request for application for services intended to return children currently placed in out-of-state facilities to the state or to prevent placement of children in out-of-state facilities is not subject to a certificate of need;

~~(9)~~ (8) The replacement of major medical equipment with like equipment, only if the replacement major medical equipment cost is more than the expenditure minimum;

~~(10)~~ (9) Renovations within a hospital, only if the renovation cost is more than the expenditure minimum. The renovations may not expand the health care facility's current square footage, incur a substantial change to the health services, or a substantial change to the bed capacity;

~~(11)~~ (10) Renovations to a skilled nursing facility;

~~(12)~~ (11) The donation of major medical equipment to replace like equipment for which a certificate of need has been issued and the replacement does not result in a substantial change to health services. This exemption does not include the donation of major medical equipment made to a health care facility by a related organization;

~~(13)~~ (12) A person providing specialized foster care personal care services to one individual and those services are delivered in the provider's home;

~~(14)~~ (13) A hospital converting the use of beds except a hospital may not convert a bed to a skilled nursing home bed and conversion of beds may not result in a substantial change to health services provided by the hospital;

~~(15)~~ (14) The construction, renovation, maintenance or operation of a state owned veterans skilled nursing facilities established pursuant to the provisions of article one-b of this chapter;

~~(16)~~ (15) To develop and operate a skilled nursing facility with no more than thirty-six beds in a county that currently is without a skilled nursing facility;

~~(17)~~ (16) A critical access hospital, designated by the state as a critical access hospital, after meeting all federal eligibility criteria, previously licensed as a hospital and subsequently closed, if it reopens within ten years of its closure;

~~(18)~~ (17) The establishing of a health care facility or offering of health services for children under one year of age suffering from Neonatal Abstinence Syndrome;

~~(19)~~ (18) The construction, development, acquisition or other establishment of community mental health and intellectual disability facility;

~~(20)~~ (19) Providing behavioral health facilities and services;

~~(21)~~ (20) The construction, development, acquisition or other establishment of kidney disease treatment centers, including freestanding hemodialysis units but only to a medically underserved population;

~~(22)~~ (21) The transfer, purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility providing intermediate care and skilled nursing services. The Department of Health and Human Resources may not create a policy which limits the transfer, purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital. The transferred beds shall retain the same certification status that existed at the nursing home or hospital skilled nursing unit from which they were acquired. If construction is required to place the transferred beds into the acquiring nursing home, the acquiring nursing home has one year from the date of purchase to commence construction;

~~(23)~~ (22) The construction, development, acquisition or other establishment by a health care facility of a nonhealth related project, only if the nonhealth related project cost is more than the expenditure minimum;

~~(24)~~ (23) The construction, development, acquisition or other establishment of an alcohol or drug treatment facility and drug and alcohol treatment services unless the construction, development, acquisition or other establishment is an opioid treatment facility or programs as set forth in subdivision (4) of section nine of this article;

~~(25)~~ (24) Assisted living facilities and services;

~~(26)~~ (25) The creation, construction, acquisition or expansion of a community-based nonprofit organization with a community board that provides or will provide primary care services to people without regard to ability to pay and receives approval from the Health Resources and Services Administration; and

~~(27)~~ (26) The acquisition and utilization of one computed tomography scanner and/or one magnetic resonance imaging scanner with a purchase price of up to \$750,000 by a hospital.”

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

The yeas and nays having been ordered, they were taken (**Roll No. 213**), and there were—yeas 37, nays 60, absent and not voting 3, with the yeas and the absent and not voting being as follows:

Yeas: Barnhart, Barrett, Clark, Conley, Cooper, Crouse, Dean, Espinosa, Fast, Ferrell, Forsht, Foster, Gearheart, Graves, Hamrick, Hardy, Horst, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, Kessinger, Kimble, Kimes, Linville, Longanacre, Mallow, Mazzocchi, Miller, Paynter, Pritt, Rowan, Summers, Sypolt, Tully and Hanshaw (Mr. Speaker).

Absent and Not Voting: Evans, McGeehan and Thompson.

So, a majority of the members present not having voted in the affirmative, the amendment was rejected.

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 4667**, Prohibition on county, city, or municipality restrictions on advanced air mobility aircraft; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4668**, Relating to air bag fraud; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4691**, Provide a 45 day waiting period before a water and sewer rate increase may go into effect for any locally rate regulated municipality; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 4758**, Relating to developing and maintaining a database to track reclamation liabilities in the West Virginia Department of Environmental Protection Special Reclamation Program; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 4761**, Authorizing the Secretary of the Department of Health and Human Resources to develop a submission procedures manual and adopt the same as a procedural rule; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4768**, Relating to change hearing location and customer notice provisions; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 4769**, Eliminate the requirement to send recommended decisions by certified mail; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4785**, Relating to judicial vacancies; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4797**, To create an EV Infrastructure Deployment Plan for West Virginia that describes how our state intends to use its share of NEVI Formula Program funds.; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Toney, the bill was amended on page 1, section 1, line 1, by deleting everything after the enacting clause and inserting in lieu thereof the following:

**“ARTICLE 30. ELECTRIC VEHICLE ECONOMIC DEVELOPMENT PLAN.**

**§17-30-1. Department of Transportation to develop electric vehicle plan.**

The Department of Transportation shall create an Electric Vehicle Infrastructure Development Plan for West Virginia that describes how our state intends to use its share of NEVI Formula Program funds. The plan shall take a wholistic approach, considering the future charging infrastructure needs of school systems, public transportation, counties and municipalities, and other public and private users. The Department shall share this plan and report with the interim Joint Committee of Government and Finance by July 1, 2022.”

The bill was then ordered to engrossment and third reading.



### First Reading

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

**Com. Sub. for H. B. 4491**, To establish requirements for carbon dioxide sequestration,

**H. B. 4627**, To provide for no more than two licensed laboratories for medical cannabis testing in this state,

And,

**Com. Sub. for H. B. 4712**, Require the prompt enrollment in payment plans for costs, fines, forfeitures, restitution, or penalties in circuit court and magistrate court.

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

### Committee Reports

Mr. Speaker (Mr. Hanshaw), Chair of the Committee on Rules submitted the following report, which was received:

Your Committee on Rules has had under consideration:

**H. R. 15**, Amend House Rules 94 and 94b to allow unlimited joint sponsors and requests to be made through the delegate console,

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

Mr. Speaker (Mr. Hanshaw), Chair of the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

**H. C. R. 81**, U.S. Army Chief Warrant Officer Milford Arnold Cunningham Memorial Bridge,

**H. C. R. 83**, U.S. Army SGT Charles L. Toppings Memorial Road,

**H. C. R. 84**, U. S. Navy, Water Tender 3rd Class, V-6, Lewis Glenn Mills Memorial Boulevard,

And,

**H. C. R. 87**, Joseph Allen Wyatt, Fire Chief of Cowen VFD Memorial Intersection,

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

### Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates, as follows:

**H. B. 4264**, Change designation of Glenville State College to “Glenville State University”.

### **Leaves of Absence**

At the request of Delegate Summers, and by unanimous consent, leaves of absence for the day were granted Delegates Evans and Thompson.

### **Miscellaneous Business**

During the X Order of Business, Delegate Hamrick asked and obtained unanimous consent to be added as a cosponsor of Com. Sub. for H. B. 4345, Com. Sub. for H. B. 4566 and Com. Sub. for H. B. 4797.

Pursuant to House Rule 94b, forms were filed with the Clerk’s Office to be added as a cosponsor of the following:

**H. B. 2845**: Delegate B. Ward;

**H. B. 4510**: Delegate Statler;

**H. B. 4662**: Delegate Dean;

**H. B. 4678**: Delegate Dean;

**H. B. 4736**: Delegate B. Ward;

**H. B. 4792**: Delegate Dean;

And,

**H. B. 4827**: Delegates Hamrick, Riley and B. Ward.

Pursuant to House Rule 94b, a form was filed with the Clerk’s Office to be removed as a cosponsor of the following:

**H. B. 4419**: Delegate Kimble.

Pursuant to House Rule 132, unanimous consent was requested and obtained to print the remarks of the following Members in the Appendix to the Journal:

- Delegates Espinosa and Kimble regarding H. J. R. 102

At 3:34 p.m., the House of Delegates adjourned until 11:00 a.m., Wednesday, February 23, 2022.

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

## **SPECIAL CALENDAR**

**Wednesday, February 23, 2022**

**43<sup>rd</sup> Day**

**11:00 A. M.**

### **UNFINISHED BUSINESS**

- H. R. 12 - Supporting the signing of a Bilateral Trade Agreement (BTA) between the United States and the Republic of China (Taiwan)
- H. R. 15 - Amend House Rules 94 and 94b to allow unlimited joint sponsors and requests to be made through the delegate console [SHALL THE RESOLUTION BE REJECTED?]
- H. C. R. 42 - Urging U.S. universities to relocate Chinese language programs from mainland China to Taiwan
- H. C. R. 81 - U.S. Army Chief Warrant Officer Milford Arnold Cunningham Memorial Bridge
- H. C. R. 83 - U.S. Army SGT Charles L. Toppings Memorial Road
- H. C. R. 84 - U. S. Navy, Water Tender 3rd Class, V-6, Lewis Glenn Mills Memorial Boulevard
- H. C. R. 87 - Joseph Allen Wyatt, Fire Chief of Cowen VFD Memorial Intersection

### **THIRD READING**

- H. B. 3082 - Stabilizing funding sources for the DEP Division of Air Quality [FINANCE COMMITTEE TITLE AMENDMENT PENDING] (HOUSEHOLDER) (REGULAR)
- Com. Sub. for H. B. 4344 - Relating to foster care (HOUSEHOLDER) (REGULAR)
- Com. Sub. for H. B. 4345 - Relating to motor vehicle registration cards by establishing electronic or mobile registration cards (STEELE) (REGULAR)
- H. B. 4391 - Relating generally to school nurses [FINANCE COMMITTEE TITLE AMENDMENT PENDING] (HOUSEHOLDER) (REGULAR)
- Com. Sub. for H. B. 4479 - Establishing the Coalfield Communities Grant Facilitation Commission (HOUSEHOLDER) (REGULAR)
- H. B. 4496 - Allowing interest and earnings on federal COVID-19 relief moneys to be retained in the funds or accounts where those moneys are invested (HOUSEHOLDER) (REGULAR)

- Com. Sub. for H. B. 4607 - To remove opioid treatment programs from requiring a certificate of need (ROHRBACH) (REGULAR)
- Com. Sub. for H. B. 4636 - Clarifying when business and occupation taxes owed to a city or municipality are considered to be remitted on time (CAPITO) (REGULAR)
- H. B. 4643 - Exempting certain health services from certificate of need (ROHRBACH) (REGULAR)
- Com. Sub. for H. B. 4667 - Prohibition on county, city, or municipality restrictions on advanced air mobility aircraft (CAPITO) (REGULAR)
- Com. Sub. for H. B. 4668 - Relating to air bag fraud (CAPITO) (REGULAR)
- Com. Sub. for H. B. 4691 - Provide a 45 day waiting period before a water and sewer rate increase may go into effect for any locally rate regulated municipality (STEELE) (REGULAR)
- H. B. 4758 - Relating to developing and maintaining a database to track reclamation liabilities in the West Virginia Department of Environmental Protection Special Reclamation Program (ANDERSON) (REGULAR)
- H. B. 4761 - Authorizing the Secretary of the Department of Health and Human Resources to develop a submission procedures manual and adopt the same as a procedural rule (ROHRBACH) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for H. B. 4768 - Relating to change hearing location and customer notice provisions (STEELE) (REGULAR)
- H. B. 4769 - Eliminate the requirement to send recommended decisions by certified mail (STEELE) (REGULAR)
- Com. Sub. for H. B. 4785 - Relating to judicial vacancies (CAPITO) (REGULAR)
- Com. Sub. for H. B. 4797 - To create an EV Infrastructure Deployment Plan for West Virginia that describes how our state intends to use its share of NEVI Formula Program funds (STEELE) (REGULAR)

### **SECOND READING**

- Com. Sub. for H. B. 4491 - To establish requirements for carbon dioxide sequestration (CAPITO) (REGULAR)
- H. B. 4627 - To provide for no more than two licensed laboratories for medical cannabis testing in this state (CAPITO) (REGULAR)
- Com. Sub. for H. B. 4712 - Require the prompt enrollment in payment plans for costs, fines, forfeitures, restitution, or penalties in circuit court and magistrate court (CAPITO) (REGULAR)

## **FIRST READING**

- Com. Sub. for S. B. 25 - Updating provisions of Medical Professional Liability Act (CAPITO) (REGULAR)
- Com. Sub. for S. B. 221 - Establishing occupational therapy compact
- Com. Sub. for S. B. 452 - Permitting civil remedies for unauthorized disclosure of intimate images (CAPITO) (REGULAR)
- Com. Sub. for H. B. 2092 - Requiring each high school student to complete a full credit course of study in personal finance (ELLINGTON) (REGULAR)
- Com. Sub. for H. B. 4492 - Creating the Division of Multimodal Transportation (STEELE) (REGULAR)
- Com. Sub. for H. B. 4510 - To provide that third grade students be competent in reading and math before moving on to fourth grade (ELLINGTON) (JULY 1, 2022)
- Com. Sub. for H. B. 4634 - Relating to occupational licensing or other authorization to practice (STEELE) (REGULAR)
- Com. Sub. for H. B. 4675 - Relating to autonomous delivery vehicles (CAPITO) (REGULAR)
- Com. Sub. for H. B. 4731 - To establish the Occupational Therapy Licensure Compact (STEELE) (REGULAR)
- H. B. 4743 - Relating to security and surveillance requirements of medical cannabis organization facilities (CAPITO) (REGULAR)
- H. B. 4773 - Adoption of the FCC customer service and technical standards and requiring certain cable operators to operate an in-state customer call center (CAPITO) (REGULAR)



## **HOUSE CALENDAR**

**Wednesday, February 23, 2022**

**43<sup>rd</sup> Day**

**11:00 A. M.**

### **THIRD READING**

- Com. Sub. for H. B. 4105 - Relating to service employees with National Association for Pupil Transportation Certifications (ELLINGTON) (REGULAR)
- H. B. 4314 - Exclude Solicitor from the definition of Investment Advisor (CAPITO) (REGULAR)
- H. B. 4462 - Relating to Deferred Retirement Option Plan evaluations (HOUSEHOLDER) (REGULAR)

### **SECOND READING**

- H. B. 2882 - Relating to repealing a ban on construction of nuclear power plants (STEELE) (REGULAR)
- Com. Sub. for H. B. 2910 - To modify the allowable number of magistrate judges per county (CAPITO) (REGULAR)
- H. B. 4331 - West Virginia's Urban Mass Transportation Authority Act (CAPITO) (REGULAR)
- Com. Sub. for H. B. 4625 - To remove Medicare or Medicaid-certified facilities from COVID-19 immunization exemption requirements (ROHRBACH) (EFFECTIVE FROM PASSAGE)

### **FIRST READING**

- Com. Sub. for H. B. 4483 - Relating to establishing term limits to certain real property interests and registration requirements associated with carbon offset agreements (ANDERSON) (REGULAR)
- Com. Sub. for H. B. 4553 - To clarify the application of zoning requirements to exempt wholesale generators (CAPITO) (REGULAR)





**WEST VIRGINIA  
HOUSE OF DELEGATES**

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**WEDNESDAY, FEBRUARY 23, 2022**

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**HOUSE CONVENES AT 11:00 A.M.**

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**COMMITTEE ON THE JUDICIARY  
10:00 A.M. – ROOM 410 M**

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

**COMMITTEE ON EDUCATION  
3:00 P.M. – ROOM 434 M**

**COMMITTEE ON GOVERNMENT ORGANIZATION  
3:00 P.M. – ROOM 215 E**





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