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OF THE

HOUSE OF DELEGATES

EIGHTY-FIRST

LEGISLATURE

OF

WEST VIRGINIA

VOLUME II

REGULAR SESSION, 2013

WEST VIRGINIA HOUSE OF DELEGATES

HONORABLE RICK THOMPSON

SPEAKER OF THE HOUSE

* *

COMPILED AND PUBLISHED
UNDER THE DIRECTION
OF

GREGORY M. GRAY

CLERK OF THE HOUSE

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MONDAY, APRIL 1, 2013

FORTY-EIGHTH DAY

[MR. SPEAKER, MR. THOMPSON, IN THE CHAIR]

The House of Delegates met at 1:00 P.M., and was called to order by the Honorable Rick Thompson, Speaker.

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

The Clerk proceeded to read the Journal of Friday, March 28, 2013, being the first order of business, when the further reading thereof was dispensed with and the same approved.

COMMITTEE REPORTS

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

Your Committee on Finance has had under consideration:

H. B. 2470, Relating to sign support specialist or an educational sign language interpreter in the education of exceptional children,

And reports back a committee substitute therefor, with a new title, as follows:

Com. Sub. for H. B. 2470 - "A Bill to amend and reenact §18-20-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-2-4 of said code; and to amend and reenact §18A-4-8 and §18A-4-8a of said code, all relating to school service personnel classification, compensation, duties, requirements and training; establishing certain service personnel classification titles and

setting their wages; specifying employment requirements and duties for certain classifications titles; modifying certain service personnel classification titles; and establishing conditions for employer payment of and continuing education credit accrual for certain certification acquisition,"

With the recommendation that the committee substitutes each do pass.

At the respective requests of Delegate Boggs, and by unanimous consent, the bill (Com. Sub. for H. B. 2470) was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration:

H. B. 2776, Increasing certain filing fees in certain civil actions,

And reports back a committee substitute therefor, with a new title, as follows:

Com. Sub. for H. B. 2776 - "A Bill to amend and reenact §46-9-525 of the Code of West Virginia, 1931, as amended; and to amend and reenact §59-1-11 of said code, all relating to increasing certain filing fees; increasing fees for filing financing statements or other records in secured transactions; increasing fees for responding for requests for information related to secured transactions; increasing and establishing new filing fees in certain civil actions; and requiring that those new and increased fees be apportioned for deposit in the existing Fund for Civil Legal Services for Low Income Persons and other funds or for other purposes,"

With the recommendation that the committee substitute do pass.

MESSAGES FROM THE SENATE

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 12, Designating the annual observance of March 31 as "West Virginia State Trooper Day".

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 33, The "201st Artillery Drive".

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. 52 - "A Bill to repeal §18B-16-7, §18B-16-8 and §18B-16-9 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18B-16-1, §18B-16-2, §18B-16-3, §18B-16-4, §18B-16-5 and §18B-16-6 of said code, all relating to continuing the Rural Health Initiative; setting forth legislative findings, purpose and definitions; discontinuing the Rural Health Advisory Committee and assigning certain of its duties to the Vice Chancellor for Health Sciences; deleting the requirement for creation of primary health care education sites; clarifying certain funding mechanisms and audit and reporting requirements; strengthening accountability measures; updating names; making technical corrections; and deleting obsolete language"; which was referred to the Committee on Health and Human Resources 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. 146 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §50-3-2c, relating to permitting magistrate courts to collect unpaid costs, fines, fees, forfeitures, restitution and penalties it has imposed on a defendant; permitting those unpaid amounts to be deducted from a defendant's income tax refund; providing a process for deducting and distributing those unpaid amounts; creating the Magistrate Fines and Fees Collection Fund; permitting the Tax Commissioner to charge an administrative fee; and providing rule-making authority"; which was referred to the Committee on the Judiciary 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

S. B. 157 - "A Bill to amend and reenact §17B-2-2 of the Code of West Virginia, 1931, as amended, relating to driver's licensing; and providing an exemption from the requirement for a Class D driver's license for certain nonresident drivers"; which was referred to the Committee on Roads and Transportation then 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. 331 - "A Bill to amend and reenact §29-26-2, §29-26-5 and §29-26-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto eight new sections, designated §29-26-7, §29-26-8, §29-26-9, §29-26-10, §29-26-11, §29-26-12, §29-26-13 and §29-26-14, all relating to providing the West Virginia Courthouse Facilities Improvement Authority with the ability to issue bonds to raise funds for paying the costs of approved modifications or construction of courthouse facilities; defining terms; adding bond-related activities to the powers of the authority; providing that moneys from the West Virginia Courthouse Facilities Improvement

Fund may be disbursed for payment of debt service on bonds; authorizing the authority to issue bonds; setting circumstances for bond issuance and potential terms of bonds; authorizing repayment of debt; permitting bonds be secured by trust agreement and setting certain parameters; permitting refunding bonds; clarifying that bonds by the authority are not a pledge of faith and credit of the state, county, municipality or other subdivision of the state; declaring bonds issued as negotiable instruments under the Uniform Commercial Code; exempting all bonds by the authority, as well as interest and income thereon, from taxation by the state or any subdivision; declaring that certain individuals have no personal liability in relation to issuance of bonds; and granting cumulative authority for exercising certain powers, including if no bonds are issued by the authority"; 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, to take effect July 1, 2013, and requested the concurrence of the House of Delegates in the passage, of

S. B. 394 - "A Bill to amend and reenact §15-2-33 of the Code of West Virginia, 1931, as amended; and to amend and reenact §15-2A-12 of said code, all relating to scholarships for dependent children of state troopers who die in performance of duty; and stating amount available per year"; 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. 428 - "A Bill to amend and reenact §16-3C-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-4-19 of said code, all relating generally to testing for HIV and sexually transmitted diseases; removing limitations on billing patients for HIV and sexually transmitted disease testing done by state

or local public health agencies; and clarifying the provisions relating to performing HIV or STD tests on persons accused of a sexual offense"; which was referred to the Committee on Health and Human Resources 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. 448 - "A Bill to amend and reenact §17A-6-10c of the Code of West Virginia, 1931, as amended, relating to authorizing the commissioner to issue no more than ten additional special demonstration plates, upon a showing of need, to new and used motor vehicle dealers engaged in the business of selling trailers, truck-tractors, road-tractors or trucks and that demonstrate the motor vehicles under actual work conditions to potential purchasers; and setting fee amount for additional plates."

At the respective requests of Delegate Boggs, and by unanimous consent, reference of the bill (Com. Sub. for S. B. 448) to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading.

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. 463 - "A Bill to amend and reenact §24B-5-3 of the Code of West Virginia, 1931, as amended, relating to increasing the amount of special license fees paid by pipeline companies to the Public Service Commission."

At the respective requests of Delegate Boggs, and by unanimous consent, reference of the bill (S. B. 463) to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading.

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. 482 - "A Bill to amend and reenact §3-2-30 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §59-1-2b, all relating to the preparation and sale of voter registration lists; exempting certain voter data from being provided; clarifying that records are to be kept in electronic form; permitting certain voter lists be obtained for noncommercial purposes from the clerk of the county commission or the Secretary of State; providing certain exemptions allowing the Secretary of State to provide voter information to others; setting forth the fees to be charged for the sale of voter registration lists; setting forth the types of lists and services that are available; requiring the net proceeds from the voter registration list sales be deposited in the State Election Fund; and clarifying that the Secretary of State may share voter information with those authorized to receive the information"; which was referred to the Committee on the Judiciary 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. 488 - "A Bill to amend and reenact §61-3-29 of the Code of West Virginia, 1931, as amended, relating to prohibiting damage to property of railroads, public utilities and certain production and distribution facilities; adding waste management facilities, storage facilities and timber operations to the protected properties; prohibiting destruction, damage or removal of property resulting in impairment to the normal, safe operation of those facilities; and providing criminal penalties"; 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. 542 - "A Bill to amend and reenact §19-23-13b of the Code of West Virginia, 1931, as amended, relating to restricted races at pari-mutuel thoroughbred horse race tracks; permitting up to two restricted races at certain tracks if there are at least seven single betting interests; permitting a third restricted race at certain tracks if there are at least nine single betting interests; and eliminating a provision concerning if less than seventy-five percent of the restricted races fail to receive enough entries to race"; 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. 563 - "A Bill to amend and reenact §61-3-49 of the Code of West Virginia, 1931, as amended, relating to the purchase of scrap metal by scrap metal dealers; and excluding jewelry platinum, gold, silver and palladium from the definition of 'scrap metal'"; 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

S. B. 596 - "A Bill to amend and reenact §31-15A-17b of the Code of West Virginia, 1931, as amended, relating to the determination of the amount of grant awards for Chesapeake Bay watershed compliance projects and the Greenbrier River watershed compliance projects"; 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, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

S. B. 663 - "A Bill to repeal §18-5-37 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §18-5D-1, §18-5D-2 ,§18-5D-3 and §18-5D-4, all relating to improving the nutrition and health of West Virginia's children; creating the West Virginia Feed to Achieve Act; providing legislative findings and intent; phasing in implementation of the West Virginia Feed to Achieve Act; requiring nutritious breakfast and lunch be made available to all students; requiring all schools to adopt delivery systems, strategies and methods to maximize participation by students; providing for record keeping and reporting; authorizing continuation or termination of nutrition programs under certain conditions; providing that classroom teachers may not be required to operate a breakfast program as part of their regular duties; establishing nonprofit foundations or funds to provide moneys for school nutrition programs; providing for acceptance of private contributions; authorizing expenditures of private funds to draw down maximum federal funds for child nutrition; authorizing certain expenditures; prohibiting use of private funds for administrative or personnel expenses; authorizing partnerships with federal and state agencies and public and private organizations to expand options for providing healthy, nutritious food to children; encouraging healthy food initiatives such as community gardens and farm-to-school programs; and requiring an annual audit of the private funds"; which was referred to the Committee on Education.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

Com. Sub. for S. C. R. 20 - "Requesting the Division of Highways to name State Route 80, beginning at the intersection of Routes 52 and 80 in Iaeger and ending at the intersection of Routes 83 and 80 in Bradshaw, in McDowell County, the 'Army PFC Phill G. McDonald Memorial Highway'."

WHEREAS, PFC McDonald was born on September 13, 1941, to Oscar Fred and VanDora McDonald; and

WHEREAS, PFC McDonald was raised in Avondale and had thirteen brothers and sisters; and

WHEREAS, When PFC McDonald was about seventeen he moved to Greensboro, North Carolina, where his sister Alice resided and began working in a cedar plant; and

WHEREAS, After moving to North Carolina PFC McDonald became active in the Central Assembly Church of God, taught Sunday School, sang in the choir, played the guitar and planned to become a minister; and

WHEREAS, PFC McDonald joined the United States Army in Beckley, West Virginia, in 1967, took basic training at Fort Benning, Georgia, and served as a private first class in Company A, 1st Battalion, 14th Infantry Regiment, 4th Infantry Division; and

WHEREAS, PFC McDonald was posthumously awarded the Medal of Honor by President Nixon during a special ceremony at the White House, for his actions during a June 7, 1968, firefight near Kontum City in the Republic of Vietnam, during which he was killed; and

WHEREAS, PFC McDonald's Medal of Honor Citation reads in full: "For conspicuous gallantry and intrepidity in action at the risk of his life above and beyond the call of duty. Pfc. McDonald distinguished himself while serving as a team leader with the First Platoon, Company A. While on a combat mission his platoon came under heavy barrage of automatic weapons fire from a concealed company-size enemy force. Volunteering to escort two wounded comrades to an evacuation point, McDonald crawled through intense fire to destroy with a grenade an enemy automatic weapon threatening the safety of the evacuation. Returning to his platoon, he again volunteered to provide covering fire for the maneuver of the platoon from its exposed position. Realizing

the threat he posed, enemy gunners concentrated their fire on McDonald's position, seriously wounding him. Despite his painful wounds, McDonald recovered the weapon of a wounded machine gunner to provide accurate covering fire for the gunner's evacuation. When other soldiers were pinned down by a heavy volume of fire from a hostile machine gun to his front, McDonald crawled toward the enemy position to destroy it with grenades. He was mortally wounded in this intrepid action. McDonald's gallantry at the risk of his life which resulted in the saving of the lives of his comrades, is in keeping with the highest traditions of the military service and reflects great credit upon himself, his unit, and the U.S. Army"; and

WHEREAS, PFC McDonald is McDowell County's only Medal of Honor recipient; and

WHEREAS, On February 23, 2012, during a special ceremony, PFC McDonald's portrait and Medal of Honor citation were placed in the McDowell County Courthouse and in the hearts of all those who knew him; and

WHEREAS, During that February 23, 2012, ceremony, VFW Post 1144, Iaeger, and American Legion Post 175, Bradshaw, combined to offer a 21-gun salute at the courthouse to honor PFC McDonald; and

WHEREAS, It is fitting to honor Army PFC Phill G. McDonald for his commitment, dedication and service to his country and his state and having made the ultimate sacrifice; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name State Route 80, beginning at the intersection of Routes 52 and 80 in Iaeger and ending at the intersection of Routes 83 and 80 in Bradshaw, McDowell County, the "Army PFC Phill G. McDonald Memorial Highway"; and, be it

Further Resolved, That the Division of Highways is requested to have made and be placed signs identifying the highway as the "Army PFC Phill G. McDonald Memorial Highway"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Secretary of the Department of Transportation and the family of Army PFC Phill G. McDonald.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

Com. Sub. for S. C. R. 22 - "Requesting the Division of Highways to name the bridge on highway U. S. 214 South, Oakhurst Drive and Deer Oaks Road in Kanawha County, Bridge No. 20-214-7.97, the 'Joseph Albert "Joey" King, Jr., Memorial Bridge'."

WHEREAS, Joseph Albert "Joey" King, Jr., died in the line of duty as a volunteer firefighter on December 4, 2011, when he fell to his death from a bridge while looking for a fire. Joey was very dedicated to the Davis Creek and Ruthdale volunteer fire departments and the safety of his community. The first left from this bridge going south is the road that Joey traveled for years to and from home and work; and

WHEREAS, Joseph Albert "Joey" King, Jr., was born on August 28, 1951, in Charleston, West Virginia, the son of Joseph and Betty Jo King. He grew up with his parents and his siblings: Arietta, Diana, Bethel and Linnie "Curley". Joey was blessed to have three children: Edna, Joey III and LeAnne. Joey's beloved only son passed away at age twelve in 1988. Joey later met his longtime companion, Sonja Kay, and helped raise her son, Anthony. Joey loved to travel to Florida on his motorcycle to visit his daughter and spend time with his granddaughters, Amanda and Skyler. He loved to ride and was a member of the Patriot Guard and The Red Knights motorcycle clubs.

Joey spent many years working at Copley's Wrecker Service. He later worked for the City of Charleston Sanitary Board as a mechanic, before retiring for health reasons. Joey served as a volunteer and took pride in being a firefighter. He found a way to help people and the community by becoming a volunteer firefighter, a task that lasted for the last seven years of his life; and

WHEREAS, Joey originally started at the fire department to get Anthony interested in something worthwhile and positive. However, he soon realized that he had a knack for what a volunteer fire department does–helping people. He became not only a firefighter, but a great friend to many members of the department. He saw that he could use his mechanical skills to benefit the fire department by caring for the equipment. Most people will never realize how valuable an asset Joey was to the fire department. To his brother firefighters, he was a friend, brother and mentor, with many looking to him for personal advice to help them to get through life. One man stated at the memorial service that Joey was a "First responder" before there was such a thing, the man you wanted at an accident scene. On a lighter note, Joey loved to tease and play practical jokes on others. He enjoyed taking his nieces' sons and granddaughters to his garage, sitting them on his motorcycle or taking them to the firehouse and putting them in the fire truck. Joey was always there for someone in need. People have said he was the nicest guy they knew and could never be replaced. Never once did he hesitate to help anyone in need of help; and

WHEREAS, It is only fitting that we honor Joseph Albert "Joey" King, Jr., for his dedication to the Davis Creek and Ruthdale volunteer fire departments and the safety of his community, and for his contributions to his community; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name the bridge on highway U. S. 214 South, Oakhurst Drive and Deer Oaks Road in Kanawha County, Bridge No. 20-214-7.97, the "Joseph Albert 'Joey' King, Jr., Memorial Bridge"; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "Joseph Albert 'Joey' King, Jr., Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Secretary of the Department of Transportation and to the children, surviving relatives and companion of Joseph Albert "Joey" King, Jr.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

S. C. R. 23 - "Requesting the Division of Highways to name bridge number 55-16/40-0.01, in Allen Junction, Wyoming County, West Virginia, the 'Reverend Edward and Mary Mullins Memorial Bridge'."

WHEREAS, Reverend Edward and Mary Mullins moved to Allen Junction in 1951, when they purchased property across the Guyandotte River from Route 16; and

WHEREAS, At the time, the residents living across the river from Route 16 had only a cable swinging foot bridge to reach their homes, but Reverend Mullins later purchased property on both sides of the river and allowed his property to be used for construction of a bridge that would enable the residents to reach their homes by automobile; and

WHEREAS, In addition to playing an instrumental role in getting the bridge built at Allen Junction and serving as its longtime caretaker, Reverend Mullins also constructed a building for the community to use as its post office, and it was used in that capacity for many years; and

WHEREAS, Reverend Mullins worked diligently in the coal mines while pastoring several churches over the years, and Mary served the

churches he pastored as their secretary, janitor, baker or any other role in which she was needed. They both worked tirelessly to establish new churches in Wyoming County, some of which are still in existence today; and

WHEREAS, Reverend Mullins later served as the state superintendent for his church organization and was responsible for overseeing numerous churches around the state; and

WHEREAS, Reverend Edward and Mary Mullins were respected by all who knew them for their commitment to church and community and for the spirit of devoted service with which they lived their lives; and

WHEREAS, Sadly, Reverend Edward Mullins passed away on June 22, 1970, and his beloved wife, Mary Mullins, followed him home to the Lord on January 6, 1975. They are survived by their children, James E. Mullins and Ruby Mullins Byrd, and their grandchildren, James Mullins, Lonnie Mullins, Robert Mullins and Deborah Mullins Conner; and

WHEREAS, It is only fitting that we name this bridge, which Reverend and Mary Mullins were so instrumental in having built, to honor their many contributions to the community of Allen Junction and greater Wyoming County, and for their enduring legacy of service; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 55-16/40-0.01, in Allen Junction, Wyoming County, West Virginia, the "Reverend Edward and Mary Mullins Memorial Bridge"; and, be it

Further Resolved, That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the bridge proclaiming the bridge the "Reverend Edward and Mary Mullins Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways and to James E. Mullins and Ruby Mullins Byrd.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

S. C. R. 24 - "Requesting the Division of Highways to name U. S. Route 60 from Mile Post 31.50 to Mile Post 40.00 in Kanawha County the 'Lou Tabit Highway'."

WHEREAS, Lou Tabit was born on July 24, 1932, in Montgomery, Fayette County, to Andrew and Frieda Tabit, immigrants from Lebanon; and

WHEREAS, Lou Tabit graduated from Montgomery High School (now Valley High School), obtained an accounting degree from University of Notre Dame in 1954 and then proceeded to obtain his doctor of jurisprudence degree from Georgetown University Law Center in 1957; and

WHEREAS, Lou Tabit married Norma Hanshaw and was blessed with two children, Mark and Janet; and

WHEREAS, Lou Tabit practiced law for fifty years and also worked in state government, serving as a special assistant attorney general, Director of the Business Occupation Tax Division and as a state tax hearing examiner; and

WHEREAS, Lou Tabit has worked for over fifty years to improve the quality of life of the citizens in the Upper Kanawha Valley in Kanawha and Fayette counties; and

WHEREAS, Lou Tabit recognized that an improved U. S. Route 60 would provide a safe commute for the local citizens and the students that attend West Virginia University School of Technology; and

WHEREAS, Lou Tabit created and chairs the Committee to Upgrade U. S. Route 60 to work with the West Virginia Division of Highways to upgrade U. S. Route 60 to a four-lane highway; and

WHEREAS, Lou Tabit successfully worked with the late Senator Robert C. Byrd and in 2010, the Division of Highways was awarded $4.5 million to repair slides along U. S. Route 60; and

WHEREAS, In May 2012, the Kanawha County Commission recognized the efforts of Lou Tabit to improve U. S. Route 60 and proclaimed Lou Tabit to be an honorary citizen of Kanawha County; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name U. S. Route 60 from Mile Post 31.50 to Mile Post 40.00 in Kanawha County the "Lou Tabit Highway"; and, be it

Further Resolved, That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the highway, containing bold and prominent letters, proclaiming this roadway to be the "Lou Tabit Highway"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways, to the Kanawha County Commission and to Mr. Lou Tabit and his children, Mark Tabit and Mary Janet Tabit.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

Com. Sub. for S. C. R. 29 - "Requesting the Division of Highways to name the bridge designated bridge number 20-64-54.37 the 'Army Cpl. Kenneth R. Hess Bridge'."

WHEREAS, Cpl. Kenneth R. Hess was born on May 21, 1921, in Buena Vista, Virginia; and

WHEREAS, Cpl. Kenneth R. Hess was inducted into the United States Army on August 6, 1942, at the age of twenty-one; and

WHEREAS, Cpl. Kenneth R. Hess spent eleven months overseas, serving in England, France, Belgium, Holland and Germany during the Second World War; and

WHEREAS, Cpl. Kenneth R. Hess was a member of Company D of the 377th Infantry Regiment of the 95th Infantry Division organized in Texas; and

WHEREAS, The members of the 95th Infantry Division are known as the "Iron Men of Metz", and renowned for fighting back fierce German counterattacks and for the eventual liberation of the town of Metz, in the northeast of France; and

WHEREAS, The people of Metz, and of France, have never forgotten the contributions of the Iron Men of Metz; and

WHEREAS, In honor of his service, which included maintaining and repairing weapons of an infantry heavy weapons company, Cpl. Kenneth R. Hess was honored by the French government with the *Orde National de la Legion d'Honneur*, presented to him in a ceremony at the French Embassy in Washington, D. C.; and

WHEREAS, Cpl. Kenneth R. Hess was also honored by the United States Army with a Good Conduct Medal, three Bronze Service Stars, France and Germany Theater Ribbons and an American Theater Ribbon; and

WHEREAS, Cpl. Kenneth R. Hess was honorably discharged from the United States Army on November 11, 1945; and

WHEREAS, Cpl. Kenneth R. Hess returned to the United States, where he worked for thirty-eight years as a millwright at Union Carbide until his retirement; and

WHEREAS, It is fitting and proper that the outstanding service to his country by Cpl. Kenneth R. Hess be honored by naming the bridge designated bridge number 20-64-54.37 the "Cpl. Kenneth R. Hess Bridge"; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name the bridge designated bridge number 20-64-54.37 the "Army Cpl. Kenneth R. Hess Bridge"; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "Army Cpl. Kenneth R. Hess Bridge"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to Cpl. Kenneth R. Hess.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

S. C. R. 30 - "Requesting that bridge number 55-10-43.05 on Route 10 in Cyclone, Wyoming County, West Virginia, be named the 'Army SP4 Jackie (Hearn) McMillion Memorial Bridge'."

WHEREAS, Jackie (Hearn) McMillion was born on February 9, 1945, in Boyd County, Kentucky, and moved to Cyclone, West Virginia, at the age of two; and

WHEREAS, Jackie (Hearn) McMillion attended Road Branch Grade School and graduated from Oceana High School in 1963; and

WHEREAS, Jackie (Hearn) McMillion enlisted in the United States Army on June 6, 1963, and completed his basic training at Fort Knox, Kentucky; and

WHEREAS, Jackie (Hearn) McMillion served with the Fourth Cavalry Airborne Division in Vietnam and achieved the rank of Specialist Four; and

WHEREAS, SP4 Jackie (Hearn) McMillion was killed in action at Au Bau Bang in the Binh Duong province of South Vietnam on November 12, 1965, the only resident of Cyclone, West Virginia, to lose his life while on active duty in Vietnam; and

WHEREAS, SP4 Jackie (Hearn) McMillion was survived by his wife, Lois Altizer McMillion; daughter, Jackie McMillion, whom he never met; parents, Mr. and Mrs. W. H. Hearn; nine brothers, Donald, James, Herbert, Ronald, Henry, William, Scott, David and Jeffery Hearn; six sisters, Mrs. Betty Hogg and Mary, Virginia, Lottie, Kathy and Bertha Hearn; and grandparents Mr. and Mrs. Sherman McMillion; and

WHEREAS, It is fitting and proper that SP4 Jackie (Hearn) McMillion be remembered and acknowledged for his courageous action and ultimate sacrifice; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 55-10-43.05 on Route 10 in Cyclone, West Virginia, the "Army SP4 Jackie (Hearn) McMillion Memorial Bridge"; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "Army SP4 Jackie (Hearn) McMillion Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Secretary of the Department of Transportation and to the surviving family of SP4 Jackie McMillion.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

S. C. R. 32 - "Requesting the Division of Highways name bridge number 31-857-10.20 over Cheat Lake, Monongalia County, West Virginia, the 'U. S. Army and Air National Guard Col. Garry L. Bowers - Ices Ferry Bridge'."

WHEREAS, Garry L. Bowers was a life-long resident of Morgantown where he attended West Virginia University starting his first public service job at the WCLG AM/FM Radio Station in Morgantown, West Virginia, as an announcer; and

WHEREAS, In 1983, he became the owner of WCLG after many years of service; and

WHEREAS, During his tenure at WCLG Garry L. Bowers began his second public service job by joining the Army National Guard in 1966; and

WHEREAS, After four years of service, he transferred to the Air National Guard in 1970; and

WHEREAS, During his service in the Air National Guard, Garry L. Bowers served active duty at Air Force Systems Command and then SAF/PA at the Pentagon, with a final assignment as the Reserve Deputy Director of Public Affairs; and

WHEREAS, Upon retirement in 1998, he achieved full Colonel for his dutiful service; and

WHEREAS, While serving his country, Colonel Garry L. Bowers also served his community by chartering the Rotary Club of Cheat Lake, West Virginia, in 1979; and

WHEREAS, Garry L. Bowers became the first inaugural President of the Rotary Club of Cheat Lake, West Virginia, which committed itself, past and present, to various community initiatives, such as support of many annual scholarships, Cheat Lake Baseball Fields and Cheat Lake Volunteer Fire Department; and

WHEREAS, Upon that fateful day in 2011, Colonel Garry L. Bowers passed away upon giving complete devotion of service to country and community; and

WHEREAS, It is only fitting and proper that this bridge be named in his honor and that it henceforth stand as a permanent memorial so that Colonel Garry L. Bowers' supreme public service for our nation and his community will never be forgotten; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 31-857-10.20 over Cheat Lake, Monongalia County, West Virginia, the "U. S. Army and Air National Guard Col. Garry L. Bowers - Ices Ferry Bridge"; and, be it

Further Resolved, That the Division of Highways is requested to have made and be placed signs identifying the Bridge as the "U. S. Army and Air National Guard Col. Garry L. Bowers - Ices Ferry Bridge"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the family of Colonel Garry L. Bowers and to the Secretary of the Department of Transportation.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

S. C. R. 34 - "Requesting the Division of Highways to name bridge number 50-36-0.30 on Sunnyside Road, just outside of Fort Gay, crossing over Mill Creek, in Wayne County, West Virginia, the 'Mavis Granny Castle Bridge'."

WHEREAS, Mavis Castle, eighty-nine years old, was born, raised and has lived all her life on Sunnyside Road in Wayne County, West Virginia; and

WHEREAS, Mavis Castle, until she was sixty years of age, worked for vocational rehabilitation; and

WHEREAS, During the same year of her retirement from vocational rehabilitation, Mavis Castle began volunteering as a foster grandparent in the Wayne County school system, where she continues, to date, and has served in this capacity for a spectacular twenty-eight years; and

WHEREAS, In light of her nearly three-decade span of valuable volunteer service, most of this at Fort Gay Elementary School, it is only fitting that a bridge near the town of her devoted service be named after her, in her honor and as a token of appreciation; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 50-36-0.30 on Sunnyside Road, just outside of Fort Gay, crossing over Mill Creek, Wayne County, West Virginia, the "Mavis Granny Castle Bridge"; and, be it

Further Resolved, That the Division of Highways is requested to have made and be placed signs identifying the bridge, in bold and prominent letters, as the "Mavis Granny Castle Bridge"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to Mavis Castle, to her son, Larry Castle, and to the Secretary of the Department of Transportation.

RESOLUTIONS INTRODUCED

Delegates Marcum and White offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 112 - "Requesting that bridge number 30-3/2-0.03, currently known as the Dingess Concrete Bridge, 0.13 mile east of Route 3/12, on County Route 3/2 over Moses Fork, Mingo County, West Virginia, be named the 'Army Command Sergeant Major Wade Damron Memorial Bridge'."

WHEREAS, Command Sergeant Major Wade Damron, son of William and Cleo Damron, was born in Dingess, West Virginia and attended Lenore High School; and

WHEREAS, Command Sergeant Major Wade Damron enlisted in the United States Army in 1952 at age seventeen, with his parent's permission; and

WHEREAS, Command Sergeant Major Wade Damron completed high school while in the Army, and later graduated from the University of South Carolina; and

WHEREAS, Command Sergeant Major Wade Damron rose through the ranks, serving his last tour or duty of a twenty-year military career as Army Command Sergeant Major at the Drill Sergeant School in Fort Jackson, South Carolina; and

WHEREAS, Command Sergeant Major Wade Damron served three years in Germany, and was awarded stars for gallantry in action for his service in Korea and three tours of duty in Vietnam; and

WHEREAS, During Army Command Sergeant Major Wade Damron's service in Vietnam he was instrumental in building and supplying an orphanage; and

WHEREAS, Army Command Sergeant Major Wade Damron was responsible for having a statue of a drill sergeant placed at the drill sergeant school at Fort Jackson; and

WHEREAS, In his honor, a flag was flown over the United States Capitol Building on February 8, 2006, his seventy-first birthday, and was presented to his wife, Joan; and

WHEREAS, Army Command Sergeant Major Wade Damron died February 16, 2006 in Columbia, South Carolina and received full military honors with General James B. Allen delivering his eulogy; and

WHEREAS, Medals awarded Army Command Sergeant Major Wade Damron, during his miliary career, included: Two Silver Stars, Bronze Star, United Nations Service Medal, National Defense Service Medal, Korean Service Medal, Republic of Korea Presidential Unit Citation Badge, Medical Badge, Combat Infantryman Badge, three Purple Hearts, Armed Force Expeditionary Medal, six OS Bars, five Good Conduct Medals, Vietnam Service Medal, Vietnam Campaign Medal and Army Commendation Medal; and

WHEREAS, Army Command Sergeant Major Wade Damron completed the basic leadership course, TUSANCO Academy, in 1972; was a charter member of the Association of United States Army; and was a founding sponsor of the National Museum of the United States Army at Arlington, Virginia; and

WHEREAS, Following his outstanding military career, Wade Damron enjoyed additional careers as personnel director at Richland Memorial Hospital and Blue Cross/Blue Shield and as president of Garnet Distribution; and

WHEREAS, It is fitting that an enduring memorial be established to commemorate the achievements of this native son; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 30-3/2-0.03, currently known as the Dingess Concrete Bridge, 0.13 mile east of Route 3/12, on County Route 3/2 over Moses Fork,

Mingo County, West Virginia, the "Army Command Sergeant Major Wade Damron Memorial Bridge"; and, be it

Further Resolved, That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge the "Army Command Sergeant Major Wade Damron Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a certified copy of this resolution to the Commissioner of the Division of Highways and to family members of Wade Damron.

Delegates Fleischauer, Skinner, Manypenny, Moore, Barill, Pino, Rowan, R. Smith, Sponaugle, Sobonya, Ellington, Ambler, Arvon, Azinger, Barrett, Campbell, Canterbury, Cooper, Diserio, Eldridge, A. Evans, Faircloth, Ferns, Hamrick, Hartman, Iaquinta, Marshall, Moye, Pasdon, L. Phillips, Pethtel, D. Poling, M. Poling, Raines, Staggers, Storch, Stowers, Sumner and Williams offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 113 - "Requesting the Joint Committee on Government and Finance to authorize a study on the need for and the constitutionality of a revenue surcharge designated for live adult entertainment establishments that serve alcohol."

WHEREAS, Nearly one in five women have been raped at some point in their lives in the United States and nearly one in two women have experienced sexual violence other than rape at some point in their lives in the United States; and

WHEREAS, There is a need for sexual assault prevention services and rape crisis centers in every county in the state but because of limited funds, services are limited; and

WHEREAS, The states of Texas and Illinois have both established a surcharge for live adult entertainment establishments that serve

alcohol that is dedicated to rape prevention services. The revenue from such a surcharge could be allocated to a sexual assault services and prevention fund and rape crisis centers; and

WHEREAS, There is a need to determine whether there is a sufficient correlation between the secondary effects of alcohol at live adult entertainment establishments and domestic violence and sexual violence for a surcharge to be implemented and considered constitutional; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to conduct a study on the establishment of a live adult entertainment facility surcharge and the creation of a sexual assault services and prevention fund; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature, no later than the first day of the regular session 2014, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

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

SPECIAL CALENDAR

THIRD READING

Com. Sub. for H. B. 2512, Reforming the State Medicaid subrogation statute; 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. 106)**, and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Ferns, Manypenny, J. Nelson, Pasdon and Storch.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2512) 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. 2531, Relating to the practice of speech-language pathology and audiology; 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. 107)**, and there were—yeas 95, nays 1, absent and not voting 4, with the nays and absent and not voting being as follows:

NAYS: Ellem.

ABSENT AND NOT VOTING: Ferns, Manypenny, J. Nelson and Storch.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2531) passed.

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

On this question, the yeas and nays were taken **(Roll No. 108)**, 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: Ferns, Manypenny, J. Nelson and Storch.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2531) 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. 2550, Adding criminal offense of receiving materials depicting minors in sexually explicit conduct; 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. 109)**, 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: Ferns, Manypenny, J. Nelson and Storch.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2550) 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. 2571, Relating to who may serve as members of the environmental quality board; on third reading, coming up in regular order, was, on motion of Delegate Boggs, placed at the foot of bills on third reading.

Com. Sub. for H. B. 2759, Relating to standards for emergency medical service personnel; 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. 110)**, 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: Ferns, Manypenny, J. Nelson and Storch.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2759) 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. 2766, Creating the "West Virginia Winner" program; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 111)**, and there were—yeas 91, nays 5, absent and not voting 4, with the nays and absent and not voting being as follows:

NAYS: Cadle, Gearheart, Householder, Howell and Kump.

ABSENT AND NOT VOTING: Ferns, Manypenny, J. Nelson and Storch.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2766) 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. 2888, Allowing members of a policemen's civil service commission to serve on other local boards and commissions; 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. 112)**, and there were—yeas 95, nays 1, absent

and not voting 4, with the nays and absent and not voting being as follows:

NAYS: Kump.

ABSENT AND NOT VOTING: Ferns, Manypenny, J. Nelson and Storch.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2888) 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. 2940, Relating to regional meetings among certain officials of county boards of education; 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. 113)**, and there were—yeas 95, nays 1, absent and not voting 4, with the nays and absent and not voting being as follows:

NAYS: Ellem.

ABSENT AND NOT VOTING: Ferns, Manypenny, J. Nelson and Storch.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2940) 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. 2966, Relating to employment and privacy protection; 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. 114)**, and there were—yeas 96, nays none, absent and not voting 4, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: Ferns, Manypenny, J. Nelson and Storch.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2966) 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. 3086, Relating to juvenile services and criminal justice institutions; 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. 115)**, and there were—yeas 95, nays 1, absent and not voting 4, with the nays and absent and not voting being as follows:

NAYS: Romine

ABSENT AND NOT VOTING: Ferns, Manypenny, J. Nelson and Storch.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3086) passed.

Delegate Boggs moved that the bill take effect July 1, 2013.

On this question, the yeas and nays were taken **(Roll No. 116)**, and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Cooper, Ferns, Manypenny, J. Nelson and Storch.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3086) takes effect July 1, 2013.

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

H. B. 3104, Authorizing certain legislative rules regarding higher education; 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. 117)**, and there were—yeas 92, nays 5, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Andes, Ellem, Lane, R. Smith and Walters.

ABSENT AND NOT VOTING: Ferns, Manypenny and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3104) passed.

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

On this question, the yeas and nays were taken **(Roll No. 118)**, and there were—yeas 93, nays 4, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Howell, Kump, R. Smith and Walters.

ABSENT AND NOT VOTING: Ferns, Manypenny and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3104) 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.

H. B. 3159, Granting exceptions from certain compulsory attendance statutes to the Monroe and Nicholas County school systems; 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. 119)**, and there were—yeas 94, nays 3, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Cowles, Howell and Lane.

ABSENT AND NOT VOTING: Ferns, Manypenny and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3159) passed.

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

On this question, the yeas and nays were taken **(Roll No. 120)**, and there were—yeas 94, nays 3, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Cowles, Howell and Kump.

ABSENT AND NOT VOTING: Ferns, Manypenny and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3159) 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.

At 1:46 P.M., on motion of Delegate Boggs, the House of Delegates recessed until 4:00 P.M., and reconvened at that time.

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AFTERNOON SESSION

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SPECIAL CALENDAR

-CONTINUED-

REORDERING OF THE CALENDAR

Delegate Boggs announced that the Committee on Rules had transferred Com. Sub. for H. B. 2626 and Com. Sub. for H. B. 2754, on third reading, House Calendar, to the Special Calendar.

THIRD READING

Com. Sub. for H. B. 2626, Authorizing the Department of Military Affairs and Public Safety to promulgate Legislative Rules; 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. 121)**, and there were—yeas 68, nays 28, absent and not voting 4, with the nays and absent and not voting being as follows:

NAYS: Ambler, Anderson, Andes, Armstead, Azinger, Border, Butler, Cadle, Canterbury, Cooper, Cowles, Ellington, A. Evans, D. Evans, Faircloth, Hamrick, Howell, Ireland, Kump, Lane, Miller, Overington, Pasdon, Romine, Rowan, R. Smith, Sobonya and Walters.

ABSENT AND NOT VOTING: Ferns, Iaquinta, Manypenny and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2626) passed.

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

On this question, the yeas and nays were taken **(Roll No. 122)**, and there were—yeas 74, nays 22, absent and not voting 4, with the nays and absent and not voting being as follows:

NAYS: Andes, Armstead, Border, Butler, Cadle, Cowles, Ellington, D. Evans, Faircloth, Gearheart, Hamrick, Howell, Ireland, Kump, Lane, Overington, Pasdon, Rowan, R. Smith, Sobonya, Walters and Westfall.

ABSENT AND NOT VOTING: Ferns, Iaquinta, Manypenny and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2626) 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. 2754, Relating to further defining a retailer engaging in business in this state for purposes of sales and use taxes; on third reading, coming up in regular order, was read a third time.

The question again being on the passage of the bill, the yeas and nays were taken **(Roll No. 123)**, and there were—yeas 84, nays 12, absent and not voting 4, with the nays and absent and not voting being as follows:

NAYS: Armstead, Cadle, Cowles, Espinosa, Folk, Gearheart, Householder, Howell, Overington, R. Smith, Sobonya and White.

ABSENT AND NOT VOTING: Ferns, Iaquinta, Manypenny and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2754) passed.

On motion of Delegate Boggs, the House of Delegates then reconsidered the vote on the passage of the bill.

The question again being on the passage of the bill, the yeas and nays were taken **(Roll No. 124)**, and there were—yeas 77, nays 19, absent and not voting 4, with the nays and absent and not voting being as follows:

NAYS: Armstead, Border, Cadle, Cowles, Espinosa, Faircloth, Folk, Frich, Gearheart, Hamrick, Householder, Howell, Ireland, Kump, Miller, Overington, Raines, R. Smith and Sobonya.

ABSENT AND NOT VOTING: Ferns, Iaquinta, Manypenny and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2754) 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. 2571, Relating to who may serve as members of the environmental quality board; 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. 125)**, and there were—yeas 74, nays 22, absent and not voting 4, with the nays and absent and not voting being as follows:

NAYS: Ambler, Armstead, Ashley, Butler, Espinosa, D. Evans, Faircloth, Folk, Gearheart, Hamrick, Householder, Howell, Ireland, Kump, Lane, McCuskey, E. Nelson, O'Neal, Overington, Shott, Sobonya and Westfall.

ABSENT AND NOT VOTING: Ferns, Iaquinta, Manypenny and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2571) passed.

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

On this question, the yeas and nays were taken **(Roll No. 126)**, and there were—yeas 77, nays 19, absent and not voting 4, with the nays and absent and not voting being as follows:

NAYS: Ambler, Armstead, Butler, Cowles, Espinosa, Faircloth, Gearheart, Hamrick, Householder, Howell, Kump, Lane, McCuskey, E. Nelson, O'Neal, Overington, Shott, Sobonya and Westfall.

ABSENT AND NOT VOTING: Ferns, Iaquinta, Manypenny and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2571) takes effect from its passage.

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

SECOND READING

Com. Sub. for H. B. 2716, Relating to the West Virginia Fairness in Competitive Bidding Act; 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. 2727, Relating to the school aid formula; 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. 2866, Providing an exception to allow a resident of a dwelling house to discharge a firearm in a lawful manner

within five hundred feet; 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. 2938, Establishing fair trade practices for court reporters; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Boggs, and by unanimous consent, the bill was advanced to third reading with restricted right to amend by Delegate Miley, and the rule was suspended to permit the consideration of the amendment on that reading.

H. B. 2954, Requiring that members of the Mine Safety Technology Task Force are paid the same compensation as members of the Legislature; 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. 2979, Relating to broadband deployment projects; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 3043, Including methane monitoring equipment as eligible safety equipment for tax credit purposes; on second reading, coming up in regular order, was read a second time.

On motion of Delegate White, the bill was amended on page three, section three, line twenty-three, following the word "includes", by striking out the words "portable and".

The bill was then ordered to engrossment and third reading.

Com. Sub. for H. B. 3135, Relating generally to voting system certification and procedures at the central counting center; 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. 3145, Removing the existing maximum quantities of beer that retailers can sell for off premises; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 3160, Providing for a pilot initiative on governance of schools jointly established by adjoining counties; on second reading, coming up in regular order, was read a second time and 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:

S. B. 496, Finding and declaring certain claims against state,

Com. Sub. for H. B. 2128, Providing that all employees have the right to review and copy the contents of their personnel file,

Com. Sub. for H. B. 2265, Relating to the School Access Safety Act,

Com. Sub. for H. B. 2352, Clarifying that the West Virginia Department of Environmental Protection does not assume a mine operator's obligations or liabilities under the Water Pollution Control Act,

H. B. 2355, Allowing the mascot of Parkersburg South High School to carry a musket on school grounds when the mascot is acting in his or her official capacity,

Com. Sub. for H. B. 2357, Relating to sexting by minors,

Com. Sub. for H. B. 2399, Protecting livestock in dire or extreme condition,

Com. Sub. for H. B. 2431, Modifying the application process for obtaining a state license to carry a concealed deadly weapon,

H. B. 2469, Increasing the cap on earnings during temporary reemployment after retirement,

Com. Sub. for H. B. 2490, Providing for the appointment of veterans advocates at state institutions of higher education,

Com. Sub. for H. B. 2491, Establishing a uniform policy for students enrolled in institutions of higher education who are called up for duty in the military,

Com. Sub. for H. B. 2498, Making it a crime for a person sitting on a grand jury to disclose the identity of an individual who will be indicted,

Com. Sub. for H. B. 2513, Improving enforcement of drugged driving offenses,

H. B. 2542, Relating to publication of the State Register,

Com. Sub. for H. B. 2544, Improving state emergency preparedness,

Com. Sub. for H. B. 2548, Increasing the criminal penalties for assaults and batteries against athletic officials,

Com. Sub. for H. B. 2570, Relating to the West Virginia Public Employees Grievance Procedure,

Com. Sub. for H. B. 2577, Relating to the practice of pharmacist care,

Com. Sub. for H. B. 2600, Creating resort area districts,

Com. Sub. for H. B. 2608, Requiring appraisal management companies to be registered,

Com. Sub. for H. B. 2689, Authorizing miscellaneous Boards and Agencies to promulgate legislative rules,

Com. Sub. for H. B. 2722, Increasing the amount of special license fees paid by pipeline companies,

Com. Sub. for H. B. 2730, Relating to the Real Estate Appraisal Board,

Com. Sub. for H. B. 2731, Regulating the performance of health maintenance tasks by unlicensed personnel,

Com. Sub. for H. B. 2738, Relating to the Center for Nursing,

Com. Sub. for H. B. 2787, Permitting family court judges and magistrates to carry concealed handguns without a permit,

Com. Sub. for H. B. 2805, Making the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program a permanent program,

Com. Sub. for H. B. 2806, Relating to administrative remedies for prisoners generally,

Com. Sub. for H. B. 2825, Relating to certain appointive state officers salaries,

Com. Sub. for H. B. 2836, Allowing certain Commission on Special Investigations personnel the right to carry firearms,

Com. Sub. for H. B. 2837, Amending various provisions of the code affecting the Treasurer's Office,

Com. Sub. for H. B. 2849, Relating to audits and investigations by the chief inspector of public offices,

Com. Sub. for H. B. 2877, Permitting the Director of the Public Employees Insurance Agency to operate any of the agency's health benefits plans on a calendar year,

Com. Sub. for H. B. 2897, Declaring certain claims against the state and its agencies to be moral obligations of the state,

Com. Sub. for H. B. 2946, Permitting the sale of alcoholic beverages on Sunday mornings,

Com. Sub. for H. B. 2960, Providing for internal and external review of adverse health coverage determinations,

Com. Sub. for H. B. 2962, Relating to exemptions from the tax on the privilege of severing natural gas and oil,

Com. Sub. for H. B. 2964, Authorizing the mayor to appoint chiefs of police and deputy chiefs of police,

H. B. 2968, Authorizing the use of an additional medium for use in archiving the records,

Com. Sub. for H. B. 3020, Improving boat dock and marina safety,

Com. Sub. for H. B. 3021, Relating to operating a bicycle or overtaking a bicycle on a roadway,

H. B. 3028, Expanding the number of hours temporary state personnel may work in a calendar year,

Com. Sub. for H. B. 3058, Relating to the valuation of motor vehicles for purposes of ad valorem property taxes,

Com. Sub. for H. B. 3060, Authorizing the Oil and Gas Conservation Commission to regulate the horizontal deep wells,

Com. Sub. for H. B. 3062, Removing the cap for collections into the land division special revenue account of the Department of Agriculture,

H. B. 3065, Transferring land located in the Western District, Taylor County, West Virginia, from the State of West Virginia to the Taylor County Commission,

Com. Sub. for H. B. 3069, Relating to access to justice,

Com. Sub. for H. B. 3072, West Virginia Coal Employment Enhancement Act,

H. B. 3112, Relating to compensation awards to victims of crimes,

Com. Sub. for H. B. 3124, Relating to floodplain and mudslide area management,

Com. Sub. for H. B. 3139, Authorizing qualified investigators employed by the Secretary of State to carry a firearm and concealed weapon,

Com. Sub. for H. B. 3157, Restoring the authority, flexibility, and capacity of schools and school systems to improve student learning,

H. B. 3161, Repealing section relating to additional fee to be collected for each marriage license issued,

H. B. 3162, Expanding the eligible recipients of matching funds to include West Virginia State University in certain circumstances, and modifying criteria for eligibility,

H. B. 3163, Requiring all debt obligations of the West Virginia Parkways Authority to be satisfied by February 1, 2020,

And,

H. B. 3164, Allowing part-time outside employment for full time prosecuting attorneys.

LEAVES OF ABSENCE

At the request of Delegate Boggs, and by unanimous consent, leaves of absence for the day were granted Delegates Ferns, Manypenny and J. Nelson.

At 4:38 P.M., the House of Delegates adjourned until 11:00 A.M., Tuesday, April 2, 2013.

TUESDAY, APRIL 2, 2013

FORTY-NINTH DAY

[MR. SPEAKER, MR. THOMPSON, IN THE CHAIR]

The House of Delegates met at 11:00 A.M., and was called to order by the Honorable Rick Thompson, 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, April 1, 2013, being the first order of business, when the further reading thereof was dispensed with and the same approved.

COMMITTEE REPORTS

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

Your Committee on the Judiciary has had under consideration:

S. B. 383, Authorizing family court judges appoint counsel in certain contempt cases,

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

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

Your Committee on the Judiciary has had under consideration:

S. B. 412, Relating to removal of elected county conservation district supervisors from office,

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

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

Your Committee on Government Organization has had under consideration:

S. B. 10, Permitting independent initiation of disciplinary proceedings by certain licensing boards,

And,

Com. Sub. for S. B. 565, Creating reverse auction pilot program for purchasing office supplies,

And reports the same back with the recommendation that they each do pass, but that they first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bills (S. B. 10 and Com. Sub. for S. B. 565) were each referred to the Committee on the Judiciary.

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. 2487, Prohibiting the use of laetrile.

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. 3013, Authorizing the establishment of job creation work groups.

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. 21 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-1C-1, §16-1C-2, §16-1C-3, §16-1C-4, §16-1C-5, §16-1C-6 and §16-1C-7, all relating generally to requiring health care providers to wear identification badges; setting forth legislative findings and purpose; providing definitions; establishing identification badge requirement; setting forth exemptions; addressing enforcement; providing for applicability; and granting rule-making authority"; which was referred to the Committee on Health and Human Resources then 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. 185 - "A Bill to amend and reenact §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-6D-10, all relating to the tax credit for alternative-fuel motor vehicles and qualified alternative-fuel vehicle refueling infrastructure and qualified alternative-fuel vehicle home refueling infrastructure; setting forth legislative findings; defining terms and modifying definitions and terms; on and after the effective date of the amendment and reenactment of the section during the regular session of the Legislature in 2013, eliminating the availability of tax credits for infrastructure related to and motor vehicles that are capable of running on ethanol and certain fuel mixtures containing ethanol, methanol or

other alcohols; excluding storage tanks from the definition of "qualified alternative-fuel vehicle home refueling infrastructure'; requiring that not more than one tax credit be granted for the purchase of an alternative-fuel motor vehicle, or for costs relating to conversion or retrofitting of a motor vehicle to an alternative-fuel motor vehicle, or for costs associated with qualified alternative-fuel vehicle refueling infrastructure, or for costs associated with qualified alternative-fuel home refueling infrastructure; removing the requirement that a converted vehicle must operate exclusively on an alternative fuel in order to take the credit; permitting a tax credit for certain retrofitted vehicles; requiring a taxpayer to own the alternative-fuel motor vehicle for which a claim is filed on the last day of the taxpayer's tax year for which the credit is claimed; clarifying restrictions and eligibility for tax credits; changing the amount of credit and the cap for qualified alternative-fuel vehicle refueling infrastructure; allowing pass-through entities to distribute credits to pass-through equity owners in any manner such equity owners see fit; eliminating a rule requirement; providing for the termination of tax credit for alternative-fuel motor vehicles purchased after December 31, 2017; providing for the termination of tax credit for motor vehicles converted or retrofitted to operate on alternative fuel after December 31, 2017; providing for the termination of tax credit for construction or purchase and installation of qualified alternative-fuel vehicle refueling infrastructure occurring after December 31, 2017; providing for the termination of tax credit for construction or purchase and installation of qualified alternative-fuel vehicle home refueling infrastructure occurring in tax years beginning after December 31, 2015; capping the number of years for which a carryover credit is allowed for alternative-fuel motor vehicle tax credits and for qualified alternative-fuel vehicle home refueling infrastructure tax credits; permitting the transfer and sale of certain tax credits under certain conditions; setting forth how transfers of tax credits may be accomplished; providing an exception from consumers sales and service tax, use tax, corporation net income tax and personal income tax; and permitting government entities and nonprofit entities to utilize tax credits"; 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, to take effect July 1, 2013, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 191 - "A Bill to amend and reenact §11B-2-20 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11B-2-20a; to amend and reenact §17-3-1 of said code; and to amend and reenact §31-15A-9 of said code, all relating to the Revenue Shortfall Reserve Fund, the Revenue Shortfall Reserve Fund - Part B and the creation of a West Virginia Infrastructure Modernization and Development Special Revenue Fund; specifying maximum aggregate funding amount for the Revenue Shortfall Reserve Fund; providing that interest and other earnings on Revenue Shortfall Reserve Fund - Part B be dedicated to and expended for and in support of the federal-state Medicaid program authorized by the Legislature or mandated by the federal government; providing that no interest or other return may be distributed from the Revenue Shortfall Reserve Fund – Part B if such distribution would cause the net asset value of the Revenue Shortfall Reserve Fund – Part B to fall below its value as of July 1, 2013, and providing process for restoration of value; providing that, in commencing and executing the provisions of this subdivision, the West Virginia Investment Management Board is not and shall not be obligated to sell any investments at a loss or otherwise take any action not in furtherance of its fiduciary duties and obligations in respect of funds and investments under its management and supervision; creating the West Virginia Infrastructure Modernization and Development Special Revenue Fund in the State Treasury; specifying the funding source for the West Virginia Infrastructure Modernization and Development Special Revenue Fund; specifying use of funds in the West Virginia Infrastructure Modernization and Development Special Revenue Fund; providing limitation on use of funds transferred from the West Virginia Infrastructure Modernization and Development Special Revenue Fund into the State Road Fund; providing ability of State Road Fund to

accept and expend funds transferred from the West Virginia Infrastructure Modernization and Development Special Revenue Fund; and providing ability of West Virginia Infrastructure Fund to accept and expend funds transferred from the West Virginia Infrastructure Modernization and Development Special Revenue 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, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 250 - "A Bill to amend and reenact article 10, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Commerce; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Development Office to promulgate a legislative rule relating to the use of coalbed methane severance tax proceeds; authorizing the Broadband Deployment Council to promulgate a legislative rule relating to broadband deployment grants programs; authorizing the Board of Miner Training, Education and Certification to promulgate a legislative rule relating to the standards for certification of coal mine electricians; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special motorboating; authorizing the Division of Natural Resources to promulgate a

legislative rule relating to defining the terms used in all hunting and trapping rules; authorizing the Division of Natural Resources to promulgate a legislative rule relating to prohibitions when hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to deer hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to general trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special waterfowl hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special fishing; authorizing the Division of Natural Resources to promulgate a legislative rule relating to falconry; authorizing the Division of Labor to promulgate a legislative rule relating to bedding and upholstered furniture; authorizing the Division of Labor to promulgate a legislative rule relating to the Amusement Rides and Amusement Attractions Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to the supervision of elevator mechanics and apprentices; authorizing the Division of Labor to promulgate a legislative rule relating to the Crane Operator Certification Act; and authorizing the Division of Labor to promulgate a legislative rule relating to the Crane Operator Certification Act – practical examination"; 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. 270 - "A Bill to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Revenue; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making

Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing the Insurance Commissioner to promulgate a legislative rule relating to provider-sponsored networks; authorizing the Athletic Commission to promulgate a legislative rule relating to mixed martial arts; authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing; authorizing the Racing Commission to promulgate a legislative rule relating to greyhound racing; authorizing the Racing Commission to promulgate a legislative rule relating to pari-mutuel wagering; authorizing the Lottery Commission to promulgate a legislative rule relating to state lottery rules; and authorizing the State Tax Department to promulgate a legislative rule relating to the valuation of commercial and industrial real and personal property for ad valorem property tax 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. 281 - "A Bill to amend and reenact article 8, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Transportation; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to

promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the denial, suspension, revocation, disqualification, restriction, nonrenewal, cancellation, administrative appeals and reinstatement of motor vehicle operating privileges; authorizing the Commissioner of Highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways; and authorizing the Office of Administrative Hearings to promulgate a legislative rule relating to appeal procedures"; 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. 354 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-2A-8d, relating to directing the Commissioner of Highways to conduct a study on alternative revenue mechanisms for development and maintenance of state roads and highways; making legislative findings and specifying intent; requiring a study and specifying study design; authorizing pilot projects and interagency cooperation; and requiring report and recommendations by certain date"; which was referred to the Committee on Roads and Transportation then Finance.

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. 369 - "A Bill to amend and reenact §61-7-6 and §61-7-6a of the Code of West Virginia, 1931, as amended, all relating to allowing a resident of another state to carry a handgun in West Virginia if the person holds a valid permit or license to possess or carry a handgun from the other state and the other state allows

residents of West Virginia who are licensed in West Virginia to carry a concealed deadly weapon to carry a concealed deadly weapon in that state"; 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. 438 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18B-3F-1, §18B-3F-2, §18B-3F-3, §18B-3F-4, §18B-3F-5, §18B-3F-6, §18B-3F-7, §18B-3F-8 and §18B-3F-9, all relating to reorganization and consolidation of Bridgemont Community and Technical College and Kanawha Valley Community and Technical College; creating an independent, multi-campus community and technical college on June 30, 2013; abolishing certain boards of governors and providing for appointment of a new board of governors on June 30, 2013; setting forth legislative findings; providing definitions; requiring development of a strategic reorganization plan; establishing an administrative planning committee; committee membership, powers and duties; termination date; appointing president and other officers; specifying certain duties; providing for transfer of assets and liabilities, operating budgets, orders, rules and procedures; clarifying employee rights and benefits when positions are abolished; and requiring notification of employment status by certain date under certain circumstances"; 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

S. B. 460 - "A Bill to amend and reenact §11-21-12e of the Code of West Virginia, 1931, as amended, relating to taxation; personal income tax; and exempting active duty military pay for resident individuals serving thirty or more continuous days on active duty in the armed forces of the United States, National Guard or armed forces

reserves for the taxable year in which the individual has separated from active military service"; 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. 462 - "A Bill to amend and reenact §22-3-20 and §22-3-21 of the Code of West Virginia, 1931, as amended, all relating to informal conferences on surface mining permit applications; extending time to hold informal conferences; and extending time from an informal conference in which the secretary must issue or deny a surface- mining permit"; which was referred to the Committee on Energy, Industry and Labor and Economic Development and Small Business then 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. 467 - "A Bill to amend and reenact §20-2-64 of the Code of West Virginia, 1931, as amended, relating to importation and release of certain aquatic species; revising the stocking permit requirements for the release of aquatic species into state waters; and criminal penalties"; which was referred to the Committee on Natural Resources then 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. 470 - "A Bill to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating to permitting farm wineries to sell samples and wine during the operation of fairs or festivals on Sunday mornings"; which was referred to the Committee on Agriculture then 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. 527 - "A Bill to repeal §3-10-4a of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-10-1, §3-10-2, §3-10-3, §3-10-3a, §3-10-4, §3-10-5, §3-10-6, §3-10-7 and §3-10-8 of said code, all relating to filling vacancies by appointment or election in certain elected offices; defining terms; setting procedures for appointing persons to fill certain vacancies; requiring certain appointments within a certain period of time; listing time periods and certain offices where elections must be held to fill certain vacancies; setting special requirements for filling vacancies in certain offices; setting procedures for certain special elections; setting requirements for special filing periods, where necessary; requiring certain notice be given regarding elections to fill vacancies; providing for payment of costs if a new election is necessary; allowing nomination of certain persons without party affiliation; allowing emergency orders by the Secretary of State in certain circumstances; removing and repealing certain language relating to previous elections; clarifying method used to fill vacancies in the Office of Governor; permitting meeting of the Judicial Vacancy Advisory Commission upon certain formal announcements of retirement or resignation; adjusting method to fill vacancies in certain statewide, legislative and judicial offices such that the timing for all are consistent; adjusting method to fill vacancies in United States Congress; requiring most elections to fill vacancies be held in conjunction with regularly scheduled elections; clarifying method used to fill vacancies in certain county offices; permitting vacancies in certain county offices to be filled by temporary replacements for no more than thirty days; and updating language regarding filling vacancies in certain elected offices"; 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. 533 - "A Bill to amend and reenact §61-2-9 and §61-2-28 of the Code of West Virginia, 1931, as amended, relating to directly prosecuting for battery an assault where the victim has certain relationships; conviction of which triggers federal firearms prosecution be prosecuted as a domestic battery or domestic assault to be consistent with federal case law and amending definition of 'domestic battery' and 'domestic assault'"; 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. 543 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §4-2-4a; and to amend said code by adding thereto a new section, designated §30-1A-2a, all relating to the Legislative Auditor; authorizing the Legislative Auditor to establish and charge fees for the sunrise application review process; reporting requirements; and terminating these fees on July 1, 2015"; 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

S. B. 552 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §39A-4-1, §39A-4-2, §39A-4-3, §39A-4-4, §39A-4-5, §39A-4-6 and §39A-4-7, all relating to creating the Uniform Real Property Electronic Recording Act; providing short title; defining terms; clarifying validity of electronic documents and electronic signatures; providing for recording of electronic documents; requiring any county clerk implementing the provisions of the act to comply with established standards; authorizing county clerks to receive, index, store, archive and transmit electronic

documents; authorizing county clerks to allow public access, search and retrieval of electronic documents; allowing county clerks to convert paper documents accepted for recording into electronic documents; authorizing county clerks to collect electronically any tax or fee relating to electronic recording of real property documents they are authorized by law to collect; authorizing county clerks to agree with other jurisdictions on procedures or processes necessary for electronic recording of documents; creating the Real Property Electronic Recording Standards Council to develop the standards necessary to electronically record real property documents; authorizing a legislative rule; providing for a report and recommendations to the Legislature; providing that members of the Real Property Electronic Recording Standards Council pay their own expenses; setting forth areas for consideration when adopting or changing standards; providing for uniformity of application and construction of the act; and providing that this act modifies, limits and supersedes certain parts of the federal Electronic Signatures in Global and National Commerce Act"; 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, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 553 - "A Bill to amend and reenact §17-2D-2 and §17-2D-5 of the Code of West Virginia, 1931, as amended, all relating to the continuation of the Highway Design-Build Pilot Program; changing the name to the Highway Design-Build Program; removing the sunset date of the program; modifying limitations on design-build projects; requiring identification of design-build projects; modifying reporting requirements; and requiring annual reporting"; 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, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 557 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-2J-3a, relating to authorizing continued operation of certain preventative care programs after expiration date of the pilot program"; which was referred to the Committee on Health and Human Resources then 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. 564 - "A Bill to amend and reenact §8-16-5 of the Code of West Virginia, 1931, as amended, relating to increasing the minimum construction cost of a municipal public works project before competitive bidding is required; and defining terms"; which was referred to the Committee on Political Subdivisions then 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. 569 - "A Bill to amend and reenact §29-3-11 of the Code of West Virginia, 1931, as amended, relating to the State Fire Marshal; and requiring the State Fire Marshal to be appointed by the Governor by and with the advice and consent of the Senate"; which was referred to the Committee on Government Organization then 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. 579 - "A Bill to repeal §3-3-2a and §3-3-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-3-1, §3-3-2, §3-3-3, §3-3-3a, §3-3-4, §3-3-5, §3-3-5a, §3-3-5b,

§3-3-5c, §3-3-8, §3-3-10 and §3-3-11 of said code; and to amend said code by adding thereto a new section, designated §3-3-3b, all relating to absentee and early in-person voting; updating, clarifying and reorganizing existing language in the code; removing outdated language; allowing veterans' homes to be treated like nursing homes in certain situations; adding requirements to serve as an assistant with early in-person voting; clarifying differences between paper-based voting systems and direct recording voting systems; clarifying certain language with regard to criminal violations; authorizing the Secretary of State to create electronic ballots in certain situations; clarifying when a federal write-in ballot may not be counted; and detailing and adding to the process for counting of absentee ballots separated by voting mechanism"; 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

S. B. 592 - "A Bill to amend and reenact §33-20F-4 of the Code of West Virginia, 1931, as amended, relating to deleting obsolete provisions regarding the Physicians' Mutual Insurance Company; and providing that the company need not be organized as a nonprofit corporation if the company remains a domestic mutual insurance company owned by its policyholders"; which was referred to the Committee on the Judiciary 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

S. B. 601 - "A Bill to amend and reenact §49-5-18 of the Code of West Virginia, 1931, as amended, relating to keeping the records of a juvenile proceeding confidential; and removing the requirement of sealing the records"; 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. 604 - "A Bill to amend and reenact §3-8-1a of the Code of West Virginia, 1931, as amended, relating to the regulation and control of elections, generally; defining terms; and expanding the definition of 'electioneering communication'"; 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

S. B. 652 - "A Bill to amend and reenact §29-3-5b of the Code of West Virginia, 1931, as amended, relating to criminal background checks for applicants for home inspectors"; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

Com. Sub. for S. C. R. 18 - "Requesting the Division of Highways to name a stretch of highway in Wyoming County, West Virginia, on State Route 20, just across the Wyoming County line approximately one mile to just past Ikes Fork Freewill Baptist Church, the 'David and Janet Lee Memorial Highway'."

WHEREAS, David E. Lee, Sr. was born in Ikes Fork, West Virginia, May 16, 1927, the youngest son of John and Millie Lee. He served in the United States Air Force and was a proud veteran of World War II and the Korean War. He married his beloved wife Janet December 9,

1949, and they shared fifty-three wonderful years together until her death in 2004. After his military service, David utilized the GI Bill and graduated from Marshall College in 1959. After working for the IRS in Chicago, Illinois, David and Janet moved back to West Virginia in 1963 where they remained until their deaths. David began a thirty-year teaching career in 1963 at Coal Mountain School, Huff Consolidated and Baileysville High School where he touched the lives of the many students he taught and coached. He served two terms on the Wyoming County Board of Education after his retirement, continuing to be an advocate for the students and public education. Affectionately known as "Poppy", David cherished his four sons, David Jr., Dale, Dean and Dante, and his grandchildren, JL, Tiffany, Chelsea, Aaron, Danielle, Jessica, Brittany, Drew and Kendra and his great grandchildren, John David, Katie, Isabella and Colton. David was active in his church and community and was always willing to help his neighbors. Janet Riffe Lee was born September 13, 1933, the daughter of John and Cara Riffe. She owned a restaurant and flower shop until she became a cook in the Wyoming County school system and at the Wyoming County Jail. Known for her great cooking, she served the students with a smile and a special touch of believing in them. She devoted her life to David and her boys as well as her grandchildren. She was active in her church and community and was a compassionate shoulder for those in need. They say "behind every great man is an even greater woman pushing him". That was never more true than for David and Janet. She was truly the strong force that kept the family together. David passed away on April 16, 2012; and

WHEREAS, It is fitting to honor David and Janet Lee by naming a stretch of highway in Wyoming County, West Virginia, on State Route 20, just across the Wyoming County line approximately one mile to just past Ikes Fork Freewill Baptist Church, for David and Janet Lee; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby requests the Division of Highways to name a stretch of highway in Wyoming County, West Virginia, on

State Route 20, just across the Wyoming County line approximately one mile to just past Ikes Fork Freewill Baptist Church, the "David and Janet Lee Memorial Highway"; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the stretch of highway as the "David and Janet Lee Memorial Highway"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Secretary of the Department of Transportation and to the surviving children and relatives of David and Janet Lee.

SPECIAL CALENDAR

THIRD READING

Com. Sub. for H. B. 2716, Relating to the West Virginia Fairness in Competitive Bidding Act; 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. 127)**, and there were—yeas 93, nays 6, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Cadle, Cowles, Gearheart, Householder, McCuskey and Overington.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2716) 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. 2727, Relating to the school aid formula; 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. 128)**, and there were—yeas 94, nays 5, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Cadle, Folk, Gearheart, Householder and Howell.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2727) passed.

Delegate Boggs moved that the bill takes effect July 1, 2013.

On this question, the yeas and nays were taken **(Roll No. 129)**, and there were—yeas 94, nays 5, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Cadle, Gearheart, Householder, Howell and Kump.

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2727) takes effect July 1, 2013.

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. 2866, Providing an exception to allow a resident of a dwelling house to discharge a firearm in a lawful manner within five hundred feet; 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. 130)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2866) 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. 2938, Establishing fair trade practices for court reporters; on third reading, coming up in regular order, was reported by the Clerk.

At the request of Delegate Boggs, and by unanimous consent, the bill was laid over.

H. B. 2954, Requiring that members of the Mine Safety Technology Task Force are paid the same compensation as members of the Legislature; 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. 131)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2954) passed.

Delegate Boggs moved that the bill takes effect from its passage.

On this question, the yeas and nays were taken **(Roll No. 132)**, and there were—yeas 99, nays none, absent and not voting 1, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2954) 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. 2979, Relating to broadband deployment projects; on third reading, coming up in regular order, was read a third time.

Delegate Espinosa requested to be excused from voting on the passage of Com. Sub. for H. B. 2979 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the Member from voting.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 133)**, and there were—yeas 88, nays 11, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Andes, Armstead, Arvon, Cowles, Espinosa, Faircloth, Hamrick, Overington, R. Smith, Sobonya and Westfall.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2979) 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. 3043, Including methane monitoring equipment as eligible safety equipment for tax credit purposes; 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. 134)**, and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Lynch.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3043) 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. 3135, Relating generally to voting system certification and procedures at the central counting center; 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. 135)**, and there were—yeas 94, nays 5, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Cadle, Folk, Householder, Kump and Shott.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3135) 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. 3145, Removing the existing maximum quantities of beer that retailers can sell for off premises; 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. 136)**, and there were—yeas 82, nays 17, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Armstead, Border, Cadle, A. Evans, D. Evans, Faircloth, Hamilton, Ireland, Kump, Lane, Moye, O'Neal, Overington, R. Smith, Sobonya, Sumner and Walker.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3145) 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. 3160, Providing for a pilot initiative on governance of schools jointly established by adjoining counties; 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. 137)**, and there were—yeas 99, nays none, absent and not voting 1, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3160) 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

S. B. 496, Finding and declaring certain claims against state; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page three, line thirty-one, by striking out the word "Romney" and inserting in lieu thereof the word "Ronney".

The bill was then ordered to third reading.

Com. Sub. for H. B. 2128, Providing railroad employees have the right to review and copy the contents of their personnel file; 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. 2265, Relating to the School Access Safety Act; 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. 2352, Clarifying that the West Virginia Department of Environmental Protection does not assume a mine operator's obligations or liabilities under the Water Pollution Control Act; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 2355, Allowing the mascot of Parkersburg South High School to carry a musket on school grounds when the mascot is acting in his or her official capacity; 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. 2357, Relating to sexting by minors; 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. 2399, Protecting livestock in dire or extreme condition; 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. 2431, Modifying the application process for obtaining a state license to carry a concealed deadly weapon; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Boggs, and by unanimous consent, the bill was advanced to third reading with restricted right to amend by Delegates Eldridge and Miley and the rule was suspended to permit the consideration of the amendments on that reading.

H. B. 2469, Increasing the cap on earnings during temporary reemployment after retirement; 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. 2470, Relating to sign support specialist or an educational sign language interpreter in the education of exceptional children; 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. 2490, Providing for the appointment of veterans advocates at state institutions of higher education; 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. 2491, Establishing a uniform policy for students enrolled in institutions of higher education who are called up for duty in the military; 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. 2498, Making it a crime for a person sitting on a grand jury to disclose the identity of an individual who will be indicted; 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. 2513, Improving enforcement of drugged driving offenses; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 2542, Relating to publication of the State Register; 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. 2544, Improving state emergency preparedness; 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. 2548, Increasing the criminal penalties for assaults and batteries against athletic officials; 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. 2570, Relating to the West Virginia Public Employees Grievance Procedure; on second reading, coming up in regular order, was read a second time.

An amendment to the bill, offered by Delegate Shott, was reported by the Clerk.

Whereupon,

Delegate Shott asked and obtained unanimous consent that the amendment be withdrawn.

Delegate Shott then asked and obtained unanimous consent to offer another amendment.

The Clerk then reported an amendment offered by Delegates Shott and Miley.

On motion of Delegates Shott and Miley, the bill was amended on page twelve, section three, line one hundred five, following the word

"mediation" and the period, by inserting the words "The board shall by July 1, 2013, promulgate a procedural rule regulating the discovery process consistent with and pursuant to article three, chapter twenty-nine-a of the code."

The bill was then ordered to engrossment and third reading.

Com. Sub. for H. B. 2577, Relating to the practice of pharmacist care; 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. 2600, Creating resort area districts; 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. 2608, Requiring appraisal management companies to be registered; 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. 2689, Authorizing miscellaneous Boards and Agencies to promulgate legislative rules; 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. 2722, Increasing the amount of special license fees paid by pipeline companies; 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. 2730, Relating to the Real Estate Appraisal Board; 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. 2731, Regulating the performance of health maintenance tasks by unlicensed personnel; 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. 2738, Relating to the Center for Nursing; 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. 2787, Permitting family court judges and magistrates to carry concealed handguns without a permit; 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. 2805, Making the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program a permanent program; 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. 2806, Relating to administrative remedies for prisoners generally; 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. 2825, Relating to certain appointive state officers salaries; 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. 2836, Allowing certain Commission on Special Investigations personnel the right to carry firearms; 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. 2837, Amending various provisions of the code affecting the Treasurer's Office; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Boggs, and by unanimous consent, the bill was advanced to third reading with restricted right to amend by Delegate White, and the rule was suspended to permit the consideration of the amendment on that reading.

Com. Sub. for H. B. 2849, Relating to audits and investigations by the chief inspector of public offices; on second reading, coming up in regular order, was read a second time.

On motion of Delegates Miley and Armstead, the bill was amended on page two, by striking out the enaction section and inserting in lieu thereof, the following:

"That §6-9-7 and §6-9-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows" followed by a colon.

And,

On page twelve, line one, by striking out section 9b in its entirety.

The bill was then ordered to engrossment and third reading.

Com. Sub. for H. B. 2877, Permitting the Director of the Public Employees Insurance Agency to operate any of the agency's health benefits plans on a calendar year; 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. 2897, Declaring certain claims against the state and its agencies to be moral obligations of the state; 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. 2946, Permitting the sale of alcoholic beverages on Sunday mornings; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Boggs, and by unanimous consent, the bill was advanced to third reading with restricted right to amend by Delegate Ireland, and the rule was suspended to permit the consideration of the amendment on that reading.

Com. Sub. for H. B. 2960, Providing for internal and external review of adverse health coverage determinations; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Miley, the bill was amended on page four, section one, line thirty-six, following the word "in", by striking out "42 U.S.C. §300-gg-01", and inserting in lieu thereof "42 U.S.C. §300-gg-91".

And,

On page five, section three, line four, by striking out the word "petitioner" and inserting in lieu thereof the word "individual".

The bill was then ordered to engrossment and third reading.

Com. Sub. for H. B. 2962, Relating to exemptions from the tax on the privilege of severing natural gas and oil; on second reading, coming up in regular order, was reported by the Clerk.

At the request of Delegate Boggs, and by unanimous consent, the bill was laid over.

Com. Sub. for H. B. 2964, Authorizing the mayor to appoint chiefs of police and deputy chiefs of police; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 2968, Authorizing the use of an additional medium for use in archiving the records; 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. 3020, Improving boat dock and marina safety; 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. 3021, Relating to operating a bicycle or overtaking a bicycle on a roadway; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 3028, Expanding the number of hours temporary state personnel may work in a calendar year; 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. 3058, Relating to the valuation of motor vehicles for purposes of ad valorem property taxes; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Butler, the bill was amended on page three, line twenty-six, immediately following the word "values", by striking out the words "or sixty percent of $700, whichever is higher".

The bill was then and ordered to engrossment and third reading.

Com. Sub. for H. B. 3060, Authorizing the Oil and Gas Conservation Commission to regulate the horizontal deep wells; 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. 3062, Removing the cap for collections into the land division special revenue account of the Department of Agriculture; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 3065, Transferring land located in the Western District, Taylor County, West Virginia, from the State of West Virginia to the Taylor County Commission; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

At the request of Delegate Boggs, and by unanimous consent, the provisions of House Rule 69, relating to bills on the Local Calendar, were suspended.

Delegate Boggs then moved that the constitutional rule requiring the bill to be fully and distinctly read on three different days be dispensed with.

On this question, the yeas and nays were taken **(Roll No. 138)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

Having been engrossed, the bill was then read a third time and put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 139)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3065) 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. 3069, Relating to access to justice; 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. 3072, West Virginia Coal Employment Enhancement Act; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 3112, Relating to compensation awards to victims of crimes; 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. 3124, Relating to floodplain and mudslide area management; 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. 3139, Authorizing qualified investigators employed by the Secretary of State to carry a firearm and concealed weapon; 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. 3157, Restoring the authority, flexibility, and capacity of schools and school systems to improve student learning; on second reading, coming up in regular order, was read a second time.

On motion of Delegates Armstead and M. Poling, the bill was amended on page five, following the enacting section, by inserting the following:

"**ARTICLE 2. STATE BOARD OF EDUCATION.**

§18-2-5g. Review and determination of principal and teacher reports; identify reports with recommendations to Legislative Oversight Commission.

~~In addition to filing each policy as required by section fourteen, article five of this chapter, the state board shall require each county board to provide a summary of any modifications to the policies and copies of annual reports developed pursuant to section fourteen, article five of this chapter. The state board shall submit copies of these summaries of modifications to the policies and annual reports, together with any comments and recommendations, to the Legislative Oversight commission on education accountability, no later than December 31, of each year.~~

(a) The state board shall review and evaluate all reports required to be written by principals and teachers in order to determine which reports are repetitive, unnecessary, counterproductive or outdated so that the administrative burden on principals and teachers may be lessened.

(b) The state board shall submit a report to the Legislative Oversight Commission on Education Accountability no later than December 31 of each year identifying those unnecessary reports, together with any comments and recommendations on how to reduce or consolidate principal and teacher reports."

And,

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

"That §18-2-15, §18-2-15a, §18-2-18, §18-2-23, §18-2-30, §18-2-31, §18-2-36, §18-2-37 and §18-2-38 of the code of West Virginia, 1931, as amended, be repealed; that §18-2E-3c and §18-2E-3d of said code be repealed; that §18-5-40 of said code be repealed; that §18-9-2b, §18-9-5, §18-9-7 and §18-9-8 of said code be repealed; that §18-9A-3a, §18-9A-3b, §18-9A-13, §18-9A-13a, §18-9A-13b, §18-9A-25 and §18-9A-26 of said code be repealed; that §18-9B-11 and §18-9B-16 of said code be repealed; that §18A-3-2b of said code be repealed; that §18-2-5g of said code be amended and reenacted; that said code be further amended by adding thereto a new section, designated §18-2E-5e; that said code be further amended by adding thereto a new section, designated §18-8-6a; and that §18-9A-10 of said code be amended and reenacted, all to read as follows" followed by a colon.

The bill was then ordered to engrossment and third reading.

H. B. 3161, Repealing section relating to additional fee to be collected for each marriage license issued; on second reading, coming

up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 3162, Expanding the eligible recipients of matching funds to include West Virginia State University in certain circumstances, and modifying criteria for eligibility; on second reading, coming up in regular order, was read a second time.

Delegates Gearheart and Shott moved to amend the bill on page three, line thirty-two, following the word "state", by striking out the words "land grant higher education institution, West Virginia State University" and inserting in lieu thereof "higher education institutions".

On page six, line twenty-eight, following the first occurrence of the word "University", by striking out the words "and West Virginia State University" and inserting in lieu thereof "the West Virginia School of Osteopathic Medicine, Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty State College and West Virginia State University".

And,

On page nine, line nine, following the word "to", by striking out the words "and West Virginia State University" and inserting in lieu thereof "the West Virginia School of Osteopathic Medicine, Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty State College and West Virginia State University".

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

The yeas and nays having been ordered, they were taken **(Roll No. 140)**, and there were—yeas 34, nays 65, absent and not voting 1, with the yeas and absent and not voting being as follows:

YEAS: Ambler, Anderson, Andes, Arvon, Ashley, Azinger, Barrett, Butler, Cadle, Canterbury, Cooper, Cowles, Ellem, Ellington, Espinosa, A. Evans, D. Evans, Faircloth, Folk, Gearheart, Hamilton, Hamrick, Householder, Howell, Ireland, Kump, Lawrence, O'Neal, Overington, Romine, Shott, Skinner, Storch and Westfall.

ABSENT AND NOT VOTING: J. Nelson.

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

The bill was then ordered to engrossment and third reading.

H. B. 3163, Requiring all debt obligations of the West Virginia parkways authority to be satisfied by February 1, 2020; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 3164, Allowing part-time outside employment for full time prosecuting attorneys; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

FIRST READING

Com. Sub. for H. B. 2776, Increasing certain filing fees in certain civil actions; on first reading, coming up in regular order, was read a first time and ordered to second reading.

MISCELLANEOUS BUSINESS

Delegate Iaquinta noted to the Clerk that he was absent on yesterday when the votes were taken on Roll Nos. 121 through 124, and that had he been present, he would have voted "YEA" thereon.

Delegate Azinger asked and obtained unanimous consent that the remarks of Delegate Hunt regarding care of those with autism spectrum disorders be printed in the Appendix to the Journal.

LEAVES OF ABSENCE

At the request of Delegate Boggs, and by unanimous consent, leave of absence for the day was granted Delegate J. Nelson.

At 12:32 P.M., the House of Delegates adjourned until 11:00 A.M., Wednesday, April 3, 2013.

WEDNESDAY, APRIL 3, 2013

FIFTIETH DAY

[MR. SPEAKER, MR. THOMPSON, IN THE CHAIR]

The House of Delegates met at 11:00 A.M., and was called to order by the Honorable Rick Thompson, Speaker.

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

The Clerk proceeded to read the Journal of Tuesday, April 2, 2013, being the first order of business, when the further reading thereof was dispensed with and the same approved.

COMMITTEE REPORTS

Mr. Speaker, Mr. Thompson, from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

H. C. R. 83, Requesting a study on viable alternatives to placing children in maximum security environments,

H. C. R. 104, Recognizing the many contributions made by citizens of the Republic of Azerbaijan and that it is in the best interest of the State of West Virginia to promote relationships with the Azerbaijani people,

H. C. R. 110, The "Boyd Leon Parsons Memorial Bridge",

H. C. R. 111, Requesting the Division of Highways to build the bridge on County Route 65/03 located near Tug Valley High School in Naugatuck, Mingo County,

S. C. R. 7, Designating Hall Flintlock Model 1819 official state firearm,

S. C. R. 9, Requesting DOH name bridge in Boone County "Naval Chief Boatswain Fred L. Byrnside and Army Captain Dora Jo Chambers Byrnside Memorial Bridge",

And,

S. C. R. 13, Requesting DOH name bridge in Lewis County "J. Cecil Jarvis Memorial Bridge",

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

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

Your Committee on Government Organization has had under consideration:

Com. Sub for S. B. 435, Continuing Municipal Home Rule Pilot Program,

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

Delegate Miley, 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. 145, Amending election complaint procedures,

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

Delegate Miley, 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. 71, Requiring descriptions of easements and rights-of-way include width in addition to centerline; exception,

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

Delegate Miley, 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. 535, Relating to process for maintaining voter registration lists,

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 (Com. Sub. for S. B. 535) was referred to the Committee on Finance.

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

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

S. B. 52, Relating to Rural Health Initiative Act,

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

In accordance with the former direction of the Speaker, the bill (S. B. 52) was referred to the Committee on Finance.

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

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

Com. Sub. for S. B. 464, Regulating tanning facilities,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 464) was referred to the Committee on the Judiciary.

On motions for leave, resolutions were introduced (Originating in the Committee on Health and Human Resources and reported with the recommendation that they each be adopted), which were read by their titles, as follows:

By Delegates Perdue, Perry, Ellington, Campbell, Diserio, Eldridge, Lawrence, Miller, Householder, Fleischauer, Border, Cowles, Marshall, Moore, Rowan, Moye, Poore, Staggers, Arvon, Sobonya, Pasdon and Ferns:

H. C. R. 114 - "Requesting the Joint Committee on Government and Finance to study the authority of structure of DHHR."

WHEREAS, The Department of Health and Human Resources has grown tremendously with an increased staff of over 6,000 employees responsible for well over 25 expansive and critical programs which serve the entire state; and

WHEREAS, The Department of Health and Human Resource budget has grown to well over 3.5 billion dollars and has easily become the most comprehensive agency in state government; and

WHEREAS, There is a strong desire on the part of the Legislature to work collaboratively to have a complete understanding of the department and how and why decisions are made; and

WHEREAS, The Legislature believes that as the appropriators of state funds there is a strong need to have a complete understanding of the DHHR budget; and

WHEREAS, Authority and structure of the Office of the Governor is currently conducting an audit and the legislature should review that audit and its findings of the Department of Health and Human resources; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the authority, structure, and audit recommendation of the department to develop a better understanding of the department and a more collaborative process of working with the department to efficiently and effectively meet the needs of the citizens of the state; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

And,

By Delegates Perdue, Perry, Ellington, Campbell, Eldridge, Diserio, Lawrence, Miller, Householder, Fleischauer, Border, Cowles, Marshall, Moore, Rowan, Moye, Poore, Staggers, Arvon, Sobonya, Pasdon and Ferns:

H. C. R. 117 – "Requesting the Joint Committee on Government and Finance to study the certificate of need review process within the Health Care Authority."

WHEREAS, The certificate of need review process was enacted by the West Virginia Legislature in 1977 and became a part of the Health Care Authority in 1983; and

WHEREAS, The certificate of need review process is intended to be a regulatory element designed to assist the Health Care Authority to control health care costs, improve the quality and efficiency of the state's health care system, encourage collaboration and develop a system of health care delivery available to all of West Virginia's citizens; and

WHEREAS, Unless specifically exempted, all health care providers in West Virginia must obtain a certificate of need prior to the addition or expansion of health care services, to exceed certain capital expenditures, to obtain major medical equipment or to develop or acquire a new health care facility; and

WHEREAS, The structure of certificate of need review varies widely from state to state and some states have either repealed or limited the scope of the certificate of need review process; and

WHEREAS, In some respects the certificate of need review process in West Virginia has substituted bureaucratic decision making for a free enterprise system; and

WHEREAS, Restructuring the certificate of need review process to better account for cost containment with attention paid to efficient allocation of scarce resources, the impact on effective delivery of

health care services, a greater attention to balancing quality of care and service delivery with entrepreneurial insight and patient preference, and a focus on availability of services to the citizens of West Virginia through a more competitive free market may be needed; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the certificate of need review process within the Health Care Authority; and, be it

Further Resolved, That the Joint Committee on Government and Finance consider an alternative framework to the certificate of need review process more centered on a free market in the delivery of medical care in health care facilities and equipment; and, be it

Further Resolved, That Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

The Speaker referred the resolutions (H. C. R. 114 and H. C. R. 117) to the Committee on Rules.

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

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

Com. Sub. for S. B. 27, Relating to administration of opioid antidote in emergency situations,

Com. Sub. for S. B. 201, Permitting expedited partner therapy,

S. B. 407, Requiring cellular and phone companies provide certain information to Bureau for Child Support Enforcement,

And,

S. B. 429, Redefining "facility" under Medication Administration by Unlicensed Personnel Act.

And reports the same back with the recommendation that they each do pass, but that they first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bills (Com. Sub. for S. B. 27, Com. Sub. for S. B. 201, S. B. 407 and S. B. 429) were each referred to the Committee on the Judiciary.

On motion for leave, a resolution was introduced (Originating in the Committee on Health and Human Resources and reported with the recommendation that it be adopted), which was read by its title, as follows:

By Delegates Lawrence, Campbell, Moye, Eldridge, Perdue, Perry, Ellington, Diserio, Householder, Fleischauer, Border, Miller, Cowles, Marshall, Moore, Rowan, Poore, Staggers, Ferns, Arvon, Pasdon and Sobonya:

H. C. R. 115 - "Requesting the Joint Committee on Government and Finance to study the current medical exemption process for immunizations in West Virginia."

WHEREAS, West Virginia has one of the strictest laws in the nation pertaining to medical vaccine exemption requirements for children before they can attend school; and

WHEREAS, Vaccines have reduced and, in some cases, eliminated many diseases that killed or severely disabled people just a few generations before; and

WHEREAS, Currently West Virginia requires that physicians send requests to the local health departments to be authorized before the child can enter the school system; and

WHEREAS, Disease prevention is the key component to public health. Vaccines prevent disease in the people who receive them and protect those who come into contact with unvaccinated individuals. Vaccines help prevent infectious diseases and save lives. Vaccines are responsible for the control of many infectious diseases that were once common in this country; and

WHEREAS, It is crucial that pediatricians design a safe immunization plan for children with confirmed vaccine allergies. Children who have had one allergic reaction are believed to be at a higher risk for future reactions, typically more serious than the first; and

WHEREAS, With the current medical exemption process, some children are forced to miss school days prior to being exempted with parents often having to opt to home school; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to conduct a study on the current medical exemption process for immunizations in West Virginia; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

The Speaker referred the resolution (H. C. R. 115) to the Committee on Rules.

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. 2800, Relating to the Teachers' Retirement System.

A message from the Senate, by

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

Com. Sub. for H. B. 2802, Relating to the Emergency Medical Services Retirement System.

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. 22 - "A Bill to amend and reenact §5-16-7 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-15-4k; to amend said code by adding thereto a new section, designated §33-16-3w; to amend said code by adding thereto a new section, designated §33-24-7l; to amend said code by adding thereto a new section, designated §33-25-8i; and to amend said code by adding thereto a new section, designated §33-25A-8k, all relating generally to requiring health insurance coverage of maternity services in certain circumstances; providing maternity services for all individuals participating in or receiving insurance coverage under a health insurance policy if those services are covered under the policy; modifying required benefits for public employees insurance, accident and sickness insurance, group accident and sickness insurance, hospital medical and dental corporations, health care corporations and health maintenance organizations; and

providing exceptions to the extent that required benefits exceed the essential health benefits specified under the Patient Protection and Affordable Care Act"; 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. 65 - "A Bill to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-7-1 of said code, all relating to pension benefits exempt from state income taxation; and including Division of Natural Resources police into the class of law-enforcement officers exempted"; which was referred to the Committee on Pensions and Retirement 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. 98 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18B-11C-1 and §18B-11C-2; and to amend said code by adding thereto a new article, designated §18B-11D-1, §18B-11D-2, §18B-11D-3, §18B-11D-4, §18B-11D-5 and §18B-11D-6, all relating to higher education centers and institutes generally; setting forth legislative findings and intent; providing definitions; requiring certain reports; creating the Shale Research, Education, Policy and Economic Development Center at West Virginia University; setting forth legislative findings and purposes; requiring certain rules; and providing certain powers and duties of West Virginia University Board of Governors, the center and the center director"; 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. 103 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §29-18A-1, §29-18A-2, §29-18A-3, §29-18A-4 and §29-18A-5, all relating to creating the West Virginia Commuter Rail Access Act; definitions; agreement with other states requirement; verifications; and authorizing a tax credit to a railroad in lieu of payment of track access fees commencing July 1, 2014"; 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, to take effect July 1, 2013, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 195 - "A Bill to amend and reenact §11-27-38 of the Code of West Virginia, 1931, as amended, relating generally to health care provider taxes; modifying the expiration date for tax rate on eligible acute care hospitals; changing the tax rate on eligible acute care hospitals; and providing for disbursement of any funds remaining in the Eligible Acute Care Provider Enhancement Account"; 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. 202 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-20C-1, §19-20C-2 and §19-20C-3, all relating to establishing the West Virginia Spay Neuter Program and Fund; designating the Commissioner of the Department of Agriculture to manage the program and fund; providing grants to nonprofit spay neuter programs in state; limiting administrative expenses of fund; requiring annual reporting; and authorizing rulemaking"; 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. 324 - "A Bill to amend and reenact §30-5-1a and §30-5-16 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §30-5-16c; to amend and reenact §60A-3-301 of said code; and to amend said code by adding thereto a new section, designated §60A-3-301a, all relating to permits for manufacturing, making, producing, packing, packaging or preparing drugs, medicines, toilet articles, dentifrices and cosmetics and registration of practitioners dispensing controlled substances; modifying fees associated with the permits; granting rule-making authority to the Board of Pharmacy to establish a fee schedule for obtaining and maintaining the permit; providing that statutory fee schedule will remain in effect until amended, modified, repealed or replaced by legislative rule; clarifying disciplinary action that may be taken if condition or rule relating to permit is violated; modifying registration fees for practitioners dispensing controlled substances; granting rule-making authority to boards, departments and agencies that license or register practitioners dispensing controlled substances; and providing that statutory fee schedule for registering practitioners dispensing controlled substances will remain in effect until amended, modified, repealed or replaced by legislative rule"; which was referred to the Committee on Government Organization then 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. 326 - "A Bill to amend and reenact §18B-1A-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18B-2A-3 of said code, all relating to institutional operating budgets; the West Virginia Network of Educational Telecomputing; requiring the Higher Education Policy Commission

and Council for Community and Technical College Education to propose procedural rules by certain date; specifying prior approval by Legislative Oversight Commission on Education Accountability; setting forth goals and objectives for state institutions of higher education and specifying procedures for measuring attainment; designating a pilot year and requiring certain reports; specifying percentages of operating budgets to be applied to outcomes-based funding annually and designating total percentages; requiring establishment of legislative committee to advise in developing procedural rules; collecting, synthesizing and disseminating data from state institutions of higher education; directing institutional boards of governors to cooperate in certain data-related operations; and providing certain privacy protections"; 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. 421 - "A Bill to amend and reenact §61-7-11a of the Code of West Virginia, 1931, as amended, relating to providing an exemption for the official mascot of Parkersburg South High School, commonly known as the Patriot, which would allow the mascot to carry a musket on school grounds when the mascot is acting in his or her official capacity."

At the respective requests of Delegate Boggs, and by unanimous consent, reference of the bill (Com. Sub. for S. B. 421) to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect July 1, 2013, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 433 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §27-1A-12, relating to creating an informal dispute resolution process available to behavioral health providers licensed by the Department of Health and Human Resources for orders or citations of deficient practice; and providing that the informal dispute resolution process does not affect the ability of a licensee to seek administrative and judicial review of an order or citation of deficient practice"; which was referred to the Committee on Health and Human Resources then 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. 466 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-34-1, §19-34-2, §19-34-3, §19-34-4, §19-34-5, §19-34-6, §19-34-7, §19-34-8, §19-34-9 and §19-34-10, all relating to the regulation of dangerous wild animals; creating the Dangerous Wild Animal Board; setting forth the duties of the board; requiring the board to create a list of dangerous wild animals by rule; permitting the board to issue a permit for a dangerous wild animal legally possessed prior to the effective date of the rules; prohibiting the possession of a dangerous wild animal thereafter; setting forth permit requirements; providing for confiscation and disposition of animals; permitting the suspension and revocation of permits; providing exemptions; providing rule-making and emergency rule-making authority; and establishing criminal and civil penalties"; which was referred to the Committee on the Judiciary then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect July 1, 2013, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 498 - "A Bill to amend and reenact §11-16-24 of the Code of West Virginia, 1931, as amended; to amend and reenact §60-3A-28 of said code; to amend and reenact §60-7-13a of said code; and to amend and reenact §60-8-18 of said code, all relating to hearing procedures for certain licenses issued by the Alcohol Beverage Control Administration; requiring that appeals from the commissioner's decision regarding disciplinary action against a licensee are to be brought in the circuit court of Kanawha County or the circuit court in the county where the facility subject to the commissioner's decision is located or proposed to be located; and providing that the licensee appealing the commissioner's decision is required to pay the costs and fees incident to transcribing, certifying and transmitting records pertaining to the appeal"; 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. 515 - "A Bill to amend and reenact §17C-15-42 of the Code of West Virginia, 1931, as amended, relating to television receivers and other devices installed in vehicles; restrictions; conditions for use; and inapplicability of section to specific devices"; 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. 561 - "A Bill to establish the Tucker County Cultural District Authority; providing legislative findings; forming the Tucker County Cultural District Authority; providing for appointment of members; providing for organization and bylaws; requiring quarterly meetings; providing for quorum; authorizing proxy voting; providing for parliamentary procedure; providing for certain powers and duties of the board; establishing funding priorities; allowing public and private

partnerships; granting certain specific authority to the president of the authority; requiring cooperation of state agencies; and allowing various municipalities, boards, commissions, agencies and others to assist the authority"; which was referred to the Committee on Political Subdivisions then Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect July 1, 2013, and requested the concurrence of the House of Delegates in the passage, of

S. B. 582 - "A Bill to amend and reenact §55-10-1, §55-10-2, §55-10-3, §55-10-4, §55-10-5, §55-10-6, §55-10-7 and §55-10-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto twenty-four new sections, designated §55-10-9, §55-10-10, §55-10-11, §55-10-12, §55-10-13, §55-10-14, §55-10-15, §55-10-16, §55-10-17, §55-10-18, §55-10-19, §55-10-20, §55-10-21, §55-10-22, §55-10-23, §55-10-24, §55-10-25, §55-10-26, §55-10-27, §55-10-28, §55-10-29, §55-10-30, §55-10-31 and §55-10-32, all relating generally to arbitration; defining terms; defining notice under the article; defining when article applies; proscribing the effect of agreements to arbitrate and defining nonwaivable provisions; allowing for application for judicial relief under the article; making an agreement to arbitrate valid unless a legal or equitable reason for revocation exists; providing for the terms by which arbitration may continue if challenged; providing for the process for motions to compel or stay arbitration; providing for provisional remedies to protect the effectiveness of arbitration proceedings; providing the process for initiation of arbitration; providing for the consolidation of separate arbitration proceedings; providing for the appointment of an arbitrator and default process if not agreed by the parties; requiring neutrality of arbitrators; requiring disclosure by arbitrators of matters affecting impartiality; requiring a majority of arbitrators to agree to exercise powers; providing immunity for arbitrators; requiring competency to testify and providing for attorneys' fees and costs for challenges from which arbitrators are immune; providing the general process for

arbitration; allowing parties to be represented by a lawyer in arbitrations; outlining the procedure for witnesses, subpoenas, depositions and discovery in arbitrations; providing for judicial enforcement of preaward ruling by arbitrator; providing for a record of an award and the requirements for an award; allowing the change of an award by an arbitrator upon motion under certain conditions; providing that certain remedies and the fees and costs of arbitration may be a part of an arbitration award; allowing for confirmation by a court of an award upon motion; providing the process and grounds for vacating an award by a court; providing the process and grounds for the modification or correction of an award upon motion; providing that a court shall enter a judgment upon confirmation of an award and may add reasonable attorneys' fees and costs; providing for jurisdiction over arbitration agreements by a court of this state; providing venue; providing that appeals may be taken from orders related to arbitration proceedings; requiring uniform construction of the act; providing that this act complies with the Electronic Signatures in Global and National Commerce Act; and providing the effective date of the act"; 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. 586 - "A Bill to repeal §30-27-15 of the Code of West Virginia, 1931, as amended; to amend and reenact §30-27-3, §30-27-5, §30-27-8, §30-27-11 and §30-27-12 of said code; and to amend and reenact §30-37-7 of said code, all relating to the Board of Barbers and Cosmetologists; licensing schools of aesthetics, barbering, cosmetology, manicuring and massage; transferring authority to approve licensure for certain schools; clarifying powers and duties of the board; providing requirements for professional licensing, license renewal and work permits; establishing certain student registration requirements; and providing definitions"; 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, to take effect July 1, 2013, and requested the concurrence of the House of Delegates in the passage, of

S. B. 623 - "A Bill to amend and reenact §18-20-5 of the Code of West Virginia, 1931, as amended, relating to allowing certain funding for supporting children with high acuity needs to also be used to fund probation officer positions needed to address truancy; and making technical corrections"; 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. 624 - "A Bill to amend and reenact §61-5-29 of the Code of West Virginia, 1931, as amended, relating to adjusting penalties for willful failure to pay child support; requiring probation and home confinement instead of confinement in a correctional facility for first violations; creating the misdemeanor offense of a second conviction of willfully failing to pay child support; creating a felony offense of a third or subsequent conviction of willfully failing to pay child support; and requiring certain persons convicted of willfully failing to pay child support to promptly obtain employment or register with Workforce West Virginia and complete certain programs"; 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. 630 - "A Bill to amend and reenact §5A-6-4a of the Code of West Virginia, 1931, as amended, relating to duties of the Chief Technology Officer with regard to security of government

information; adding the Division of Protective Services and the West Virginia Intelligence Fusion Center to the list of agencies exempted from the control of the Chief Technology Officer; and adding the Treasurer to the list of officers whose responsibilities cannot be infringed upon by the Chief Technology Officer"; which was referred to the Committee on Government Organization then 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. 638 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13A-22, relating to exemptions from the tax on the privilege of severing natural gas and oil; terminating a severance tax exemption for natural gas or oil produced from any horizontally drilled well that has not produced marketable quantities for five consecutive years immediately preceding the year in which such well is placed back into production and thereafter produces marketable quantities of natural gas or oil; providing an exception thereto; and specifying a controlling effective date."

At the respective requests of Delegate Boggs, and by unanimous consent, reference of the bill (Com. Sub. for S. B. 638) to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading.

PETITIONS

Delegate Ireland presented a petition on behalf of his constituents in support of H. B. 2580, Providing that all future federal, state and local statutes, ordinances, laws, orders and rules concerning firearms, firearm accessories, ammunition and their accouterments are invalid and unenforceable; which was referred to the Committee on the Judiciary.

SPECIAL CALENDAR

THIRD READING

S. B. 496, Finding and declaring certain claims against state; 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. 141)**, and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hamrick, J. Nelson and Raines.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 496) passed.

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

On this question, the yeas and nays were taken **(Roll No. 142)**, and there were—yeas 95, nays 2, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Cadle and Householder.

ABSENT AND NOT VOTING: Hamrick, J. Nelson and Raines.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 496) 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. 2128, Providing railroad employees have the right to review and copy the contents of their personnel file; on third reading, coming up in regular order, was read a third time.

Delegate Boggs requested to be excused from voting on the passage of Com. Sub. for H. B. 2128 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the Member from voting.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 143)**, and there were—yeas 85, nays 12, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Andes, Cadle, Cowles, Craig, Gearheart, Householder, McCuskey, Miller, E. Nelson, Overington, Pasdon and Sobonya.

ABSENT AND NOT VOTING: Hamrick, J. Nelson and Raines.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2128) passed.

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

Com. Sub. for H. B. 2128 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §21-3-22, relating to railroad employee records; and requiring railroads to provide access to or copies of an employee's personnel file under certain circumstances and with certain limitations."

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. 2265, Relating to the School Access Safety Act; 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. 144)**, and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hamrick, J. Nelson and Raines.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2265) 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. 2352, Clarifying that the West Virginia Department of Environmental Protection does not assume a mine operator's obligations or liabilities under the Water Pollution Control Act; 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. 145)**, and there were—yeas 97, nays 1, absent and not voting 2, with the absent and not voting being as follows:

NAYS: Manypenny

ABSENT AND NOT VOTING: Hamrick and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2352) 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. 2355, Allowing the mascot of Parkersburg South High School to carry a musket on school grounds when the mascot is acting in his or her official capacity; on third reading, coming up in regular order was reported by the Clerk.

At the request of Delegate Boggs, and by unanimous consent, the bill was laid over.

Com. Sub. for H. B. 2357, Relating to sexting by minors; 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. 146**), 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: Hamrick and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2357) 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. 2399, Protecting livestock in dire or extreme condition; 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. 147**), 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: Hamrick and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2399) 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. 2431, Modifying the application process for obtaining a state license to carry a concealed deadly weapon; on third reading, coming up in regular order, with amendment pending and with restricted right to amend, was reported by the Clerk.

An amendment to the bill, offered by Delegate Eldridge, was reported by the Clerk.

Whereupon,

Delegate Eldridge asked and obtained unanimous consent that the amendment be withdrawn.

Delegates Eldridge, Miley and R. Philips then asked and obtained unanimous consent to offer an amendment on this reading.

The Clerk then reported the amendment amending the bill on page eight, section four, line one hundred thirty-two, immediately following the word "Guard", by inserting the words "or proof of other handgun qualification received while serving in any branch of the United States Military, Reserve or National Guard" and a period.

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

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 148)**, and there were—yeas 97, nays 1, absent and not voting 2, with the absent and not voting being as follows:

NAYS: Wells

ABSENT AND NOT VOTING: Hamrick and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2431) passed.

On motion of Delegates Eldridge and Miley, the title of the bill was amended to read as follows:

Com. Sub. for H. B. 2431 -"A Bill to amend and reenact §61-7-4 of the Code of West Virginia, 1931, as amended, relating to the process for obtaining a state license to carry a concealed deadly weapon;

clarifying certain restrictions and prohibitions; clarifying effect of expungement, pardons or reversal of prior offenses on permit application; clarifying training and certification requirements; clarifying background check requirements; and exempting active military and veterans from licensing fees."

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

H. B. 2469, Increasing the cap on earnings during temporary reemployment after retirement; 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. 149)**, and there were—yeas 95, nays 3, absent and not voting 2, with the absent and not voting being as follows:

NAYS: Armstead, Lane and McCuskey.

ABSENT AND NOT VOTING: Hamrick and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2469) 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. 2470, Relating to sign support specialist or an educational sign language interpreter in the education of exceptional children; 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. 150)**, 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: Hamrick and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2470) passed.

Delegate Boggs moved that the bill take effect July 1, 2013.

On this question, the yeas and nays were taken **(Roll No. 151)**, and there were—yeas 98, nays none, absent and not voting 2, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: Hamrick and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2470) takes effect July 1, 2013.

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. 2490, Providing for the appointment of veterans advocates at state institutions of higher education; 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. 152)**, 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: Hamrick and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2490) 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. 2491, Establishing a uniform policy for students enrolled in institutions of higher education who are called up

for duty in the military; 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. 153)**, 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: Hamrick and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2491) 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. 2498, Making it a crime for a person sitting on a grand jury to disclose the identity of an individual who will be indicted; 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. 154)**, 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: Hamrick and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2498) 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. 2513, Improving enforcement of drugged driving offenses; 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. 155)**, and there were—yeas 72, nays 26, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Barrett, Butler, Cadle, Canterbury, Eldridge, Ellem, Faircloth, Folk, Frich, Gearheart, Hamilton, Householder, Howell, Ireland, Kump, Lawrence, Manypenny, Miller, Poore, Romine, Skinner, R. Smith, Sobonya, Sponaugle, Walters and Westfall.

ABSENT AND NOT VOTING: Hamrick and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2513) 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. 2542, Relating to publication of the State Register; 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. 156)**, 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: Hamrick and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2542) passed.

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

On this question, the yeas and nays were taken **(Roll No. 157)**, and there were—yeas 98, nays none, absent and not voting 2, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: Hamrick and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2542) 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. 2544, Improving state emergency preparedness; 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. 158)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2544) 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. 2548, Increasing the criminal penalties for assaults and batteries against athletic officials; on third reading, coming up in regular order, was read a third time.

Delegates Gearheart and Espinosa requested to be excused from voting on the passage of Com. Sub. for H. B. 2548 under the provisions of House Rule 49.

The Speaker replied that the Delegates were members of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the Members from voting.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 159)**, and there were—yeas 94, nays 5, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Butler, Ireland, Overington, Sobonya and Walker.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2548) 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. 2570, Relating to the West Virginia Public Employees Grievance Procedure; 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. 160)**, and there were—yeas 97, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: McCuskey and Shott.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2570) 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. 2577, Relating to the practice of pharmacist care; 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. 161)**, and there were—yeas 99, nays none, absent and not voting 1, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2577) passed.

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

Com. Sub. for H. B. 2577 - "A Bill to repeal §30-5-1a, §30-5-1b, §30-5-2a, §30-5-3a, §30-5-5a, §30-5-5b, §30-5-6a, §30-5-7a, §30-5-7b, §30-5-7c, §30-5-9a, §30-5-10a, §30-5-12c, §30-5-14a, §30-5-14b, §30-5-16a, §30-5-16b, §30-5-16c and §30-5-22a of the Code of West Virginia, 1931, as amended; to amend and reenact §30-5-1, §30-5-2, §30-5-3, §30-5-4, §30-5-5, §30-5-6, §30-5-7, §30-5-8, §30-5-9, §30-5-10, §30-5-11, §30-5-12, §30-5-13, §30-5-14, §30-5-15, §30-5-16, §30-5-17, §30-5-18, §30-5-19, §30-5-20, §30-5-21, §30-5-22, §30-5-23, §30-5-24, §30-5-25, §30-5-26, §30-5-27, §30-5-28, §30-5-29 and §30-5-30 of said code; to amend said code by adding thereto four new sections, designated §30-5-31, §30-5-32, §30-5-33 and §30-5-34; and to amend and reenact §60A-10-3 of said code, all relating to pharmacy practice; prohibiting the practice of pharmacist care without a license; permitting a licensed practitioner to dispense in certain settings; providing other applicable sections; providing definitions; providing for board composition; setting forth the powers and duties of the board; clarifying rule-making authority; continuing a special revenue account; establishing license, registration and permit requirements; creating a scope of practice; creating a temporary permit; establishing renewal requirements; providing for exemptions from licensure; providing requirement to participate in collaborative pharmacy practice; providing requirement for dispensing

generic drugs; requiring and authorizing registration of pharmacies; establishing for permit for mail-order pharmacies and the manufacturing of drugs; providing requirements of filling prescriptions; providing requirements for the display of a board authorization; permitting the board to file an injunction; setting forth grounds for disciplinary actions; allowing for specific disciplinary actions; providing procedures for investigation of complaints; providing duty to warn; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal penalties; and updating references."

Delegate Boggs moved that the bill take effect July 1, 2013.

On this question, the yeas and nays were taken (**Roll No. 162**), and there were—yeas 99, nays none, absent and not voting 1, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2577) takes effect July 1, 2013.

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. 2600, Creating resort area districts; 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. 163**), and there were—yeas 82, nays 17, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Armstead, Arvon, Azinger, Butler, Cadle, Canterbury, A. Evans, D. Evans, Faircloth, Folk, Gearheart, Hamrick, Howell, Kump, Rowan, R. Smith and Sobonya.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2600) 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. 2608, Requiring appraisal management companies to be registered; 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. 164)**, and there were—yeas 95, nays 4, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Ambler, Butler, D. Evans and Howell.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2608) 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. 2689, Authorizing miscellaneous Boards and Agencies to promulgate legislative rules; 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. 165)**, and there were—yeas 60, nays 39, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Ambler, Anderson, Andes, Armstead, Arvon, Ashley, Azinger, Border, Butler, Cadle, Canterbury, Cooper, Cowles, Ellem, Ellington, Espinosa, A. Evans, D. Evans, Faircloth, Folk, Frich, Gearheart, Hamrick, Householder, Howell, Kump, Lane, McCuskey, Miller, E. Nelson, Overington, Pasdon, Raines, R. Smith, Sobonya, Storch, Sumner, Walters and Westfall.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2689) passed.

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

On this question, the yeas and nays were taken **(Roll No. 166)**, and there were—yeas 64, nays 35, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Anderson, Andes, Armstead, Arvon, Border, Butler, Cadle, Canterbury, Ellem, Ellington, Espinosa, A. Evans, D. Evans, Faircloth, Folk, Frich, Gearheart, Hamrick, Householder, Howell, Kump, Lane, McCuskey, Miller, E. Nelson, Overington, Pasdon, Raines, Rowan, R. Smith, Sobonya, Storch, Sumner, Walters and Westfall.

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates not having voted in the affirmative, the Speaker declared the motion to make the bill (Com. Sub. for H. B. 2689) effective from its passage rejected.

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. 2722, Increasing the amount of special license fees paid by pipeline companies; on third reading, coming up in regular order, was reported by the Clerk.

At the request of Delegate Boggs, and by unanimous consent, the bill was laid over.

Com. Sub. for H. B. 2730, Relating to the Real Estate Appraisal Board; 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. 167)**, and there were—yeas 99, nays none, absent and not voting 1, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2730) 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. 2731, Regulating the performance of health maintenance tasks by unlicensed personnel; 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. 168)**, and there were—yeas 98, nays none, absent and not voting 2, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2731) passed.

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

On this question, the yeas and nays were taken **(Roll No. 169)**, and there were—yeas 97, nays 1, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Howell.

ABSENT AND NOT VOTING: J. Nelson and L. Phillips.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2731) 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. 2738, Relating to the Center for Nursing; 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. 170)**, and there were—yeas 98, nays none, absent and not voting 2, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2738) 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. 2787, Permitting family court judges and magistrates to carry concealed handguns without a permit; on third reading, coming up in regular order, was read a third time.

Delegate Overington requested to be excused from voting on the passage of Com. Sub. for H. B. 2787 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the Member from voting.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 171)**, and there were—yeas 97, nays 1, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Wells

ABSENT AND NOT VOTING: J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2787) 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. 2805, Making the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program a permanent program; on third reading, coming up in regular order, was read a third time.

Delegate Lane requested to be excused from voting on the passage of Com. Sub. for H. B. 2806 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the Member from voting.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 172)**, and there were—yeas 70, nays 29, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Ambler, Andes, Armstead, Arvon, Border, Butler, Cadle, Canterbury, Cowles, Espinosa, D. Evans, Faircloth, Frich, Gearheart, Hamrick, Householder, Howell, Iaquinta, Ireland, Kump, Miller, Overington, Pasdon, Raines, Rowan, R. Smith, Sobonya, Sumner and Westfall.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2805) 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. 2806, Relating to administrative remedies for prisoners generally; 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. 173)**, and there were—yeas 99, nays none, absent and not voting 1, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2806) 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. 2825, Relating to certain appointive state officers salaries; 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. 174)**, and there were—yeas 55, nays 44, absent

and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Ambler, Anderson, Andes, Armstead, Arvon, Ashley, Border, Butler, Cadle, Campbell, Canterbury, Cooper, Cowles, Ellington, Espinosa, A. Evans, D. Evans, Faircloth, Folk, Frich, Gearheart, Hamilton, Hamrick, Householder, Howell, Ireland, Kump, Lane, McCuskey, Miller, E. Nelson, O'Neal, Overington, Pasdon, L. Phillips, Raines, Romine, Shott, R. Smith, Sobonya, Storch, Sumner, Walters and Westfall.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2825) passed.

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

On this question, the yeas and nays were taken **(Roll No. 175)**, and there were—yeas 56, nays 43, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Ambler, Andes, Armstead, Arvon, Ashley, Border, Butler, Cadle, Campbell, Canterbury, Cooper, Cowles, Ellem, Ellington, Espinosa, D. Evans, Faircloth, Folk, Frich, Gearheart, Hamilton, Hamrick, Householder, Howell, Ireland, Kump, Lane, McCuskey, Miller, E. Nelson, O'Neal, Overington, Pasdon, L. Phillips, Raines, Rowan, Shott, R. Smith, Sobonya, Storch, Sumner, Walters and Westfall.

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates not having voted in the affirmative, the Speaker declared the motion to make the bill (Com. Sub. for H. B. 2825) effective from its passage rejected.

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. 2836, Allowing certain Commission on Special Investigations personnel the right to carry firearms; 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. 176)**, and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Wells

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2836) passed.

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

On this question, the yeas and nays were taken (**Roll No. 177**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Wells

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2836) 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. 2837, Amending various provisions of the code affecting the Treasurer's Office; on third reading, coming up in regular order, with restricted right to amend, was reported by the Clerk.

There being no amendments, the Speaker then put the question on the passage of the bill.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 178)**, and there were—yeas 57, nays 42, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Ambler, Anderson, Andes, Armstead, Arvon, Ashley, Border, Butler, Cadle, Canterbury, Cooper, Cowles, Ellem, Ellington, Espinosa, D. Evans, Faircloth, Folk, Frich, Gearheart, Hamilton, Hamrick, Householder, Howell, Ireland, Kump, Lane, McCuskey, Miller, E. Nelson, O'Neal, Overington, Pasdon, Raines, Rowan, Shott, R. Smith, Sobonya, Storch, Sumner, Walters and Westfall.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2837) 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. 2849, Relating to audits and investigations by the chief inspector of public offices; 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. 179)**, and there were—yeas 99, nays none, absent and not voting 1, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2849) passed.

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

Com. Sub. for H. B. 2849 - "A Bill to amend and reenact §6-9-7 and §6-9-9a of the Code of West Virginia, 1931, as amended, all relating to the Chief Inspector of Public Offices; authorizing the Chief Inspector to investigate the financial affairs of local governmental offices, political subdivisions, boards, commissions, authorities, agencies and other public entities; clarifying that the Chief Inspector may report to proper legal authority or initiate civil and criminal actions if an investigation discloses misfeasance, malfeasance or nonfeasance; and providing for confidentiality of reports until the completion of investigation or adjudication."

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

Delegate Hamilton noted to the Clerk that he was absent on today when the votes were taken on Roll Nos. 141 through 155, and that had he been present, he would have voted "YEA" thereon, excluding Roll Nos. 143 and 155, on which he would have voted "NAY".

Delegate L. Phillips noted to the Clerk that she was absent on today when the votes were taken on Roll Nos. 169 through 171, and that had she been present, she would have voted "YEA" thereon.

Delegate Raines also noted to the Clerk that she was absent on today when the votes were taken on Roll Nos. 141, 142 and 144, and that had she been present, she would have voted "YEA" thereon. She further noted that she had not been present when the vote was taken on Roll No. 143, and that had she been present, she would have voted "NAY" thereon.

At 12:25 P.M., on motion of Delegate Boggs, the House of Delegates recessed until 2:30 P.M., and reconvened at that time.

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AFTERNOON SESSION

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SPECIAL CALENDAR

-CONTINUED-

REORDERING OF THE CALENDAR

Delegate Boggs announced that the Committee on Rules had transferred Com. Sub. for H. B. 2877, Com. Sub. for H. B. 2946 and H. B. 3164, on third reading, Special Calendar, to the House Calendar.

THIRD READING

Com. Sub. for H. B. 2897, Declaring certain claims against the state and its agencies to be moral obligations of the state; 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. 180)**, and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Marcum, J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2897) passed.

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

On this question, the yeas and nays were taken **(Roll No. 181)**, and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Marcum, J. Nelson and L. Phillips.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2897) 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. 2960, Providing for internal and external review of adverse health coverage determinations; 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. 182)**, and there were—yeas 58, nays 40, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Ambler, Anderson, Andes, Armstead, Arvon, Azinger, Border, Butler, Cadle, Canterbury, Cooper, Cowles, Ellington, Espinosa, A. Evans, D. Evans, Faircloth, Folk, Frich, Gearheart, Hamrick, Householder, Howell, Ireland, Kump, Lane, Miller, E. Nelson, O'Neal, Overington, Pasdon, Raines, Romine, Rowan, Shott, R. Smith, Sobonya, Storch, Sumner and Westfall.

ABSENT AND NOT VOTING: J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2960) 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. 2964, Authorizing the mayor to appoint chiefs of police and deputy chiefs of police; 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. 183)**, and there were—yeas 97, nays 1, absent

and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Butler.

ABSENT AND NOT VOTING: J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2964) 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. 2968, Authorizing the use of an additional medium for use in archiving the records; 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. 184)**, 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: J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2968) 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. 3020, Improving boat dock and marina safety; 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. 185)**, 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: J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3020) 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. 3021, Relating to operating a bicycle or overtaking a bicycle on a roadway; on third reading, coming up in regular order, was, at the request of Delegate Boggs, and by unanimous consent, placed at the foot of the calendar.

H. B. 3028, Expanding the number of hours temporary state personnel may work in a calendar year; 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. 186)**, and there were—yeas 90, nays 8, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Armstead, Cowles, D. Evans, Hamrick, McCuskey, O'Neal, Overington and Westfall.

ABSENT AND NOT VOTING: J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3028) passed.

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

On this question, the yeas and nays were taken **(Roll No. 187)**, and there were—yeas 90, nays 8, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Armstead, Cowles, Hamilton, Householder, Howell, McCuskey, O'Neal and Westfall.

ABSENT AND NOT VOTING: J. Nelson and L. Phillips.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3028) 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. 3058, Relating to the valuation of motor vehicles for purposes of ad valorem property taxes; on third reading, coming up in regular order, was read a third time.

Delegates Butler, Cooper, Diserio, A. Evans, Folk, Hamilton, Howell, Hunt, Manchin, Moye, Sponaugle, Staggers, Storch, Walters and Wells requested to be excused from voting on the passage of Com. Sub. for H. B. 3058 under the provisions of House Rule 49.

The Speaker stated that the aforementioned Members were members of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse them from voting thereon.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 188)**, and there were—yeas 91, nays 7, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Azinger, Cowles, A. Evans, D. Evans, Hamilton, Romine and Rowan.

ABSENT AND NOT VOTING: J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3058) passed.

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

Com. Sub. for H. B. 3058 - "A Bill to amend and reenact §11-1C-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §11-1C-5c and §11-1C-5d, all relating to the valuation of motor vehicles for purposes of ad valorem property taxes; requiring antique motor vehicles not used as a primary vehicle to be assigned an appraised value of up to $5,000; and providing that a reconciliation excise tax is imposed on the sale of an antique motor vehicle to recapture revenue from the sale."

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. 3060, Authorizing the Oil and Gas Conservation Commission to regulate the horizontal deep wells; on third reading, coming up in regular order, was read a third time.

Delegate Armstead requested to be excused from voting on the passage of Com. Sub. for H. B. 3060 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the Member from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 189**), and there were—yeas 94, nays 4, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Hamilton, Lane, McCuskey and Walters.

ABSENT AND NOT VOTING: J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3060) 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. 3062, Removing the cap for collections into the land division special revenue account of the Department of Agriculture; 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. 190)**, 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: J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3062) passed.

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

On this question, the yeas and nays were taken **(Roll No. 191)**, and there were—yeas 98, nays none, absent and not voting 2, with absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson and L. Phillips.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3062) 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. 3069, Relating to access to justice; 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. 192)**, and there were—yeas 97, nays 1, absent

and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Pasdon.

ABSENT AND NOT VOTING: J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3069) 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. 3072, West Virginia Coal Employment Enhancement Act; 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. 193)**, and there were—yeas 97, nays none, absent and not voting 3, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: Fleischauer, J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3072) 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. 3112, Relating to compensation awards to victims of crimes; 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. 194)**, and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Fleischauer, J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3112) 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. 3112 - "A Bill to amend and reenact §14-2A-3, §14-2A-9 and §14-2A-12 of the Code of West Virginia, 1931, as amended, all relating to compensation awards to victims of crimes; increasing the amount of victim relocation costs; permitting a victim's reasonable travels costs to attend parole hearings of the offender; including student loans in definition of lost scholarship; permitting the Court of Claims to hire more than two claim investigators; and permitting claim investigators to acquire autopsy reports, including toxicology results, from the State Medical Examiner."

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. 3139, Authorizing qualified investigators employed by the Secretary of State to carry a firearm and concealed weapon; 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. 195)**, and there were—yeas 96, nays 1, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Wells

ABSENT AND NOT VOTING: Fleischauer, J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3139) passed.

Delegate Boggs 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 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Fleischauer, J. Nelson and L. Phillips.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3139) 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. 3157, Restoring the authority, flexibility, and capacity of schools and school systems to improve student learning; 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 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3157) passed.

On motion of Delegate M. Poling, the title of the bill was amended to read as follows:

Com. Sub. for H. B. 3157 - "A Bill to repeal §18-2-15, §18-2-15a, §18-2-18, §18-2-23, §18-2-30, §18-2-31, §18-2-36, §18-2-37 and §18-2-38 of the code of West Virginia, 1931, as amended; to repeal §18-2E-3c and §18-2E-3d of said code; to repeal §18-5-40 of said code; to repeal §18-9-2b, §18-9-5, §18-9-7 and §18-9-8 of said code; to repeal §18-9A-3a, §18-9A-3b, §18-9A-13, §18-9A-13a, §18-9A-13b, §18-9A-25 and §18-9A-26 of said code; to repeal §18-9B-11 and §18-9B-16 of said code; to repeal §18A-3-2b of said code; to amend and reenact §18-2-5g of said code; to further amend said code by adding thereto a new section, designated §18-2E-5e; to further amend said code by adding thereto a new section, designated §18-8-6a; and to amend and reenact §18-9A-10 of said code, all relating to restoring the authority, flexibility and capacity of schools and school systems to improve student learning; eliminating requirement for biennial report on public schools and institutions; eliminating expired provisions for RESA study; eliminating expired provisions for study on staff fluctuations at certain schools; eliminating outdated provisions on comprehensive education program plans; eliminating requirement for statewide curriculum technology resource center; eliminating outdated provisions for automatic cost of living adjustment plan; eliminating outdated provisions for student learning abilities grant program; eliminating expired provisions on flood and property insurance study; eliminating expired provisions on study of school teams and committees; eliminating prescriptive summer reading and math grant program provisions; eliminating provisions pilot program for operation on schools on semester basis; eliminating outdated provisions for transferring school funds from magisterial and independent school districts; eliminating outdated provisions related to the board of the school fund; eliminating outdated provisions related to supplemental aid to for districts with institutional home for orphans and homeless children; eliminating expired provisions for transition to new provisions on school finance; eliminating expired provisions for school finance in certain fiscal year; eliminating expired provisions for one-year transitional allocation appropriation for certain rural districts; eliminating expired provisions related to levies subsequent to passage

of statewide uniform excess levy; eliminating inoperable provisions for legislative reserve fund; eliminating requirement for appropriation for teacher of the year salary; eliminating allowance for workers' compensation for unpaid work-based learning; eliminating outdated provisions related to board of school finance; eliminating provisions related to beginning teacher internship; replacing requirement for annual summary and submission of certain county board policies with requirement for state board to review and evaluate certain reports and report to legislative oversight commission; making legislative findings on Goals for Education; making legislative findings on policy-oriented objectives in Goals for Education; making legislative findings on certain issues raised by Efficiency Audit; making legislative findings on consistency of certain Audit conclusion and policy-oriented objectives of Goals for Education; stating purpose of section with respect to Goals for Education and policy-oriented objectives; requiring state board report on accountability supervisory method that does not affect school and district strategic plans in certain ways; requiring state board to provide clear and consistent expectations for reasonable period in certain ways; requiring state board to ensure certain school and school system capacity for professional development; requiring state board to evaluate its performance and progress on achieving goals and report to Legislative Oversight Commission on Education Accountability; providing reimbursement in certain circumstances for county board costs of probation officers for truant juveniles; eliminating state board approval of certain electronic strategic improvement plans; reducing percent of increase in local share added to allowance to improve instructional programs; requiring certain funds available for use for personnel to be used for only certain personnel subject to certain condition; increasing percent of increase in local share added to instructional technology purposes; changing purpose to county and school strategic improvement plans; and changing method of allocation to counties."

Delegate Boggs moved that the bill take effect July 1, 2013.

On this question, the yeas and nays were taken **(Roll No. 198)**, 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: J. Nelson and L. Phillips.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3157) takes effect July 1, 2013.

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

H. B. 3161, Repealing section relating to additional fee to be collected for each marriage license issued; 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 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3161) 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. 3162, Expanding the eligible recipients of matching funds to include West Virginia State University in certain circumstances, and modifying criteria for eligibility; 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. 200)**, and there were—yeas 95, nays 3, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Folk, Howell and Kump.

ABSENT AND NOT VOTING: J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3162) 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. 3163, Requiring all debt obligations of the West Virginia parkways authority to be satisfied by February 1, 2020; 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 97, nays 1, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Wells.

ABSENT AND NOT VOTING: J. Nelson and L. Phillips.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3163) 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

Com. Sub. for S. B. 430, Defining "employment term" in Teachers' Defined Contribution Retirement System; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 431, Relating to public employer liability for delinquent retirement contributions; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 448, Increasing number of demonstration dealer plates issued to large commercial vehicle dealers; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for H. B. 2776, Increasing certain filing fees in certain civil actions; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 2859, Authorizing the Commissioner to issue no more than ten additional special demonstration plates used by new and used dealers of larger commercial type vehicles; on second reading, coming up in regular order, was read a second time and 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:

S. B. 383, Authorizing family court judges appoint counsel in certain contempt cases,

And,

Com. Sub. for S. B. 412, Relating to removal of elected county conservation district supervisors from office.

THIRD READING

Com. Sub. for H. B. 3021, Relating to operating a bicycle or overtaking a bicycle on a roadway; on third reading, having been postponed in earlier proceedings, was, on motion of Delegate Boggs, laid over.

MISCELLANEOUS BUSINESS

Delegate L. Phillips noted to the Clerk that she was absent on today when the votes were taken on Roll Nos. 179 through 201, and that had she been present, she would have voted "YEA" thereon.

Delegates Ellington, Gearheart and Shott addressed the House regarding H. B. 3163, Requiring all debt obligations of the West Virginia Parkways Authority to be satisfied by February 1, 2020, and at the conclusion thereof, Delegate Kump asked and obtained unanimous consent that said remarks be printed in the Appendix to the Journal.

Delegate O'Neal also addressed the House regarding H. B. 3163, and at the conclusion thereof, Delegate Armstead asked and obtained unanimous consent that said remarks be printed in the Appendix to the Journal.

Delegate Sumner addressed the House regarding H. B.3163, and at the conclusion thereof, Delegate Lane asked and obtained unanimous consent that said remarks be printed in the Appendix to the Journal.

LEAVES OF ABSENCE

At the request of Delegate Boggs, and by unanimous consent, leave of absence for the day was granted Delegate J. Nelson.

At 3:35 P.M., the House of Delegates adjourned until 11:00 A.M., Thursday, April 4, 2013.

THURSDAY, APRIL 4, 2013

FIFTY-FIRST DAY

[MR. SPEAKER, MR. THOMPSON, IN THE CHAIR]

The House of Delegates met at 11:00 A.M., and was called to order by the Honorable Rick Thompson, Speaker.

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

The Clerk proceeded to read the Journal of Wednesday, April 3, 2013, being the first order of business, when the further reading thereof was dispensed with and the same approved.

At the request of Delegate Boggs, and by unanimous consent, the House of Delegates proceeded to the Seventh Order of Business for the purpose of introduction of resolutions.

RESOLUTIONS INTRODUCED

Mr. Speaker, Mr. Thompson, and Delegates Perdue, Stephens and Reynolds offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 118 - "Requesting the Division of Highways to rename the bridge on High Street over Twelve Pole Creek in Ceredo, West Virginia, bridge number 50-60/4-0.10, the 'U.S. Marine Corps PFC Daniel L. Edwards Memorial Bridge'."

WHEREAS, PFC Daniel L. Edwards was born on April 1, 1950 in Huntington, West Virginia; and

WHEREAS, PFC Daniel L. Edwards attended Ceredo-Kenova High School and fought in the Golden Gloves tournament; and

WHEREAS, PFC Daniel L. Edwards enlisted in the United States Marine Corps on June 2, 1967; and

WHEREAS, PFC Daniel L. Edwards was deployed to Vietnam in May 1968, and was a member of Company B of the First Battalion of the Seventh Marine Regiment, First Marine Division; and

WHEREAS, On the afternoon of August 10, 1968, PFC Daniel L. Edwards' company came under intense rocket and automatic weapons fire from a large, well-entrenched North Vietnamese Army force; and

WHEREAS, PFC Daniel L. Edwards unhesitatingly launched a determined assault against enemy positions, fearlessly maneuvering across fire-swept terrain and delivering accurate suppressive fire upon hostile emplacements, enabling his comrades to evacuate other injured men; and

WHEREAS, PFC Daniel L. Edwards steadfastly remained in a dangerous exposed position, skillfully providing coverage until he was mortally wounded; and

WHEREAS, PFC Daniel L. Edwards' heroic and timely actions inspired all who observed him and were instrumental in enabling fellow Marines to reach safety; and

WHEREAS, For conspicuous gallantry and intrepidity in action, PFC Daniel L. Edwards was posthumously awarded the Silver Star Medal as well as the Purple Heart; and

WHEREAS, PFC Daniel L. Edwards was survived by his parents, Carl R. and Dorothy Neace Edwards, as well as his brother Spec 4 Carl Edwards Jr., who also served in Vietnam, his sisters Linda McCoy and Brenda Klein, and his grandparents Mr. and Mrs. Charles Edwards; and

WHEREAS, It is fitting and proper, that PFC Daniel L. Edwards be remembered and acknowledged for his courageous and selfless action in service to his country, and for his ultimate sacrifice; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name on High Street over Twelve Pole Creek in Ceredo, West Virginia, bridge number 50-60/4-0.10, the "U.S. Marine Corps PFC Daniel L. Edwards Memorial Bridge"; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "U.S. Marine Corps PFC Daniel L. Edwards Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a certified copy of this resolution to the Secretary of the Department of Transportation and to the surviving family of PFC Daniel L. Edwards.

Delegates Cadle, Lynch, Folk, Cooper, Iaquinta, Arvon, Westfall, Ambler, Anderson, Andes, Armstead, Ashley, Border, Butler, Canterbury, Cowles, Ellem, Espinosa, D. Evans, Gearheart, Hamrick, Howell, Lane, McCuskey, E. Nelson, O'Neal, Paxton, Raines, R. Smith, Sumner, Walters and Williams offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 119 - "Requesting the Division of Highways to name bridge number 27-62-37.01 on Route 62 in Hartford, Mason County, the 'US Army Corporal John L. Gibbs Memorial Bridge'."

WHEREAS, Corporal John Leslie Gibbs was born on November 1, 1944, one of twelve children born to the late Charles and Sadie Gibbs of Hartford, Mason County, West Virginia; and

WHEREAS, Corporal John L. Gibbs entered the United States Army on August 23, 1966. As a Private First Class, he was serving as a member of Company B, 2nd Battalion, 23rd Infantry, 2nd Infantry Division, one of the forward elements of the United Nations Command

enforcing the Korean Armistice of 1953. On July 16, 1967, PFC John L. Gibbs was in a foxhole south of the Korean Demilitarized Zone when his position was suddenly attacked by North Korean infiltrators under the cover of dense fog and darkness. A furious fire fight erupted and PFC John L. Gibbs and two of his fellow soldiers were killed; and

WHEREAS, On July 15, 1967, PFC John L. Gibbs was posthumously promoted to the grade of Corporal, and was awarded the Purple Heart on August 10, 1967, for wounds received in action in Korea resulting in his death; and

WHEREAS, It is fitting and proper, that US Army Corporal John L. Gibbs be remembered and acknowledged for his dedicated service and ultimate sacrifice to his country; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 27-62-37.01 on Route 62 in Hartford, Mason County, the "US Army Corporal John L. Gibbs Memorial Bridge"; and, be it

Further Resolved, That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge the "US Army Corporal John L. Gibbs Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a certified copy of this resolution to the Commissioner of the Division of Highways and to the surviving family of Corporal John L. Gibbs.

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

H. C. R. 120 - "Requesting the Division of Highways to rename one side of Front Street and one side of Market Street in the city of

Spencer, Roane County, West Virginia, the '1st Sergeant Walter Criss Street, United States Army'."

WHEREAS, Walter Criss was born and raised in a log cabin on Sang Run, near Beech, in Calhoun County, West Virginia; and

WHEREAS, After dropping out of school at a young age, Walter Criss impulsively joined the Army in 1940 after seeing a recruitment poster on the streets of Charleston, West Virginia, an impulsive decision that set the path of his life; and

WHEREAS, Initially, as a young soldier, Walter Criss was assigned to the 21st Field Artillery Division, stationed in Battle Creek, Michigan, earning wages of a whopping $17 per month; and

WHEREAS, In the fall of 1941, Walter Criss and his unit were sent to Iceland for a six month tour that turned into a twenty-five month tour due to the start of WWII; and

WHEREAS, While in Iceland, Walter Criss served as a guard and was, ultimately, promoted to Corporal of the Guard; and

WHEREAS, In 1943, Walter Criss was assigned to the 955th Field Artillery stationed in England preparing for the D-Day invasion scheduled one year hence; and

WHEREAS, As the days led up to D-Day, Walter Criss and other members of his unit engaged in a ploy to disguise the invasion and throw off German intelligence by using passes to go to another part England; and

WHEREAS, During his tour in Europe, Walter Criss was involved in five major battles and witnessed the bombing of Saint-Lo; and

WHEREAS, After a brief leave to come back to the States in 1945, Walter Criss rejoined his unit, first in Czechoslovakia with the Russian Army in eyesight and then later through Germany, France, Morroco,

Dakar, Brazil, Florida and, finally, Ft. Meade, Maryland, where he was honorably discharged in July 1945; and

WHEREAS, Shortly after his discharge in July 1945, Walter Criss met and married Frankie Greathouse of Spencer, West Virginia, a woman with whom he remained until her death in 2006; and

WHEREAS, Walter and Frankie had two children, Norman of Louisville, Kentucky, and Nora Ann Cox of Barberton, Ohio; and

WHEREAS, In 1946, Walter Criss reenlisted in the United States Army and was stationed, first in Alaska and, then, Oklahoma; and

WHEREAS, Walter Criss was sent to Korea where he saw action during the Korean War and was promoted to 1st Sergeant; and

WHEREAS, After the Korean War, 1st Sergeant Criss' military duties took him to Texas, Louisiana, Germany and Virginia where he was assigned to a guided missile unit protecting Washington. D.C.; and

WHEREAS, 1st Sergeant Criss later served in Germany, again, and Ft. Meade where he obtained his GED; and

WHEREAS, After one more tour in Germany, 1st Sergeant Criss transferred to the Guards in 1961; and

WHEREAS, Most recently, in February 2012, 1st Sergeant Criss was appointed a "Chevalier", or Knight, of the French Legion of Honor by the French for his role in the liberation of France during WWII, an honor which began two centuries ago under Napolean; and

WHEREAS, In light of Walter Criss' significant history in the United States Army and substantial risk and contributions during two major wars, WWII and the Korean War, it is more than fitting to designate a street in his town by his name and rank; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name one side of Front Street and one side of Market Street in the City of Spencer, Roane County, West Virginia, the "1st Sgt. Walter Criss Street, United States Army"; and, be it

Further Resolved, That the Division of Highways is hereby requested to cause to have made and be placed signs at every intersection of the streets, in prominent lettering, the "1st Sgt. Walter Criss Street, United States Army"; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a certified copy of this resolution to Walter Criss, to his children, Norman of Louisville, Kentucky, and Nora Ann Cox of Barberton, Ohio, and to the Secretary of the Department of Transportation.

Delegates Anderson, Border, Azinger, D. Poling and Ellem offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 121 - "Requesting that bridge number 54-68-23.53 on Routes 2 and 68, known as the I-77 overpass in Wood County, West Virginia, be named the 'LSC (SS) Andrew Scott Mollohan Memorial Bridge'."

WHEREAS, LSC (SS) Andrew Scott Mollohan was born on September 15, 1969, in Wood County, West Virginia, the son of Thomas and Alice Mollohan of Wood County. He attended and graduated from Williamstown High School in Wood County; and

WHEREAS, LSC (SS) Andrew Scott Mollohan began his twenty-two year career in the United States Navy after graduating from high school and served until his death. While in the United States Navy, LSC (SS) Andrew Scott Mollohan served in the Gulf War and was stationed at Groton, Connecticut. He was the Logistics Specialist Division leading Petty Officer and was building the U.S.S. Missouri SSN 780 when he died on November 29, 2009; and

WHEREAS, LSC (SS) Andrew Scott Mollohan received several awards for his service in the United States Navy including Enlisted Submarine Warfare Insignia, Expert Pistol Medal, Navy Arctic Service Ribbon, five Navy Sea Service Development Ribbons, Global War on Terrorism Service Medal, Global War On Terrorism Expeditionary Medal, two National Defense Service Medals, Navy Expeditionary Medal, six Navy Good Conduct Medals, three Navy E Ribbons, Navy Meritorious Unit Commendation, Navy and Marine Corp Achievement Medal, and the Navy and Marine Corp Commendation Medal; and

WHEREAS, LSC (SS) Andrew Scott Mollohan dedicated his whole life to the United States Navy and his country, it is only fitting and proper that he be remembered and acknowledged for his outstanding dedication and service; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 54-68-23.53 on Routes 2 and 68 in Wood County, West Virginia, the "LSC (SS) Andrew Scott Mollohan Memorial Bridge"; and, be it

Further Resolved, That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the bridge containing bold and prominent letter proclaiming the bridge the "LSC (SS) Andrew Scott Mollohan Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a certified copy of this resolution to the Secretary of the Department of Transportation and to the surviving family of LSC (SS) Andrew Scott Mollohan.

Delegates Perdue, Boggs and Moye offered the following resolution, which was read by the Clerk as follows:

H. C. R. 122 - "Requesting the Joint Committee on Government and Finance to study the rural health workforce in West Virginia."

WHEREAS, West Virginians from rural areas across the state rely on their local rural health care system including hospitals, community health centers, free clinics and private primary care providers to provide critical services; and

WHEREAS, West Virginia's rural health care system struggles to recruit and retain adequate workforce to meet the health care needs of its population; and

WHEREAS, In 2012, all but five West Virginia counties were below the national average of physicians per 100,000; and

WHEREAS, The federal government currently classifies sixteen rural West Virginia counties in whole or in part as primary care Health Professional Shortage Areas; and

WHEREAS, An estimated 300,000 West Virginians could possibly become newly insured under the Patient Protection and Affordable Care Act and many of these citizens live in rural areas; and

WHEREAS, The West Virginia Rural Health Association released its 2012 report "Health Care in West Virginia: A Workforce Analysis" providing an inventory of West Virginia's health care workforce and also held community forums across the state to collect feedback on the state's rural health workforce needs; and

WHEREAS, Building a strong health care system across West Virginia will not only improve community health and quality of life but also foster economic development; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study West Virginia's rural health workforce and potential strategies for improving rural West Virginians' access to health care; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

At the respective requests of Delegate Boggs, and by unanimous consent, reference of the resolution (H. C. R. 122) to a committee was dispensed with, and it was taken up for immediate consideration and adopted.

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

Delegates Folk, Kump, Faircloth, Eldridge, Butler, Cadle, Lynch, J. Nelson, Householder, R. Phillips, Stephens, Ambler, Anderson, Andes, Armstead, Arvon, Ashley, Azinger, Barill, Barrett, Border, Campbell, Canterbury, Cooper, Diserio, Ellington, A. Evans, D. Evans, Ferns, Fleischauer, Frich, Gearheart, Hamilton, Hamrick, Hartman, Hunt, Iaquinta, Ireland, Jones, Lane, Longstreth, Manypenny, Marcum, Marshall, Miley, Miller, Moore, Morgan, E. Nelson, O'Neal, Overington, Pasdon, Paxton, Perdue, Perry, L. Phillips, M. Poling, Poore, Raines, Reynolds, Romine, Rowan, Shott, Skaff, P. Smith, R. Smith, Sobonya, Sponaugle, Staggers, Storch, Stowers, Sumner, Swartzmiller, Mr. Speaker, Mr. Thompson, Tomblin, Walker, Walters, Westfall, White, Williams and Young offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. R. 31 - "Expressing support of the House of Delegates urging Congress to enact legislation to revoke the policy of extending 'trusted traveler' status under the Global Entry program to Saudi Arabian travelers."

WHEREAS, The Global Entry program was launched in 2008 to expedite preapproved passengers through the airport customs and security process when they arrive in the United States; and

WHEREAS, Saudi Arabia's Minister of the Interior Prince Mohammed bin Naif and U.S. Secretary of Homeland Security Janet Napolitano recently signed an agreement on arrangements relating to the implementation of a program of the "Trusted Traveler" between the two countries; and

WHEREAS, According to the terms of this agreement United States Customs and Border Protection's "Trusted Traveler" program, Global Entry will be implemented with respect to Saudi Arabian travelers; and

WHEREAS, Global Entry streamlines the screening process at airports for trusted travelers, allowing customs authorities to focus on those travelers they know less about; and

WHEREAS, Only an exclusive handful of countries enjoy inclusion in the Global Entry program, including countries such as Canada, Mexico, South Korea and the Netherlands; and

WHEREAS, The increased scrutiny upon air travel and air passengers is a direct consequence of the terror attacks upon the United States which took place on September 11, 2001; and

WHEREAS, Fifteen of the nineteen terrorists who took part in those attacks were citizens of the Kingdom of Saudi Arabia; and

WHEREAS, Common sense and prudent policy would dictate that the citizens of a country which provided an overwhelming majority of the personnel responsible for the most deadly attack in American history should be subject to a higher standard of scrutiny than the citizens of other realms; and

WHEREAS, It appears that the United States government has given undue favor to the kingdom of Saudi Arabia with this agreement; and

WHEREAS, This policy appears to us to be imprudent and unsound; therefore, be it

Resolved by the House of Delegates:

That the House of Delegates hereby strongly urges the United States Congress to enact legislation to revoke the policy of extending "trusted traveler" status under the Global Entry program to Saudi Arabian travelers; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a certified copy of this resolution to the President of the United States, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, and each member of West Virginia's congressional delegation.

Delegate Boggs and Mr. Speaker, Mr. Thompson, offered the following resolution, which was read by the Clerk as follows:

H. R. 32 - "Honoring the service and contributions of Governor William Gaston Caperton III to the youth of West Virginia."

WHEREAS, William Gaston Caperton III was born February 21, 1940, in Charleston, West Virginia; and

WHEREAS, Gaston Caperton graduated from the University of North Carolina at Chapel Hill, and then returned to Charleston to manage his family-owned insurance firm; and

WHEREAS, Gaston Caperton later became the principal owner of the insurance firm, turning it into one of the largest privately-owned insurance brokerage firms in the country; and

WHEREAS, Gaston Caperton was elected the thirty-first Governor of West Virginia in November 1988 and served as Governor of West Virginia from 1989 until 1997; and

WHEREAS, During his service as Governor, Gaston Caperton distinguished himself as a model of fiscal responsibility and an innovator of education reform, resulting in him being named as the Chair of the Democratic Governors Association; and

WHEREAS, During his term as Governor, Gaston Caperton was instrumental in championing causes and programs of the Ohio-West Virginia Youth Leadership Association; and

WHEREAS, These achievements include continued and increased funding of the Governor's Youth Opportunity Camp at Camp Horseshoe for low income 7- to 12-year-old West Virginia boys and girls, enabling at-risk children to turn their lives to achievement in school, career, more healthy living, and citizenship; and

WHEREAS, As Governor, Gaston Caperton was instrumental in obtaining a grant from the Appalachian Regional Commission to extend youth leadership programming into more West Virginia schools and communities; and

WHEREAS, Gaston Caperton led the creation of the Institute for IDEAS at Camp Horseshoe as a residential alternative school for talented West Virginia 8th and 9th graders who were failing in school and often life, motivating and preparing more than 85% of the students to return home to succeed in school and life; and

WHEREAS, Gaston Caperton was an integral partner in the Youth in Government Model Legislature Program, which provides students with live on-hands experience in the workings of state government; and

WHEREAS, After completing two terms as Governor, Gaston Caperton taught at Harvard University, and was a founder of the Institute on Education and Government at Columbia University; and

WHEREAS, In 1999, Gaston Caperton became president of the college board, which administers the SAT and AP tests; and

WHEREAS, Gaston Caperton left the college board in 2012 in order to return to Charleston; and

WHEREAS, Gaston Caperton's contributions to the youth of West Virginia have been known to generations and will be felt by generations to follow; and

WHEREAS, Gaston Caperton's accomplishments are being recognized on April 4, 2013, as the 10th recipient of the Lewis N. McManus Spirit of the Mountains Award, an impressive designation previously received by Jessica Lynch, Cecil Underwood, John D. Rockefeller IV, Bill Raney, Gayle Manchin and James H. "Buck" Harless, among others; therefore, be it

Resolved by the House of Delegates:

That the House of Delegates hereby recognizes and commends the contributions of Governor William Gaston Caperton III to the causes of young people, distressed youth, and programs to enhance their lives and education; and, be it

Further Resolved, That the House of Delegates expresses its congratulations to Governor Caperton in being selected for this significant award; and, be it

Further Resolved, That the Legislature joins with the Youth Leadership Association in recognizing and thanking Governor Caperton for his service to the people of West Virginia; and, be it

Further Resolved, That the Clerk of the House provide copies of this award to Governor William Gaston Caperton III and the Youth Leadership Association.

At the respective requests of Delegate Boggs, and by unanimous consent, reference of the resolution (H. R. 32) to a committee was dispensed with, and it was taken up for immediate consideration.

The question now being on the adoption of the resolution, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken **(Roll No. 202)**, 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: Marshall and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the resolution (H. R. 32) adopted.

COMMITTEE REPORTS

Mr. Speaker, Mr. Thompson, from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

H. C. R. 108, The "Army Specialist Fourth Class Tommy Joe Belcher Memorial Bridge",

S. C. R. 11, Requesting DOH name portion of State Route 214 "Army Pvt. Parker Meikle Memorial Road",

S. C. R. 12, Requesting DOH name section of Lick Creek Road in Boone County "PFC Randall Bruce Miller Memorial Road",

S. C. R. 18, Requesting DOH name portion of State Route 20 in Wyoming County "David and Janet Lee Memorial Highway",

And,

S. C. R. 34, Requesting DOH name bridge in Wayne County "Mavis Granny Castle Bridge",

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

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

Your Committee on Finance has had under consideration:

S. B. 183, Updating terms in Corporation Net Income Tax Act,

S. B. 571, Extending time Oceana City Council can meet as levying body,

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

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

Your Committee on Education has had under consideration:

Com. Sub. for S. B. 80, Including substitute teaching in job duties of certain professional educators employed by county boards,

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

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

Your Committee on Education has had under consideration:

Com. Sub. for S. B. 438, Authorizing reorganization of certain community and technical colleges,

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 (Com. Sub. for S. B. 438) was referred to the Committee on Finance.

MESSAGES FROM THE SENATE

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. 90 - "A Bill to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, relating to making it a felony to drive a vehicle while under the influence of alcohol, controlled substance or other drug and cause serious bodily injury to another person under certain circumstances; defining 'serious bodily injury'; making technical corrections; and establishing penalties for first and subsequent violations of certain provisions"; 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. 117 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3-11a, relating to creating a criminal offense of possession of burglar's tools; and establishing penalties"; 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. 118 - "A Bill to amend and reenact §17A-3-14 of the Code of West Virginia, 1931, as amended, relating to authorizing the Division of Motor Vehicles to issue a special I Support Veterans license plate; and establishing fees"; which was referred to the Committee on Roads and Transportation 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. 347 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §6C-3-2a, relating to requiring the Public Employees Grievance Board in conjunction with the Division of Personnel to provide training seminars for chief administrators and persons who conduct level one hearings and conferences under the public employees' grievance process; stating certain training requirements; requiring chief administrators and persons who conduct level one hearings and conferences to obtain certain training; and permitting a registration fee for the training"; which was referred to the Committee on Government Organization then 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. 355 - "A Bill to amend and reenact §21-5-4 of the Code of West Virginia, 1931, as amended, relating to the time final wages are required to be paid to discharged employees; authorizing payment by mail if requested by the employee; providing that employers pay an employee all wages he or she earned at the time of quitting if the employee gives written notice of his or her intention to quit at least one pay period before quitting; defining 'business day'; and making other technical changes"; 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. 363 - "A Bill to amend and reenact §5A-3-3 of the Code of West Virginia, 1931, as amended; and to amend said

code by adding thereto three new sections, designated §5A-3-10d, §5A-3-60 and §5A-3-61, all relating to the Purchasing Division; clarifying the powers and duties of the director under the direction and supervision of the Administration Secretary; prohibiting the Purchasing Division from using the secondary bid process commencing July 1, 2013; requiring annual purchasing training for executive branch officials; creating a Purchasing Task Force; study and reporting requirements for the task force; and expense reimbursement for legislative members of the task force"; 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. 365 - "A Bill to amend and reenact §61-11-26 of the Code of West Virginia, 1931, as amended, relating to the expungement of certain criminal convictions generally; permitting expungement of certain felony convictions; establishing the amount of time after conviction of a felony before expungement may be sought; creating exceptions; clarifying that retirement or employment benefits lost due to conviction are not reinstated due to expungement; declaring that expungement does not preclude a person who has received an expungement from being subject to sentencing enhancements for second and subsequent violations; declaring that information in State Police database sufficient to prove existence of prior convictions; establishing a fee to offset State Police costs associated with administering this section and the Criminal Identification Bureau; establishing a special revenue account in the State Treasury for funds received; and allowing funds to not expire"; 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. 378 - "A Bill to amend and reenact §50-1-3, §50-1-8, §50-1-9 and §50-1-9a of the Code of West Virginia, 1931, as amended, all relating to adjusting the population line upon which salaries for magistrates and certain magistrate employees are calculated; providing an effective date; and providing that the adjustments are retroactive to January 1, 2013"; which was referred to the Committee on Government Organization then the Judiciary 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. 401 - "A Bill to amend and reenact §30-13-6, §30-13-13, §30-13-15 and §30-13-17 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-13-13a, all relating to the Board of Registration for Professional Engineers and the requirements for registration and certification of engineers, engineer interns and engineering businesses; providing for compensation of, and reimbursement for, members of the board at same rate as legislative interim pay; providing for registration of engineers generally; adding additional classifications of registration; setting forth qualifications for engineer interns; establishing designations for engineers ineligible to practice; updating examination provisions to comport with changes at the national level; providing emergency rule-making authority to comply with changes in standardized tests; and clarifying the certificate of authorization requirements"; 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, to take effect July 1, 2013, and requested the concurrence of the House of Delegates in the passage, of

S. B. 403 - "A Bill to amend and reenact §51-9-4 of the Code of West Virginia, 1931, as amended, relating to the judicial retirement

system; reducing the contribution rate of judges; authorizing the Consolidated Public Retirement Board to annually establish future participant contribution rates based on the State Actuary's report; and limiting the participant contribution rate to ten and one-half percent of a participant's salary"; which was referred to the Committee on Pensions and Retirement 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. 426 - "A Bill to amend and reenact §46-9-510, §46-9-516 and §46-9-521 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §46-9-516a, all relating to amending the Uniform Commercial Code as to secured transactions; providing for the effectiveness of filed records; creating additional authority to refuse to accept a record for filing; creating circumstances under which a record filing is false; providing criminal penalties for filing or attempting to file a false record; providing civil penalties for filing or attempting to file a false record; setting forth an administrative procedure initiated by the Secretary of State or a person identified as a debtor on a record; requiring party to an adverse administrative decision by the Secretary of State to file action in Kanawha County Circuit Court if the party wishes to have the Secretary of State's decision reversed; exempting the filing office and its employees from liability; exempting filings by a regulated financial institution or its representatives from certain provisions; and clarifying the applicability of provisions to records filed prior to the effective date of this article"; 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. 437 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,

designated §19-20-26, relating to protecting dogs by creating regulations for commercial dog-breeding operations; providing definitions; providing exceptions; allowing commercial breeders to sell dogs only as household pets; requiring a business license if required by the locality; authorizing county commissions to charge a fee to a commercial dog breeder to obtain an annual permit to operate; limiting the amount of the fee; setting forth responsibilities of the commercial dog breeder; setting forth the requirements for maintaining adequate enclosures; providing for inspections; prohibiting a commercial dog breeder to operate if convicted of animal cruelty; providing no exemption for United States Department of Agriculture licensees; and providing criminal penalties"; 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. 444 - "A Bill to amend and reenact §12-1-12d of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-1B-4 of said code; to amend and reenact §18B-2A-1 and §18B-2A-3 of said code; to amend and reenact §18B-7-11 of said code; to amend and reenact §18B-19-10 of said code; and to amend said code by adding thereto a new section, designated §18B-19-19, all relating to higher education generally; increasing the amounts that Marshall University and West Virginia University may have invested with their respective foundations under certain conditions; authorizing certain actions by certain state institutions of higher education regarding capital projects and facilities and capital project financing; exempting compensation packages of certain institutional presidents from certain approval process; clarifying that certain members of institutional governing boards are eligible to succeed themselves under certain conditions; collecting, synthesizing and disseminating data from state institutions of higher education; directing institutional boards of

governors to cooperate in certain data-related operations; providing certain privacy protections for data; exempting the West Virginia Policy Commission and West Virginia Council for Community and Technical College Education from meeting certain employee ratios; authorizing the use of proceeds from rentals and leases of real property at state institutions of higher education and providing for the transfer of real property to other public bodies; and exempting certain institutional boards of governors from certain approval process related to capital facilities and requiring certain reports"; 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

S. B. 451 - "A Bill to amend and reenact §29-3-16a of the Code of West Virginia, 1931, as amended, relating to carbon monoxide detectors in residential units; and clarifying that carbon monoxide detectors are not required unless a structure contains fuel-burning appliances or equipment that emit carbon monoxide byproducts"; 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. 454 - "A Bill to amend and reenact §11-14C-2, §11-14C-5, §11-14C-9, §11-14C-10, §11-14C-13 and §11-14C-19 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-14C-6a; to amend and reenact §11-15-18b of said code; and to amend and reenact §11-15A-13a of said code, all relating to the taxation of alternative fuel; defining terms; requiring the Tax Commissioner to determine the gasoline gallon equivalent for alternative fuels; imposing tax on motor fuel equivalent gallons; specifying the point of imposition of tax on alternative fuels not otherwise taxed at the point of imposition;

providing that propane used in a motor vehicle is subject to the tax; requiring alternative-fuel bulk end users, providers of alternative fuels and retailers of alternative fuels to be licensed; establishing bonding requirements for alternative-fuel bulk end users, providers of alternative fuels and retailers of alternative fuels; establishing due dates for returns and payments of tax on alternative fuels; and specifying effective dates for amendments"; which was referred to the Committee on Roads and Transportation 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

S. B. 458 - "A Bill to amend and reenact §5-16-3 of the Code of West Virginia, 1931, as amended, relating to permitting the Director of the Public Employees Insurance Agency to operate any of the agency's health benefits plans on a calendar year if it is financially advantageous; and providing that financial plans shall continue to be on a fiscal-year basis."

At the respective requests of Delegate Boggs, and by unanimous consent, reference of the bill (S. B. 458) to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading.

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. 474 - "A Bill to amend and reenact §36-8-2 of the Code of West Virginia, 1931, as amended, relating to clarifying that there must be five years of continuous inactivity of a noninterest-bearing demand, savings or time deposit before it may be presumed to be abandoned for unclaimed property purposes; and clarifying that there must be seven years of continuous inactivity of an interest-bearing demand, savings or time deposit before it may be presumed to be abandoned for

unclaimed property purposes"; which was referred to the Committee on Banking and Insurance then Finance.

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. 478 - "A Bill to amend and reenact §29-22A-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §29-22B-332 of said code; and to amend and reenact §29-25-2 and §29-25-24 of said code, all relating to deleting those video lottery games that allow players an option to select replacement symbols or numbers or additional symbols or numbers after the game is initiated and in the course of play from the definition of 'video lottery game'; deleting prohibition against game themes commonly associated with casino gambling; and permitting certain employees of an historic resort hotel to wager at the gaming facility of that historic hotel"; 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. 481 - "A Bill to amend and reenact §27-4-1 of the Code of West Virginia, 1931, as amended, relating to juvenile mental health, intellectual disability and addiction; permitting acceptance of a notarized application in lieu of in-person application for certain voluntary hospitalization; allowing use of article five, chapter twenty-seven of said code for juveniles in certain situations; requiring parents or guardians to transport minors for voluntary hospitalization; creating exceptions to that requirement by affidavit to circuit court, mental hygiene commissioner or magistrate court; requiring transfer by county sheriff upon order of circuit court, mental hygiene commissioner or magistrate court; and requiring mental health facilities to make their application immediately accessible in certain situations"; 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. 490 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-34-1, §19-34-2, §19-34-3, §19-34-4, §19-34-5 and §19-34-6, all relating to the regulation of equine boarding facilities; permitting rulemaking; and establishing criminal penalties"; 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. 492 - "A Bill to repeal §29-25-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §29-25-1, §29-25-2, §29-25-3, §29-25-5, §29-25-6, §29-25-9, §29-25-12, §29-25-15, §29-25-18, §29-25-19, §29-25-20, §29-25-21, §29-25-24, §29-25-28, §29-25-29, §29-25-30, §29-25-31, §29-25-32, §29-25-34, §29-25-35, §29-25-37 and §29-25-38 of said code; and to amend said code by adding thereto two new sections, designated §29-25-22b and §29-25-22c, all relating to gaming facilities; authorizing gaming facilities; permitting a rural resort community as limited gaming facility; defining terms; creating the Rural Resort Community Fund and Rural Resort Community Human Resource Benefit Fund; providing for the regulation and control of a rural resort community; and repealing the local option provision of this article"; which was referred to the Committee on the Judiciary 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. 493 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated

§17A-13-1, §17A-13-2, §17A-13-3, §17A-13-4 and §17A-13-5, all relating generally to standards for conversion and retrofits of alternative-fuel motor vehicles; defining key terms for such standards; setting forth conversion and retrofit standards for the conversion of diesel and gasoline vehicles to alternative fuels; and setting forth training requirements for facilities converting and retrofitting vehicles to be capable of running on compressed natural gas"; which was referred to the Committee on Natural Resources then 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. 504 - "A Bill to repeal §19-4-26 and §19-4-30 of the Code of West Virginia, 1931, as amended; and to amend and reenact §19-4-1, §19-4-2, §19-4-6, §19-4-10, §19-4-19, §19-4-21 and §19-4-29 of said code, all relating to cooperative associations; permitting three or more persons producing agricultural products to form a profit or nonprofit cooperative association; providing that certain credit union provisions apply; permitting the association be managed by not fewer than three directors; requiring cooperative associations file annual reports with the Secretary of State; requiring the term cooperative or its abbreviation be in the name of the association; prohibiting a farmer's marketing association from using the term cooperative or its abbreviation as part of its name unless certain conditions are met; stating that the business corporation or nonprofit corporation laws apply to cooperatives; clarifying definitions; and clarifying articles of incorporation and directors of cooperative associations"; 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. 509 - "A Bill to amend and reenact §33-22-2 of the Code of West Virginia, 1931, as amended, relating to farmers' mutual fire

insurance companies; providing for verification of debris removal prior to the payment of proceeds; imposing a statutory lien on fire insurance proceeds in the event of a total loss to real property; requiring farmers' mutual fire insurance companies to notify insured and municipality or county after determining that a claim involves a total loss to real property; requiring a municipality or county to perfect the lien within thirty days of notice of a total-loss determination; providing for release of the lien upon satisfaction of certain conditions; and clarifying obligations and liability"; which was referred to the Committee on Banking and Insurance then 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. 521 - "A Bill to amend and reenact §17B-3-3c and §17B-3-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §17B-3-9a, all relating to creating an amnesty program for certain persons with suspended or revoked licenses to allow reinstatement; establishing a time period and certain procedures for the amnesty program; creating exceptions to the amnesty period; making certain technical corrections; requiring certain tickets amnestied remain listed as unsatisfied on court records and amounts remain due; requiring certain suspension or revocation time remaining be waived in certain situations; requiring a public awareness campaign regarding the amnesty program; and providing for rule-making authority"; 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. 580 - "A Bill to amend and reenact §30-4-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-4-13a, all

relating to the practice of dentistry; and updating the requirements for dental intern, dental resident and dental teaching permits"; 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

Com. Sub. for S. B. 594 - "A Bill to amend and reenact §14-2-13a and §14-2-16 of the Code of West Virginia, 1931, as amended, all relating to procedures for certain claims against the state; detailing the process for claims for unjust arrest and imprisonment or conviction and imprisonment; stating legislative intent; requiring certain notice of claims; establishing the burden of proof necessary; permitting the court of claims to determine the amount of relief granted; stating the burden of proving damages; and permitting the court to call expert witnesses in certain situations"; 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

S. B. 599 - "A Bill to amend and reenact §29-6-4 of the Code of West Virginia, 1931, as amended, relating to expanding the number of hours temporary state personnel may work in a calendar year"; 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, to take effect July 1, 2013, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 615 - "A Bill to amend and reenact §29-22A-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact 29-22C-8 of said code, all relating to providing for distribution

of certain amounts of gross terminal income derived from racetrack video lottery terminals; and amending the table game license renewal fee for West Virginia pari-mutuel racetracks"; which was referred to the Committee on the Judiciary then Finance.

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. 656 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-22A-20, relating to establishing a gaming industry special study committee to assess problems facing the gaming industry in West Virginia"; 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

S. B. 664 - "A Bill supplementing and amending by decreasing the appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Governor's Office, fund 0101, fiscal year 2013, organization 0100, to the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2013, organization 0100, to the West Virginia Conservation Agency, fund 0132, fiscal year 2013, organization 1400, to the Department of Administration - Office of the Secretary, fund 0186, fiscal year 2013, organization 0201, to the Department of Administration, Division of Finance, fund 0203, fiscal year 2013, organization 0209, to the Department of Administration, Division of General Services, fund 0230, fiscal year 2013, organization 0211, to the Department of Administration, Division of Purchasing, fund 0210, fiscal year 2013, organization 0213, to the Department of Administration, Travel Management, fund 0615, fiscal year 2013,

organization 0215, to the Department of Administration, Public Employees Insurance Agency, fund 0200, fiscal year 2013, organization 0225, to the Department of Administration, Real Estate Division, fund 0610, fiscal year 2013, organization 0233, to the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2013, organization 0307, to the Department of Commerce, Division of Natural Resources, fund 0265, fiscal year 2013, organization 0310, to the Department of Education, State Department of Education, fund 0313, fiscal year 2013, organization 0402, to the Department of Education, West Virginia Schools for the Deaf and the Blind, fund 0320, fiscal year 2013, organization 0403, to the Department of Education and the Arts - Office of the Secretary, fund 0294, fiscal year 2013, organization 0431, to the Department of Education and the Arts, Division of Culture and History, fund 0293, fiscal year 2013, organization 0432, to the Department of Education and the Arts, Library Commission, fund 0296, fiscal year 2013, organization 0433, to the Department of Education and the Arts, Educational Broadcasting Authority, fund 0300, fiscal year 2013, organization 0439, to the Department of Environmental Protection, Division of Environmental Protection, fund 0273, fiscal year 2013, organization 0313, to the Department of Health and Human Resources - Office of the Secretary, fund 0400, fiscal year 2013, organization 0501, to the Department of Health and Human Resources, Division of Health - Central Office, fund 0407, fiscal year 2013, organization 0506, to the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2013, organization 0506, to the Department of Health and Human Resources, Human Rights Commission, fund 0416, fiscal year 2013, organization 0510, to the Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2013, organization 0601, to the Department of Miliary Affairs and Public Safety, Adjutant General - State Militia, fund 0433, fiscal year 2013, organization 0603, to the Department of Military Affairs and Public Safety, Adjutant General - Military Fund, fund 0605, fiscal year 2013, organization 0603, to the Department of Military Affairs and Public Safety, Division of Homeland Security and Emergency Management, fund 0443, fiscal

year 2013, organization 0606, to the Department of Military Affairs and Public Safety, Division of Corrections - Central Office, fund 0446, fiscal year 2013, organization 0608, to the Department of Military Affairs and Public Safety, West Virginia State Police, fund 0453, fiscal year 2013, organization 0612, to the Department of Miliary Affairs and Public Safety, Division of Justice and Community Services, fund 0546, fiscal year 2013, organization 0620, to the Department of Military Affairs and Public Safety, Division of Protective Services, fund 0585, fiscal year 2013, organization 0622, to the Department of Revenue, Office of the Secretary, fund 0465, fiscal year 2013, organization 0701, to the Department of Revenue, Tax Division, fund 0470, fiscal year 2013, organization 0702, to the Department of Revenue, State Budget Office, fund 0595, fiscal year 2013, organization 0703, to the Department of Revenue, West Virginia Office of Tax Appeals, fund 0593, fiscal year 2013, organization 0709, to the Department of Transportation, State Rail Authority, fund 0506, fiscal year 2013, organization 0804, to the Department of Transportation, Division of Public Transit, fund 0510, fiscal year 2013, organization 0805, to the Department of Transportation, Public Port Authority, fund 0581, fiscal year 2013, organization 0806, to the Department of Transportation, Aeronautics Commission, fund 0582, fiscal year 2013, organization 0807, to the Department of Veterans' Assistance, fund 0456, fiscal year 2013, organization 0613, to the Department of Veterans' Assistance - Veterans' Home, fund 0460, fiscal year 2013, organization 0618, and to the West Virginia Council for Community and Technical College Education - Control Account, fund 0596, fiscal year 2013, organization 0420, by supplementing and amending the appropriations for the fiscal year ending June 30, 2013"; which was referred to the Committee on Finance.

SPECIAL CALENDAR

UNFINISHED BUSINESS

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

S. C. R. 7, Designating Hall Flintlock Model 1819 official state firearm,

S. C. R. 9, Requesting DOH name bridge in Boone County "Naval Chief Boatswain Fred L. Byrnside and Army Captain Dora Jo Chambers Byrnside Memorial Bridge",

Com. Sub. for S. C. R. 13, Requesting DOH name bridge in Lewis County "J. Cecil Jarvis Memorial Bridge",

H. C. R. 83, Requesting a study on viable alternatives to placing children in maximum security environments,

H. C. R. 104, Recognizing the many contributions made by citizens of the Republic of Azerbaijan and that it is in the best interest of the State of West Virginia to promote relationships with the Azerbaijani people,

H. C. R. 110, The "Boyd Leon Parsons Memorial Bridge",

And,

H. C. R. 111, Requesting the Division of Highways to build the bridge on County Route 65/03 located near Tug Valley High School in Naugatuck, Mingo County.

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

THIRD READING

Com. Sub. for S. B. 430, Defining "employment term" in Teachers' Defined Contribution Retirement System; 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 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hartman, Marshall and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 430) passed.

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

Com. Sub. for S. B. 430 - "A Bill to amend and reenact §18-7B-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18-7B-21, all relating to the Teachers' Defined Contribution Retirement System; adding a definition of employment term; and providing for correction of errors by participating public employers and the Consolidated Public Retirement Board."

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

Com. Sub. for S. B. 431, Relating to public employer liability for delinquent retirement contributions; 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 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hartman, Marshall and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 431) passed.

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

Com. Sub. for S. B. 431 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,

designated §5-10D-11, relating to the liability of a participating public employer and its successor to pay delinquent retirement contributions, delinquency fees and related costs; and providing for enforcement and collection of the costs by the Consolidated Public Retirement Board".

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

On this question, the yeas and nays were taken **(Roll No. 205)**, and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hartman, Marshall and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 431) 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 S. B. 448, Increasing number of demonstration dealer plates issued to large commercial vehicle dealers; 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 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Hartman, Marshall and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 448) passed.

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

Com. Sub. for H. B. 2776, Increasing certain filing fees in certain civil actions; on third reading, coming up in regular order, was, on motion of Delegate Boggs, laid upon the table.

H. B. 2818, Relating to the Teachers' Defined Contribution Retirement System; on third reading, coming up in regular order, was, on motion of Delegate Boggs, laid upon the table.

H. B. 2822, Holding liable any participating public employer owing delinquent retirement contributions; on third reading, coming up in regular order, was, on motion of Delegate Boggs, laid upon the table.

H. B. 2859, Authorizing the Commissioner to issue no more than ten additional special demonstration plates used by new and used dealers of larger commercial type vehicles; on third reading, coming up in regular order, was, on motion of Delegate Boggs, laid upon the table.

SECOND READING

S. B. 383, Authorizing family court judges appoint counsel in certain contempt cases; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 412, Relating to removal of elected county conservation district supervisors from office; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Miley, the bill was amended on page one, following the enacting section, by striking out the remainder of the bill and inserting in lieu thereof the following:

"That §19-21A-6 and §19-21A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-6. Election of supervisors for each district; filling vacancies.

(a) Each county in a district shall elect two nonpartisan supervisors: *Provided,* That any county with a population of one hundred thousand based on the most recent decennial census shall elect one additional supervisor and any county with a population over one hundred thousand based on the most recent decennial census shall elect one additional supervisor for each fifty thousand residents over one hundred thousand.

(b) A candidate for supervisor must be a landowner and an active farmer with a minimum of five years' experience or a retired farmer who has had a minimum of five years' experience and must have the education, training and experience necessary to carry out the duties required by this article. The State Conservation Committee shall propose for promulgation in accordance with the requirements of article three-a, chapter twenty-nine of this code legislative rules to establish criteria for the necessary education, training and experience.

(c) All registered voters in the district are eligible to vote in the election for candidates from the county within the boundaries of the district in which the voter resides. The candidates in each county who receive the largest number of votes cast in the election shall be elected supervisors for that county.

(d) ~~Supervisors shall be elected in the general election to be conducted in the year 2008 as nonpartisan candidates. After that, Supervisors shall be elected in the primary election. The term of office for the candidate for supervisor receiving the highest number of votes in the general election of 2008 is four years; the candidate for supervisor receiving the second highest number of votes in the general election of 2008 is two years. In counties where more than two supervisors are elected in the general election of 2008, the two~~

~~supervisors receiving the highest number of votes serve for four years and the remaining supervisor or supervisors serve for two years. Terms of office for supervisors elected after that are four years.~~ Supervisors shall be elected in the primary election and serve a term of four years. The provisions of chapter three of this code apply to election of supervisors.

(e) Persons holding the position of supervisor, regardless of the expiration of the designated term of office, continue to serve until the election and qualification of his or her successor.

(f) Any vacancy occurring in the office of supervisor shall be filled by the committee by appointment of a person from the county in which the vacancy occurs. Within fifteen days after the vacancy occurs, the district shall submit a list of names of persons qualified to be a supervisor. If the unexpired term is for less than two years and ~~two~~ six months, the appointed person holds office until the expiration of the term. If the unexpired term is for more than two years and ~~two~~ six months, the appointed person holds the office until a successor is elected in the next primary or general election and qualified.

§19-21A-7. Supervisors to constitute governing body of district; qualifications and terms of supervisors; powers and duties; removal.

(a) The governing body of the district consists of the supervisors, appointed or elected, as provided in this article. The supervisors shall be persons who are by training and experience qualified to perform the specialized skilled services which are required of them in the performance of their duties under this section and shall be legal residents and landowners in the district.

(b) The supervisors shall designate a chairperson and may, from time to time, change the designation. On and after the election of supervisors in 2008, the term of office of each elected supervisor is four years. A supervisor holds office until his or her successor has

been elected or appointed. In case a new county is added to a district, the committee may appoint two supervisors to represent the county until the next regular election of supervisors for the district takes place.

(c) A supervisor is entitled to reasonable and necessary expenses and a per diem of not more than $150 nor less than $30 when engaged in the performance of his or her duties. The expense and per diem rate shall be established by the state committee based on availability of funds.

(d) The supervisors may, with the approval of the State Conservation Committee, employ a secretary, dam monitors, technical experts and any other officers, agents and employees, permanent and temporary, either with or without compensation, as they may require and shall determine their qualifications, duties and compensation, if any. Dam monitors, as specified in any emergency action plan or monitoring plan approved by the Department of Environmental Protection pursuant to its dam safety rules, pertaining to a flood control structure operated or maintained by a soil conservation district and any other employees, agents or officers employed pursuant to this section are 'employees' of the district within the meaning of subsection (a), section three, article twelve-a, chapter twenty-nine of this code.

(e) The supervisors may delegate to their chairperson, to one or more supervisors or to one or more agents, or employees, those administrative powers and duties they consider proper. The supervisors shall furnish to the State Conservation Committee, upon request, copies of the ordinances, rules, orders, contracts, forms and other documents they adopt or employ and any other information concerning their activities required in the performance of State Conservation Committee's duties under this article.

(f) The supervisors shall:

(1) Require the execution of surety bonds for all employees and officers who are entrusted with funds or property;

(2) Provide for the keeping of a full and accurate record of all proceedings and of all resolutions, rules and orders issued or adopted; and

(3) Provide for an annual audit of the accounts of receipts and disbursements.

(g) Any supervisor may be removed ~~by the state Conservation Committee upon notice and hearing for neglect of duty or malfeasance in office, but for no other reason~~ from office pursuant to section seven, article six, chapter six of this code.

(h) The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of a district on all questions of program and policy which may affect the property, water supply or other interests of the municipality or county."

The bill was then ordered to third reading.

Com. Sub. for S. B. 421, Exempting certain school mascot from prohibition of firearms possession on school grounds; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 463, Increasing special license fee paid by pipeline companies to PSC; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Boggs, the bill was then amended by striking out everything following the enacting clause and inserting in lieu thereof the provisions of H. B. 2722.

The bill was then ordered to third reading.

Com. Sub. for S. B. 638, Terminating certain severance tax exemption for production of natural gas or oil; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Boggs, and by unanimous consent, the bill was advanced to third reading with restricted right to amend by Delegates Manchin and Ireland, and the rule was suspended to permit the consideration of the amendment on that reading.

Com. Sub. for H. B. 2962, Relating to exemptions from the tax on the privilege of severing natural gas and oil; on second reading, coming up in regular order, was read a second time and ordered to third reading.

FIRST READING

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

Com. Sub. for S. B. 71, Requiring descriptions of easements and rights-of-way include width in addition to centerline; exception,

Com. Sub. for S. B. 145, Amending election complaint procedures,

And,

Com. Sub. for S. B. 435, Continuing Municipal Home Rule Pilot Program.

LEAVES OF ABSENCE

At the request of Delegate Boggs, and by unanimous consent, leaves of absence for the day were granted Delegates Marshall and J. Nelson.

MISCELLANEOUS BUSINESS

Delegate Caputo asked and obtained unanimous consent that the remarks of Delegate Marcum regarding the recent death of Mingo County Sheriff Eugene Crum be printed in the Appendix to the Journal.

At 12:09 P.M., the House of Delegates adjourned until 11:00 A.M., Friday, April 5, 2013.

FRIDAY, APRIL 5, 2013

FIFTY-SECOND DAY

[MR. SPEAKER, MR. THOMPSON, IN THE CHAIR]

The House of Delegates met at 11:00 A.M., and was called to order by the Honorable Rick Thompson, Speaker.

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

The Clerk proceeded to read the Journal of Thursday, April 4, 2013, being the first order of business, when the further reading thereof was dispensed with and the same approved.

COMMITTEE REPORTS

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

Your Committee on Government Organization has had under consideration:

Com. Sub. for S. B. 158, Creating Complete Streets Act,

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

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

Your Committee on Government Organization has had under consideration:

Com. Sub. for S. B. 324, Allowing boards licensing persons engaging in manufacture, distribution or dispensing controlled substances set fees by legislative rule,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 324) was referred to the Committee on the Judiciary.

Delegate Poling, Chair of the Committee on Energy, Industry and Labor, Economic Development and Small Business, submitted the following report, which was received:

Your Committee on Energy, Industry and Labor, Economic Development and Small Business has had under consideration:

S. B. 462, Extending time for informal conferences on surface mining permit applications,

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

In accordance with the former direction of the Speaker, the bill (S. B. 462) was referred to the Committee on the Judiciary.

Delegate Staggers, Chair of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

S. B. 190, Relating to public-private transportation projects funding,

And,

Com. Sub. for S. B. 454, Relating to taxation of alternative motor fuels,

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

In accordance with the former direction of the Speaker, the bills (S. B. 190 and Com. Sub. for S. B. 454) were each referred to the Committee on Finance.

Delegate Hunt, Chair of the Committee on Political Subdivisions, submitted the following report, which was received:

Your Committee on Political Subdivisions has had under consideration:

Com. Sub. for S. B. 564, Increasing minimum construction cost of municipal public works project before competitive bidding is required,

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

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

Delegate Miley, 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. 60, Relating to name-change notice publication requirements,

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

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

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

S. B. 108, Creating Unintentional Pharmaceutical Drug Overdose Fatality Review Team.

And reports the same back, with amendment, with the recommendation that it do pass, as amended, and with the recommendation that second reference of the bill to the Committee on Government Organization be dispensed with.

In the absence of objection, reference of the bill (S. B. 108) to the Committee on Government Organization was abrogated.

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

Your Committee on the Judiciary has had under consideration:

S. B. 21, Creating Health Care Provide Transparency Act,

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 (S. B. 21) was referred to the Committee on the Judiciary.

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

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

Com. Sub. for S. B. 433, Creating informal dispute resolution process for DHHR providers or licensees,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 433) was referred to the Committee on the Judiciary.

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

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

Com. Sub. for S. B. 557, Continuing Preventive Care Pilot Program,

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 Government Organization.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 557) was referred to the Committee on Government Organization.

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

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

Com. Sub. for S. B. 580, Updating requirements for dental intern, resident and teaching permits,

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

On motion for leave, resolutions were introduced (Originating in the Committee on Senior Citizen Issues and reported with the

recommendation that they each do be adopted), which were read by their titles, as follows:

By Delegates Williams, Moye, Perdue, Perry, Pino, Pethtel, Manypenny, Ferro, Stephens, Campbell, Border, R. Smith, Rowan, Young, Faircloth, Raines, O'Neal, Sumner and Arvon:

H. C. R. 127 - "Requesting the Joint Committee on Government and Finance to study adult day care services in West Virginia."

WHEREAS, Adult day services provide low-cost quality services to medically frail adults and seniors with disabilities at home and in their communities; and

WHEREAS, Adult day services provide a significant respite for caregivers, enabling them to work outside of the home or to take a much-needed break from the rigors of 24-hour caregiving; and

WHEREAS, Three main models of adult day services exist: medical model adult day care, adult day health services, and social model adult day care; and

WHEREAS, Compared to the nation, access to all three models of adult day services is extremely limited in West Virginia; and

WHEREAS, West Virginia only regulates medical model adult day care, but presently no medical model day cares operate in West Virginia; and

WHEREAS, West Virginia is the only state that does not provide for Medicaid reimbursement of any type of adult day services; and

WHEREAS, a 2007 West Virginia Adult Day Roundtable Report recommended that West Virginia regulate adult day health services as its preferred model of adult day services; and

WHEREAS, the 2012 Make a Plan for Alzheimer's report recommended that West Virginia regulate adult day health services and provide for Medicaid reimbursement of those; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the barriers to widespread utilization of adult day care services across West Virginia; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

By Delegates Williams, Moye, Perdue, Perry, Pino, Pethtel, Manypenny, Ferro, Stephens, Campbell, Border, R. Smith, Rowan, Young, Faircloth, Raines, O'Neal, Sumner and Arvon:

H. C. R. 128 – "Requesting the Joint Committee on Government and Finance to study the needs, challenges and issues facing senior citizens in finding personal care services."

WHEREAS, West Virginia currently has the second largest senior population in the country with sixteen percent of the state's population being sixty five years of age or older; and

WHEREAS, It has been estimated that over eight out of ten individuals sixty-five years of age and older will suffer one or more chronic conditions in their lifetime with six out of ten facing the need for long-term care; and

WHEREAS, The availability of personal care services is crucial in allowing individuals to remain in their homes, preserving a better quality of life as they age by avoiding long-term institutional care; and

WHEREAS, The current certificate of need standards and processes for personal care services have not been updated for several years

which may have the effect of limiting the availability of personal care services and freedom of choice; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to conduct a study of the needs, challenges and issues facing West Virginia's senior citizens in finding personal care services including the impact of the existing certificate of need standards and process on such service availability; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

By Delegates Williams, Moye, Perdue, Perry, Pino, Pethtel, Manypenny, Ferro, Stephens, Campbell, Border, R. Smith, Rowan, Young, Faircloth, Raines, O'Neal, Sumner and Arvon:

H. C. R. 129 - "Requesting the Joint Committee on Government and Finance to study the deficiencies in home caregiver assistance for senior citizens."

WHEREAS, Nationwide 70% of homebound Alzheimer's diagnosed individuals need assistance with activities of daily living; and

WHEREAS, Majority of homebound senior citizens rely on unpaid caregiver support with preference of remaining in home which is more cost effective; and

WHEREAS, Cost-effective senior citizen in home services decrease the need for public assistance; and

WHEREAS, As the population of senior citizens expand, there will be an increasing need for long-term services; and be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to conduct a study of the deficiencies facing West Virginia's senior citizens' in finding more efficient methods of providing education and support for in home caregiver assistance; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

And,

By Delegates Williams, Moye, Perdue, Perry, Pino, Pethtel, Manypenny, Ferro, Stephens, Campbell, Border, R. Smith, Rowan, Young, Faircloth, Raines, O'Neal, Sumner and Arvon:

H. C. R. 130 - "Requesting the Joint Committee on Government and Finance to study the feasibility of updating state laws that strengthen protections against elder abuse, exploitation and fraud."

WHEREAS, Research indicates that two million elders are abused in the United States by telemarketing fraud or paid caregiver con-artists; and

WHEREAS, The National Center on Elder Abuse (NCEA) and the West Virginia Financial Exploitation Workgroup manage research, training, best-practices, news and resources on safeguarding elder mistreatment; and

WHEREAS, Elder mistreatment can also include physical abuse, emotional abuse, sexual abuse, exploitation, neglect and abandonment; and

WHEREAS, Review of laws to protect consumers, prepare prosecutors, and acquiring knowledge of neighboring states definitions of financial exploitation are of great potential significance to West Virginia as a continuing method to ensure the continued protection of elder abuse and to the general interests of the state as a strategy to eliminate mistreatment; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the issues of elder abuse, exploitation and fraud; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

The Speaker referred the resolutions (H. C. R. 127, H. C. R. 128, H. C. R. 129 and H. C. R. 130) to the Committee on Rules.

RESOLUTIONS INTRODUCED

Delegates Frich, Manchin, Ellem, Sobonya, Marshall, Barill, Pasdon, Walters, Longstreth, McCuskey, Ambler, Anderson, Armstead, Arvon, Ashley, Azinger, Barrett, Border, Butler, Cadle, Canterbury, Eldridge, Ellington, Espinosa, D. Evans, Folk, Gearheart, Hamilton, Hamrick, Householder, Howell, Kump, Lane, Lawrence,

Lynch, E. Nelson, Raines, Romine, Rowan, Shott, Skinner, R. Smith, Storch, Sumner, Wells, Westfall and Williams offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 123 - "Requesting the Joint Committee on Government and Finance to study the feasibility of reapportioning the number of magistrates among our counties to achieve greater efficiencies in the administration of justice."

WHEREAS, The Legislature recognizes the need of our system for the efficient administration of justice as close to the people as possible; and

WHEREAS, The Legislature recognizes that our magistrates are the members of our judicial system who are most frequently encountered by the public, and that the magistrates of our state deal with a wide variety of cases and controversies; and

WHEREAS, The Legislature seeks to address concerns that the numbers of magistrates in some counties are too few to adequately do the amount of work required; and

WHEREAS, The Legislature believes there is a need to determine whether greater efficiencies to the public in the administration of justice could be achieved if an adequate number of magistrates were available in every county to do the work of administering justice; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance study the feasibility of reapportioning the number of magistrates among our counties to achieve greater efficiencies in the administration of justice; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its

findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Delegates Fleischauer, Barill, Barrett, Butler, Cadle, Cooper, Craig, Eldridge, A. Evans, Ferro, Hartman, Iaquinta, Manypenny, Marcum, Moye, Paxton, Pethtel, R. Phillips, Pino, D. Poling, Romine, Rowan, Skaff, Skinner, R. Smith, Sponaugle, Staggers, Stowers, Wells and Williams offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 124 - "Requesting the Joint Committee on Government and Finance to study whether all operators of underground facilities should be required to be a member of a one-call system, West Virginia 811, also known as Miss Utility of West Virginia."

WHEREAS, Under current West Virginia law, any privately owned public water utility regulated by the Public Service Commission, any state agency, any municipality or county, or any municipal or county agency are exempt from being a member of the one-call system for the area in which the underground facility is located; and

WHEREAS, West Virginia has over four hundred memberships of businesses and organizations comprised of utilities, oil and gas producers, pipeline companies, telecommunication providers and related businesses and organizations throughout the state; and

WHEREAS, While some underground facility operators are required to be members, West Virginia 811 is unable to provide a one hundred percent accurate report to the caller or excavator due to one-fourth of the underground facility operators being exempt from membership; and

WHEREAS, Requiring all operating underground facilities to have membership with the West Virginia 811 call system will improve public safety, contractor safety and greater reporting accuracy; and

WHEREAS, West Virginia 811 provides underground mapping to prevent accidents from digging; and

WHEREAS, Because not everyone is a member, there are gaps in the map provided by West Virginia 811; and

WHEREAS, If all underground facilities are not required to be a member of the one-call system, individuals and/or contractors could possibly be injured or killed; and

WHEREAS, Without accurate mapping of all underground facilities, there is a likelihood that important utility services could be damaged or interrupted; and

WHEREAS, While not required, exempted facilities may voluntarily become members of the one call system. Currently, approximately three-fourths of the members of West Virginia 811 are voluntary members; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to authorize a study to show whether there is a need to require the currently exempt operators of underground facilities to be members of a one-call system, West Virginia 811, also known as Miss Utility of West Virginia; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature, no later than the first of day of the regular session of the Legislature, 2014, on its findings, conclusions and recommendations, if any, together with drafts of any legislation to effectuate its recommendations; and, be it

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

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

H. C. R. 125 - "Requesting the Division of Highways name bridge number 54-14-7.55, currently known as the 'Mineral Wells I-77 Overpass Bridge', carrying both north and south bound lanes, in Wood County, the 'Army Sergeant Richard Bowry Memorial Bridge'."

WHEREAS, In 1861, shortly after the outbreak of the Late Unpleasantness, also known as the Civil War, Parkersburg resident Richard Bowry answered the call of duty and enlisted in the Union Army in Wirt County, West Virginia on August 30, 1861; and

WHEREAS, Due to Richard Bowry's love and knowledge of horses, was assigned to Company "B", 1st Virginia Calvary, which later was combined with other companies and became Company "C", 1st West Virginia Calvary; and

WHEREAS, Richard Bowry was promoted to Corporal in July 1863, and to Sergeant in 1864 and at the end of his first enlistment, he was again mustered into service at New Creek (now Keyser), West Virginia, on January 1, 1864; and

WHEREAS, The Regimental history of the 1st West Virginia Calvary describes the unit as being one of the more active units in the Civil War; and

WHEREAS, During the Battle of Charlottesville, in the action at Waynesboro, Virginia on March 8, 1865, Sergeant Richard Bowry, despite having suffered a severe gunshot wound to his leg with the bullet having lodged in his boot, courageously continued his pursuit of the enemy and eventually captured a Battle Flag of the enemy; and

WHEREAS, In recognition of his heroic exploits during the Battle of Charlottesville, Sergeant Richard Bowry became one of West Virginia's first recipients of the Congressional Medal of Honor; and

WHEREAS, Sergeant Richard Bowry was discharged on July 8, 1865, at Wheeling, West Virginia and returned home to Parkersburg, West Virginia and became a successful farmer and landowner and in his later years, he became a guard at the old Terrapin Park; and

WHEREAS, Sergeant Richard Bowry died on July 5, 1914, at the age of seventy-eight years and is interred at Parkersburg Memorial Park, Parkersburg, West Virginia; and

WHEREAS, It is only fitting and proper that the military service and heroism of Sergeant Richard Bowry, recipient of the Medal of Honor, be recognized by the naming of a bridge in his home county of Wood in his honor; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 54-14-7.55, currently known as the "Mineral Wells I-77 Overpass Bridge", carrying both north and south bound lanes, in Wood County, the "Army Sergeant Richard Bowry Memorial Bridge"; and, be it

Further Resolved, That the Division of Highways is requested to have made and be placed signs identifying the bridge as the "Army Sergeant Richard Bowry Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a copy of this resolution to the family of Sergeant Richard Bowry and the Secretary of the Department of Transportation.

Delegates Marcum, White, Moore, Craig and Perdue offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 126 - "Requesting the Division of Highways to rename a one mile stretch of Route 49, Schoolhouse Road, in Matewan, West Virginia, the middle point of which shall be the point in the road closest to the Matewan High School football field, the 'John Jacob Fry II Memorial Highway'."

WHEREAS, John Jacob Fry II was born on February 11, 1985 in Williamson, West Virginia to Barbara Sue Hatfield Fry and the late John Arthur Fry; and

WHEREAS, John Jacob Fry II attended and played football for the Matewan Middle School and High School Tigers; and

WHEREAS, John Jacob Fry II graduated from Marshall University with a Bachelor of Arts degree in History; and

WHEREAS, John Jacob Fry II worked as a teacher at Gilbert Middle School; and

WHEREAS, John Jacob Fry II worked as Assistant Football Coach at Mingo Central High School; and

WHEREAS, John Jacob Fry II was a loving husband to Leigh Ann Pollis Fry, stepfather to Fon Ethan and Jadyn Bailey McCoy and a beloved friend and family member to a host of others; and

WHEREAS, John Jacob Fry II was an avid volunteer, coach and friend to his community and never knew a stranger; and

WHEREAS, John Jacob Fry II passed away on June 14, 2012 at the age of twenty-seven; and

WHEREAS, It is fitting and proper, that John Jacob Fry II be remembered and acknowledged for his devotion to his community, students, players, friends and family, therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name a one mile stretch of Route 49, Schoolhouse Road, in Matewan, West Virginia, the middle point of which shall be the point in the road closest to the Matewan High School football field, the "John Jacob Fry II Memorial Highway"; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the one mile stretch as the "John Jacob Fry II Memorial Highway"; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a certified copy of this resolution to the Secretary of the Department of Transportation and to the surviving family of John Jacob Fry II.

Delegates L. Phillips, Rowan, Marshall, Raines, Guthrie, Sumner, Lawrence, Arvon, P. Smith, Border and Poore offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. R. 33 - "Requesting the House of Delegates Women's Caucus, acting as an Interim Study Committee, study crimes against children."

WHEREAS, The House of Delegates Women's Caucus wishes to examine the West Virginia Code for the purpose of more thoroughly defining the child abuse and neglect code; and

WHEREAS, The Women's Caucus believes there is need to hire more experienced officers to aid the Crimes Against Children Unit of the West Virginia State Police; and

WHEREAS, The financial responsibility of adding more experienced officers is a concern of the Women's Caucus; and

WHEREAS, The Caucus feels the need to examine how the maintenance of the Sex Offender Registry is carried out in a timely manner; and

WHEREAS, The Internet Crimes Against Children Unit of the West Virginia State Police is also an interest of the Women's Caucus, particularly if changes in the State Code are needed in order to make the Unit more effective; therefore, be it

Resolved by the House of Delegates:

That the West Virginia House of Delegates Women's Caucus is hereby requested to act as an Interim Study Committee to study crimes against children; and, be it

Further Resolved, That the Committee report to the House of Delegates at the 2014 regular session, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the House of Delegates.

SPECIAL CALENDAR

UNFINISHED BUSINESS

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

S. C. R. 11, Requesting DOH name portion of State Route 214 "Army Pvt. Parker Meikle Memorial Road",

S. C. R. 12, Requesting DOH name section of Lick Creek Road in Boone County "PFC Randall Bruce Miller Memorial Road",

Com. Sub. for S. C. R. 18, Requesting DOH name portion of State Route 20 in Wyoming County "David and Janet Lee Memorial Highway",

S. C. R. 34, Requesting DOH name bridge in Wayne County "Mavis Granny Castle Bridge",

And,

H. C. R. 108, The "Army Specialist Fourth Class Tommy Joe Belcher Memorial Bridge".

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

THIRD READING

S. B. 383, Authorizing family court judges appoint counsel in certain contempt cases; on third reading, coming up in regular order, was read a third time.

Delegate Poore requested to be excused from voting on the passage of S. B. 383 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the Member from voting.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 207)**, and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Householder, Marshall and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 383) passed.

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

S. B. 383 - "A Bill to amend and reenact §29-21-9 and §29-21-20 of the Code of West Virginia, 1931, as amended, all relating to Public Defender Services; authorizing family court judges to appoint counsel in contempt cases when jail commitment is possible; and providing immunity to attorney appointed by family court judges."

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

Com. Sub. for S. B. 412, Relating to removal of elected county conservation district supervisors from office; 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. 208)**, and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Householder, Marshall and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 412) passed.

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

Com. Sub. for S. B. 412 - "A Bill to amend and reenact §19-21A-6 and §19-21A-7 of the Code of West Virginia, 1931, as amended, all relating to county conservation district supervisors; extending unexpired terms when filling vacancies; and providing for the removal of elected county conservation district supervisors from office."

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

On this question, the yeas and nays were taken **(Roll No. 209)**, and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Householder, Marshall and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 412) 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 S. B. 421, Exempting certain school mascot from prohibition of firearms possession on school grounds; 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. 210)**, and there were—yeas 96, nays 1, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Wells.

ABSENT AND NOT VOTING: Householder, Marshall and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 421) passed.

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

S. B. 463, Increasing special license fee paid by pipeline companies to PSC; on third reading, coming up in regular order, was read a third time.

Delegate Armstead requested to be excused from voting on the passage of S. B. 463 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill but exhibited

no direct personal or pecuniary interest therein, and refused to excuse the Member from voting.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 211)**, and there were—yeas 91, nays 6, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Andes, Gearheart, Kump, McCuskey, E. Nelson and Raines.

ABSENT AND NOT VOTING: Householder, Marshall and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 463) passed.

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

S. B. 463 - "A Bill to amend and reenact §24B-5-3 of the Code of West Virginia, 1931, as amended, relating to the special license fees paid by pipeline companies to the Public Service Commission; increasing the aggregate amount of fees collected; specifying for what purpose the fees may be used."

Com. Sub. for S. B. 638, Terminating certain severance tax exemption for production of natural gas or oil; on third reading, coming up in regular order, with restricted right to amend by Delegates Manchin and Ireland, was reported by the Clerk.

On motion of Delegates Manchin and Ireland, the bill was amended on page two, section twenty-two, by striking out subsection (b) in its entirety and inserting in lieu thereof the following:

"(b) 'Horizontally drilled well' means any well that is drilled using a "horizontal drilling" method as that term is defined in subdivision (5), subsection (b), section four, article six-a, chapter twenty-two of this code" and a period.

There being no further amendments, the bill was then read a third time.

Delegate Armstead requested to be excused from voting on the passage of Com. Sub. for S. B. 638 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the Member from voting.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 212)**, and there were—yeas 94, nays 3, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Howell, McCuskey and E. Nelson.

ABSENT AND NOT VOTING: Householder, Marshall and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 638) passed.

Delegate Boggs moved that the bill take effect July 1, 2013.

On this question, the yeas and nays were taken **(Roll No. 213)**, and there were—yeas 94, nays 3, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Howell, Kump, and McCuskey.

ABSENT AND NOT VOTING: Householder, Marshall and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 638) takes effect July 1, 2013.

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

S. B. 463, Increasing special license fee paid by pipeline companies to PSC; still being in possession of the Clerk, was taken up for further consideration.

Delegate Boggs moved that the bill take effect July 1, 2013.

On this question, the yeas and nays were taken **(Roll No. 214)**, and there were—yeas 92, nays 5, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Gearheart, Howell, Kump, McCuskey and Raines.

ABSENT AND NOT VOTING: Householder, Marshall and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 463) takes effect July 1, 2013.

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

H. B. 2355, Allowing the mascot of Parkersburg South High School to carry a musket on school grounds when the mascot is acting in his or her official capacity; on third reading, coming up in regular order, was, on motion of Delegate Boggs, laid upon the table.

Com. Sub. for H. B. 2722, Increasing the amount of special license fees paid by pipeline companies; on third reading, coming up in regular order, was, on motion of Delegate Boggs, laid upon the table.

Com. Sub. for H. B. 2962, Relating to exemptions from the tax on the privilege of severing natural gas and oil; on third reading, coming up in regular order, was, on motion of Delegate Boggs, laid upon the table.

SECOND READING

Com. Sub. for S. B. 71, Requiring descriptions of easements and rights-of-way include width in addition to centerline; exception; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 145, Amending election complaint procedures; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page three, section fifty, line nineteen, after the word "chapter", by inserting the words "or Title III of the Help America Vote Act, Pub. L. 107-252".

The bill was then ordered to third reading.

Com. Sub. for S. B. 435, Continuing Municipal Home Rule Pilot Program; on second reading, coming up in regular order, was reported by the Clerk.

At the request of Delegate Boggs, and by unanimous consent, the bill was laid over.

S. B. 458, Permitting PEIA health plans to operate on calendar-year basis; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Boggs, the bill was then amended by striking out everything following the enacting clause and inserting in lieu thereof the following:

"ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-3. Composition of Public Employees Insurance Agency; appointment, qualification, compensation and

duties of Director of Agency; employees; civil service coverage.

(a) The Public Employees Insurance Agency consists of the director, the Finance Board, the Advisory Board and any employees who may be authorized by law. The director shall be appointed by the Governor, with the advice and consent of the Senate, and serves at the will and pleasure of the Governor. The director shall have at least three years' experience in health or governmental health benefit administration as his or her primary employment duty prior to appointment as director. The director shall receive actual expenses incurred in the performance of official business. The director shall employ any administrative, technical and clerical employees required for the proper administration of the programs provided in this article. The director shall perform the duties that are required of him or her under the provisions of this article and is the Chief Administrative Officer of the Public Employees Insurance Agency. The director may employ a deputy director.

(b) Except for the director, his or her personal secretary, the Deputy Director and the Chief Financial Officer, all positions in the agency shall be included in the classified service of the civil service system pursuant to article six, chapter twenty-nine of this code.

(c) The director is responsible for the administration and management of the Public Employees Insurance Agency as provided in this article and in connection with his or her responsibility may make all rules necessary to effectuate the provisions of this article. Nothing in section four or five of this article limits the director's ability to manage on a day-to-day basis the group insurance plans required or authorized by this article, including, but not limited to, administrative contracting, studies, analyses and audits, eligibility determinations, utilization management provisions and incentives, provider negotiations, provider contracting and payment, designation of covered and noncovered services, offering of additional coverage options or cost containment incentives, pursuit of coordination of benefits and

subrogation or any other actions which would serve to implement the plan or plans designed by the Finance Board. The director is to function as a benefits management professional and should avoid political involvement in managing the affairs of the Public Employees Insurance Agency.

(d) The director may, if it is financially advantageous to the state, operate the Medicare retiree health benefit plan offered by the agency based on a plan year that runs concurrent with the calendar year. Financial plans as addressed in section five of this article shall continue to be on a fiscal year basis.

~~(d)~~ (e) The director should make every effort to evaluate and administer programs to improve quality, improve health status of members, develop innovative payment methodologies, manage health care delivery costs, evaluate effective benefit designs, evaluate cost sharing and benefit based programs, and adopt effective industry programs that can manage the long-term effectiveness and costs for the programs at the Public Employees Insurance Agency to include, but not be limited to:

(1) Increasing generic fill rates;

(2) Managing specialty pharmacy costs;

(3) Implementing and evaluating medical home models and health care delivery;

(4) Coordinating with providers, private insurance carriers and to the extent possible Medicare to encourage the establishment of cost effective accountable care organizations;

(5) Exploring and developing advanced payment methodologies for care delivery such as case rates, capitation and other potential risk-sharing models and partial risk-sharing models for accountable care organizations and/or medical homes;

(6) Adopting measures identified by the Centers for Medicare and Medicaid Services to reduce cost and enhance quality;

(7) Evaluating the expenditures to reduce excessive use of emergency room visits, imaging services and other drivers of the agency's medical rate of inflation;

(8) Recommending cutting-edge benefit designs to the Finance Board to drive behavior and control costs for the plans;

(9) Implementing programs to encourage the use of the most efficient and high-quality providers by employees and retired employees;

(10) Identifying employees and retired employees who have multiple chronic illnesses and initiating programs to coordinate the care of these patients;

(11) Initiating steps by the agency to adjust payment by the agency for the treatment of hospital acquired infections and related events consistent with the payment policies, operational guidelines and implementation timetable established by the Centers of Medicare and Medicaid Services. The agency shall protect employees and retired employees from any adjustment in payment for hospital acquired infections; and

(12) Initiating steps by the agency to reduce the number of employees and retired employees who experience avoidable readmissions to a hospital for the same diagnosis related group illness within thirty days of being discharged by a hospital in this state or another state consistent with the payment policies, operational guidelines and implementation timetable established by the Centers of Medicare and Medicaid Services.

~~(e)~~ (f) The director shall issue an annual progress report to the Joint Committee on Government and Finance on the implementation of any

reforms initiated pursuant to this section and other initiatives developed by the agency."

The bill was then ordered to third reading.

FIRST READING

Com. Sub. for S. B. 80, Including substitute teaching in job duties of certain professional educators employed by county boards; on first reading, coming up in regular order, was read a first time and ordered to second reading.

S. B. 183, Updating terms in Corporation Net Income Tax Act; on first reading, coming up in regular order, was read a first time and ordered to second reading.

S. B. 571, Extending time Oceana City Council can meet as levying body; on first reading, coming up in regular order, was read a first time and ordered to second reading.

At the request of Delegate Boggs, and by unanimous consent, the provisions of House Rule 69, relating to bills on the Local Calendar, were suspended.

Delegate Boggs then moved that the constitutional rule requiring the bill to be fully and distinctly read on three different days be dispensed with.

On this question, the yeas and nays were taken **(Roll No. 215)**, and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Householder, Marshall and J. Nelson.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a second time and ordered to third reading.

The bill was then read a third time and put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 216)**, and there were—yeas 96, nays 1, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Howell.

ABSENT AND NOT VOTING: Householder, Marshall and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 571) passed.

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

On this question, the yeas and nays were taken **(Roll No. 217)**, and there were—yeas 96, nays 1, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Howell.

ABSENT AND NOT VOTING: Householder, Marshall and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 571) takes effect from its passage.

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

MISCELLANEOUS BUSINESS

Delegate Ellem noted to the Clerk that he be recorded as having voted "NAY" on the adoption of S. C. R. 7, Designating Hall Flintlock Model 1819 official state firearm.

Delegate Hartman noted to the Clerk that he was absent on yesterday when the votes were taken on Roll Nos. 203 through 206, and that had he been present, he would have voted "YEA" thereon.

LEAVES OF ABSENCE

At the request of Delegate Boggs, and by unanimous consent, leaves of absence for the day were granted Delegates Householder, Marshall and J. Nelson.

At 11:35 A.M., the House of Delegates adjourned until 11:00 A.M., Monday, April 8, 2013.

MONDAY, APRIL 8, 2013

FIFTY-FIFTH DAY

[MR. SPEAKER, MR. THOMPSON, IN THE CHAIR]

The House of Delegates met at 11:00 A.M., and was called to order by the Honorable Rick Thompson, Speaker.

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

The Clerk proceeded to read the Journal of Friday, April 5, 2013, being the first order of business, when the further reading thereof was dispensed with and the same approved.

COMMITTEE REPORTS

Mr. Speaker, Mr. Thompson, from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

H. C. R. 98, Requesting a study on the feasibility of obtaining a waiver of the federal requirement relating to state/federal matching highway funds based on a proposed funding model,

H. C. R. 105, Requesting a study on the necessity of hiring additional fraud investigators for the Department of Health and Human Resources and the Medicaid Fraud Control Unit,

And,

H. C. R. 118, The "U.S. Marine Corps PFC Daniel L. Edwards Memorial Bridge",

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

Mr. Speaker, Mr. Thompson, from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

H. C. R. 102, The "Michael A. Oliverio, Sr. Interchange",

And reports back a committee substitute therefor, with a new title, as follows:

Com. Sub. for H. C. R. 102 - "Requesting that the Star City interchange at Exit 155 of Interstate 79 in Morgantown, Monongalia County, West Virginia be named the 'Michael A. Oliverio, Sr. Interchange'."

And,

H. C. R. 106, The "O. Winston Link Trail",

And reports back a committee substitute therefor, with a new title, as follows:

Com. Sub. for H. C. R. 106 – "Requesting the Division of Highways to strive to attempt to identify a qualified sponsor and provide technical assistance in pursuing a Transportation Enhancement Grant to place and maintain markers at a trail of specific sites in West Virginia representing the locations photographed by O. Winston Link to highlight and celebrate the Norfolk and Western Railroad steam engine heritage in West Virginia and to name the trail of sites the 'O. Winston Link Trail'."

With the recommendation that the committee substitutes each be adopted.

Chairman Wells, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 5th day of April 2013, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

(H. B. 2487), Prohibiting the use of laetrile,

(Com. Sub. for H. B. 2784), Relating to the Deputy Sheriff Retirement System Act,

(H. B. 3013), Authorizing the establishment of job creation work groups,

And,

(Com. Sub. for S. B. 359), Relating generally to reforming public education.

Delegate Walker, Chair of the Committee on Agriculture, submitted the following report, which was received:

Your Committee on Agriculture has had under consideration:

S. B. 470, Permitting wine sale on Sunday mornings at fairs and festivals,

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

In accordance with the former direction of the Speaker, the bill (S. B. 470) was referred to the Committee on the Judiciary.

Delegate Craig, Chair of the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration:

Com. Sub. for S. B. 493, Providing standards for converting and retrofitting motor vehicles to alternative fuels,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 493) was referred to the Committee on the Judiciary.

Delegate Pethtel, Chair of the Committee on Pensions and Retirement, submitted the following report, which was received:

Your Committee on Pensions and Retirement has had under consideration:

S. B. 65, Exempting PERS retirement income of DNR police officers from state income tax,

S. B. 403, Relating to judicial retirement system contribution rates,

And,

Com. Sub. for S. B. 469, Clarifying service credit for certain PERS members,

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

In accordance with the former direction of the Speaker, the bills (S. B. 65, S. B. 403 and Com. Sub. for S. B. 469) were each referred to the Committee on Finance.

Delegate Pethtel, Chair of the Committee on Pensions and Retirement, submitted the following report, which was received:

Your Committee on Pensions and Retirement has had under consideration:

S. B. 507, Relating to PERS and State Police Retirement System contribution rates,

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

In accordance with the former direction of the Speaker, the bill (S. B. 507) was referred to the Committee on the Judiciary.

Delegate Guthrie, Chair of the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration:

S. B. 509, Imposing statutory liens on certain fire insurance proceeds,

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 (S. B. 509) was referred to the Committee on the Judiciary.

Delegate Hunt, Chair of the Committee on Political Subdivisions, submitted the following report, which was received:

Your Committee on Political Subdivisions has had under consideration:

S. B. 561, Establishing Tucker County Cultural District Authority,

And,

S. B. 658, Extending time for Madison City Council to meet as levying body,

And reports the same back with the recommendation that they each do pass, but that they first be referred to the Committee on Government Organization.

In accordance with the former direction of the Speaker, the bills (S. B. 561 and S. B. 658) were each referred to the Committee on Government Organization.

Delegate Staggers, Chair of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

S. B. 354, Requiring study on alternative revenue sources for funding state roads,

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

In accordance with the former direction of the Speaker, the bill (S. B. 354) was referred to the Committee on Finance.

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

Your Committee on the Judiciary has had under consideration:

S. B. 387, Relating to family court judge supervision of criminal background investigations,

And,

Com. Sub. for S. B. 534, Correcting internal code reference regarding insurance information disclosure,

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

Delegate Miley, 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. 146, Collecting unpaid magistrate court charges through income tax refund withholding,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 146) was referred to the Committee on Finance.

Delegate Miley, 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. 172, Relating to nonintoxicating beer distributor licensees,

Com. Sub. for S. B. 482, Relating to sale of voter registration lists,

And,

Com. Sub. for S. B. 492, Authorizing "rural resort community" as limited gaming facility,

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

In accordance with the former direction of the Speaker, the bills (Com. Sub. for S. B. 172, Com. Sub. for S. B. 482 and Com. Sub. for S. B. 492) were each referred to the Committee on Finance.

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

Your Committee on Finance has had under consideration:

H. B. 2541, Making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, to the Department of Health and Human Resources, Division of Human Services,

And,

S. B. 208, Making supplementary appropriation from State Fund, General Revenue, to Department of Commerce, Division of Labor, and DHHR, Division of Human Services,

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

At the respective requests of Delegate Boggs, and by unanimous consent, H. B. 2541 was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration:

H. B. 2538, Expiring, supplementing, amending, increasing, and adding items of appropriation in various accounts,

And reports back a committee substitute therefor, with a new title, as follows:

Com. Sub. for H. B. 2538 - "A Bill expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2013 in the amount of $3,500,000 from the Governor's Office, Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100, activity 236, and in the amount of $1,500,000 from the State Election Commission, Supreme Court Public Campaign Financing Fund, fund 1690, fiscal year 2013, organization 1601, and

in the amount of $2,500,000 from the Department of Administration, Office of the Secretary, State Employee Sick Leave Fund, fund 2045, fiscal year 2013, organization 0201, and in the amount of $18,317,356.29 from the Department of Administration, Education, Arts, Sciences and Tourism Debt Service Fund, fund 2252, fiscal year 2013, organization 0211, and in the amount of $3,800,000 from the Department of Administration, Division of General Services, 2004 Capitol Complex Parking Garage Fund, fund 2461, fiscal year 2013, organization 0211, and in the amount of $8,000,000 from the Department of Administration, Board of Risk and Insurance Management, Premium Tax Saving Fund, fund 2367, fiscal year 2013, organization 0218, and in the amount of $5,000,000 from the West Virginia Health Care Authority, Health Care Cost Review Authority Fund, fund 5375, fiscal year 2013, organization 0507, and in the amount of $2,000,000 from the Department of Health and Human Resources, Division of Human Services, Low Income Energy Assistance Program Fund, fund 5081, fiscal year 2013, organization 0511, and in the amount of $4,600,000 from the Department of Revenue, State Budget Office, Public Employees Insurance Reserve Fund, fund 7400, fiscal year 2013, organization 0703, and in the amount of $30,000,000 from the Department of Revenue, Insurance Commissioner, Insurance Commission Fund, fund 7152, fiscal year 2013, organization 0704, and in the amount of $14,736,022 from the Department of Revenue, Lottery Commission, Revenue Center Construction Fund, fund 7209, fiscal year 2013, organization 0705, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration, Division of Finance, fund 0203, fiscal year 2013, organization 0209, to the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2013, organization 0307, to the Department of Commerce, Division of Natural Resources, fund 0265, fiscal year 2013, organization 0310, to the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2013, organization 0506, to the Department of Health and

Human Resources, Division of Human Services, fund 0403, fiscal year 2013, organization 0511, to the Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2013, organization 0601, to the Department of Military Affairs and Public Safety, Division of Corrections - Correctional Units, fund 0450, fiscal year 2013, organization 0608, to the West Virginia Council for Community and Technical College Education - Control Account, fund 0596, fiscal year 2013, organization 0420, and to the Higher Education Policy Commission - Administration - Control Account, fund 0589, fiscal year 2013, organization 0441, and to the Higher Education Policy Commission - Control Account, fund 0586, fiscal year 2013, organization 0442, by supplementing and amending the appropriations for the fiscal year ending June 30, 2013,"

With the recommendation that the committee substitute do pass.

At the respective requests of Delegate Boggs, and by unanimous consent, the bill (Com. Sub. for H. B. 2538) was taken up for immediate consideration, read a first time and ordered to second reading.

MESSAGES FROM THE SENATE

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 11, Requesting the State of West Virginia to annually recognize August 16 as "Airborne Day" in West Virginia.

RESOLUTIONS INTRODUCED

Delegates Skinner, Fleischauer, Poore, Barrett, Moore, Morgan, Perdue, Hunt, Marshall, Manypenny, Barill, Eldridge, Ferns, Pasdon, Paxton and Raines offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 131 - "Supporting the goals and ideals of the National Day of Silence in bringing attention to anti-lesbian, gay, bisexual and transgender name-calling, bullying and harassment faced by individuals in schools."

WHEREAS, The National Day of Silence is a day in which students take a vow of silence to bring attention to the anti-lesbian, gay, bisexual and transgender name-calling, bullying and harassment faced by individuals in schools. The Gay, Lesbian and Straight Education Network designates the third Friday of every April as the National Day of Silence. Hundreds of thousands of students at more than 8,000 schools have participated in the National Day of Silence in past years; and

WHEREAS, The Gay, Lesbian and Straight Education Network's 2011 National School Climate Survey illustrates the pervasive harassment and victimization faced by lesbian, gay, bisexual and transgender students by documenting their experiences within the preceding academic year. Nearly 82 percent of lesbian, gay, bisexual and transgender students reported being verbally harassed by their peers at school because of their sexual orientation and more than 60 percent because of their gender expression. More than 38 percent of lesbian, gay, bisexual and transgender students reported being physically harassed by their peers at school because of their sexual orientation, and over 27 percent because of their gender expression. Over 18 percent of lesbian, gay, bisexual and transgender students reported being physically assaulted by their peers at school because of their sexual orientation and more than 12 percent because of their gender expression. More than 60 percent of lesbian, gay, bisexual and transgender students reported that they felt unsafe in school and nearly 30 percent reported missing at least one entire school day in the preceding month because of safety concerns; and

WHEREAS, Transgender students were more likely than all other students to report feeling unsafe at school because of their gender expression. According to the National Transgender Discrimination

Survey, those who expressed a transgender identity or gender nonconformity while in grades K through 12 reported alarming rates of harassment, physical assault and sexual violence so severe that almost 15 percent of those surveyed had to leave school. Student academic performance is affected such that lesbian, gay, bisexual and transgender students who experienced high levels of verbal harassment because of their sexual orientation or gender expression report a grade point average nearly a half grade lower than those of lesbian, gay, bisexual and transgender students who experienced low levels of such harassment; and

WHEREAS, The presence of supportive staff contributed to a range of positive indicators including fewer reports of missing school, fewer reports of feeling unsafe, greater academic achievement, higher educational aspirations, and a greater sense of school belonging. A growing number of cities and local education authorities in the state are adopting laws and policies to prohibit name-calling, bullying, harassment and discrimination against students on the basis of their sexual orientation and gender identity or expression; and

WHEREAS, Every child should be guaranteed an education free from name-calling, bullying, harassment and discrimination regardless of his or her sexual orientation and gender identity or expression; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature supports the goals and ideals of the National Day of Silence; and, be it

Further Resolved, That the Governor is requested to issue a proclamation calling on the people of the United States to observe the National Day of Silence with appropriate ceremonies, programs and activities; and, be it

Further Resolved, That city, and local education authority in the state are encouraged to adopt laws and policies to prohibit

name-calling, bullying, harassment and discrimination against students, teachers and other school staff regardless of their sexual orientation and gender identity or expression, so that the Nation's schools are institutions where all individuals are able to focus on learning.

Delegates Guthrie, Barrett, Hartman, Manchin, Morgan, Perry, R. Phillips, Reynolds and Walters offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 132 - "Requesting the Joint Committee on Government and Finance study whether insurers licensed to sell motor vehicle insurance in West Virginia should be prohibited from raising premiums after an insured person's filing of a claim for an accident for which no insured person was at fault."

WHEREAS, The State of West Virginia requires owners and operators of motor vehicles, trailers, and semitrailers to maintain proof of ability to pay damages for liability arising out of the ownership, operation, maintenance or use of a motor vehicle, trailer or semitrailer on West Virginia's roads and highways; and

WHEREAS, The State of West Virginia requires owners and operators of motor vehicles, trailers and semitrailers to maintain insurance coverage for injuries or damaged caused by uninsured motorists; and

WHEREAS, The State of West Virginia requires insurers licensed to sell motor vehicle insurance in West Virginia to offer to sell underinsured motorists coverage to persons who apply to purchase liability and uninsured motorists coverage; and

WHEREAS, West Virginia owners and operators of motor vehicles, trailers and semitrailers ordinarily meet statutory requirements by purchasing liability insurance and uninsured motorists coverage, and commonly purchase other types of motor vehicle insurance, including, but not limited to, under insured motorists coverage and other

coverages applicable to motor vehicle accidents in which the insured person is not at fault; and

WHEREAS, It appears that some insurers believe that an insured person's not-at-fault motor vehicle accident, and/or filing of a claim for a not-at-fault accident, increases the likelihood that the insured person will file future claims under the insurer's policy; and

WHEREAS, It appears that some insurers raise future premiums for a policy covering a person involved in or filing a claim for a not-at-fault accident, although it appears that other insurers do not raise future premiums for either reason; and

WHEREAS, It appears that some persons involved in not-at-fault accidents, who have paid for insurance coverage applicable to not-at-fault accidents, do not file not-at-fault accident claims because they fear that the motor vehicle insurer will increase future premiums because of the not-at-fault accident; and

WHEREAS, Some other states, including the neighboring State of Ohio, have enacted legislation to prohibit motor vehicle insurers from raising policy premiums because of an insured person's not-at-fault accident claim; and

WHEREAS, It appears that some, but not all, motor vehicle insurers in states that prohibit premium increases based on not-at-fault accidents have raised their premiums generally, to account for risk perceived to be presented by a not-at-fault accident; and

WHEREAS, Of motor vehicle insurers now licensed to sell insurance in West Virginia, it does not appear that many, if any, would withdraw from this state if prohibited from increasing premiums based on an insured person's not-at-fault accident or not-at-fault accident claim; and

WHEREAS, Motor vehicle insurance is more expensive in West Virginia than in neighboring states, due in part to topography, a large

deer population, and other factors beyond the control of insureds; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is requested to study whether insurers licensed to sell motor vehicle insurance in West Virginia should be prohibited from raising premiums after an insured person's filing of a claim for an accident for which no insured person was at fault; and, be it

Further Resolved, That the study take into account insurers' assertions of an increased risk due to not-at-fault accidents and the concerns of persons who have paid for otherwise applicable insurance but feel constrained to seek benefits for fear of increased future premiums; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session, 2014, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

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

Mr. Speaker, Mr. Thompson, and Delegate Perdue offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 133 - "Requesting that bridge number 50-64-2.03, the I-64 bridge that spans Twelve Pole Creek in Ceredo, Wayne County, West Virginia, be named the 'James T. and Paul T. Billups Bridge'."

WHEREAS, James T. Billups, currently eighty-one years of age, has served as a member of the Ceredo Town Council for the last thirty-

seven years and is the official source of knowledge for most questions concerning infrastructure of the town; and

WHEREAS, James T. Billups is widely considered the unofficial historian of all things Ceredo; and

WHEREAS, James T. Billups' father, Paul T. Billups, served as Mayor of Ceredo for twenty years, from 1947 through 1967; and

WHEREAS, Paul T. Billups was a leader of the volunteer movement that started the "modernization" of Ceredo, personally installing much of the town infrastructure while serving as the unofficial patriarch of the town and solving many and varied problems of the residents nightly on his front porch; and

WHEREAS, Both James and Paul Billups, were born in Ceredo, worked their entire lives in Ceredo, and lived substantially all their lives within feet of the I-64 Bridge in Ceredo; and

WHEREAS, There is hardly a volunteer project that has been undertaken in Ceredo in the last sixty years in which one or both of the Billups, father and son, have not participated; and

WHEREAS, Both men have enjoyed the respect of the citizenry, and for both men, love of the town of Ceredo has been paramount; and

WHEREAS, It is fitting that this enduring memorial be established to commemorate the service and dedication to the town of Ceredo, West Virginia by Paul T. and James T. Billups; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 50-64-2.03, the I-64 bridge that spans Twelve Pole Creek in Ceredo, Wayne County, West Virginia, the "James T. and Paul T. Billups Bridge"; and, be it

Further Resolved, That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge the "James T. and Paul T. Billups Bridge"; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a certified copy of this resolution to the Commissioner of the Division of Highways and to Paul A. Billups, 4 Briarcliff Drive, Huntington, WV 25704.

Delegates Guthrie, Fleischauer, Fragale, Iaquinta, Longstreth, Manypenny, Moore, Perdue, L. Phillips, Poore and Skaff offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 134 - "Requesting the Joint Committee on Government and Finance to study whether employees of the State of West Virginia whose salaries are not set by statute should be granted an annual salary increase of $1,000 per year."

WHEREAS, The State of West Virginia's payment of salaries to its employees is a proper expense of state government, necessary to obtain the services of employees qualified to perform the duties and tasks undertaken by the state's executive branch; and

WHEREAS, In 2011 the Legislature amended W. Va. Code §6-7-2a to increase the salaries of certain appointive state officers; and

WHEREAS, Although in 2008 the Legislature amended W. Va. Code §5-5-2, to raise from $50 to $60 the annual salary increases payable to state employees with three or more years of service, the levels of salaries paid by the state to employees whose salaries are not set by statute have not kept pace with the rising cost of living or with salaries paid to comparably qualified individuals employed in West Virginia's private sector; and

WHEREAS, Except for the 2011 increases granted to appointive state officers, salary increases for public employees, without regard to merit, seniority, promotion, years of service, or other reason particular to an employee, have been frozen for at least five years; and

WHEREAS, The state has in recent years found it necessary to reduce the dollar value of, and increase public employees' contributions to, public employee benefits, including, but not limited to, the costs of health plan coverage; and

WHEREAS, In light of the state's relatively low salary levels, inflation in the general economy, reduced public employee benefits, and public employees' correspondingly increased costs, the state finds difficulty, and anticipates future difficulty, in attracting and hiring the most qualified individuals; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is asked to conduct a study of the need for legislation to grant an annual $1,000 salary increase to all public employees, without regard to merit, seniority, promotion, years of service or other reason particular to an employee; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session, 2014, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

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

Mr. Speaker, Mr. Thompson, and Delegates Eldridge, R. Phillips, White, Manchin, Jones, Diserio, Manypenny, Frich, Westfall, Ambler, Anderson, Andes, Armstead, Arvon, Ashley, Azinger, Barill, Barrett,

Boggs, Border, Butler, Cadle, Campbell, Canterbury, Caputo, Cooper, Cowles, Craig, Ellem, Ellington, Espinosa, A. Evans, D. Evans, Faircloth, Ferns, Ferro, Fleischauer, Folk, Fragale, Gearheart, Guthrie, Hamilton, Hamrick, Hartman, Householder, Howell, Hunt, Iaquinta, Ireland, Kump, Lane, Lawrence, Longstreth, Lynch, Marcum, Marshall, McCuskey, Miley, Miller, Moore, Morgan, Moye, E. Nelson, O'Neal, Overington, Pasdon, Paxton, Perdue, Perry, Pethtel, L. Phillips, Pino, D. Poling, M. Poling, Poore, Raines, Reynolds, Romine, Rowan, Shott, Skaff, Skinner, P. Smith, R. Smith, Sobonya, Sponaugle, Staggers, Stephens, Storch, Stowers, Sumner, Swartzmiller, Tomblin, Walker, Walters, Wells, Williams and Young offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 135 - "Proclaiming West Virginia as a Purple Heart State, honoring the service and sacrifices of our nation's men and women in uniform wounded or killed by the enemy while serving to protect the freedoms enjoyed by all Americans."

WHEREAS, The people of the State of West Virginia have a great admiration and the utmost gratitude for all the men and women who have selflessly served their country and this state in the Armed Forces; and

WHEREAS, Veterans have paid the high price of freedom by leaving their families and communities and placing themselves in harm's way for the good of all; and

WHEREAS, The contributions and sacrifices of the men and women from the State of West Virginia who served in the Armed Forces have been vital in maintaining the freedoms and way of life enjoyed by our citizens; and

WHEREAS, Many men and women in uniform have given their lives while serving in the Armed Forces; and

WHEREAS, Many citizens of our state have earned the Purple Heart Medal as a result of being wounded while engaged in combat with an enemy force, recognized as a singularly meritorious act of essential service; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature proclaims West Virginia as a Purple Heart State, honoring the service and sacrifices of our nation's men and women in uniform wounded or killed by the enemy while serving to protect the freedoms enjoyed by all Americans.

SPECIAL CALENDAR

THIRD READING

Com. Sub. for S. B. 71, Requiring descriptions of easements and rights-of-way include width in addition to centerline; exception; on third reading, coming up in regular order, with an amendment pending, was reported by the Clerk.

At the request of Delegate Boggs, and by unanimous consent, the bill was laid over.

Com. Sub. for S. B. 145, Amending election complaint procedures; 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. 218)**, 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: J. Nelson and Storch.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 145) passed.

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

S. B. 458, Permitting PEIA health plans to operate on calendar-year basis; 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. 219)**, 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: J. Nelson and Storch.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 458) passed.

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

S. B. 458 - "A Bill to amend and reenact §5-16-3 of the Code of West Virginia, 1931, as amended, relating to health benefit plans; permitting the Director of the Public Employees Insurance Agency to operate the Medicare retiree health benefits plans on a calendar year; requiring certain conditions; and providing that financial plans shall continue to be on a fiscal year basis."

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

On this question, the yeas and nays were taken **(Roll No. 220)**, 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: J. Nelson and Storch.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 458) 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. 2877, Permitting the Director of the Public Employees Insurance Agency to operate any of the agency's health benefits plans on a calendar year; on third reading, coming up in regular order, was, on motion of Delegate Boggs, laid upon the table.

SECOND READING

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

Com. Sub. for S. B. 80, Including substitute teaching in job duties of certain professional educators employed by county boards,

And,

S. B. 183, Updating terms in Corporation Net Income Tax Act.

FIRST READING

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

Com. Sub. for S. B. 60, Relating to name-change notice publication requirements,

S. B. 108, Creating Unintentional Pharmaceutical Drug Overdose Fatality Review Team,

Com. Sub. for S. B. 158, Creating Complete Streets Act,

And,

Com. Sub. for S. B. 580, Updating requirements for dental intern, resident and teaching permits.

At 11:30 A.M., on motion of Delegate Boggs, the House of Delegates recessed until 5:00 P.M., and reconvened at that time.

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AFTERNOON SESSION

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MESSAGES FROM THE SENATE

A message from the Senate, by

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

S. B. 383, Authorizing family court judges appoint counsel in certain contempt cases,

And,

Com. Sub. for S. B. 430, Defining "employment term" in Teachers' Defined Contribution Retirement System.

A message from the Senate, by

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

Com. Sub. for S. B. 412, Relating to county conservation district supervisors,

Com. Sub. for S. B. 431, Relating to public employer liability for delinquent retirement contributions,

And,

S. B. 496, Finding and declaring certain claims against state.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, to take effect July 1, 2013, of

S. B. 463, Increasing special license fee paid by pipeline companies to PSC,

And,

Com. Sub. for S. B. 638, Terminating certain severance tax exemption for production of natural gas or oil.

COMMITTEE REPORTS

At the request of Delegate Boggs, and by unanimous consent, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

On motion for leave, a resolution was introduced (Originating in the Committee on Roads and Transportation and reported with the recommendation that it be adopted), which was read by its title, as follows:

By Delegates Cowles, Gearheart, Barill, Boggs, Longstreth, Lynch, Marcum, D. Poling, Skaff, Smith, Stephens, Stowers, Wells, Ambler, Butler, Cadle, Ellington, Espinosa, D. Evans, Hamrick, Howell and Shott:

H. C. R. 136 – "Requesting the Joint Committee on Government and Finance to study the requirement of successfully passing a drug test by applicants before issuance of an instruction permit or level three full Class E license."

WHEREAS, Illegal drug use has become an increasingly serious public health and law-enforcement problem throughout the State of West Virginia; and

WHEREAS, Keeping our youth drug-free is an investment in the productivity and prosperity of the next generation of West Virginians; and

WHEREAS, Requiring an applicant for an instruction permit or level three full Class E license to show proof of successfully passing a test to detect illegal use of controlled substances could curb drug use in teens and young adults; and

WHEREAS, Issuance of instruction permits and level three full Class E licenses has been an effective incentive historically; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the requirement of proof of successful passage of a drug test designed to detect illegal use of controlled substances before issuance of an instruction permit or a full level three Class E license; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

In the absence of objection, the Speaker referred the resolution to the Committee on Rules.

On motion for leave, a resolution was introduced (Originating in the Committee on Health and Human Resources and reported with the recommendation that it be adopted), which was read by its title, as follows:

By Delegates Perdue, Perry, Ellington, Campbell, Diserio, Eldridge, Ferns, Fleischauer, Lawrence, Marshall, Moore,

Moye, Poore, Staggers, Arvon, Border, Cowles, Faircloth, Miller, Pasdon, Rowan and Sobonya:

H. C. R. 137 - "Requesting the Joint Committee on Government and Finance to study the adequacy of the SNAP providing healthy diets to low-income recipients."

WHEREAS, The SNAP (Supplemental Nutritional Assistance Program) assists more than forty-seven million low-income people who rely on the program - - costing $74.6 billion a year; and

WHEREAS, Eligible food items are any food or food products for home consumption and also includes seeds and plants which produce food for consumption by SNAP households. The Act precludes alcoholic beverages, tobacco products, pet foods, vitamins, hot food and any food sold for on-premises consumption; and

WHEREAS, There is a concern that SNAP participants often have to compromise food choices for options higher in sugar, fat and preservatives because healthy alternatives are not always affordable - - SNAP participants consume less produce and healthy options and purchase at least 40% more sugar-sweetened beverages than any other consumer group; and

WHEREAS, Seven times as many poor children are obese as those who are underweight, is an indication that government aid in the form of SNAP does a good job of addressing hunger but encourages the consumption of unhealthy choices; and

WHEREAS, Unlike other federal programs that provide food subsidies, SNAP does not have nutritional standards; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the adequacy of the SNAP providing healthy diets to low-income recipients in regards to sales of sugary beverages and food with no nutritional value; and, be it

Further Resolved, That Joint Committee on Government and Finance report to the regular session of the Legislature 2014, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

In the absence of objection, the Speaker referred the resolution to the Committee on Rules.

On motion for leave, a resolution was introduced (Originating in the Committee on Health and Human Resources and reported with the recommendation that it be adopted), which was read by its title, as follows:

By Delegates Perdue, Perry, Eldridge, Diserio, Ferns, Fleischauer, Marshall, Moore, Poore, Staggers and Pasdon:

H. C. R. 116 - "Requesting the Joint Committee on Government and Finance to authorize a study on medicinal marijuana."

WHEREAS, Modern medical research has discovered a beneficial use for medicinal marijuana in treating and alleviating the pain and other symptoms associated with certain debilitating medical conditions and injuries that often fail to respond to conventional treatments; and

WHEREAS, Medicinal marijuana has a beneficial use for the relief of nausea, vomiting and other side effects of drugs increasing the chances of patients continuing on life-saving treatment regimens; and

WHEREAS, Reports have shown the therapeutic value of medicinal marijuana in treating a wide array of debilitating medical conditions including, but not limited to, cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency

syndrome, hepatitis C, amyotrophic lateral sclerosis (Lou Gehrig's disease), Crohn's disease, epilepsy, Alzheimer's disease, Parkinson's disease, post-traumatic stress disorder, depression, anxiety, addiction to opiates or amphetamines, chronic and debilitating diseases or medical conditions or the treatments that produce one or more of the following: cachexia or wasting syndrome, severe or chronic pain, severe nausea, seizures and severe and persistent muscle spasms; and

WHEREAS, The Legislature is committed to evaluating the use of appropriate pain therapy techniques as those develop within various regulated clinical environments and applying those methodologies in this state to provide appropriate and cost-effective pain therapy for the citizens of this state thus reducing the likelihood of addition and abuse; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to authorize a study on medicinal marijuana; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature 2014, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

In the absence of objection, the Speaker referred the resolution to the Committee on Rules.

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

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

Com. Sub. for S. B. 335, Permitting certain hospitals exemption from certificate of need,

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 Government Organization.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 335) was referred to the Committee on Government Organization.

Delegate Miley, 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. 116, Relating to crimes against property involving graffiti,

Com. Sub. for S. B. 372, Creating criminal offense for interfering with emergency service call,

Com. Sub. for S. B. 423, Providing certain convicted persons reduction in sentence,

And,

S. B. 489, Permitting community enhancement districts to decrease annual property assessments,

And reports the same back, with amendment, with the recommendation that they each do pass, as amended, and with the recommendation that second reference of the bills to the Committee on Finance be dispensed with.

Delegate Boggs asked unanimous consent that second reference of the bills (Com. Sub. for S. B. 116, Com. Sub. for S. B. 372, Com.

Sub. for S. B. 423 and S. B. 489) to the Committee on Finance be dispensed with, which consent was not given, objections being heard.

Delegate Boggs then so moved.

On this question, the yeas and nays were taken **(Roll No. 221)**, and there were—yeas 53, nays 40, absent and not voting 7, with the nays and absent and not voting being as follows:

NAYS: Ambler, Anderson, Armstead, Arvon, Ashley, Azinger, Border, Butler, Cadle, Canterbury, Cooper, Cowles, Ellem, Ellington, Espinosa, D. Evans, Faircloth, Frich, Gearheart, Hamilton, Hamrick, Householder, Howell, Ireland, Lane, McCuskey, Miller, E. Nelson, O'Neal, Overington, Pasdon, Raines, Romine, Rowan, Shott, R. Smith, Sobonya, Storch, Sumner and Walters.

ABSENT AND NOT VOTING: Andes, Folk, Fragale, Kump, J. Nelson, Skaff and Westfall.

So, two thirds of the members present and voting not having voted in the affirmative, the motion did not prevail.

The bills (Com. Sub. for S. B. 116, Com. Sub. for S. B. 372, Com. Sub. for S. B. 423 and S. B. 489) were then referred to the Committee on Finance.

On motion for leave, a resolution was introduced (Originating in the Committee on Government Organization and reported with the recommendation that it be adopted), which was read by its title, as follows:

By Delegates Morgan, Stephens, Caputo, Diserio, Eldridge, Ferns, Hartman, Jones, Lynch, Paxton, P. Smith, Staggers, Swartzmiller, Arvon, Azinger, Border, Cadle, Faircloth, Folk, Kump, Romine and R. Smith:

H. C. R. 138 - "Requesting that the Joint Committee on Government and Finance authorize a study on state recognition of Native American Tribes."

WHEREAS, Currently, West Virginia does not formally recognize indigenous Native American tribes within the State, but has historically been the homeland of Native American tribes and groups; and

WHEREAS, During the 2002 Regular Session, the West Virginia Legislature adopted House Resolution 18 and Senate Resolution 28, recognizing the Native American Indian Federation as an official tribe of the State of West Virginia; and

WHEREAS, During the 2002 Regular Session, the West Virginia Legislature adopted House Concurrent Resolution 78 requesting a study on the establishment of a state commission on Indian Affairs; and

WHEREAS, Native Americans and their descendants live throughout the State of West Virginia and contribute to the economic, cultural, political and social diversity of West Virginia; and

WHEREAS, Native Americans have influenced and enriched the heritage of this state as reflected in the names of our rivers Ohio, Monogahela and Kanawha, the names of our counties Logan and Mingo, and our state parks and forests Seneca Rocks and Watoga; and

WHEREAS, The State of West Virginia has a unique history as an area esteemed for its great natural resources depended upon by Native Americans of many tribes; and

WHEREAS, It is in the public interest for West Virginia and its citizens to recognize the diverse culture and ethnic heritage of the people of this State in order to promote greater awareness and understanding for the education, inspiration and the general public welfare of its people; and

WHEREAS, Official state recognition of Native American tribes will help keep alive the oral history and traditions that have been handed down through countless generations of families; and

WHEREAS, There is a mutual shared interest of West Virginia and groups in West Virginia to recognize Native American Tribes and certify Native American Organizations as such recognition is necessary to promote access to certain educational, cultural and economic development opportunities, pursuant to Public Law 101-644 the Indian Arts and Crafts Act of 1990 and its subsequent revisions; and

WHEREAS, Official state recognition of Native American tribes by West Virginia may be necessary to facilitate access to federal funds set aside for Native Americans; and

Whereas, The Legislature of West Virginia is committed to promoting access to opportunity and recognizing cultural diversity for all of our citizens; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to authorize a study on the state recognition of Native American Tribes; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Regular Session of the Legislature, 2013, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

In the absence of objection, the Speaker referred the resolution to the Committee on Rules.

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

Your Committee on Government Organization has had under consideration:

Com. Sub. for S. B. 347, Requiring Public Employees Grievance Board and Division of Personnel provide training seminars to certain persons,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 347) was referred to the Committee on the Judiciary.

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

Your Committee on Government Organization has had under consideration:

Com. Sub. for S. B. 544, Scheduling departmental performance reviews,

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

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

Your Committee on Government Organization has had under consideration:

S. B. 561, Establishing Tucker County Cultural District Authority,

And,

S. B. 658, Extending time for Madison City Council to meet as levying body,

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

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

Your Committee on Government Organization has had under consideration:

S. B. 214, Eliminating interview requirement for certain medical licensee applicants,

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

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

Your Committee on Government Organization has had under consideration:

Com. Sub. for S. B. 557, Continuing Preventive Care Pilot Program,

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

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

Your Committee on Government Organization has had under consideration:

Com. Sub. for S. B. 630, Relating to Chief Technology Officer's duties with regard to security of government information,

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

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 630) was referred to the Committee on the Judiciary.

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

Your Committee on the Judiciary has had under consideration:

S. B. 462, Extending time for informal conferences on surface mining permit applications,

S. B. 491, Relating to rental car license cost recovery fee,

S. B. 504, Relating to cooperative associations,

And,

Com. Sub. for S. B. 542, Relating to restricted races at pari-mutuel thoroughbred horse race tracks,

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

Delegate Miley, 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. 478, Redefining "video lottery games"; permitting wagering by historic resort hotel employees,

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

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

Your Committee on Finance has had under consideration:

Com. Sub. for S. B. 358, Relating to municipal policemen and firemen pensions,

Com. Sub. for S. B. 440, Relating to disclosure of specified tax information for enforcement of Tobacco Master Settlement Agreement,

Com. Sub. for S. B. 445, Allowing Tax Commissioner divert lottery prizes to offset tax liabilities of lottery winners,

S. B. 446, Conforming motor fuel taxes with International Fuel Tax Agreement,

S. B. 524, Supplementing, amending, decreasing and increasing appropriations from State Road Fund to DOT,

S. B. 526, Making supplementary appropriation of federal funds to DHHR, Division of Human Services-Temporary Assistance for Needy Families,

And,

Com. Sub. for S. B. 553, Relating to Highway Design-Build Program,

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

LEAVES OF ABSENCE

At the request of Delegate Boggs, and by unanimous consent, leave of absence for the day was granted Delegate J. Nelson.

At 5:13 P.M., the House of Delegates adjourned until 11:00 A.M., Tuesday, April 9, 2013.

TUESDAY, APRIL 9, 2013

FIFTY-SIXTH DAY

[MR. SPEAKER, MR. THOMPSON, IN THE CHAIR]

The House of Delegates met at 11:00 A.M., and was called to order by the Honorable Rick Thompson, 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, April 8, 2013, being the first order of business, when the further reading thereof was dispensed with and the same approved.

COMMITTEE REPORTS

Mr. Speaker, Mr. Thompson, from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

H. C. R. 112, The "Army Command Sergeant Major Wade Damron Memorial Bridge",

H. C. R. 125, The "Army Sergeant Richard Bowry Memorial Bridge",

H. C. R. 126, The "John Jacob Fry II Memorial Highway",

H. C. R. 133, The "James T. and Paul T. Billups Bridge",

And,

H. C. R. 135, Proclaiming West Virginia as a Purple Heart State,

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

Mr. Speaker, Mr. Thompson, from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

H. C. R. 56, The "John Edgar Saville Memorial Bridge",

And reports back a committee substitute therefore, with a new title, as follows:

Com. Sub. for H. C. R. 56 – "Requesting that bridge number 2-6-0.96 being constructed on County Route 6, Dry Run Road, crossing Back Creek near Hedgesville, Berkeley County, West Virginia, be named the 'John Edgar Saville Memorial Bridge'."

H. C. R. 120, The "1st Sergeant Walter Criss Street, United States Army",

And reports back a committee substitute therefore, with a new title, as follows:

Com. Sub. for H. C. R. 120 – "Requesting the Division of Highways to name bridge number 44-905-0.61 on Market Street near the junction with Front Street in the City of Spencer, Roane County, West Virginia, the '1st Sergeant Walter Criss Bridge, United States Army'."

And,

H. C. R. 121, The "LSC (SS) Andrew Scott Mollohan Memorial Bridge",

And reports back a committee substitute therefore, with a new title, as follows:

Com. Sub. for H. C. R. 121 – "Requesting that bridge number 54-68-23.53 on Routes 2 and 68, known as the I-77 overpass in Wood County, West Virginia, be named the 'U.S. Navy LSC (SS) Andrew Scott Mollohan Memorial Bridge'."

With the recommendation that the committee substitutes each be adopted.

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

Your Committee on Finance has had under consideration:

Com. Sub. for S. B. 202, Creating WV Spay Neuter Assistance Program and Fund,

Com. Sub. for S. B. 401, Relating to Board of Registration for Professional Engineers,

S. B. 441, Relating to withdrawal of erroneous state tax liens,

Com. Sub. for S. B. 454, Relating to taxation of alternative motor fuels,

S. B. 523, Making supplementary appropriation of unappropriated moneys to various accounts,

S. B. 525, Making supplementary appropriation of federal funds to various accounts,

S. B. 664, Decreasing appropriations of public moneys in State Fund, General Revenue,

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

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

Your Committee on Education has had under consideration:

S. B. 663, Creating WV Feed to Achieve Act,

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

Delegate Miley, 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. 250, Authorizing Department of Commerce promulgate legislative rules,

Com. Sub. for S. B. 265, Authorizing DHHR promulgate legislative rules,

Com. Sub. for S. B. 270, Authorizing Department of Revenue promulgate legislative rules,

Com. Sub. for S. B. 426, Relating to filings under Uniform Commercial Code as to secured transactions,

S. B. 515, Relating to use of television receivers and other devices in vehicles,

Com. Sub. for S. B. 538, Eliminating requirement law enforcement maintain files of domestic violence orders,

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

Delegate Miley, 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. 281, Authorizing Department of Transportation promulgate legislative rules,

Com. Sub. for S. B. 477, Relating to electronic registration of voters,

And,

Com. Sub. for S. B. 604, Expanding definition of "electioneering communication",

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

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

Your Committee on the Judiciary has had under consideration:

S. B. 407, Requiring cellular and phone companies provide certain information to Bureau for Child Support Enforcement,

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

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

Your Committee on Education has had under consideration:

S. B. 394, Relating to scholarships for dependent children of state troopers who die in performance of duty,

And,

Com. Sub. for S. B. 444, Relating to higher education generally,

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

In accordance with the former direction of the Speaker, the bills (S. B. 394 and Com. Sub. for S. B. 444) were each referred to the Committee on Finance.

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

Your Committee on Education has had under consideration:

S. B. 623, Relating to funding for probation officers to address truancy,

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

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

Your Committee on Finance has had under consideration:

H. B. 2014, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution,

And reports back a committee substitute therefor, with the same title, as follows:

Com. Sub. for H. B. 2014 - "A Bill making appropriations of public money out of the Treasury in accordance with section fifty-one, article VI of the Constitution,"

With the recommendation that the committee substitute do pass.

Delegate Miley, 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. 371, Relating to prison overcrowding,

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 (Com. Sub. for S. B. 371) was referred to the Committee on Finance.

RESOLUTIONS INTRODUCED

Delegates Williams, Boggs, Pethtel, Perdue, Anderson, Iaquinta, Guthrie, Miller, Walker, Manypenny, White, Ashley, Barill, Caputo, Craig, Eldridge, A. Evans, Ferro, Fleischauer, Hartman, Hunt, Ireland, Lawrence, Lynch, Manchin, Marcum, Miley, Moore, Morgan, Pasdon, Perry, R. Phillips, Pino, M. Poling, Reynolds, Skaff, P. Smith, Staggers and Stowers offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 139 - "Requesting the Joint Committee on Government and Finance to create a select working group to study the potential for creating new jobs and improving our economy by increasing agribusiness in the state through the development of a sustainable regional-based food system that supports the production, processing, aggregation, distribution and consumption of West Virginia foods."

WHEREAS, A strong, regionally-based food system can provide a wellspring of economic growth for rural communities and cities. While other areas in the United States have realized some gain from developing agricultural and food-based resources, West Virginia's potential remains largely underutilized. Total farm sales in the state increased by 19 percent to $591 million from 2002 to 2007, but these amounts pale in comparison to other states and West Virginia ranked 43rd in the nation for total farm product sales in 2007; and

WHEREAS, Despite West Virginia's mountainous terrain, many farms and much agricultural land exist in the state. Currently, most

farms have cattle or calf inventory, but there is significant room for vegetable and fruit production to expand to fill the local shortage, or the difference between consumption and production; and

WHEREAS, A significant market exists for vegetables and fruits, and in particular, there is a high demand for fresh vegetables. This fact, combined with the trend of low current vegetable production, highlights a market opportunity for increased vegetable production in West Virginia; and

WHEREAS, Significantly expanding vegetable and fruit production in West Virginia would have an important economic impact on the state. For example, if West Virginia farmers grew enough vegetables and fruits to meet 75 percent of the fresh seasonal produce needs of all West Virginians it would create an estimated 1,330 jobs (519 jobs in farming and 398 jobs in food and beverage retail), and the resulting increase in production would create an estimated $93.9 million in additional sales. If West Virginia farmers grew enough vegetables and fruits to meet 100 percent of the fresh seasonal produce needs of all West Virginians it would create an estimated 1,723 jobs (690 jobs in farming and 510 jobs in food and beverage retail), and the resulting increase in production would create an estimated $120.8 million in additional sales; and

WHEREAS, There are also opportunities to grow jobs and stimulate the West Virginia economy by increasing the production and processing of livestock and poultry that we consume in this state. According to the U.S. Food Market Estimator developed by Iowa State University, almost 72 million pounds of beef are consumed annually in West Virginia, and much of that is currently imported from outside the state and the country. A recent West Virginia University Extension Service study estimated the potential economic benefit of raising and processing all the beef and pork we consume in this state to be a total of 14,295 additional jobs when factoring the direct, indirect and induced effect of the production; and

WHEREAS, There are many positive economic impacts of a vibrant local food system, but the primary economic benefits take the form of increased income and employment, which are driven by substitution (buying local food instead of food from far away) and localization (bringing processing activities into the region instead of processing food far away). This results in more jobs and more recirculated dollars, as an enhanced local food system can even stimulate neighboring businesses and increase the sharing of local skill sets; and

WHEREAS, In addition to the foregoing direct economic benefits, local food systems also have secondary socioeconomic benefits such as improving the health of residents. Local food is usually fresher and less processed, and the availability of readily accessible local food may lead to healthier diet choices, like eating more vegetables, fruits and leaner meats. Additionally, local food may also improve school children's diets, and school-based healthy food programming can help increase fruit, vegetable and leaner meat intake; and

WHEREAS, A coordinated, strategic and collaborative effort is needed to successfully implement policy changes that will help establish a sustainable regional-based food system in West Virginia to grow our economy; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to create a select working group to study the potential for creating new jobs and improving our economy by increasing agribusiness in the state through the development of a sustainable regional-based food system that supports the production, processing, aggregation, distribution and consumption of West Virginia foods; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

PETITIONS

Delegate A. Evans presented a petition on behalf of his constituents concerned about the current freeze on the Aged and Disabled Medicaid Waiver Program; which was referred to the Committee on Health and Human Resources.

SPECIAL CALENDAR

UNFINISHED BUSINESS

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

H. C. R. 98, Requesting a study on the feasibility of obtaining a waiver of the federal requirement relating to state/federal matching highway funds based on a proposed funding model,

Com. Sub. for H. C. R. 102, The "Michael A. Oliverio, Sr. Interchange",

H. C. R. 105, Requesting a study on the necessity of hiring additional fraud investigators for the Department of Health and Human Resources and the Medicaid Fraud Control Unit,

Com. Sub. for H. C. R. 106, The "O. Winston Link Trail",

And,

H. C. R. 118, The "U.S. Marine Corps PFC Daniel L. Edwards Memorial Bridge".

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

THIRD READING

Com. Sub. for S. B. 80, Including substitute teaching in job duties of certain professional educators employed by county boards; 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. 222)**, and there were—yeas 78, nays 20, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Andes, Armstead, Arvon, Butler, Cadle, Cowles, Ellem, Espinosa, Faircloth, Hamrick, Householder, Howell, Kump, E. Nelson, O'Neal, Overington, Raines, Shott, R. Smith and Sumner.

ABSENT AND NOT VOTING: Marshall and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 80) passed.

Delegate Boggs moved that the bill take effect July 1, 2013.

On this question, the yeas and nays were taken **(Roll No. 223)**, and there were—yeas 81, nays 17, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Andes, Arvon, Cadle, Cowles, Espinosa, Faircloth, Gearheart, Hamrick, Householder, Howell, Kump, E. Nelson, O'Neal, Overington, Raines, R. Smith and Sumner.

ABSENT AND NOT VOTING: Marshall and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 80) takes effect July 1, 2013.

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

S. B. 183, Updating terms in Corporation Net Income Tax Act; 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. 224)**, 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: Marshall and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 183) passed.

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

On this question, the yeas and nays were taken **(Roll No. 225)**, 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: Marshall and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 183) takes effect from its passage.

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

SECOND READING

Com. Sub. for S. B. 60, Relating to name-change notice publication requirements; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Boggs, and by unanimous consent, the bill was advanced to third reading with an amendment pending, and the rule was suspended to permit the consideration of the amendment on that reading.

S. B. 108, Creating Unintentional Pharmaceutical Drug Overdose Fatality Review Team; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Health and Human Resources, was reported by the Clerk on page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

"That §48-25A-1, §48-25A-2, and §48-25A-3 of the Code of West Virginia, 1931, as amended, be repealed; that §48-27A-1, §48-27A-2, and §48-27A-3 of said code be repealed; that §49-5D-5 of said code be repealed; that said code be amended by adding thereto a new article, designated §61-12A-1, §61-12A-2, §61-12A-3, §61-12A-4 and §61-12A-5, all to read as follows:

ARTICLE 12A. FATALITY REVIEW TEAM.

§61-12A-1. Fatality Review Team.

(a) A fatality review team is created under the Office of the Chief Medical Examiner. The fatality review team combines the Maternal Mortality Review Team, the Domestic Violence Fatality Review Team and the Child Fatality Review Team. The fatality review team is a multidisciplinary team created to examine, review and analyze the deaths of all persons in West Virginia who die as a result of unintentional prescription or pharmaceutical drug overdoses; the deaths of children under the age of eighteen years; the deaths resulting from suspected domestic violence; and the deaths of all infants and of all women who die during pregnancy, at the time of birth or within one year of the birth of a child.

(b) The fatality review team shall consist of the following:

(1) The Chief Medical Examiner in the Bureau for Public Health or his or her designee, who is to serve as the chairperson and who is responsible for calling and coordinating all meetings;

(2) The Commissioner of the Bureau for Public Health or his or her designee;

(3) The Superintendent of the West Virginia State Police or his or her designee; and

(4) A prosecuting attorney or his or her designee, as appointed by the Governor.

(c) Each member serve for a term of three years, unless otherwise reappointed to a second or subsequent term. Members shall continue to serve until their respective terms expire or until their successors have been appointed.

(d) Each member shall serve without additional compensation and may not be reimbursed for any expenses incurred in the discharge of his or her duties under the provisions of this article.

§61-12A-2. Responsibilities of the Fatality Review Team.

(a) The Fatality Review Team shall:

(1) Review and analyze all deaths as required by this article;

(2) Ascertain and document the trends, patterns and risk factors;

(3) Provide statistical information and analysis regarding the causes of certain fatalities.

(b) During the review process, the team may include any additional persons with expertise or knowledge in a particular field that it determines is needed in the review and consideration of a particular case as a result of a death in subsection (a) of section one.

(c) The fatality review team, in the exercise of its duties as defined in this section, may not:

(1) Call witnesses or take testimony from individuals involved in the investigation of a fatality;

(2) Contact a family member of the deceased;

(3) Enforce any public health standard or criminal law or otherwise participate in any legal proceeding; or

(4) Otherwise take any action which, in the determination of a prosecuting attorney or his or her assistants, impairs the ability of the prosecuting attorney, his or her assistants or any law-enforcement officer to perform his or her statutory duties.

(d) The fatality review team shall submit an annual report to the Governor and to the Legislative Oversight Commission on Health and Human Resources Accountability concerning its activities within the state. The report is due annually on December 1. The report is to include statistical information concerning cases reviewed during the year, trends and patterns concerning these cases and the team's recommendations to reduce the number of unintentional pharmaceutical drug overdose fatalities in the state.

§61-12A-3. Access to information; other agencies of government required to cooperate.

(a) Notwithstanding any other provision of this code to the contrary, the fatality review team may request information and records as necessary to carry out its responsibilities. Records and information that may be requested under this section include:

(1) Medical, dental and mental health records;

(2) Substance abuse records to the extent allowed by federal law; and

(3) Information and records maintained by any state, county and local government agency, except as provided in subsection (c), section two of this article.

(b) State, county and local government agencies shall provide the fatality review team with any information requested in writing by the team.

§61-12A-4. Confidentiality.

(a) Proceedings, records and opinions of the fatality review team are confidential and are not subject to discovery, subpoena or introduction into evidence in any civil or criminal proceeding. This section does not limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source and entirely independent of the proceedings of the fatality review team.

(b) Members of the fatality review team may not be questioned in any civil or criminal proceeding regarding information presented in or opinions formed as a result of a meeting of the team. This subsection does not prevent a member of the fatality review team from testifying to information obtained independently of the team or which is public information.

(c) Proceedings, records and opinions of the fatality review team are exempt from disclosure under the Freedom of Information Act, as provided in chapter twenty-nine-b of this code.

§61-12A-5. Rules.

The Office of the Chief Medical Examiner, in consultation with the fatality review team, shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code. Those rules shall include, at a minimum:

(1) The standard procedures for the conduct of the fatality review team;

(2) The processes and protocols for the review and analysis of fatalities of those who were not suffering from mortal diseases shortly before death;

(3) The processes and protocols to ensure confidentiality of records obtained by the fatality review team; and

(4) Other rules as may be deemed necessary to effectuate the purposes of this article."

On motion of Delegate Perdue, the amendment was amended on page three, line twenty, after the word "overdose", by striking out the remainder of the sentence and inserting "deaths; deaths of children under the age of eighteen years; deaths from suspected domestic violence; and the deaths of all infants and women who die during pregnancy, at the time of birth to one year in the state."

The Health and Human Resources amendment, as amended, was then adopted.

The bill was then ordered to third reading.

Com. Sub. for S. B. 158, Creating Complete Streets Act; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 580, Updating requirements for dental intern, resident and teaching permits; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Health and Human Resources, was reported by the Clerk and adopted, amending the bill on page one, following the enacting clause, by inserting the following:

"That §30-4-8a, §30-4-10a, §30-4-25, §30-4-26, §30-4-27, §30-4-28 and §30-4-29 of the Code of West Virginia, 1931, as amended, be repealed; that §30-4A-6a, §30-4A-6b, §30-4A-6c, §30-4A-6d and §30-4A-18 of said code be repealed; that §30-4B-5, §30-4B-6, §30-4B-7 and §30-4B-8 of said code be repealed; that §30-4-1, §30-4-2, §30-4-3, §30-4-4, §30-4-5, §30-4-6, §30-4-7,

§30-4-8, §30-4-9, §30-4-10, §30-4-11, §30-4-12, §30-4-13, §30-4-14, §30-4-15, §30-4-16, §30-4-17, §30-4-18, §30-4-19, §30-4-20, §30-4-21, §30-4-22, §30-4-23 and §30-4-24 of said code be amended and reenacted; that §30-4A-1, §30-4A-2, §30-4A-3, §30-4A-4, §30-4A-5, §30-4A-6, §30-4A-7, §30-4A-8, §30-4A-9, §30-4A-10, §30-4A-11, §30-4A-12, §30-4A-13, §30-4A-14, §30-4A-15, §30-4A-16 and §30-4A-17 of said code be amended and reenacted; and that §30-4B-1, §30-4B-2, §30-4B-3 and §30-4B-4 of said code be amended and reenacted; all to read as follows:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-1. Unlawful acts.

(a) It is unlawful for any person to practice or offer to practice dentistry or dental hygiene this state without a license, issued under the provisions of this article, or advertise or use any title or description tending to convey or give the impression that they are a dentist or dental hygienist, unless the person is licensed under the provisions of this article.

(b) A business entity may not render any service or engage in any activity which, if rendered or engaged in by an individual, would constitute the practice of dentistry, except through a licensee.

§30-4-2. Applicable law.

The practices authorized under the provisions of this article and the Board of Dentistry are subject to article one of this chapter, the provisions of this article, and any rules promulgated hereunder.

§30-4-3. Definitions.

As used in article four, four-a and four-b, the following words and terms have the following meanings:

(1) 'AAOMS' means the American Association of Oral and Maxillofacial Surgeons;

(2) 'AAPD' means the American Academy of Pediatric Dentistry;

(3) 'ACLS' means Advanced Cardiac Life Support;

(4) 'ADA' means the American Dental Association;

(5) 'AMA' means the American Medical Association;

(6) 'ASA' means American Society of Anesthesiologists;

(7)'Anxiolysis(anxiety-free)/minimal sedation' or premedication for anxiety - means removing, eliminating or decreasing anxiety by the use of a single anxiety or analgesia medication that is administered in an amount consistent with the manufacturer's current recommended dosage for the unsupervised treatment of anxiety, insomnia or pain, in conjunction with nitrous oxide and oxygen. This does not include multiple dosing or exceeding current normal dosage limits set by the manufacturer for unsupervised use by the patient (at home), for the treatment of anxiety;

(8) 'Approved dental hygiene program' means a program that is approved by the board and is accredited or its educational standards are deemed by the board to be substantially equivalent to those required by the Commission on Dental Accreditation of the American Dental Association;

(9) 'Approved dental school, college or dental department of a university' means a dental school, college or dental department of a university that is approved by the board and is accredited or its educational standards are deemed by the board to be substantially equivalent to those required by the Commission on Dental Accreditation of the American Dental Association;

(10) 'Authorize' means that the dentist is giving permission or approval to dental auxiliary personnel to perform delegated procedures in accordance with the dentist's diagnosis and treatment plan;

(11) 'BLS' means Basic Life Support;

(12) 'Board' means the West Virginia Board of Dentistry;

(13) 'Business entity' means any firm, partnership, association, company, corporation, limited partnership, limited liability company or other entity;

(14) 'Central Nervous System Anesthesia' means an induced controlled state of unconsciousness or depressed consciousness produced by a pharmacologic method;

(15) 'Certificate of qualification' means a certificate authorizing a dentist to practice a specialty;

(16) 'CPR' means Cardiopulmonary Resuscitation;

(17) 'Conscious sedation/Moderate sedation' means an induced controlled state of depressed consciousness, produced through the administration of nitrous oxide and oxygen and/or the administration of other agents whether enteral or parenteral, in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command;

(18) 'CRNA' means Certified Registered Nurse Anesthetist;

(19) 'Delegated procedures' means those procedures specified by law or by rule of the board and performed by dental auxiliary personnel under the supervision of a licensed dentist;

(20) 'Dentist Anesthesiologist' means a dentist who is trained in the practice of anesthesiology and has completed an additional approved anesthesia education course;

(21) 'Dental assistant' means a person qualified by education, training or experience who aids or assists a dentist in the delivery of patient care in accordance with delegated procedures as specified by

the board by rule or who may perform nonclinical duties in the dental office;

(22) 'Dental auxiliary personnel' or 'auxiliary' means dental hygienists and dental assistants who assist the dentist in the practice of dentistry;

(23) 'Dental Hygiene' means the performance of educational, preventive or therapeutic dental services and as further provided in section nine and legislative rule;

(24) 'Dental hygienist' means a person licensed by the board to practice provides dental hygiene and other services as specified by the board by rule to patients in the dental office and in a public health setting;

(25) 'Dental laboratory' means a business performing dental laboratory services;

(26) 'Dental laboratory services' means the fabricating, repairing or altering of a dental prosthesis;

(27) 'Dental laboratory technician' means a person qualified by education, training or experience who has completed a dental laboratory technology education program and who fabricates, repairs or alters a dental prosthesis in accordance with a dentist's work authorization;

(28) 'Dental office' means the place where the licensed dentist and dental auxiliary personnel are practicing dentistry;

(29) 'Dental prosthesis' means an artificial appliance fabricated to replace one or more teeth or other oral or peri-oral structure in order to restore or alter function or aesthetics;

(30) 'Dentist' means an individual licensed by the board to practice dentistry;

(31) 'Dentistry' means the evaluation, diagnosis, prevention and treatment of diseases, disorders and conditions of the oral cavity, maxillofacial area and the adjacent and associated structures provided by a dentist;

(32) 'Direct supervision' means supervision of dental auxiliary personnel provided by a licensed dentist who is physically present in the dental office or treatment facility when procedures are being performed;

(33) 'Facility Permit' means a permit for a facility where sedation procedures are used that correspond with the level of anesthesia provided;

(34) 'General anesthesia' means an induced controlled state of unconsciousness in which the patient experiences complete loss of protective reflexes, as evidenced by the inability to independently maintain an airway, the inability to respond purposefully to physical stimulation, or the inability to respond purposefully to verbal command. 'Deep conscious sedation/general anesthesia' includes partial loss of protective reflexes and the patient retains the ability to independently and continuously maintain an airway;

(35) 'General supervision' means a dentist is not required to be in the office or treatment facility when procedures are being performed by the auxiliary dental personnel, but has personally diagnosed the condition to be treated, has personally authorized the procedures and will evaluate the treatment provided by the dental auxiliary personnel;

(36) 'Good moral character' means a lack of history of dishonesty;

(37) 'Health Care Provider BLS/CPR' means Health Care Provider Basic Life Support/Cardiopulmonary Resuscitation;

(38) 'License' means a license to practice dentistry or dental hygiene;

(39) 'Licensee' means a person holding a license;

(40) 'Mobile Dental Facility' any self-contained facility in which dentistry or dental hygiene will be practiced which may be moved, towed, or transported from one location to another;

(41) 'Other dental practitioner' means those persons excluded from the definition of the practice of dentistry under the provisions of subsections (3), (4) and (5), section twenty-nine, of and also those persons who hold teaching permits which have been issued to them under the provisions of section fourteen, article four of this chapter;

(42) 'PALS' means Pediatric Advanced Life Support;

(43) 'Pediatric Patient' means infants and children;

(44) 'Physician Anesthesiologist' means a physician, MD or DO, who is specialized in the practice of anesthesiology;

(45) 'Portable Dental Unit' any non-facility in which dental equipment, utilized in the practice of dentistry, is transported to and utilized on a temporary basis an out-of-office location, including, but not limited to, patient's homes, schools, nursing homes, or other institutions;

(46) 'Public health practice' means treatment or procedures in a public health setting which shall be designated by a rule promulgated by the board to require direct, general or no supervision of a dental hygienist by a dentist;

(47)'Public health setting' means hospitals, schools, correctional facilities, jails, community clinics, long-term care facilities, nursing homes, home health agencies, group homes, state institutions under the West Virginia Department of Health and Human Resources, public health facilities, homebound settings, accredited dental hygiene education programs and any other place designated by the board by rule;

(48) 'Qualified Monitor' means an individual who by virtue of credentialing and/or training checks closely and documents the status of a patient undergoing anesthesia and observes utilized equipment;

(49) 'Relative analgesia/minimal sedation' means an induced controlled state of minimally depressed consciousness, produced solely by the inhalation of a combination of nitrous oxide and oxygen, or single oral premedication without the addition of nitrous oxide and oxygen in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command. Dosage of oral premedication is not to exceed the recommended dosage limits set by the manufacturer for the treatment of anxiety, insomnia or pain;

(50) 'Specialty' means the practice of a certain branch of dentistry;

(51) 'Subcommittee' means West Virginia Board of Dentistry Subcommittee on Anesthesia;

(52) 'Work authorization' means a written order for dental laboratory services which has been issued by a licensed dentist or other dental practitioner.

§30-4-4. Board of Dental Examiners.

(a) The 'West Virginia Board of Dental Examiners' is continued and on July 1, 2013, the board shall be renamed the 'West Virginia Board of Dentistry'. The members of the board in office on the date this section takes effect shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

(b) The Governor, by and with the advice and consent of the Senate, shall appoint:

(1) Six licensed dentists;

(2) One licensed dental hygienist;

(3) One nationally certified dental assistant or currently practicing dental assistant with a minimum of ten years experience and;

(4) One citizen member who is not licensed under the provisions of this article and does not perform any services related to the practice of dentistry.

(c) The West Virginia Dental Association may submit recommendations to the Governor for the appointment of the licensed dentists board members, the West Virginia Association of Dental Hygienists may submit recommendations to the Governor for the appointment of an Dental Hygienist board member, and the West Virginia Dental Assistant Association may submit recommendations to the Governor for the appointment of an Dental Assistant board member.

(d) A person connected with a commercial entity that may derive financial gain from the profession of dentistry and a person employed as full-time faculty with a dental college, school or dental department of a university are not eligible for appointment to the board.

(e) After the initial appointment term, the appointment term is five years. A member may not serve more than two consecutive terms. A member who has served two consecutive full terms may not be reappointed for at least one year after completion of his or her second full term. A member may continue to serve until his or her successor has been appointed and qualified.

(f) Each licensed member of the board, at the time of his or her appointment, shall have held a license in this state for a period of not less than five years immediately preceding the appointment.

(g) Each member of the board shall be a resident of this state during the appointment term.

(h) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant.

(i) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(j) A licensed member of the board immediately and automatically forfeits membership to the board if his or her license to practice is suspended or revoked in any jurisdiction.

(k) A member of the board immediately and automatically forfeits membership to the board if he or she is convicted of a felony under the laws of any jurisdiction or becomes a nonresident of this state.

(l) The board shall elect annually one of its members as president and one member as secretary who shall serve at the will and pleasure of the board.

(m) Each member of the board is entitled to receive compensation and expense reimbursement in accordance with article one of this chapter.

(n) A simple majority of the membership serving on the board at a given time is a quorum for the transaction of business.

(o) The board shall hold at least two meetings annually. Other meetings shall be held at the call of the president or upon the written request of four members, at the time and place as designated in the call or request.

(p) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

(q) The members of the board when acting in good faith and without malice shall enjoy immunity from individual civil liability while acting within the scope of their duties as board members.

§30-4-5. Powers of the board.

The board has all the powers and duties set forth in this article, by rule, in article one of this chapter and elsewhere in law, including:

(1) Hold meetings;

(2) Establish procedures for submitting, approving and rejecting applications for a license, certificate and permit;

(3) Determine the qualifications of any applicant for a license, certificate and permit;

(4) Establish the fees charged under the provisions of this article;

(5) Issue, renew, deny, suspend, revoke or reinstate a license, certificate and permit;

(6) Prepare, conduct, administer and grade written, oral or written and oral examinations for a license;

(7) Contract with third parties to administer the examinations required under the provisions of this article;

(8) Maintain records of the examinations the board or a third party administers, including the number of persons taking the examination and the pass and fail rate;

(9) Maintain an office, and hire, discharge, establish the job requirements and fix the compensation of employees and contract with persons necessary to enforce the provisions of this article.

(10) Employ investigators, attorneys, hearing examiners, consultants and other employees as may be necessary, who are exempt from the classified service and who serve at the will and pleasure of the board.

(11) Investigate alleged violations of the provisions of this article, article four-a and article four-b of this chapter, legislative rule, orders and final decisions of the board;

(12) Conduct disciplinary hearings of persons regulated by the board;

(13) Determine disciplinary action and issue orders;

(14) Institute appropriate legal action for the enforcement of the provisions of this article;

(15) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(16) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

(17) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article;

(18) Sue and be sued in its official name as an agency of this state; and

(19) Confer with the Attorney General or his or her assistant in connection with legal matters and questions.

§30-4-6. Rule-making authority.

(a) The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, and articles four-a and four-b of this chapter including:

(1) Standards and requirements for licenses, certifications and permits;

(2) Requirements for third parties to prepare and/or administer examinations and reexaminations;

(3) Educational and experience requirements;

(4) Continuing education requirements and approval of continuing education courses;

(5) Procedures for the issuance and renewal of licenses, certifications and permits;

(6) Establish a fee schedule;

(7) Regulate dental specialities;

(8) Delegate procedures to be performed by a dental hygienist;

(9) Delegate procedures to be performed by a dental assistant;

(10) Designate the services and procedures performed under direct supervision, general supervision in public health practice;

(11) Designate additional public health settings;

(12) Regulate the use of firm or trade names;

(13) Regulate dental corporations;

(14) Regulate professional limited liability companies;

(15) Establish professional conduct requirements;

(16) Establish the procedures for denying, suspending, revoking, reinstating or limiting the practice of licensees, certifications and permitees;

(17) Establish requirements for inactive or revoked licenses, certifications and permits;

(18) Regulate dental anesthesia, including:

(A) Fees;

(B) Evaluations;

(C) Equipment;

(D) Emergency Drugs;

(E) Definitions;

(F) Qualified Monitor Requirements; and

(G) Education;

(19) Any other rules necessary to implement this article.

(b) All of the board's rules in effect and not in conflict with these provisions, shall remain in effect until they are amended or rescinded.

§30-4-7. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury designated the 'Board of Dentists and Dental Hygienist Special Fund', which is continued and shall be known as the 'Board of Dentistry Special Fund'. The fund is used by the board for the administration of this article. Except as may be provided in article one of this chapter, the board retains the amount in the special revenue account from year to year. No compensation or expense incurred under this article is a charge against the General Revenue Fund.

(b) Any amounts received as administrative fines imposed pursuant to this article shall be deposited into the general revenue fund of the State Treasury.

§30-4-8. License to practice dentistry.

(a) The board shall issue a license to practice dentistry to an applicant who meets the following requirements:

(1) Is at least eighteen years of age;

(2) Is of good moral character;

(3) Is a graduate of and has a diploma from a Commission on Dental Accreditation or equivalent approved dental college, school or dental department of a university;

(4) Has passed the National Board examination as given by the Joint Commission on National Dental Examinations and a clinical board as specified by the board by rule;

(5) Has not been found guilty of cheating, deception or fraud in the examination or any part of the application;

(6) Has paid the application fee specified by rule; and

(7) Not be an alcohol or drug abuser, as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step program or other similar group or process, may be considered.

(b) A dentist may not represent to the public that he or she is a specialist in any branch of dentistry or limit his or her practice to any branch of dentistry unless first issued a certificate of qualification in that branch of dentistry by the board.

(c) A license to practice dentistry issued by the board shall for all purposes be considered a license issued under this section: *Provided*, That a person holding a license shall renew the license.

§30-4-9. Scope of practice of a dentist.

The practice of dentistry includes the following:

(1) Coordinate dental services to meet the oral health needs of the patient;

(2) Examine, evaluate and diagnose diseases, disorders and conditions of the oral cavity, maxillofacial area and adjacent and associated structures;

(3) Treat diseases, disorders and conditions of the oral cavity, maxillofacial area and the adjacent and associated structures;

(4) Provide services to prevent diseases, disorders and conditions of the oral cavity, maxillofacial area and the adjacent and associated structures;

(5) Fabricate, repair or alter a dental prosthesis;

(6) Administer anesthesia in accordance with the provisions of article four-a of this chapter;

(7) Prescribe drugs necessary for the practice of dentistry;

(8) Execute and sign a death certificate when it is required in the practice of dentistry;

(9) Employ and supervise dental auxiliary personnel;

(10) Authorize delegated procedures to be performed by dental auxiliary personnel; and

(11) Perform any other work included in the curriculum of an approved dental school, college or dental department of a university.

§30-4-10. License to practice dental hygiene.

(a) The board shall issue a dental hygienist license to an applicant who meets the following requirements:

(1) Is at least eighteen years of age;

(2) Is of good moral character;

(3) Is a graduate with a degree in dental hygiene from an approved dental hygiene program of a college, school or dental department of a university;

(4) Has passed the national board dental hygiene examination, a regional or state clinical examination and a state law examination that tests the applicant's knowledge of subjects specified by the board by rule;

(5) Has not been found guilty of cheating, deception or fraud in the examination or any part of the application;

(6) Has paid the application fee specified by rule; and

(7) Not be an alcohol or drug abuser, as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step program or other similar group or process, may be considered.

(b) A dental hygienist license issued by the board shall for all purposes be considered a dental hygienist license issued under this section: *Provided*, That a person holding a dental hygienist license shall renew the license.

§30-4-11. Scope of practice for a dental hygienist.

The practice of dental hygiene includes the following:

(1) Perform a complete prophylaxis, including the removal of any deposit, accretion or stain from supra and subgingival, the surface of a tooth or a restoration;

(2) Apply a medicinal agent to a tooth for a prophylactic purpose;

(3) Take a radiograph for interpretation by a dentist;

(4) Instruct a patient on proper oral hygiene practice;

(5) Place sealants on a patient's teeth without a prior examination by a licensed dentist: *Provided*, That for this subdivision, the dental hygienist has a public health practice permit issued by the board, and subject to a collaborative agreement with a supervising dentist and the patient is referred for a dental examination within six months of sealant application;

(6) Perform all delegated procedures of a dental hygienist specified by rule by the board; and

(7) Performing all delegated procedures of a dental assistant specified by rule by the board.

§30-4-12. License renewal.

(a) All persons regulated by this article shall annually or biannually, renew his or her board authorization by completing a form prescribed by the board and submitting any other information required by the board.

(b) The board shall charge a fee for each renewal of a board authorization and shall charge a late fee for any renewal not paid by the due date.

(c) The board shall require as a condition of renewal that each licensee, certificate holder or permittee complete continuing education.

(d) The board may deny an application for renewal for any reason which would justify the denial of an original application.

§30-4-13. Board authorizations shall be displayed.

(a) The board shall prescribe the form for a board authorization, and may issue a duplicate upon payment of a fee.

(b) Any person regulated by the article shall conspicuously display his or her board authorization at his or her principal business location.

§30-4-14. Dental intern, resident, or teaching permit.

(a) The board may issue a dental intern or dental resident permit to an applicant who has been accepted as a dental intern or dental resident by a licensed hospital or dental school in this state which maintains an established dental department under the supervision of a licensed dentist and meets the following qualifications:

(1) Has graduated from a Commission on Dental Accreditation or equivalent approved dental college, school or dental department of a university with a degree in dentistry;

(2) Has paid the application fee specified by rule; and

(3) Meets the other qualifications specified by rule.

(b) The dental intern or dental resident permit may be renewed and expires on the earlier of:

(1) The date the permit holder ceases to be a dental intern or dental resident; or

(2) One year after the date of issue.

(c) The board may issue a teaching permit to an applicant who is not otherwise licensed to practice dentistry in this state and who meets the following conditions:

(1) Shall have authorization or has been eligible for a authorization to practice dentistry in another jurisdiction;

(2) Has met or been approved under the credentialing standards of a dental school or an academic medical center with which the person is to be affiliated; the dental school or academic medical center shall be accredited by the Commission on Dental Accreditation or Joint Commission on Accreditation of Health Care Organizations;

(3) The permittee may teach and practice dentistry in or on behalf of a dental school or college offering a doctoral degree in dentistry operated and conducted in this state, in connection with an academic medical center or at any teaching hospital adjacent to a dental school or an academic medical center;

(4) May be renewed annually with a written recommendation from the dental school dean;

(5) Shall successfully complete the West Virginia Dental Law Examination;

(6) Shall pay annual renewal fees to the board;

(7) Shall comply with continuing education requirements;

(8) Has had no disciplinary actions taken or pending against him or her by any other jurisdiction; and

(9) Shall be responsible for the permit as would a regular dental license.

(d) While in effect, a permittee is subject to the restrictions and requirements imposed by this article. In addition, a permittee may not receive any fee for service other than a salary paid by the hospital or dental school.

§30-4-15. Special volunteer dentist or dental hygienist license; civil immunity for voluntary services rendered to indigents.

(a) There is continued a special volunteer dentist and dental hygienist license for dentist and dental hygienists retired or retiring

from the active practice of dentistry and dental hygiene who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinic setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer dentist or dental hygienist license shall be issued by the board to dentist or dental hygienists licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the dental hygienist's acknowledgment that:

(1) The dentist or dental hygienist's practice under the special volunteer dentist or dental hygienist license will be exclusively devoted to providing dentistry or dental hygiene care to needy and indigent persons in West Virginia;

(2) The dentist or dental hygienist will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any dentistry or dental hygiene services rendered under the special volunteer dentist or dental hygienist license;

(3) The dentist or dental hygienist will supply any supporting documentation that the board may reasonably require; and

(4) The dentist or dental hygienist agrees to continue to participate in continuing professional education as required by the board for the special volunteer dentist or dental hygienist.

(b) Any dentist or dental hygienist who renders any dentistry or dental hygiene service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer dentist or dental hygienist license authorized under subsection (a) of this section without payment

or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the dental hygiene service at the clinic unless the act or omission was the result of the dentist's or dental hygienist's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there shall be a written agreement between the dentist or dental hygienist and the clinic pursuant to which the dentist or dental hygienist will provide voluntary uncompensated dental hygiene services under the control of the clinic to patients of the clinic before the rendering of any services by the dentist or dental hygienist at the clinic: *Provided*, That any clinic entering into such written agreement is required to maintain liability coverage of not less than one million dollars per occurrence.

(c) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a dentist or dental hygienist rendering voluntary dental hygiene services at or for the clinic under a special volunteer dentist or dental hygienist license authorized under subsection (a) of this section.

(d) For purposes of this section, 'otherwise eligible for licensure' means the satisfaction of all the requirements for licensure as listed in section ten of this article and in the legislative rules promulgated thereunder, except the fee requirements of subdivision six of that section and of the legislative rules promulgated by the board relating to fees.

(e) Nothing in this section may be construed as requiring the board to issue a special volunteer dentist or dental hygienist license to any dental hygienist whose license is or has been subject to any disciplinary action or to any dentist or dental hygienist who has surrendered a license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action

taken against his or her dentist or dental hygienist license, or who has elected to place a dentist or dental hygienist license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a dentist or dental hygienist license.

(f) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any dentist or dental hygienist covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a dentist or dental hygienist who holds a special volunteer dentist or dental hygienist license.

§30-4-16. Dental corporations.

(a) Dental corporations are continued.

(b) One or more dentists may organize and become a shareholder or shareholders of a dental corporation domiciled within this state under the terms and conditions and subject to the limitations and restrictions specified by rule.

(c) No corporation may practice dentistry, or any of its branches, or hold itself out as being capable of doing so without a certificate of authorization from the board.

(d) When the Secretary of State receives a certificate of authorization to act as a dental corporation from the board, he or she shall attach the authorization to the corporation application and, upon compliance with the applicable provisions of chapter thirty-one of this code, the Secretary of State shall issue to the incorporators a certificate of incorporation for the dental corporation.

(e) A corporation holding a certificate of authorization shall renew annually, on or before June 30, on a form prescribed by the board and pay an annual fee in an amount specified by rule.

(f) A dental corporation may practice dentistry only through an individual dentist or dentists licensed to practice dentistry in this state, but the dentist or dentists may be employees rather than shareholders of the corporation.

(g) A dental corporation holding a certificate of authorization shall cease to engage in the practice of dentistry upon being notified by the board that any of its shareholders is no longer a licensed dentist or when any shares of the corporation have been sold or disposed of to a person who is not a licensed dentist: *Provided*, That the personal representative of a deceased shareholder has a period, not to exceed twenty-four months from the date of the shareholder's death, to dispose of the shares; but nothing contained herein may be construed as affecting the existence of the corporation or its right to continue to operate for all lawful purposes other than the practice of dentistry.

§30-4-17. Reinstatement.

(a) A licensee against whom disciplinary action has been taken under the provisions of this article shall be afforded an opportunity to demonstrate the qualifications to resume practice. The application for reinstatement shall be in writing and subject to the procedures specified by the board by rule.

(b) A licensee who does not complete annual renewal, as specified by the board by rule, and whose licensed has lapsed for one year or longer, shall make application for reinstatement as specified by the board by rule.

(c) The board, at its discretion and for cause, may require an applicant for reinstatement to undergo a physical and/or mental evaluation to determine a licensee is competent to practice or if the licensee is impaired by drugs or alcohol.

§30-4-18. Actions to enjoin violations.

(a) If the board obtains information that any person has engaged in, is engaging in or is about to engage in any act which constitutes or will constitute a violation of the provisions of this article, the rules promulgated pursuant to this article, or a final order or decision of the board, it may issue a notice to the person to cease and desist in engaging in the act and/or apply to the circuit court in the county of the alleged violation for an order enjoining the act.

(b) The circuit court may issue a temporary injunction pending a decision on the merits, and may issue a permanent injunction based on its findings in the case.

(c) The judgment of the circuit court on an application permitted by the provisions of this section is final unless reversed, vacated or modified on appeal to the West Virginia Supreme Court of Appeals.

§30-4-19. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may initiate a complaint upon receipt of credible information, and shall upon the receipt of a written complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules promulgated pursuant to this article.

(b) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee, certificate holder or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article.

(c) Upon a finding of probable cause to go forward with a complaint, the board shall provide a copy of the complaint to the licensee, certificate holder or permittee.

(d) Upon a finding that probable cause exists that the licensee, certificate holder or permittee has violated subsection (g) of this

section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for disciplinary action against the licensee, certificate holder or permittee. Any hearing shall be held in accordance with the provisions of this article, and shall require a violation to be proven by a preponderance of the evidence.

(e) A member of the complaint committee or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend, restrict or revoke the license, certificate or permit of, or impose probationary conditions upon or take disciplinary action against, any licensee, certificate holder or permittee for any of the following reasons:

(1) Obtaining a board authorization by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or other crime involving drugs, violent crime, or moral turpitude;

(3) Being guilty of unprofessional conduct which placed the public at risk, as defined by legislative rule of the board;

(4) Intentional violation of a lawful order or legislative rule of the board;

(5) Having had a board authorization revoked or suspended, other disciplinary action taken, or an application for a board authorization denied by the proper authorities of another jurisdiction;

(6) Aiding or abetting unlicensed practice;

(7) Engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare or safety of the public;

(8) Incapacity that prevents a licensee from engaging in the practice of dentistry or dental hygiene, with reasonable skill, competence, and safety to the public;

(9) Committing fraud in connection with the practice of dentistry or dental hygiene;

(10) Failure to report to the board one's surrender of a license or authorization to practice dentistry or dental hygiene in another jurisdiction while under disciplinary investigation by any of those authorities or bodies for conduct that would constitute grounds for action as defined in this section;

(11) Failure to report to the board any adverse judgment, settlement, or award arising from a malpractice claim arising related to conduct that would constitute grounds for action as defined in this section;

(12) Being guilty of unprofessional conduct as contained in the American Dental Association principles of ethics and code of professional conduct. The following acts are conclusively presumed to be unprofessional conduct:

(A) Being guilty of any fraud or deception;

(B) Committing a criminal operation or being convicted of a crime involving moral turpitude;

(C) Abusing alcohol or drugs;

(D) Violating any professional confidence or disclosing any professional secret;

(E) Being grossly immoral;

(F) Harassing, abusing, intimidating, insulting, degrading or humiliating a patient physically, verbally or through another form of communication;

(G) Obtaining any fee by fraud or misrepresentation;

(H) Employing directly or indirectly, or directing or permitting any suspended or unlicensed person so employed, to perform operations of any kind or to treat lesions of the human teeth or jaws or correct malimposed formations thereof;

(I) Practicing, or offering, or undertaking to practice dentistry under any firm name or trade name not approved by the board;

(J) Having a professional connection or association with, or lending his or her name to another, for the illegal practice of dentistry, or professional connection or association with any person, firm or corporation holding himself or herself, themselves or itself out in any manner contrary to this article;

(K) Making use of any advertising relating to the use of any drug or medicine of unknown formula;

(L) Advertising to practice dentistry or perform any operation thereunder without causing pain;

(M) Advertising professional superiority or the performance of professional services in a superior manner;

(N) Advertising to guarantee any dental service;

(O) Advertising in any manner that is false or misleading in any material respect;

(P) Soliciting subscriptions from individuals within or without the state for, or advertising or offering to individuals within or without the state, a course or instruction or course materials in any phase, part or branch of dentistry or dental hygiene in any journal, newspaper,

magazine or dental publication, or by means of radio, television or United States mail, or in or by any other means of contacting individuals: *Provided*, That the provisions of this paragraph may not be construed so as to prohibit:

(i) An individual dentist or dental hygienist from presenting articles pertaining to procedures or technique to state or national journals or accepted dental publications; or

(ii) Educational institutions approved by the board from offering courses or instruction or course materials to individual dentists and dental hygienists from within or without the state; or

(Q) Engaging in any action or conduct which would have warranted the denial of the license.

(13) Knowing or suspecting that a licensee is incapable of engaging in the practice of dentistry or dental hygiene, with reasonable skill, competence, and safety to the public, and failing to report any relevant information to the board;

(14) Illegal use or disclosure of protected health information;

(15) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of any licensing examination;

(16) Failure to furnish to the board or its representatives any information legally requested by the board, or failure to cooperate with or engaging in any conduct which obstructs an investigation being conducted by the board;

(17) Announcing or otherwise holding himself or herself out to the public as a specialist or as being specially qualified in any particular branch of dentistry or as giving special attention to any branch of dentistry or as limiting his or her practice to any branch of dentistry without first complying with the requirements established by

the board for the specialty and having been issued a certificate of qualification in the specialty by the board;

(18) Failing to report to the board within 72 hours of becoming aware thereof any life threatening occurrence, serious injury or death of a patient resulting from dental treatment or complications following a dental procedure;

(19) Failing to report to the board any Driving Under the Influence and/or Driving While Intoxicated offense; or

(20) Violation of any of the terms or conditions of any order entered in any disciplinary action.

(h) For the purposes of subsection (g) of this section, effective July 1, 2013, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Restrictions;

(4) Suspension;

(5) Revocation;

(6) Administrative fine, not to exceed $1,000 per day per violation;

(7) Mandatory attendance at continuing education seminars or other training;

(8) Practicing under supervision or other restriction; or

(9) Requiring the licensee or permittee to report to the board for periodic interviews for a specified period of time.

(i) In addition to any other sanction imposed, the board may require a licensee or permittee to pay the costs of the proceeding.

(j) Nothing shall be construed as barring criminal prosecutions for violations of this article.

(k) A person authorized to practice under this article, who reports or otherwise provides evidence of the negligence, impairment or incompetence of another member of this profession to the board or to any peer review organization, is not liable to any person for making the report if the report is made without actual malice and in the reasonable belief that the report is warranted by the facts known to him or her at the time.

§30-4-20. Procedures for hearing; right of appeal.

(a) Hearings are governed by the provisions of section eight, article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, at the conclusion of a hearing he or she shall prepare a proposed written order containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member or the executive director of the board has the authority to administer oaths, examine any person under oath.

(e) If, after a hearing, the board determines the licensee or permittee has violated provisions of this article or the board's rules, a formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.

§30-4-21. Judicial review.

A person adversely affected by a decision of the board denying an application or entered after a hearing may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in accordance with article six, chapter twenty-nine-a of this code.

§30-4-22. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a person authorized under this article has committed a criminal offense under this article, the board may bring its information to the attention of an appropriate law-enforcement official.

(b) Any person who intentionally practices, or holds himself or herself out as qualified to practice dentistry or dental hygiene, or uses any title, word or abbreviation to indicate to or induce others to believe he or she is licensed to practice as a dentist or dental hygienist without obtaining an active, valid West Virginia license to practice that profession or with a license that is:

(1) Expired, suspended or lapsed; or

(2) Inactive, revoked, suspended as a result of disciplinary action, or surrendered, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000.

§30-4-23. Single act evidence of practice.

In any action brought under this article, article four-a or article four-b any proceeding initiated under this article, evidence of the commission of a single act prohibited by this article is sufficient to justify a penalty, injunction, restraining order or conviction without evidence of a general course of conduct.

§30-4-24. Inapplicability of article.

The provisions of this article do not apply to:

(1) A licensed physician or surgeon in the practice of his or her profession when rendering dental relief in emergency cases, unless he or she undertakes to reproduce or reproduces lost parts of the human teeth or to restore or replace lost or missing teeth in the human mouth;

(2) A dental laboratory in the performance of dental laboratory services, while the dental laboratory, in the performance of the work, conforms in all respects to the requirements of article four-b and further does not apply to persons performing dental laboratory services under the direct supervision of a licensed dentist or under the direct supervision of a person authorized under this article to perform any of the acts in this article defined to constitute the practice of dentistry while the work is performed in connection with, and as a part of, the dental practice of the licensed dentist or other authorized person and for his or her dental patients;

(3) A student enrolled in and regularly attending any dental college recognized by the board, provided their acts are done in the dental college and under the direct and personal supervision of their instructor;

(4) A student enrolled in and regularly attending any dental college recognized by the board may practice dentistry in a public health setting, provided their acts are done under the direct supervision of their instructor, adjunct instructor or a dentist;

(5) An authorized dentist of another state temporarily operating a clinic under the auspices of a organized and reputable dental college or reputable dental society, or to one lecturing before a reputable society composed exclusively of dentists; or

(6) A dentists whose practice is confined exclusively to the service of the United States Army, the United States Navy, the United

States Air Force, The United States Coast Guard, the United States Public Health Service, the United States Veteran's Bureau or any other authorized United States government agency or bureau.

ARTICLE 4A. ADMINISTRATION OF ANESTHESIA BY DENTISTS.

§30-4A-1. Requirement for anesthesia permit.

(a) No dentist may induce central nervous system anesthesia without first having obtained an anesthesia permit for the level of anesthesia being induced.

(b) The applicant for an anesthesia permit shall pay the appropriate permit fees and renewal fees, submit a completed board-approved application and consent to an office evaluation.

(c) Permits shall be issued to coincide with the annual renewal dates.

(d) Permit holders shall report the names and qualifications of each qualified monitor. Qualified monitors shall apply for certification and pay the appropriate application fees and renewal fees. Qualified monitors are required to renew annually by the 30th day of June. Qualified monitor requirements for each level of sedation are as specified by rule.

(e) A dentist shall hold a class permit equivalent to or exceeding the anesthesia level being provided, unless the provider of anesthesia is a physician anesthesiologist or licensed dentist who holds a current anesthesia permit issued by the board.

§30-4A-2. Presumption of Degree of Central Nervous System Depression.

(a) In any hearing where a question exists as to the degree of central nervous system depression a licensee has induced (i.e., local

anesthesia, relative analgesia, anxiolysis, conscious sedation, general anesthesia/deep conscious sedation) the board may base its findings on, among other things, the types, dosages and routes of administration of drugs administered to the patient and what result can reasonably be expected from those drugs in those dosages and routes administered in a patient of that physical and psychological status.

(b) No permit holder may have more than one person under conscious sedation/moderate sedation and/or general anesthesia/deep conscious sedation at the same time, exclusive of recovery.

§30-4A-3. Classes of anesthesia permits.

(a) The board shall issue the following permits:

(1) Class 2 Permit: A Class 2 Permit authorizes a dentist to induce anxiolysis/minimal sedation.

(2) Class 3 Permit: A Class 3 Permit authorizes a dentist to induce conscious sedation/moderate sedation as limited enteral (3a) and/or comprehensive parenteral (3b), and anxiolysis/minimal sedation.

(3) Class 4 Permit: A Class 4 Permit authorizes a dentist to induce general anesthesia/deep conscious sedation, conscious sedation/moderate sedation, and anxiolysis/minimal sedation.

(b) When anesthesia services are provided in dental facilities by a MD or DO physician anesthesiologist, dentist anesthesiologist, or CRNA, the dental facility shall be inspected and approved for a Class 4 permit, and the dentist shall have a minimum of a Class 2 permit. If anesthesia services are provided by a CRNA, the dental facility shall be inspected and approved for a Class 4 permit. and the supervising dentist shall have the same level of permit for the level of anesthesia provided by the CRNA.

§30-4A-4. Qualifications, standards, and continuing education requirements for relative analgesia/minimal sedation use.

(a) The board shall allow administration of relative analgesia if the practitioner:

(1) Is a licensed dentist in the state;

(2) Holds valid and current documentation showing successful completion of a Health Care Provider BLS/CPR course; and

(3) Has completed a training course of instruction in dental school, continuing education or as a postgraduate in the administration of relative analgesia.

(b) A practitioner who administers relative analgesia shall have the following facilities, equipment and drugs available during the procedure and during recovery:

(1) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow delivery of age appropriate care in an emergency situation;

(2) An operating table or chair which permits the patient to be positioned so that the patient's airway can be maintained, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support;

(3) A lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(4) Suction equipment which permits aspiration of the oral and pharyngeal cavities;

(5) An oxygen delivery system with adequate age appropriate full face masks and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(6) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system; and

(7) A defibrillator device: *Provided*, That this requirement is only for Class 2, 3, and 4 permittees.

(c) All equipment used shall be appropriate for the height and weight and age of the patient.

(d) Before inducing relative analgesia/minimal sedation by means of nitrous oxide or a single pre-med agent, a practitioner shall:

(1) Evaluate the patient;

(2) Give instruction to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; and

(3) Certify that the patient is an appropriate candidate for relative analgesia/minimal sedation.

(e) A practitioner who administers relative analgesia/minimal sedation shall see that the patient's condition is visually monitored. At all times, the patient shall be observed by a qualified monitor until discharge criteria have been met.

(f) A qualified monitor's record shall include documentation of all medications administered with dosages, time intervals and route of administration including local anesthesia.

(g) A discharge entry shall be made in the patient's record indicating the patient's condition upon discharge.

(h) A qualified monitor shall hold valid and current documentation:

(1) Showing successful completion of a Health Care Provider BLS/CPR course; and

(2) Have received training and be competent in the recognition and treatment of medical emergencies, monitoring vital signs, the operation of nitrous oxide delivery systems and the use of the sphygmomanometer and stethoscope.

(i) The practitioner shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(1) The patient is alert and oriented to person, place and time as appropriate to age and preoperative neurological status;

(2) The patient can talk and respond coherently to verbal questioning or to preoperative neurological status;

(3) The patient can sit up unaided or without assistance or to preoperative neurological status;

(4) The patient can ambulate with minimal assistance or to preoperative neurological status; and

(5) The patient does not have uncontrollable nausea, vomiting or dizziness.

§30-4A-5. Qualifications, standards, and continuing education requirements for a Class 2 Permit.

(a) The board shall issue a Class 2 Permit to an applicant who:

(1) Is a licensed dentist in West Virginia;

(2) Holds valid and current documentation showing successful completion of a Health Care Provider BLS/CPR; and

(3) Has completed a board approved course of at least six hours didactic and clinical of either predoctoral dental school or postgraduate instruction.

(b) A dentist who induces relative analgesia/minimal sedation and anxiolysis/minimal sedation shall have the following facilities, properly maintained equipment and appropriate drugs available during the procedures and during recovery:

(1) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two individuals to freely move about the patient;

(2) An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support;

(3) A lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(4) Suction equipment which permits aspiration of the oral and pharyngeal cavities;

(5) An oxygen delivery system with adequate age appropriate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(6) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system;

(7) A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room;

(8) Sphygmomanometer, stethoscope, and pulse oximeter;

(9) Emergency drugs as specified by rule;

(10) A defibrillator device; and

(11) All equipment and medication dosages shall be in accordance with the height and weight and age of the patient being treated.

(c) Before inducing anxiolysis, a dentist shall:

(1) Evaluate the patient and certify by using the ASA Patient Physical Status Classification of the ASA that the patient is an appropriate candidate for anxiolysis sedation; and

(2) Obtain written informed consent from the patient or patient's guardian for the anesthesia. The obtaining of the informed consent shall be documented in the patient's record.

(d) The dentist shall monitor and record the patient's condition or shall use a qualified monitor to monitor and record the patient's condition. The documented requirements of a qualified monitor monitoring anxiolysis sedation cases are as specified by rule. A Class 2 Permit holder may have no more than one person under anxiolysis at the same time.

(e) The patient shall be monitored as follows:

(1) Patients shall have continuous monitoring using pulse oximetry. The patient's blood pressure, heart rate and respiration shall be recorded at least once before, during and after the procedure, and these recordings shall be documented in the patient record. At all

times, the patient shall be observed by a qualified monitor until discharge criteria have been met. If the dentist is unable to obtain this information, the reasons shall be documented in the patient's record. The record shall also include documentation of all medications administered with dosages, time intervals and route of administration including local anesthesia.

(2) A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge.

(f) A permit holder who uses anxiolysis shall see that the patient's condition is visually monitored. The patient shall be monitored as to response to verbal stimulation, oral mucosal color and preoperative and postoperative vital signs.

(g) The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(1) Vital signs including blood pressure, pulse rate and respiratory rate are stable;

(2) The patient is alert and oriented to person, place and time as appropriate to age and preoperative neurological status;

(3) The patient can talk and respond coherently to verbal questioning, or to preoperative neurological status;

(4) The patient can sit up unaided, or to preoperative neurological status;

(5) The patient can ambulate with minimal assistance, or to preoperative neurological status; and

(6) The patient does not have uncontrollable nausea or vomiting and has minimal dizziness.

(h) A dentist may not release a patient who has undergone anxiolysis/minimal sedation except to the care of a responsible adult third party.

§30-4A-6. Qualifications, standards, and continuing education requirements for Class 3 Anesthesia Permit.

(a) The board shall issue or renew a Class 3 Permit to an applicant who:

(1) Is a licensed dentist in West Virginia;

(2) Holds valid and current documentation showing successful completion of a Health Care Provider BLS/CPR course, ACLS and/or a PALS course if treating pediatric patients; and

(3) Satisfies one of the following criteria:

(A) Certificate of completion of a comprehensive training program in conscious sedation that satisfies the requirements described in the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students and the ADA Guidelines for the Use of Sedation and General Anesthesia by Dentists at the time training was commenced.

(B) Certificate of completion of an ADA accredited postdoctoral training program which affords comprehensive and appropriate training necessary to administer and manage conscious sedation, commensurate with these guidelines.

(C) In lieu of these requirements, the board may accept documented evidence of equivalent training or experience in conscious sedation anesthesia for Limited Enteral Permit as Class 3a or comprehensive Parenteral Permit as Class 3b as specified by rule.

(b) A dentist who induces conscious sedation shall have the following facilities, properly maintained age appropriate equipment

and age appropriate medications available during the procedures and during recovery:

(1) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two individuals to freely move about the patient;

(2) An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support;

(3) A lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(4) Suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure;

(5) An oxygen delivery system with adequate age appropriate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(6) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system;

(7) A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room;

(8) Sphygmomanometer, pulse oximeter, oral and nasopharyngeal airways, intravenous fluid administration equipment

and/or equipment required for the standard of care or as specified by rule;

(9) Emergency drugs as specified by rule; and

(10) A defibrillator device.

(c) Before inducing conscious sedation, a dentist shall:

(1) Evaluate the patient and document, using the ASA Patient Physical Status Classifications, that the patient is an appropriate candidate for conscious sedation;

(2) Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or neurological status of the patient, the patient's guardian; and

(3) Obtain written informed consent from the patient or patient's guardian for the anesthesia.

(d) The dentist shall ensure that the patient's condition is monitored and recorded on a contemporaneous record. The dentist shall use a Qualified Monitor to monitor and record the patient's condition in addition to the chair side dental assistant. A Qualified Monitor shall be present to monitor the patient at all times.

(e) The patient shall be monitored as follows:

(1) Patients shall have continuous monitoring using pulse oximetry and/or equipment required for the standard of care or as specified by rule by a Qualified Monitor until discharge criteria have been met. The documented requirements of a Qualified Monitor monitoring limited enteral or comprehensive parenteral sedations cases are as specified by rule. The patient's blood pressure, heart rate, and respiration shall be recorded every five minutes, and these recordings shall be documented in the patient record. The record shall also include documentation of preoperative and postoperative vital signs, all

medications administered with dosages, time intervals and route of administration including local anesthesia. If the dentist is unable to obtain this information, the reasons shall be documented in the patient's record.

(2) During the recovery phase, the patient shall be monitored by a qualified monitor.

(3) A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged.

(f) A dentist may not release a patient who has undergone conscious sedation/moderate sedation except to the care of a responsible adult third party.

(g) When discharging a pediatric patient the dentist shall follow the current edition of AAPD Guidelines for Monitoring and Management of Pediatric Patients During and After Sedation for Diagnostic and Therapeutic Procedures.

(h) The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(1) Vital signs including blood pressure, pulse rate and respiratory rate are stable;

(2) The patient is alert and oriented to person, place and time as appropriate to age and preoperative neurological status;

(3) The patient can talk and respond coherently to verbal questioning, or to preoperative neurological status;

(4) The patient can sit up unaided, or to preoperative neurological status;

(5) The patient can ambulate with minimal assistance, or to preoperative neurological status; and

(6) The patient does not have uncontrollable nausea or vomiting and has minimal dizziness.

(i) A dentist who induces conscious sedation shall employ the services of a Qualified Monitor and a chair side dental assistant at all times who each shall hold a valid BLS/CPR certification and maintains certification as specified by rule.

§30-4A-7. Qualifications, standards, and continuing education requirements for Class 4 Anesthesia Permit.

(a) A Class 4 Permit permits the use of general anesthesia/deep conscious sedation, conscious sedation/moderate sedation, and anxiolysis/minimal sedation.

(b) The board shall issue or renew a Class 4 Permit to an applicant who:

(1) Is a licensed dentist in West Virginia;

(2) Holds a valid and current documentation showing successful completion of a Healthcare Provider BLS/CPR course, Advanced Cardiac Life Support (ACLS) and/or Pediatric Advanced Life Support (PALS) course if treating pediatric patients;

(3) Satisfies one of the following criteria:

(A) Completion of an advanced training program in anesthesia and related subjects beyond the undergraduate dental curriculum that satisfies the requirements described in the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students and the ADA Guidelines for the Use of Sedation and General Anesthesia by Dentists at the time training was commenced;

(B) Completion of an ADA or AMA accredited postdoctoral training program which affords comprehensive and appropriate training necessary to administer and manage general anesthesia, commensurate with these guidelines;

(C) In lieu of these requirements, the board may accept documented evidence of equivalent training or experience in general anesthesia/deep conscious sedation.

(c) A dentist who induces general anesthesia/deep conscious sedation shall have the following facilities, properly maintained age appropriate equipment and age appropriate drugs available during the procedure and during recovery:

(1) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least three individuals to freely move about the patient;

(2) An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support;

(3) A lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(4) Suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure;

(5) An oxygen delivery system with adequate age appropriate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(6) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system;

(7) A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room;

(8) Equipment as specified by rule;

(9) Emergency drugs as specified by rule; and

(10) A defibrillator device.

(d) Before inducing general anesthesia/deep conscious sedation the dentist shall:

(1) Evaluate the patient and document, using the ASA Patient Physical Status Classifications, that the patient is an appropriate candidate for general anesthesia or deep conscious sedation;

(2) Shall give written preoperative and postoperative instructions to the patient or, when appropriate due to age or neurological status of the patient, the patient's guardian; and

(3) Shall obtain written informed consent from the patient or patient's guardian for the anesthesia.

(e) A dentist who induces general anesthesia/deep conscious sedation shall ensure that the patient's condition is monitored and recorded on a contemporaneous record. The dentist shall use a Qualified Monitor to monitor and record the patient's condition on a contemporaneous record and a chair side dental assistant. The documented requirements of a Qualified Monitor monitoring general anesthesia/deep conscious sedation cases are as specified by rule. No permit holder may have more than one patient under general anesthesia at the same time.

(f) The patient shall be monitored as follows:

(1) Patients shall have continuous monitoring using pulse oximetry and/or equipment required for the standard of care or as specified by rule by a Qualified Monitor until discharge criteria have been met. The patient's blood pressure, heart rate and oxygen saturation shall be assessed every five minutes, and shall be contemporaneously documented in the patient record. The record shall also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration including local anesthesia. The person administering the anesthesia may not leave the patient while the patient is under general anesthesia;

(2) During the recovery phase, the patient shall be monitored, including the use of pulse oximetry, by a Qualified Monitor; and

(3) A dentist may not release a patient who has undergone general anesthesia/deep conscious sedation except to the care of a responsible adult third party.

(4) When discharging a pediatric patient the dentist shall follow the current edition of AAPD Guidelines for the Monitoring and Management of Pediatric Patients During and After Sedation for Diagnostic and Therapeutic Procedures.

(g) The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(1) Vital signs including blood pressure, pulse rate and respiratory rate are stable;

(2) The patient is alert and oriented to person, place and time as appropriate to age and preoperative neurological status;

(3) The patient can talk and respond coherently to verbal questioning, or to preoperative neurological status;

(4) The patient can sit up unaided, or to preoperative neurological status;

(5) The patient can ambulate with minimal assistance, or to preoperative neurological status; and

(6) The patient does not have uncontrollable nausea or vomiting and has minimal dizziness.

(7) A discharge entry shall be made in the patient's record by the dentist indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged.

(h) A dentist who induces general anesthesia shall employ the services of a Qualified Monitor and a chair side dental assistant at all times, who each shall hold a valid BLS/CPR certification and maintains certification as specified by rule.

§30-4A-8. Board to review, inspect and reinspect dentists for issuance of permits.

(a) By making application to the board for an anesthesia permit, a dentist consents and authorizes the board to review his or her credentials, inspect or reinspect his or her facilities, and investigate any alleged anesthesia mortalities, misadventure, or other adverse occurrences. The board shall conduct an in-office review or on-site inspection of any dentist applying for or holding a permit to administer anesthesia.

Prior to issuing a permit, the board shall conduct an on-site inspection of facility, equipment, and auxiliary personnel of the applicant to determine if, in fact, all the requirements for the permit have been met. This inspection or evaluation, if required, shall be carried out by at least two members of the subcommittee. This evaluation is to be carried out in a manner following the principles, but not necessarily the procedures, set forth by the current edition of the AAOMS Office Anesthesia Evaluation Manual. On-site inspections are

required and shall be performed for all Class 3a, 3b and 4 permitees. The board may reinspect annually, at its discretion, but shall perform an on-site inspection for all permit holders at least once every five years except Class 2 permit holders. The board reserves the right to conduct an on-site inspection whenever it deems necessary for all permit holders. All on-site inspections shall be held during regular business hours.

(b) Cancellation or failure to appear or be present for a scheduled evaluation by a permit holder, for an unexplained or unexcusable reason, shall be assessed a penalty fee two times the permit holders normal annual renewal fee. The penalty fee shall be separate from the annual renewal fees.

§30-4A-9. Office evaluations.

(a) The in-office evaluation shall include:

(1) Observation of one or more cases of anesthesia to determine the appropriateness of technique and adequacy of patient evaluation and care;

(2) Inspection of facilities, which shall include but not be limited to, the inspection of equipment, drugs and patient records and qualified monitor's certifications and documentation; and

(3) The evaluation shall be performed by a team appointed by the board and shall include a member of the Subcommittee who holds a current anesthesia permit in the same class or in a higher class than that held by the permit holder being evaluated.

(4) Class 2 permit holders may be audited periodically as determined by the committee; and

(5) Class 3 and 4 permit holders shall be evaluated once every five years.

(b) A dentist utilizing a licensed dentist who holds a current anesthesia permit issued by the board shall have his or her office inspected to the level of a class 4 permit as specified by section 10 of this article. The office is only approved at that level when the anesthesia permit holder is present and shall have the number of qualified monitors present as required by this article.

(c) In addition to the requirements of this article a treating dentist who applies for a certificate to allow a CRNA to administer anesthesia and sedation to a patient, shall maintain a permit as follows:

(1) A treating dentist, who allows a CRNA to administer limited enteral sedation to a patient, shall maintain a Class 3a permit for themselves and the administration site shall be inspected to a Class 4 permit level;

(2) A treating dentist, who allows a CRNA to administer comprehensive parenteral sedation to a patient, shall maintain a Class 3b permit for themselves and the administration site shall be inspected to a Class 4 permit level; and

(3) A treating dentist, who allows a CRNA to administer general anesthesia/deep conscious sedation to a patient, shall maintain a Class 4 permit for themselves and the administration site shall be inspected to a Class 4 permit level.

§30-4A-10. Reporting of death, serious complications or injury.

If a death, any serious complication or any injury occurs which may have resulted from the administration of general anesthesia/deep conscious sedation, conscious sedation/moderate sedation, anxiolysis/minimal sedation, or relative analgesia/minimal sedation, the licensee performing the dental procedure shall submit a written detailed report to the board within 72 hours of the incident along with copies of the patient's original complete dental records. If the anesthetic agent was administered by a person other than the person

performing the dental procedure, that person shall also submit a detailed written report. The detailed report(s) shall include:

(1) Name, age and address of patient;

(2) Name of the licensee and other persons present during the incident along with their names and addresses;

(3) Address where the incident took place;

(4) Type of anesthesia and dosages of drugs administered to the patient including local anesthesia;

(5) A narrative description of the incident including approximate times and evolution of symptoms; and

(6) The anesthesia record and the signed informed consent form for the anesthesia.

§30-4A-11. Immunity from liability.

(a) Notwithstanding any other provision of law, no person providing information to the board or to the subcommittee may be held, by reason of having provided the information, to be civilly liable under any law unless the information was false and the person providing information knew or had reason to believe the such information was false.

(b) No member or employee of the board or the subcommittee may be held by reason of the performance by him or her of any duty, function or activity authorized or required of the board or the subcommittee to be civilly liable. The foregoing provisions of this subsection do not apply with respect to any action taken by any individual if the individual, in taking the action, was motivated by malice toward any person affected by the action.

§30-4A-12. Facility inspections.

(a) The board shall perform an onsite evaluation of Class 3 and 4 applicants dental facilities, equipment, techniques, and personnel prior to issuing a permit. The board may conduct further on-site evaluations.

(b) The board may inspect Class 2 applicants facilities.

§30-4A-13. Issuance of regular annual permits.

Upon the recommendation of the subcommittee, the board shall issue permits to applicable dentists. An anesthesia permit shall be renewed annually.

§30-4A-14. Waiting period for reapplication or reinspection of facilities.

A dentist whose application has been denied for failure to satisfy the requirements in the application procedure or the on-site evaluation shall wait thirty days from the date of the denial prior to reapplying and shall submit to another on-site evaluation prior to receiving a permit. The board and the subcommittee shall promptly reinspect the applicant dentist's facilities, techniques, equipment, and personnel within ninety days after the applicant has made reapplication.

§30-4A-15. Application and annual renewal of regular permits; fees.

The board shall require an initial application fee and an annual renewal fee for Class 2, Class 3 and 4 Permits. Permits expire annually. The board shall renew permits for the use of anesthesia after the permittee satisfies the application for renewal.

§30-4A-16. Violations of article; penalties for practicing anesthesia without a permit.

Violations of any of the provisions of this article, whether intentional or unintentional, may result in the revocation or suspension

of the dentist's permit to administer anesthesia; multiple or repeated violations or gross infractions, such as practicing anesthesia without a valid permit may result in suspension of the dentist's license to practice dentistry for up to one year as well as other disciplinary measures as deemed appropriate by the board.

§30-4A-17. Appointment of subcommittee; credentials review; and on-site inspections.

(a) The board shall appoint a subcommittee to carry out the review and on-site inspection of any dentist applying for or renewing a permit under this article.

(b) The subcommittee shall make a recommendation for issuing or revoking a permit under this article.

(c) This subcommittee shall be known as the 'West Virginia Board of Dentistry Subcommittee on Anesthesia,' The subcommittee shall, at a minimum, consist of one member of the board who shall act as chairman of the subcommittee, and two members holding a Class 4 permit and two members holding a Class 3 permit.

(d) The subcommittee shall adopt policies and procedures related to the regulation of general anesthesia/deep conscious sedation, conscious sedation/moderate sedation, anxiolysis/minimal sedation, and relative analgesia/minimal sedation with the same being approved by the board. The subcommittee members shall be paid and reimbursed expenses pursuant to article one of this chapter.

ARTICLE 4B. DENTAL LABORATORY SERVICES.

§30-4B-1. Unlawful acts.

(a) It is unlawful for any person, other than a dentist or other dental practitioner, to sell, offer for sale or furnish any dental prosthesis or other dental laboratory service to any person who is not a dentist or other dental practitioner.

(b) It is unlawful for any person to perform dental laboratory services without a work authorization: *Provided,* That this subsection does not apply to a dentist or other dental practitioner, or to their employees working under their direct supervision, performing dental laboratory services as a part of their own dental practice and for their own dental patients.

(c) It is unlawful for any dental laboratory to perform any dental laboratory service without the issuance of a work authorization by a dentist or other dental practitioner.

(d) It is unlawful for any dental laboratory or dentist who fabricates a full upper or full lower set of prosthetic dentures not to affix upon the dentures, in a nonremovable manner, the name of the patient, the initials of the dentist's state of practice and license identification.

(e) It is unlawful for any dental laboratory either directly or indirectly:

(1) To advertise that it is engaged in the business of performing dental laboratory services;

(2) To advertise it performs dental laboratory services for members of the public;

(3) To advertise a price for the performance of dental laboratory services; or

(4) To advertise techniques used or materials employed by it in the performance of dental laboratory services: *Provided,* That this subsection does not prevent dental laboratories from advertising in dental journals or in other professional dental publications or from communicating directly to a dentist and other dental practitioner or from listing the dental laboratory in business and telephone directories if the business and telephone directory announcements are limited to name, address and telephone number and do not occupy more than the

number of lines necessary to disclose the information, or from displaying the trade name and address of the dental laboratory on the door of its place of business or on name plates or door plates exhibited on the interior or exterior of the place of business.

§30-4B-2. Work authorization required; contents; retention.

(a) No dental laboratory technician may perform any dental laboratory service without the issuance of a work authorization by a dentist or other dental practitioner.

(b) Each work authorization shall contain:

(1) The name and address of the dental laboratory to which it is directed;

(2) The case identification;

(3) A specification of the materials to be used;

(4) A description of the work to be done and, if necessary, diagrams thereof;

(5) The date of issue; and

(6) The signature and address of the dentist or other dental practitioner issuing the work authorization.

(c)A separate work authorization shall be issued for each patient of the dentist or other dental practitioner for whom a dental laboratory service is to be performed.

(d) Every work authorization shall be made in duplicate with the original being delivered to the dental laboratory to which it is directed and the copy being retained in the office of the issuing dentist or other dental practitioner. A work authorization shall be saved for a period of two years from its date of issue.

§30-4B-3. Denture identification.

A dental laboratory and a dentist who engages in dental laboratory services and who fabricates any full upper or full lower set of prosthetic dentures shall affix upon the dentures, in a nonremovable manner, the name of the patient for whom the dentures are made and the initials of the dentist's state of practice and license identification number.

§30-4B-4. Review of dental laboratory services.

The board may review the dental laboratory services of a dental laboratory on a random and general basis without any requirement of a formal complaint or suspicion of impropriety."

The bill was then ordered to third reading.

Com. Sub. for H. B. 2538, Expiring, supplementing, amending, increasing, and adding items of appropriation in various accounts; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 2541, Making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, to the Department of Health and Human Resources, Division of Human Services; on second reading, coming up in regular order, was read a second time and 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:

S. B. 208, Making supplementary appropriation from State Fund, General Revenue, to Department of Commerce, Division of Labor, and DHHR, Division of Human Services,

S. B. 214, Eliminating interview requirement for certain medical licensee applicants,

Com. Sub. for S. B. 358, Relating to municipal policemen and firemen pensions,

S. B. 387, Relating to family court judge supervision of criminal background investigations,

Com. Sub. for S. B. 440, Relating to disclosure of specified tax information for enforcement of Tobacco Master Settlement Agreement,

Com. Sub. for S. B. 445, Allowing Tax Commissioner divert lottery prizes to offset tax liabilities of lottery winners,

S. B. 446, Conforming motor fuel taxes with International Fuel Tax Agreement,

S. B. 462, Extending time for informal conferences on surface mining permit applications,

Com. Sub. for S. B. 478, Redefining "video lottery games"; permitting wagering by historic resort hotel employees,

S. B. 491, Relating to rental car license cost recovery fee,

S. B. 504, Relating to cooperative associations,

S. B. 524, Supplementing, amending, decreasing and increasing appropriations from State Road Fund to DOT,

S. B. 526, Making supplementary appropriation of federal funds to DHHR, Division of Human Services-Temporary Assistance for Needy Families,

Com. Sub. for S. B. 534, Correcting internal code reference regarding insurance information disclosure,

Com. Sub. for S. B. 542, Relating to restricted races at pari-mutuel thoroughbred horse race tracks,

Com. Sub. for S. B. 544, Scheduling departmental performance reviews,

Com. Sub. for S. B. 553, Relating to Highway Design-Build Program,

Com. Sub. for S. B. 557, Continuing Preventive Care Pilot Program,

S. B. 561, Establishing Tucker County Cultural District Authority,

And,

S. B. 658, Extending time for Madison City Council to meet as levying body.

At 12:47 P.M., on motion of Delegate Boggs, the House of Delegates recessed until 5:00 P.M., and reconvened at that time.

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AFTERNOON SESSION

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At the request of Delegate Boggs, and by unanimous consent, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

COMMITTEE REPORTS

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

Your Committee on Government Organization has had under consideration:

S. B. 82, Requiring rate-paying residential customer on public service board,

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

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

Your Committee on Education has had under consideration:

Com. Sub. for S. B. 586, Transferring authority to license cosmetology, barber and massage schools to Council for Community and Technical College Education,

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

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

Your Committee on Finance has had under consideration:

Com. Sub. for S. B. 371, Relating to prison overcrowding,

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

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

Your Committee on Finance has had under consideration:

Com. Sub. for S. B. 469, Clarifying service credit for certain PERS members,

And,

S. B. 596, Determining grant awards for Chesapeake Bay and Greenbrier River watershed compliance projects,

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

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

Your Committee on Finance has had under consideration:

S. B. 65, Exempting PERS retirement income of DNR police officers from state income tax,

Com. Sub. for S. B. 195, Removing tax rate expiration date on eligible acute care hospitals,

And,

S. B. 331, Permitting Courthouse Facilities Improvement Authority to issue bonds,

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

Delegate Miley, 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. 437, Regulating commercial dog-breeding operations,

And,

Com. Sub. for S. B. 481, Relating to juvenile mental health treatment,

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

Delegate Miley, 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. 200, Relating to Eyewitness Identification Act,

Com. Sub. for S. B. 243, Authorizing DEP promulgate legislative rules,

Com. Sub. for S. B. 355, Relating to final wage payment to discharged employees,

Com. Sub. for S. B. 369, Relating to concealed handgun license reciprocity,

Com. Sub. for S. B. 386, Relating to personal safety orders,

Com. Sub. for S. B. 464, Regulating tanning facilities,

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

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

Your Committee on Finance has had under consideration:

S. B. 194, Repealing code relating to Medicaid program contract procedure,

Com. Sub. for S. B. 482, Relating to sale of voter registration lists,

And,

Com. Sub. for S. B. 535, Relating to process for maintaining voter registration lists,

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

LEAVES OF ABSENCE

At the request of Delegate Boggs, and by unanimous consent, leave of absence for the day was granted Delegate J. Nelson.

At 6:01 P.M., the House of Delegates adjourned until 11:00 A.M., Wednesday, April 10, 2013.

WEDNESDAY, APRIL 10, 2013

FIFTY-SEVENTH DAY

[MR. SPEAKER, MR. THOMPSON, IN THE CHAIR]

The House of Delegates met at 11:00 A.M., and was called to order by the Honorable Rick Thompson, Speaker.

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

The Clerk proceeded to read the Journal of Tuesday, April 9, 2013, being the first order of business, when the further reading thereof was dispensed with and the same approved.

At the request of Delegate Boggs, and by unanimous consent, the House of Delegates proceeded to the Seventh Order of Business for the purpose of introduction of resolutions.

RESOLUTIONS INTRODUCED

Delegates R. Phillips, Caputo, Hartman, Tomblin, Eldridge, Lynch, Craig, Iaquinta, Stowers, White, Mr. Speaker, Mr. Thompson, Andes, Armstead, Barill, Barrett, Boggs, Campbell, Canterbury, Diserio, Ferns, Ferro, Fleischauer, Gearheart, Hamilton, Jones, Lawrence, Longstreth, Marcum, Marshall, Morgan, Moye, E. Nelson, O'Neal, Paxton, Perry, Pethtel, L. Phillips, D. Poling, M. Poling, Reynolds, Shott, Skaff, Skinner, P. Smith, Sobonya, Sponaugle, Staggers, Stephens, Storch, Swartzmiller, Walker, Westfall, Williams and Young offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 140 - "Recognizing July 16 as 'Atomic Veterans Day of Remembrance' in West Virginia."

WHEREAS, On July 16, 1945, the world's first atomic bomb, code-named "Trinity", was detonated in Alamogordo, New Mexico, and from that date until June 12, 1963, there were 1,054 nuclear devices detonated in tests considered vital to our national security, and approximately 750,000 U.S. military and civilian personnel participated in these experimental endeavors; and

WHEREAS, Many of the nation's veterans, including residents of West Virginia, were subjected to varying amounts of radiation because of this testing of atomic weapons; and

WHEREAS, The potential harm to these veterans was unknown at the time of the testing, resulting in the exposure of many veterans to harmful doses of radiation and causing them to suffer debilitating, degenerative diseases that affect the veterans and their descendants; and

WHEREAS, Veterans who were early test subjects were required to sign an oath of secrecy regarding their involvement in the atomic testing, preventing these veterans from informing the Veterans Health Administration of their medical problems that resulted from radiation until 1996, when these veterans were released from their oaths of secrecy; and

WHEREAS, In 1979, the National Association of Atomic Veterans was created to locate these veterans, to honor the sacrifices they made and to help these veterans and their families in obtaining medical treatment and assistance; and

WHEREAS, By engaging in a national research and education effort for atomic war veterans, the National Association of Atomic Veterans is promoting early detection of medical problems and research and documentation of the connection between radiation exposure and resultant cancer and other debilitating, degenerative diseases and genetic mutations; and

WHEREAS, In the time since these detonations, roughly fifty percent of the men and women who participated in the testing have

experienced the harmful effects of exposure to ionizing radiation, yet these veterans who were injured in the line of duty received no medals because they were not in combat; and

WHEREAS, The number of members in this group is rapidly decreasing because of the age of these veterans, and thus it is important to recognize these individuals who sacrificed so much in serving our country and who are deserving of our immense gratitude; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby recognizes July 16 as "Atomic Veterans Day of Remembrance" in West Virginia and encourages the Governor, the Department of Veterans Assistance and all West Virginians to take part in this significant observance; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a certified copy of this resolution to Haskell Watts Jr., West Virginia State Commander of the National Association of Atomic Veterans, the Secretary of the West Virginia Department of Veterans Assistance and the Governor of West Virginia.

Delegates R. Smith and Eldridge offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 141 - "Requesting the Joint Committee on Government and Finance study requiring social workers to be employed in each public school, K through 8 in the state."

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study requiring social workers to be employed in each public school, K through 8 in the state; and, be it

Further Resolved, That the study include considering the possibility of implementing such a requirement through a pilot program implementing the requirement in a limited area; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Delegates Marcum, Azinger, Barill, Barrett, Boggs, Campbell, Eldridge, Ellington, A. Evans, Fleischauer, Frich, Guthrie, Hamilton, Hartman, Kump, Lawrence, Lynch, O'Neal, Paxton, Perdue, Perry, L. Phillips, R. Phillips, Pino, Poore, Reynolds, Romine, Rowan, P. Smith, Sobonya, Sponaugle, Stowers, Tomblin, Walker, Wells, Westfall, White and Young offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 142 - "Expressing support of the West Virginia Legislature urging Congress to swiftly take bipartisan, concrete action to address the growing scourge of prescription drug abuse in West Virginia and other states."

WHEREAS, Abuse of prescription drugs is the fastest growing segment of the nation's unlawful drug use; and

WHEREAS, West Virginia is consistently among the states with the highest rate of drug overdose deaths; and

WHEREAS, The majority of drug overdose deaths in West Virginia result from overdose of prescription drugs; and

Whereas, Nationally, prescription drugs account for more illegal drug use than cocaine, methamphetamine and heroin combined; and

WHEREAS, Prescription drug overdose has become the nation's leading cause of accidental death; and

WHEREAS, The high profits reaped from the illegal drug trade have attracted increasing numbers of unscrupulous doctors and increasingly violent drug traffic offenders; and

WHEREAS, The magnitude of the illegal drug trade in West Virginia and other states is overwhelming available drug enforcement and drug treatment resources; and

WHEREAS, Sheriff Eugene Crum of Mingo County, West Virginia, who had successfully focused efforts on eradicating unlawful drug traffic and use in his county, and who had received numerous threats because of his drug enforcement efforts, was fatally shot April 3, 2013 as he sat in his cruiser eating lunch near the county courthouse; and

WHEREAS, West Virginia and other states lack adequate treatment facilities to help stem the demand for illegal drugs; and

WHEREAS, The abuse of drugs results in enormous economic and human costs to individuals, families, businesses and governments, often expressed in murders, assaults, robberies, burglaries, domestic violence, child abuse, child neglect, elder abuse, drunk driving accidents and overdose deaths; therefore, be it

Resolved by the Legislature of West Virginia:

That the West Virginia Legislature hereby strongly urges the United States Congress to swiftly take bipartisan, concrete action to address the growing scourge of prescription drug abuse in West Virginia and other states; and, be it

Further Resolved: That the West Virginia Legislature strongly urges Congress to recognize and respect the level of sacrifices made by Sheriff Eugene Crum of Mingo County, West Virginia, and other law-enforcement officials throughout the nation who have stood in the front ranks of those attacking the "pill mills" and other prescription drug traffic offenders, and respond with commensurate support; and, be it

Further Resolved: That the Clerk of the House of Delegates forward a certified copy of this resolution to the President of the United States, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, and each member of West Virginia's congressional delegation.

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

H. C. R. 143 - "Requesting the Division of Highways to name bridge number 44-79-29.04NB, on Interstate 79 in Roane County, West Virginia, the 'Sloan Brother's Memorial Bridge'."

WHEREAS, John Wilder Sloan married Flora Ethel Nida on December 20, 1917, and they were lifelong residents of Amma, West Virginia and the parents of eleven children. During the 1940's three of their children, Carl, Arch and Eugene served in the United States Military at the same time. Arch and Carl were in the United States Army and Eugene in the United States Navy. Their son Lovel served in the United States Army in 1954 and son Emmet from 1954 to 1959. Three of John and Flora's grandchildren and three great grandchildren have served in the United States Military, two of them currently in foreign countries; and

WHEREAS, The Sloan name is well-known and respected in southern Roane County, whether having served in the military or not for their contributions to their community as well as to the state and their county during military service; and

WHEREAS, The community, children and grandchildren of these well-respected residents of Roane County believe that the lives of these members of the Sloan family, their community contributions and military service should be memorialized, by ensuring that future generations are aware of the lives, bravery, service and sacrifice in the cause of freedom by this remarkable family and sons of Roane County, West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby requests the Commissioner of the Division of Highways to name bridge number 44-79-29.04NB, on Interstate 79 in Roane County, West Virginia, the "Sloan Brother's Memorial Bridge"; and, be it

Further Resolved, That the Commissioner of the Division of Highways is hereby requested to cause to be fabricated signs to be erected, containing bold and prominent letters proclaiming this bridge to be the "Sloan Brother's Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a certified copy of this resolution to the Secretary of Transportation, the Commissioner of the Division of Highways, and the surviving family of the Sloan brothers.

Delegates Marshall, Barill, Campbell, Diserio, Jones, Lynch, P. Smith, Stephens and Sumner offered the following resolution, which was read by the Clerk as follows:

H. R. 34 - "Designating April 10, 2013, as 'Crime Victims Day at the Legislature'."

WHEREAS, The West Virginia Crime Victims Compensation Fund is celebrating "Crime Victims Day at the Legislature" by providing all of the crime victim agencies and individuals who serve victims of crime an opportunity to educate the members of the Legislature and the public about the many services available to assist victims of crime and their families throughout our State; and

WHEREAS, The many agencies and individuals serving victims of crime and their families in West Virginia strive to foster the healing of victims and their families through treatment for their many needs including, but not limited to, advocacy for and on behalf of victims and their families, medical treatment and mental health counseling, compensation, and restitution; and

WHEREAS, The many organizations and individuals who provide assistance to victims of crime and families make valuable contributions to those who have been affected by crime in our State; and

WHEREAS, West Virginia is proud of the accomplishments and achievements of the many organizations and individuals who serve the needs of victims of crime and appreciate their many contributions to our communities; and

WHEREAS, There are also many victims or family members present on this special day to foster understanding by the public of the effects of victimization; therefore, be it

Resolved by the House of Delegates:

That the House of Delegates hereby designates April 10, 2013, as "Crime Victims Day at the Legislature"; and, be it

Further Resolved, That the House of Delegates expresses its appreciation to the many organizations which serve victims of crime and their families throughout our State and for the dedication of those individuals who serve these organizations; and, be it

Further Resolved, That the Clerk of the House forward a copy of this resolution to the appropriate official with the West Virginia Crime Victims Compensation Fund, Cheryle M. Hall, Clerk of the Court.

At the request of Delegate Boggs, and by unanimous consent, reference of the resolution (H. R. 34) to a committee was dispensed with, and it was taken up for immediate consideration and adopted.

COMMITTEE REPORTS

Mr. Speaker, Mr. Thompson, from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

H. C. R. 100, Requesting a study of Medical Amnesty and Good Samaritan policies in other states,

H. C. R. 101, Requesting a study on the legality and the potential consequences of the use of drones by public and private entities in the State,

H. C. R. 113, Requesting a study on the need for and the constitutionality of a revenue surcharge designated for live adult entertainment establishments that serve alcohol,

H. C. R. 127, Requesting the Joint Committee on Government and Finance to study adult day care services in West Virginia,

H. C. R. 129, Requesting the Joint Committee on Government and Finance to study the deficiencies in home caregiver assistance for senior citizens,

H. C. R. 130, Requesting the Joint Committee on Government and Finance to study the feasibility of updating state laws that strengthen protections against elder abuse, exploitation and fraud,

H. C. R. 138, Requesting that the Joint Committee on Government and Finance authorize a study on state recognition of Native American Tribes,

H. C. R. 139, Requesting a study for the potential for creating new jobs and improving our economy by increasing agribusiness in the state,

S. C. R. 16, Requesting DOH name County Route 5/07 in Logan County "Army PFC James Edward Workman Memorial Road",

S. C. R. 17, Requesting DOH name bridge in Randolph County "Army Captain Bernard Francis Jones Memorial Bridge",

S. C. R. 19, Requesting DOH name bridge in Kanawha County "U. S. Army Sgt. Archie W. Searls Memorial Bridge",

S. C. R. 21, Requesting DOH name bridge in Logan County "Navy Lieutenant, Junior Grade, Edsel Carl Varney Memorial Bridge",

Com. Sub. for S. C. R. 22, Requesting DOH name bridge in Kanawha County "Joseph Albert 'Joey' King, Jr., Memorial Bridge",

S. C. R. 23, Requesting DOH name bridge in Wyoming County "Reverend Edward and Mary Mullins Memorial Bridge",

And,

S. C. R. 24, Requesting DOH name portion of U. S. Route 60 in Kanawha County "Lou Tabit Highway",

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

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

Your Committee on Government Organization has had under consideration:

Com. Sub. for S. B. 335, Permitting certain hospitals exemption from certificate of need,

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

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

Your Committee on the Judiciary has had under consideration:

S. B. 125, Permitting Monongalia County Commission to levy special district excise tax,

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

In accordance with the former direction of the Speaker, the bill (S. B. 125) was referred to the Committee on Finance.

Delegate Craig, Chair of the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration:

Com. Sub. for S. B. 414, Clarifying hunting and fishing license-issuing authorities,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, and with the recommendation that second reference of the bill to the Committee on the Judiciary be dispensed with.

In the absence of objection, reference of the bill (Com. Sub. for S. B. 414) to the Committee on the Judiciary was abrogated.

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

Your Committee on Finance has had under consideration:

Com. Sub. for S. B. 185, Relating to alternative-fuel motor vehicles and qualified refueling infrastructure tax credits,

And,

S. B. 460, Exempting certain residents' active duty military pay from state income tax,

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

MESSAGES FROM THE EXECUTIVE

The Speaker then laid before the House of Delegates communications from His Excellency, the Governor, which were read by the Clerk as follows:

STATE OF WEST VIRGINIA
EARL RAY TOMBLIN
GOVERNOR

April 9, 2013

EXECUTIVE MESSAGE NO. 2
2013 REGULAR SESSION

The Honorable Rick Thompson
Speaker, West Virginia House of Delegates
State Capitol
Charleston, WV 25305

Dear Sir:

Pursuant to the provision of section twenty, article one, chapter five of the Code of West Virginia, I hereby certify that the following 2012-2013 annual reports have been received in the Office of the Governor:

Accountancy, West Virginia Board of

Aeronautics Commission, West Virginia Department of Transportation

Alternative and Renewable Energy Resources Research Fund, Division of Energh, West Virginia Department of Commerce

Architects, West Virginia Board of

Barbers and Cosmetologists, West Virginia Board of

Chiropractic, West Virginia Board of

Coal Mine Health and Safety, West Virginia Board of

Commercial Motor Vehicle Weight and Safety Enforcement Advisory Committee

Community Corrections Act, Governor's Committee on Crime, Delinquency and Correction, Division of Justice and Community Services, Department of Military Affairs and Public Safety

Consumer Advocate, Office of the, Offices of the Insurance Commissioner, West Virginia Department of Revenue

Consumer Advocate, Division of the, West Virginia Public Service Commission

Corrections, Division of, West Virginia Department of Military Affairs and Public Safety

Court of Claims, West Virginia

Court System, West Virginia Supreme Court of Appeals

Crime, Delinquency and Correction, Governor's Committee on Law Enforcement Training Subcommittee, Division of Criminal Justice Services, West Virginia Department of Military Affairs and Public Safety

Death, Disability and Retirement Fund (Plan A) and State Police Recruitment System (Plan B), Consolidated Public Retirement Board, West Virginia Department of Administration

Dental Examiners, West Virginia Board of (2010-2011 and 2011-2012)

Economic Development Authority, West Virginia

Energy, Division of, West Virginia Department of Commerce

Environmental Protection, West Virginia Department of

Equal Employment Opportunity, West Virginia Office of

Family Protection Services Board, Division of Justice and Community Services, West Virginia Department of Health and Human Services

Fire Marshal, State Fire Commission, West Virginia Department of Military Affairs and Public Safety

Funeral Service Examiners, West Virginia Board of

Health Facility Licensure and Certification, Office of Inspector General, West Virginia Department of Health and Human Resources

Health Insurance Plan (Access WV), Office of the Insurance Commissioner, West Virginia Department of Revenue (2009, 2010, and 2011)

Human Rights Commission, West Virginia (2010-2011)

Insurance Commissioner, Offices of the, West Virginia Department of Revenue

Juvenile Justice and Delinquency Prevention, Division of Justice and Community Services, West Virginia Department of Military Affairs and Public Safety

Juvenile Services, Division of, West Virginia Department of Military Affairs and Public Safety

Law Enforcement Professional Standards Subcommittee, Governor's Committee on Crime, Delinquency and Correction, Division of Justice and Community, West Virginia Department of Military Affairs and Public Safety

Logging Sediment Control Act, Division of Forestry, West Virginia Department of Commerce

Medical Imaging and Radiation Therapy Technology, West Virginia Board

Medicine, West Virginia Board of, West Virginia (Volumes I and II)

Mine Safety Technology Task Force, Office of Miners' Health, Safety and Training, West Virginia Department of Commerce

Miners' Health, Safety and Training, Office of, West Virginia Department of Commerce

Minority Affairs, Herbert Henderson Office of, Office of the Governor

Municipal Bond Commission, West Virginia

National Guard, West Virginia, Office of the Adjutant General

Natural Resources, Division of, West Virginia Department of Commerce

Neighborhood Investment Program, Development Office, West Virginia Department of Commerce

Nursing Home Administrators Licensing Board, West Virginia

Occupational Therapy, West Virginia Board of (2007-2012)

Parole Board, West Virginia Department of Military Affairs and Public Safety

Personnel, Division of, West Virginia Department of Administration

Physical Therapy, West Virginia Board of

Planning and Development Council, Region 4

Professional Engineers, West Virginia State Board of Registration for Public Defender Services, West Virginia Department of Administration

Public Employees Grievance Board, West Virginia Department of Administration

Racing Commission

Real Estate Commission, West Virginia

Regional Intergovernmental Council, West Virginia, Region 3

Registered Professional Nurses, West Virginia Board of Examiners for (Biennium Report 2010-2012)

Research Trust Fund, West Virginia Higher Education Policy Commission

Risk and Insurance Management, West Virginia Board of

Sanitarians, West Virginia State Board of

Senior Services, West Virginia Bureau of

Speech-Language Pathology and Audiology, West Virginia Board of Examiners for

State Police, West Virginia Department of Military Affairs and Public Safety

State Privacy Office, West Virginia Health Care Authority

State Rehabilitation Council, West Virginia

Tax Increment Financing, West Virginia Development Office

Tourism, Division of, West Virginia Department of Commerce

Treasurer, State of West Virginia

Veterans Assistance, West Virginia Department of (2010-2011)

Veterinary Medicine, West Virginia Board of

Volunteer West Virginia (State's Commission for National and Community Service)

Water Development Authority, West Virginia

Youth Services, Bureau for Children and Families, West Virginia Department of Health and Human Resources

Very truly yours,

EARL RAY TOMBLIN,
Governor.

STATE OF WEST VIRGINIA
EARL RAY TOMBLIN
GOVERNOR

April 9, 2013

EXECUTIVE MESSAGE NO. 3
2013 REGULAR SESSION

The Honorable Rick Thompson
Speaker, West Virginia House of Delegates
State Capitol
Charleston, West Virginia 25305

Dear Mr. Speaker:

In accordance with the provisions of Section 11, Article 7 of the Constitution of the State of West Virginia, and Section 16, Article 1, Chapter 5 of the Code of West Virginia, I hereby report that I granted no pardons or reprieves, nor commuted punishment to any person, nor

remitted any fines or penalties, during the period of March 8, 2012 through April 9, 2013.

Very truly yours,

EARL RAY TOMBLIN,
Governor.

MESSAGES FROM THE SENATE

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with a title amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2314, Authorizing a family court judge to order a child to be taken into custody in emergency situations.

On motion of Delegate Boggs, the bill was taken up for immediate consideration.

The following Senate title amendment was reported by the Clerk:

Com. Sub. for H. B. 2314 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-6-9a, relating to authorizing a family court judge to order the emergency custody of a child in the physical custody of a party to an action or proceeding before the family court; requiring the Department of Health and Human Resources to immediately respond and assist the family court judge in emergency placement of the child; providing for circuit court order for department to file an investigative report; providing for termination of family court order; extending order of family court by filing petition; and providing additional procedures for department when a child is ordered taken into emergency custody."

On motion of Delegate Boggs, the House of Delegates concurred in the Senate title amendment.

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken **(Roll No. 226)**, 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: Marshall and J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2314) passed.

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

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. 2361, Relating to the definition of "eligible veteran" for certain state training and employment preference benefits.

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. 2463, Repealing the article that permits the sterilization of persons deemed to be mentally incompetent.

A message from the Senate, by
The Clerk of the Senate, announced that the Senate had passed, with a title amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2521, Relating to the West Virginia Contraband Forfeiture Act.

On motion of Delegate Boggs, the bill was taken up for immediate consideration.

The following Senate title amendment was reported by the Clerk:

Com. Sub. for H. B. 2521 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-7-705a, relating to the West Virginia Contraband Forfeiture Act; providing procedures for voluntary administrative forfeiture of forfeitable money used in or obtained through the illegal trafficking of controlled substances; establishing time frames; providing notice requirements; and providing for use of existing forfeiture law in contested cases."

On motion of Delegate Boggs, the House of Delegates concurred in the Senate title amendment.

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken **(Roll No. 227)**, and there were—yeas 92, nays 4, absent and not voting 4, with the nays and absent and not voting being as follows:

NAYS: Cadle, Cowles, Householder and Howell.

ABSENT AND NOT VOTING: Fleischauer, Marshall, J. Nelson and R. Smith.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2521) passed.

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

A message from the Senate, by
The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2553, Authorizing the Secretary of State to administratively dissolve certain business entities.

On motion of Delegate Boggs, the bill was taken up for immediate consideration.

The following Senate amendment was reported by the Clerk:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

"That §31B-8-809 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31B-10-1006 of said code be amended and reenacted; that §31D-14-1420 of said code be amended and reenacted; that §31D-15-1530 of said code be amended and reenacted; that §31E-13-1320 of said code be amended and reenacted; that §31E-14-1430 of said code be amended and reenacted; and that §59-1-2a of said code be amended and reenacted, all to read as follows:

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 8. WINDING UP COMPANY'S BUSINESS.

§31B-8-809. Grounds for administrative dissolution.

The Secretary of State may commence a proceeding to administratively dissolve a limited liability company ~~administratively~~ if: ~~the company does not:~~

(1) ~~Pay~~ The company fails to pay any fees, taxes or penalties imposed by this chapter or other law within sixty days after they are due;

(2) ~~Deliver~~ The company fails to deliver its annual report to the Secretary of State within sixty days after it is due;

(3) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is or all the licenses are required for the continued operation of the company; or

(4) The company is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.

ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.

§31B-10-1006. Revocation and reinstatement of certificate of authority.

(a) A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the Secretary of State in the manner provided in subsection (b) of this section if:

(1) The company fails to:

(i) Pay any fees, taxes and penalties owed to this state;

(ii) Deliver its annual report required under section 2-211 to the Secretary of State within sixty days after it is due; or

(iii) File a statement of a change in the name or business address of the agent as required by this article; ~~or~~

(2) A misrepresentation has been made of any material matter in any application, report, affidavit or other record submitted by the company pursuant to this article;

(3) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is or all the licenses are required for the continued operation of the company; or

(4) The company is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.

(b) The Secretary of State may not revoke a certificate of authority of a foreign limited liability company unless the Secretary of State sends the company notice of the revocation, at least sixty days before its effective date, by a record addressed to its principal office. The notice must specify the cause for the revocation of the certificate of authority. The authority of the company to transact business in this

state ceases on the effective date of the revocation unless the foreign limited liability company cures the failure before that date.

(c) A foreign limited liability company administratively revoked may apply to the Secretary of State for reinstatement within two years after the effective date of revocation. The application must:

(1) Recite the name of the company and the effective date of its administrative revocation; (2) state that the ground for revocation either did not exist or has been eliminated; (3) state that the company's name satisfies the requirements of section 10-1005; and (4) contain a certificate from the Tax Commissioner reciting that all taxes owed by the company have been paid.

(d) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate and serve the company with a copy of the certificate.

(e) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the company may resume its business as if the administrative revocation had never occurred.

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 14. DISSOLUTION.

PART II. ADMINISTRATIVE DISSOLUTION.

§31D-14-1420. Grounds for administrative dissolution.

The Secretary of State may commence a proceeding under section one thousand four hundred twenty-one of this article to administratively dissolve a corporation if:

(1) The corporation does not pay within sixty days after they are due any fees, franchise taxes or penalties imposed by this chapter or other law;

(2) The corporation does not notify the Secretary of State within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned or that its registered office has been discontinued; ~~or~~

(3) The corporation's period of duration stated in its articles of incorporation expires;

(4) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is or all the licenses are required for the continued operation of the corporation; or

(5) The corporation is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.

ARTICLE 15. FOREIGN CORPORATIONS.

PART III. REVOCATION OF CERTIFICATE OF AUTHORITY.

§31D-15-1530. Grounds for revocation.

The Secretary of State may commence a proceeding under section one thousand five hundred thirty-one of this article to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not pay within sixty days after they are due any fees, franchise taxes or penalties imposed by this chapter or other law;

(2) The foreign corporation does not inform the Secretary of State under section one thousand five hundred eight or one thousand five-

hundred nine of this article that its registered agent or registered office has changed, that its registered agent has resigned or that its registered office has been discontinued within sixty days of the change, resignation or discontinuance;

(3) An incorporator, director, officer or agent of the foreign corporation signed a document he or she knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; ~~or~~

(4) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger;

(5) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is or all the licenses are required for the continued operation of the foreign corporation; or

(6) The foreign corporation is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 13. DISSOLUTION.

PART II. ADMINISTRATIVE DISSOLUTION.

§31E-13-1320. Grounds for administrative dissolution.

The Secretary of State may commence a proceeding under section one thousand three hundred twenty-one of this article to administratively dissolve a corporation if:

(1) The corporation does not pay within sixty days after they are due any fees, franchise taxes or penalties imposed by this chapter or other law;

(2) The corporation does not notify the Secretary of State within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned or that its registered office has been discontinued; ~~or~~

(3) The corporation's period of duration stated in its articles of incorporation expires;

(4) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is or all the licenses are required for the continued operation of the nonprofit entity; or

(5) The corporation is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.

ARTICLE 14. FOREIGN CORPORATIONS.

PART III. REVOCATION OF CERTIFICATE OF AUTHORITY.

§31E-14-1430. Grounds for revocation.

The Secretary of State may commence a proceeding under section one thousand four hundred thirty-one of this article to revoke the certificate of authority of a foreign corporation authorized to conduct activities in this state if:

(1) The foreign corporation does not pay within sixty days after they are due any fees, franchise taxes or penalties imposed by this chapter or other law;

(2) The foreign corporation does not inform the Secretary of State under sections one thousand four hundred eight or one thousand four

hundred nine of this article that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation or discontinuance;

(3) An incorporator, director, officer or agent of the foreign corporation signed a document he or she knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; ~~or~~

(4) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger;

(5) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is or all the licenses are required for the continued operation of the corporation; or

(6) The foreign corporation is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2a. Annual business fees to be paid to the Secretary of State; filing of annual reports; purchase of data.

(a) *Definitions.* — As used in this section:

(1) 'Annual report fee' means the fee described in subsection (c) of this section that is to be paid to the Secretary of State each year by corporations, limited partnerships, domestic limited liability companies

and foreign limited liability companies. After June 30, 2008, any reference in this code to a fee paid to the Secretary of State for services as a statutory attorney in fact shall mean the annual report fee described in this section.

(2) 'Business activity' means all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, but does not mean any of the activities of foreign corporations enumerated in subsection (b), section one thousand five hundred one, article fifteen, chapter thirty-one-d of this code, except for the activity of conducting affairs in interstate commerce when activity occurs in this state, nor does it mean any of the activities of foreign limited liability companies enumerated in subsection (a), section one thousand three, article ten, chapter thirty-one-b of this code except for the activity of conducting affairs in interstate commerce when activity occurs in this state.

(3) 'Corporation' means a 'domestic corporation', a 'foreign corporation' or a 'nonprofit corporation'.

(4) 'Deliver or delivery' means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and electronic transmission.

(5) 'Domestic corporation' means a corporation for profit which is not a foreign corporation incorporated under or subject to chapter thirty-one-d of this code.

(6) 'Domestic limited liability company' means a limited liability company which is not a foreign limited liability company under or subject to chapter thirty-one-b of this code.

(7) 'Foreign corporation' means a for-profit corporation incorporated under a law other than the laws of this state.

(8) 'Foreign limited liability company' means a limited liability company organized under a law other than the laws of this state.

(9) 'Limited partnership' means a partnership as defined by section one, article nine, chapter forty-seven of this code.

(10) 'Nonprofit corporation' means a nonprofit corporation as defined by section one hundred fifty, article one, chapter thirty-one-e of this code.

(11) 'Registration fee' means the fee for the issuance of a certificate relating to the initial registration of a corporation, limited partnership, domestic limited liability company or foreign limited liability company described in subdivision (2), subsection (a), section two of this article. The term 'initial registration' also means the date upon which the registration fee is paid.

(b) *Required payment of annual report fee and filing of annual report.* — After June 30, 2008, no corporation, limited partnership, domestic limited liability company or foreign limited liability company may engage in any business activity in this state without paying the annual report fee and filing the annual report as required by this section.

(c) *Annual report fee.* — After June 30, 2008, each corporation, limited partnership, domestic limited liability company and foreign limited liability company engaged in or authorized to do business in this state shall pay an annual report fee of $25 for the services of the Secretary of State as attorney-in-fact for the corporation, limited partnership, domestic limited liability company or foreign limited liability company, and for such other administrative services as may be imposed by law upon the Secretary of State. The fee is due and payable each year after the initial registration of the corporation, limited partnership, domestic limited liability company or foreign limited liability company with the annual report described in subsection (d) of this section on or before the dates specified in subsection (e) of this section. The fee is due and payable each year with the annual report from corporations, limited partnerships, domestic limited liability companies and foreign limited liability

companies that paid the registration fee prior to July 1, 2008, on or before the dates specified in subsection (e) of this section. The annual report fees received by the Secretary of State pursuant to this subsection shall be deposited by the Secretary of State in the general administrative fees account established by section two of this article.

(d) *Annual report.* — (1) After June 30, 2008, each corporation, limited partnership, domestic limited liability company and foreign limited liability company engaged in or authorized to do business in this state shall file an annual report. The report is due each year after the initial registration of the corporation, limited partnership, domestic limited liability company or foreign limited liability company with the annual report fee described in subsection (c) of this section on or before the dates specified in subsection (e) of this section. The report is due each year from corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies that paid the registration fee prior to July 1, 2008, on or before the dates specified in subsection (e) of this section.

(2) (A) The annual report shall be filed with the Secretary of State on forms provided by the Secretary of State for that purpose. The annual report shall, in the case of corporations, contain: (i) The address of the corporation's principal office; (ii) the names and mailing addresses of its officers and directors; (iii) the name and mailing address of the person on whom notice of process may be served; (iv) the name and address of the corporation's parent corporation and of each subsidiary of the corporation licensed to do business in this state; (v) in the case of limited partnerships domestic limited liability companies and foreign limited liability companies, similar information with respect to their principal or controlling interests as determined by the Secretary of State or otherwise required by law to be reported to the Secretary of State; (vi) the county or county code in which the principal office address or mailing address of the company is located; (vii) business class code; and (viii) any other information the Secretary of State considers appropriate.

(B) Notwithstanding any other provision of law to the contrary, the Secretary of State shall, upon request of any person, disclose, with respect to corporations: (i) The address of the corporation's principal office; (ii) the names and addresses of its officers and directors; (iii) the name and mailing address of the person on whom notice of process may be served; (iv) the name and address of each subsidiary of the corporation and the corporation's parent corporation; (v) the county or county code in which the principal office address or mailing address of the company is located; and (vi) the business class code. The Secretary of State shall provide similar information with respect to information in its possession relating to limited partnerships domestic limited liability companies and foreign limited liability companies, similar information with respect to their principal or controlling interests.

(e) *Annual reports and fees due July 1.* — Each domestic and foreign corporation, limited partnership, limited liability company and foreign limited liability company shall file with the Secretary of State the annual report and pay the annual report fee by July 1 of each year.

(f) *Deposit of fees.* — The annual report fees received by the Secretary of State pursuant to this section shall be deposited by the Secretary of State in the general administrative fees account established by section two, article one, chapter fifty-nine of this code.

(g) (1) *Duty to pay.* — It shall be the duty of each corporation, limited partnership, limited liability company and foreign limited liability company required to pay the annual report fees imposed under this article, to remit them with a properly completed annual report to the Secretary of State, and if it fails to do so it shall be subject to the late fees prescribed in subsection (h) of this article and dissolution or revocation, pursuant to this code: *Provided,* That before dissolution or revocation for failure to pay fees may occur, the Secretary of State shall notify the entity by certified mail, return receipt requested, of its failure to pay, all late fees or bad check fees associated with the failure to pay and the date upon which dissolution or revocation will occur if all fees are not paid in full. The certified mail required by this

subdivision shall be postmarked at least thirty days before the dissolution or revocation date listed in the notice.

(2) *Bad check fee.* — If any corporation, limited partnership, limited liability company or foreign limited liability company submits payment by check or money order for the annual report fee imposed under this article and the check or money order is rejected because there are insufficient funds in the account or the account is closed, the Secretary of State shall assess a bad check fee to the corporation, limited partnership, limited liability company or foreign limited liability company that is equivalent to the service charge paid by the Secretary of State due to the rejected check or money order. The bad check fee assessed under this subdivision shall be deposited into the account or accounts from which the Secretary of State paid the service charge.

(h) *Late fees.* — (1) The following late fees shall be in addition to any other penalties and remedies available elsewhere in this code:

(A) *Administrative late fee.* — The Secretary of State shall assess upon each corporation, limited partnership, limited liability company and foreign limited liability company delinquent in the payment of an annual report fee or the filing of an annual report an administrative late fee in the amount of $50.

(B) *Administrative late fees for nonprofit corporations.* — The Secretary of State shall assess each nonprofit corporation delinquent in the payment of an annual report fee or the filing of an annual report an administrative late fee in the amount of $25.

(2) The Secretary of State shall deposit the first $25,000 of fees collected under this subsection into the general administrative fees account established in subsection (h), section two of this article, and shall deposit any additional fees collected under this section into the General Revenue Fund of the state.

(i) *Reports to Tax Commissioner; suspension, cancellation or withholding of business registration certificate.* —

(1) The Secretary of State shall, within twenty days after the close of each month, make a report to the Tax Commissioner for the preceding month, in which he or she shall set out the name of every business entity to which he or she issued a certificate to conduct business in the State of West Virginia during that month. The report shall set out the names and addresses all corporations, limited partnerships, limited liability companies and foreign limited liability companies to which he or she issued certificates of change of name or of change of location of principal office, dissolution, withdrawal or merger. If the Secretary of State fails to make the report, it shall be the duty of the Tax Commissioner to report such failure to the Governor. A writ of mandamus shall lie for correction of such failure.

(2) Notwithstanding any other provisions of this code to the contrary, upon receipt of notice from the Secretary of State that a corporation, limited partnership, limited liability company and foreign limited liability company is more than thirty days delinquent in the payment of annual report fees or in the filing of an annual report required by this section, the Tax Commissioner may suspend, cancel or withhold a business registration certificate issued to or applied for by the delinquent corporation, limited partnership, limited liability company or foreign limited liability company until the same is paid and filed in the manner provided for the suspension, cancellation or withholding of business registration certificates for other reasons under article twelve, chapter eleven of this code.

(j) *Purchase of data.* — The Secretary of State will provide electronically, for purchase, any data maintained in the Secretary of State's Business Organizations Database. For the electronic purchase of the entire Business Organizations Database, the cost is $12,000. For the purchase of the monthly updates of the Business Organizations Database, the cost is $1,000 per month. The fees received by the Secretary of State pursuant to this subsection shall be deposited by the

Secretary of State in the general administrative fees account established by section two, article one, chapter fifty-nine of this code.

(k) The Secretary of State is authorized to collect the service fee per transaction, if any, charged for an online service from any customer who purchases data or conducts transactions through an online service.

(l) *Rules.* — The Secretary of State may propose legislative rules for promulgation pursuant to article three, chapter twenty-nine-a of this code to implement this article, and may, pending promulgation of those rules, promulgate emergency rules pursuant to those provisions for those purposes."

And by amending the title of the bill to read as follows:

Com. Sub. for H. B. 2553 - "A Bill to amend and reenact §31B-8-809 of the Code of West Virginia, 1931, as amended; to amend and reenact §31B-10-1006 of said code; to amend and reenact §31D-14-1420 of said code; to amend and reenact §31D-15-1530 of said code; to amend and reenact §31E-13-1320 of said code; to amend and reenact §31E-14-1430 of said code; and to amend and reenact §59-1-2a of said code, all relating to the authority to conduct business in the state; authorizing the Secretary of State to administratively dissolve or revoke the certificate of authority of certain business entities; authorizing dissolution or revocation if certain business entities fail to pay fees imposed by law; requiring notice to a business entity by certified mail before dissolution or revocation due to failure to pay fees; permitting a bad check fee if certain payment by check or money order is rejected for certain reasons; authorizing dissolution or revocation if one or more professional licenses have been revoked and the license is or licenses are necessary for the continued operation of the business entity; and authorizing dissolution or revocation if the business entity is in default with the Bureau of Employment Programs."

On motion of Delegate Boggs, the House of Delegates concurred in the Senate amendments.

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken **(Roll No. 228)**, and there were—yeas 98, nays none, absent and not voting 2, with absent and not voting being as follows:

ABSENT AND NOT VOTING: Marshall and J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2553) passed.

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

A message from the Senate, by
The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2585, Increasing the time to file a petition in response to notice of an increased assessment.

On motion of Delegate Boggs, the bill was taken up for immediate consideration.

The following Senate amendment was reported by the Clerk:

On page three, section fifteen-c, line thirty-five, after the word "section" and the period, by inserting "For purposes of this section, 'business day' means a day on which state offices are open for business."

And,

On page four, section fifteen-d, line seven, after the word "Commissioner" and the period, by inserting "For purposes of this section, 'business day' means a day on which state offices are open for business."

And by amending the title of the bill to read as follows:

Com. Sub. for H. B. 2585 - "A Bill to amend and reenact §11-3-15c and §11-3-15d of the Code of West Virginia, 1931, as amended, relating to increasing the time to file a petition for review or appeal in response to a notice of an increased assessment of certain real and personal property; and defining business day."

On motion of Delegate Boggs, the House of Delegates refused to concur in the Senate amendments and requested the Senate to recede therefrom.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2652, Authorizing the Department of Administration to promulgate legislative rules.

On motion of Delegate Boggs, the bill was taken up for immediate consideration.

The following Senate amendments were reported by the Clerk:

On page eight, section two, line seventy-three, after the word "authorized", by striking out the period and inserting the following: "with the following amendment:

On page three, subsection 8.1., after the word 'System', by changing the period to a colon and inserting the following proviso: *And provided further*, That beginning July 1, 2013, each participating public employer shall contribute fourteen and five-tenths percent (14.5%) of each compensation payment of all its employees who are members of the Public Employees Retirement System."

And,

On page eight, section two, after line seventy-nine, by inserting the following:

"On page eight, subsection 14.1., after the word 'System', by changing the period to a colon and inserting the following proviso: '*And provided further*, That beginning July 1, 2013, the West Virginia State Police shall contribute fourteen and five-tenths percent (14.5%) of the monthly salary of each member of the West Virginia State Police Retirement System to the West Virginia State Police Retirement System;

And,'".

On motion of Delegate Boggs, the House of Delegates concurred in the Senate amendments.

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken **(Roll No. 229)**, and there were—yeas 93, nays 5, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Andes, Armstead, Howell, Lane and Sobonya.

ABSENT AND NOT VOTING: Marshall and J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2652) passed.

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

On this question, the yeas and nays were taken **(Roll No. 230)**, and there were—yeas 93, nays 5, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Armstead, Howell, Kump, R. Smith and Walters.

ABSENT AND NOT VOTING: Marshall and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2652) takes effect from its passage.

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

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. 2729, Allowing schools to voluntarily maintain and use epinephrine auto-injectors.

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:

Com. Sub. for H. B. 2858, Relating generally to consumer rate relief bonds.

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. 2923, Relating to directors of state-chartered banking institutions.

A message from the Senate, by

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

Com. Sub. for H. B. 2940, Relating to regional meetings among certain officials of county boards of education.

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. 3028, Expanding the number of hours temporary state personnel may work in a calendar year.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect July 1, 2013, a bill of the House of Delegates as follows:

Com. Sub. for H. B. 3086, Relating to juvenile services and criminal justice institutions.

On motion of Delegate Boggs, the bill was taken up for immediate consideration.

The following Senate amendments were reported by the Clerk:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

"That §28-3-1a, §28-3-1b, §28-3-2, §28-3-4, §28-3-5, §28-3-6, §28-3-7, §28-3-8, §28-3-9, §28-3-10, §28-3-11, §28-3-12, §28-3-13, §28-3-14, §28-3-15, §28-3-16, §28-3-17 and §28-3-18 of the Code of West Virginia, 1931, as amended, be repealed; that §25-1-3 of said code be amended and reenacted; and that §28-3-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-3. Institutions managed by Commissioner of Corrections; certain institutions transferred to Department of

Health and Human Resources; establishment of work and study release units; contracting with certain entities for reentry and direct placement services; reports to Governor.

(a) The Commissioner of Corrections shall manage, direct, control and govern the following penal or correctional institutions and any others placed under his or her jurisdiction or control:

Mount Olive Correctional Complex;

Huttonsville Correctional Center;

Anthony Correctional Center;

Denmar Correctional Center;

Pruntytown Correctional Center;

Northern West Virginia Correctional Center;

St. Marys Correctional Center;

Lakin Correctional Center;

Ohio County Correctional Center;

Beckley Correctional Center; ~~and~~

Martinsburg Correctional Center;

Salem Correctional Center; and

Parkersburg Correctional Center.

(b) The Commissioner of Corrections may contract with the County Commission of McDowell County to house and incarcerate inmates at the Stevens Correctional Center consistent with all requirements and standards governing the Division of Corrections.

(c) Jurisdiction of and title to the West Virginia Children's Home at Elkins are hereby transferred to the Department of Health and Human Resources, which is the custodian of all deeds and other muniments of title to the property and shall record those that are susceptible of recordation to be recorded in the proper offices. Notwithstanding any provision of this code to the contrary, the West Virginia Children's Home shall be managed and controlled by a superintendent appointed by the Commissioner of the Division of Human Services.

(d) The Commissioner of Corrections may establish work and study release units as extensions and subsidiaries of those state institutions under his or her control and authority. The work and study release units may be coeducational and shall be managed, directed and controlled as provided in this article.

(e) (1) The commissioner may contract with nonprofit or charitable entities including, but not limited to, nonprofit community mental health clinics, operating half-way houses or transitional housing facilities for the placement of persons in the commissioner's custody, whether confined or under parole supervision, as long as such facilities meet standards and criteria established by the commissioner.

(2) (A) The Commissioner of Corrections may direct that a person who is placed in a half-way house or transitional housing facility under this section make reimbursement to the state in the amount of a reasonable sum calculated to offset all or part of the costs of the placement.

(B) Prior to ordering the person to make the reimbursement, the commissioner, or his or her designee, shall consider the following:

(i) The person's ability to pay;

(ii) The nature and extent of the person's responsibilities to his or her dependents, if any;

(iii) The length of probable incarceration under the court's sentence; and

(iv) The effect, if any, that reimbursement might have on the person's rehabilitation.

(f) The Division of Corrections shall provide the number of persons placed in a half-way house or a transitional housing facility pursuant to subsection (e) of this section in its report made pursuant to section twenty, article one, chapter five of this code, and shall describe its plans to use the authority provided under the provisions of subsection (e) of this section in furtherance of the duties and responsibilities imposed by this article.

(g) Any person employed by the Office of Public Institutions ~~who on the effective date of this article~~ is a classified civil service employee ~~shall,~~ within the limits contained in section two, article six, chapter twenty-nine of this code. ~~remain in the civil service system as a covered employee~~

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 3. INDUSTRIAL HOME FOR YOUTH.

§28-3-1. Renaming West Virginia Industrial Home for Youth as Salem Correctional Center; transferring control to Division of Corrections.

(a) Effective July 1, 2013, the West Virginia Industrial Home for Youth shall be known as the Salem Correctional Center. The Salem Correctional Center is hereby transferred to the Division of Corrections.

(b) Commencing July 1, 2013, wherever the 'West Virginia Industrial Home for Youth' is referred to in this code, it shall mean the 'Salem Correctional Center'."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 3086 - "A Bill to repeal §28-3-1a, §28-3-1b, §28-3-2, §28-3-4, §28-3-5, §28-3-6, §28-3-7, §28-3-8, §28-3-9, §28-3-10, §28-3-11, §28-3-12, §28-3-13, §28-3-14, §28-3-15, §28-3-16, §28-3-17 and §28-3-18 of the Code of West Virginia, 1931, as amended; to amend and reenact §25-1-3 of said code; and to amend and reenact §28-3-1 of said code, all relating to state correctional and penal institutions; renaming the Industrial Home for Youth the Salem Correctional Center; transferring control of the Salem Correctional Center to the Division of Corrections; and authorizing the Parkersburg Correctional Center and placing it under the control of the Division of Corrections."

On motion of Delegate Boggs, the House of Delegates concurred in the Senate amendments.

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken **(Roll No. 231)**, and there were—yeas 98, nays none, absent and not voting 2, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: Marshall and J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3086) passed.

Delegate Boggs moved that the bill take effect July 1, 2013.

On this question, the yeas and nays were taken **(Roll No. 232)**, and there were—yeas 98, nays none, absent and not voting 2, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: Marshall and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3086) takes effect July 1, 2013.

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

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. 3104, Authorizing certain legislative rules regarding higher education.

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

Com. Sub. for S. B. 145, Amending election complaint procedures.

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

S. B. 458, Permitting PEIA operate Medicare retiree health plan on calendar-year basis.

PETITIONS

Delegate Ireland presented a petition on behalf of his constituents in support of H. B. 2580, providing that all future federal, state and local statutes, ordinances, laws, orders and rules concerning firearms, firearm accessories, ammunition and their accouterments are invalid

and unenforceable; which was referred to the Committee on the Judiciary.

SPECIAL CALENDAR

UNFINISHED BUSINESS

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

Com. Sub. for H. C. R. 56, The "John Edgar Saville Memorial Bridge",

H. C. R. 112, The "Army Command Sergeant Major Wade Damron Memorial Bridge",

Com. Sub. for H. C. R. 120, The "1st Sergeant Walter Criss Bridge, United States Army",

Com. Sub. for H. C. R. 121, The "LSC Andrew Scott Mollohan Memorial Bridge",

H. C. R. 125, The "Army Sergeant Richard Bowry Memorial Bridge",

H. C. R. 126, The "John Jacob Fry II Memorial Highway",

H. C. R. 133, The "James T. and Paul T. Billups Bridge",

And,

H. C. R. 135, Proclaiming West Virginia as a Purple Heart State.

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

THIRD READING

Com. Sub. for S. B. 60, Relating to name-change notice publication requirements; on third reading, coming up in regular order, with an amendment pending, was reported by the Clerk.

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

"ARTICLE 25. CHANGE OF NAME.

§48-25-101. Petition to circuit court or family court for change of name; contents thereof; notice of application.

(a) ~~Any~~ A person desiring a change of his or her own name, or that of his or her child, may apply to the circuit court or family court of the county in which he or she resides by a verified petition setting forth and affirming the following:

(1) That he or she has been a bona fide resident of the county for at least one year prior to the filing of the petition or that he or she is a nonresident of the county who was born in the county, was married in the county and was previously a resident of the county for a period of at least fifteen years;

(2) The cause for which the change of name is sought;

(3) The new name desired;

(4) The name change is not for purposes of avoiding debt or creditors;

(5) The petitioner seeking the name change is not a registered sex offender pursuant to any state or federal law;

(6) The name change sought is not for purposes of avoiding any state or federal law regarding identity;

(7) The name change sought is not for any improper or illegal purpose;

(8) The petitioner is not a convicted felon in any jurisdiction; ~~and~~

(9) The name change sought is not for any purpose of evading detection, identification or arrest by any local, state or federal law-enforcement agency; and

(10) Whether or not the petitioner desires to protect his or her identity for personal safety reasons.

(b) ~~Prior to~~ After filing the petition and at least ten days before the hearing to consider the application, the person shall cause a notice of the time and place that the application will be made to be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The petitioner shall in the notice set forth the name to which his or her name will be changed, unless as shown in the petition ~~upon good cause shown~~ to the court, the name change is being requested because the petitioner desires to protect his or her identity for personal safety reasons. *Provided*, That upon good cause shown, there may be a closed hearing. The publication area for the publication is the county. ~~*Provided, That*~~ The publication shall contain a provision that the hearing may be rescheduled without further notice or publication."

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 233)**, 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: Marshall and J. Nelson.

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

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

Com. Sub. for S. B. 60 - "A Bill to amend and reenact §48-25-101 of the Code of West Virginia, 1931, as amended, relating to change of

name; establishing certain time frames to publish the notice for name change; requiring the published notice to include the petitioner's proposed new name; providing an exception to the inclusion of the proposed new name in the publication; and providing for a closed hearing in certain circumstances."

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

Com. Sub. for S. B. 71, Requiring descriptions of easements and rights-of-way include width in addition to centerline; exception; on third reading, coming up in regular order, was reported by the Clerk.

At the request of Delegate Miley, and by unanimous consent, the rule was suspended to permit offering and consideration of an amendment of the bill on third reading.

The bill was then read a third time.

On motion of Delegate Miley, the bill was amended on page four, section five-a, line thirty-seven, following the word "under", by striking out the words "section twelve, article 13-a, chapter thirty" and inserting in lieu thereof the words "section two-a, article one, chapter thirty-nine".

Delegate Armstead requested to be excused from voting on the passage of Com. Sub. for S. B. 71 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the Member from voting.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 234)**, 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: Marshall and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 71) passed.

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

S. B. 108, Creating Unintentional Pharmaceutical Drug Overdose Fatality Review Team; 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. 235)**, 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: Marshall and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 108) passed.

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

S. B. 108 - "A Bill to repeal §48-25A-1, §48-25A-2, and §48-25A-3 of the Code of West Virginia, 1931, as amended; to repeal §48-27A-1, §48-27A-2, and §48-27A-3 of said code; to repeal §49-5D-5 of said code; and to amend said code by adding thereto a new article, designated §61-12A-1, §61-12A-2, §61-12A-3, §61-12A-4 and §61-12A-5; all relating to a fatality review team; combining other fatality review teams; setting forth membership of the team; setting forth terms of office; setting forth responsibilities of the team; providing for certain actions the team may not take in exercising its duties; requiring an annual report; providing confidentiality; setting forth record-keeping requirements; authorizing access to certain

records; requiring certain agencies to cooperate with the team; and requiring the promulgation of legislative rules."

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

Com. Sub. for S. B. 158, Creating Complete Streets Act; 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. 236)**, and there were—yeas 92, nays 7, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Andes, Cowles, Folk, Gearheart, Householder, Howell and Kump.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 158) passed.

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

Com. Sub. for S. B. 580, Updating requirements for dental intern, resident and teaching permits; 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. 237)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 580) passed.

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

Com. Sub. for S. B. 580 - "A Bill to repeal §30-4-8a, §30-4-10a, §30-4-25, §30-4-26, §30-4-27, §30-4-28 and §30-4-29 of the Code of West Virginia, 1931, as amended; to repeal §30-4A-6a, §30-4A-6b, §30-4A-6c, §30-4A-6d and §30-4A-18 of said code; to repeal §30-4B-5, §30-4B-6, §30-4B-7 and §30-4B-8 of said code; to amend and reenact §30-4-1, §30-4-2, §30-4-3, §30-4-4, §30-4-5, §30-4-6, §30-4-7, §30-4-8, §30-4-9, §30-4-10, §30-4-11, §30-4-12, §30-4-13, §30-4-14, §30-4-15, §30-4-16, §30-4-17, §30-4-18, §30-4-19, §30-4-20, §30-4-21, §30-4-22, §30-4-23 and §30-4-24 of said code; to amend and reenact §30-4A-1, §30-4A-2, §30-4A-3, §30-4A-4, §30-4A-5, §30-4A-6, §30-4A-7, §30-4A-8, §30-4A-9, §30-4A-10, §30-4A-11, §30-4A-12, §30-4A-13, §30-4A-14, §30-4A-15, §30-4A-16 and §30-4A-17 of said code; and to amend and reenact §30-4B-1, §30-4B-2, §30-4B-3 and §30-4B-4 of said code, all relating to the practice of dentistry; prohibiting the practice of dentistry without a license; providing other applicable sections; providing definitions; providing for board composition; setting forth the powers and duties of the board; clarifying rule-making authority; continuing a special revenue account; establishing license, certification and permit requirements; continuing a scope of practice; creating temporary permits; establishing renewal requirements; providing for exemptions from licensure; providing requirements for the display of a board authorization; permitting the board to file an injunction; setting forth grounds for disciplinary actions; allowing for specific disciplinary actions; providing procedures for investigation of complaints; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal penalties; updating the requirements concerning the use of anesthesia; updating the requirements of dental laboratory services and updating references."

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. 2538, Expiring, supplementing, amending, increasing, and adding items of appropriation in various accounts; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken **(Roll No. 238)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2538) passed.

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

On this question, the yeas and nays were taken **(Roll No. 239)**, and there were—yeas 99, nays none, absent and not voting 1, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2538) 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.

H. B. 2541, Making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, to the Department of Health and Human Resources, Division of Human Services; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken **(Roll No. 240)**, and there were—yeas 64, nays 35, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Andes, Armstead, Arvon, Ashley, Border, Butler, Cadle, Cooper, Cowles, Ellem, Espinosa, D. Evans, Faircloth, Folk, Frich, Gearheart, Hamrick, Householder, Howell, Ireland, Kump, Lane, McCuskey, E. Nelson, O'Neal, Overington, Raines, Rowan, Shott, R. Smith, Sobonya, Storch, Sumner, Walters and Westfall.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2541) passed.

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

On this question, the yeas and nays were taken **(Roll No. 241),** and there were—yeas 64, nays 35, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Andes, Armstead, Arvon, Ashley, Border, Butler, Cadle, Cooper, Cowles, Ellem, Espinosa, D. Evans, Faircloth, Folk, Frich, Gearheart, Hamrick, Householder, Howell, Ireland, Kump, Lane, McCuskey, E. Nelson, O'Neal, Overington, Raines, Rowan, Shott, R. Smith, Sobonya, Storch, Sumner, Walters and Westfall.

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates not having voted in the affirmative, the Speaker declared the motion for the effective date rejected.

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

SECOND READING

S. B. 208, Making supplementary appropriation from State Fund, General Revenue, to Department of Commerce, Division of Labor, and

DHHR, Division of Human Services; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 214, Eliminating interview requirement for certain medical licensee applicants; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 358, Relating to municipal policemen and firemen pensions; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 387, Relating to family court judge supervision of criminal background investigations; on third reading, coming up in regular order, was read a third time.

Com. Sub. for S. B. 435, Continuing Municipal Home Rule Pilot Program; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Government Organization, was reported by the Clerk, on page one, by striking out everything after the enacting section and inserting in lieu thereof the following:

"ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.

§8-1-5a. Municipal Home Rule Pilot Program.

(a) *Legislative findings.* — The Legislature finds and declares that:

(1) The initial Municipal Home Rule Pilot Program brought innovative results, including novel municipal ideas that became municipal ordinances which later resulted in new statewide statutes;

(2) The initial Municipal Home Rule Pilot Program also brought some novel municipal ideas that resulted in court challenges against some of the participating municipalities;

(3) The Municipal Home Rule Board was an essential part of the initial Municipal Home Rule Pilot Program but it lacked some needed powers and duties;

(4) Municipalities still face challenges delivering services required by federal and state law, or demanded by their constituents;

(5) Municipalities are sometimes restrained by state statutes, policies and rules that challenge their ability to carry out their duties and responsibilities in a cost-effective, efficient and timely manner;

(6) Continuing the Municipal Home Rule Pilot Program is in the public interest; and

(7) Increasing the powers and duties of the Municipal Home Rule Board will enhance the Municipal Home Rule Pilot Program.

(b) *Continuance of pilot program.* — The Municipal Home Rule Pilot Program is continued until July 1, 2019. The ordinances enacted by the four participating municipalities pursuant to the initial Municipal Home Rule Pilot Program are hereby authorized and may remain in effect until the ordinances are repealed, but are null and void if amended and such amendment is not approved by the Municipal Home Rule Board: *Provided,* That any ordinance enacting a municipal occupation tax is hereby null and void.

(c) *Authorizing participation.* — Commencing July 1, 2013, any Class I, Class II, Class III and/or Class IV municipality, that is current in payment of all state fees, may participate in the Municipal Home Rule Pilot Program pursuant to the provisions of this section: *Provided,* That the four municipalities participating in the pilot program on July 1, 2012, are hereby authorized to continue in the pilot program and may amend current written plans and/or submit new written plans in accordance with the provisions of this section.

(d) *Municipal Home Rule Board.* — The Municipal Home Rule Board is hereby continued. The board members serving on the board

on July 1, 2012, may continue to serve, except that the Chair of the Senate Committee on Government Organization and the Chair of the House Committee on Government Organization shall be ex officio nonvoting members. Effective July 1, 2013, the Municipal Home Rule Board shall consist of the following five voting members:

(1) The Governor, or a designee, who shall serve as chair;

(2) The Executive Director of the West Virginia Development Office or a designee;

(3) One member representing the Business and Industry Council, appointed by the Governor with the advice and consent of the Senate;

(4) One member representing the largest labor organization in the state, appointed by the Governor with the advice and consent of the Senate; and

(5) One member representing the West Virginia Chapter of American Institute of Certified Planners, appointed by the Governor with the advice and consent of the Senate.

(e) *Board's powers and duties.* — The Municipal Home Rule Board has the following powers and duties:

(1) Establish specific eligibility criteria for the application process and documentation required for participation in the Municipal Home Rule Pilot Program;

(2) Review, evaluate, make recommendations and approve or reject, by a majority vote of the board, each aspect of the written plan submitted by a municipality;

(3) By a majority vote of the board, select, based on the municipality's written plan, new Class I, Class II, Class III and/or Class IV municipalities to participate in the Municipal Home Rule Pilot Program;

(4) Review, evaluate, make recommendations and approve or reject, by a majority vote of the board, the amendments to the written plans submitted by municipalities;

(5) Approve or reject, by a majority vote of the board, each ordinance submitted by a participating municipality pursuant to its written plan or its amendments to the written plan;

(6) Consult with any agency affected by the written plans or the amendments to the written plans; and

(7) Perform any other powers or duties necessary to effectuate the provisions of this section.

(f) *Written plan.* — On or before June 1, 2014, a Class I, Class II, Class III or Class IV municipality desiring to participate or continue to participate in the Municipal Home Rule Pilot Program shall submit a written plan to the board stating in detail the following:

(1) The specific laws, acts, resolutions, policies, rules or regulations which prevent the municipality from carrying out its duties in the most cost-efficient, effective and timely manner;

(2) The problems created by the laws, acts, resolutions, policies, rules or regulations;

(3) The proposed solutions to the problems, including all proposed changes to ordinances, acts, resolutions, rules and regulations: *Provided,* That the specific municipal ordinance instituting the solution does not have to be included in the written plan; and

(4) A written opinion, by an attorney licensed to practice in West Virginia, stating that the proposed written plan does not violate the provisions of this section.

(g) *Public hearing on written plan.* — Prior to submitting its written plan to the board, the municipality shall:

(1) Hold a public hearing on the written plan;

(2) Provide notice at least thirty days prior to the public hearing by a Class II legal advertisement;

(3) Make a copy of the written plan available for public inspection at least thirty days prior to the public hearing; and

(4) After the public hearing, adopt an ordinance authorizing the municipality to submit a written plan to the Municipal Home Rule Board after the proposed ordinance has been read two times.

(h) *Selection of municipalities.* — On or after June 1, 2014, by a majority vote, the Municipal Home Rule Board may select from the municipalities that submitted written plans and were approved by the board by majority vote new Class I, Class II, Class III and/or Class IV municipalities to participate in the Municipal Home Rule Pilot Program.

(i) *Ordinance, act, resolution, rule or regulation.* — After being selected to participate in the Municipal Home Rule Pilot Program and prior to enacting an ordinance, act, resolution, rule or regulation based on the written plan, the municipality shall:

(1) Hold a public hearing on the proposed ordinance, act, resolution, rule or regulation;

(2) Provide notice at least thirty days prior to the public hearing by a Class II legal advertisement;

(3) Make a copy of the proposed ordinance, act, resolution, rule or regulation available for public inspection at least thirty days prior to the public hearing;

(4) After the public hearing, submit the comments, either in audio or written form, to the Municipal Home Rule Board;

(5) Obtain approval, from the Municipal Home Rule Board by a majority vote, for the proposed ordinance, act, resolution, rule or regulation; and

(6) After obtaining approval from the Municipal Home Rule Board, read the proposed ordinance, act, resolution, rule or regulation at least two times.

(j) *Powers and duties of municipalities.* — The municipalities participating in the Municipal Home Rule Pilot Program have the authority to pass an ordinance, act, resolution, rule or regulation, under the provisions of this section, that is not contrary to:

(1) Environmental law;

(2) Bidding on government construction and other contracts;

(3) The Freedom of Information Act;

(4) The Open Governmental Proceedings Act;

(5) Wages for construction of public improvements;

(6) The provisions of this section; and

(7) The municipality's written plan.

(k) *Prohibited acts.* — The municipalities participating in the Municipal Home Rule Pilot Program do not have the authority to pass an ordinance, act, resolution, rule or regulation, under the provisions of this section, pertaining to:

(1) The Constitutions of the United States or West Virginia;

(2) Federal law or crimes and punishment;

(3) Chapters sixty-a, sixty-one and sixty-two of this code or state crimes and punishment;

(4) Pensions or retirement plans;

(5) Annexation;

(6) Taxation: *Provided*, That a participating municipality may enact a municipal sales tax up to one percent if it reduces or eliminates its municipal business and occupation tax: *Provided, however,* That if a municipality subsequently reinstates or raises the municipal business and occupation tax it previously reduced or eliminated under the Municipal Home Rule Pilot Program, it shall eliminate the municipal sales tax enacted under the Municipal Home Rule Pilot Program: *Provided, further*, That any municipality that imposes a municipal sales tax pursuant to this section shall use the services of the Tax Commissioner to administer, enforce and collect the tax in the same manner as the state consumers sales and service tax and use tax under the provisions of articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code and all applicable provisions of the streamlined sales and use tax agreement: *And provided, further*, That such tax will not apply to the sale of motor fuel or motor vehicles;

(7) Tax increment financing;

(8) Extraction of natural resources;

(9) Persons or property outside the boundaries of the municipality: *Provided*, That this prohibition under the Municipal Home Rule Pilot Program does not affect a municipality's powers outside its boundary lines under other sections of this chapter, other chapters of this code, or court decisions;

(10) Marriage and divorce laws; and

(11) Restricting the carrying of a firearm, as that term is defined in section two, article seven, chapter sixty-one of this code.

(l) *Amendments to written plans.* — A municipality selected to participate in the Municipal Home Rule Pilot Program may amend its written plan at any time.

(m) *Reporting requirements.* — Commencing December 1, 2015, and each year thereafter, each participating municipality shall give a progress report to the Municipal Home Rule Board, and commencing January 1, 2016, and each year thereafter, the Municipal Home Rule Board shall give a summary report of all the participating municipalities to the Joint Committee on Government and Finance.

(n) *Termination of the pilot program.* — The Municipal Home Rule Pilot Program terminates on July 1, 2019. No ordinance, act, resolution, rule or regulation may be enacted by a participating municipality after July 1, 2019, pursuant to the provisions of this section. An ordinance, act, resolution, rule or regulation enacted by a participating municipality under the provisions of this section during the period of the Municipal Home Rule Pilot Program shall continue in full force and effect until repealed, but is null and void if it is amended and such amendment is not approved by the Municipal Home Rule Board."

On motion of Delegate Sobonya, the amendment was amended on page seven, following line eleven, by inserting a new subdivision to read as follows:

"(8) The Constitution of the United States or West Virginia."

On motion of Delegate Sobonya, the amendment was then amended on page eight, following line twenty-four, by inserting new subdivision to read as follows:

"(12) A fee or assessment payable by a non-resident of a municipality, which is substantially equivalent to an occupation tax."

On motion of Delegate Sobonya, the amendment was then amended on page nine, following line eleven, by striking out subsection (n) in its entirety and inserting in lieu thereof the following:

"(n) Before the January 1, 2018, the Performance Evaluation and Review Division shall conduct a performance review on the pilot

program and the participating municipalities and/or metro governments. The review shall include the following:

(1) An evaluation of the effectiveness of expanded home rule on the participating municipalities and/or metro governments;

(2) A recommendation as to whether the expanded home rule should be continued, reduced, expanded or terminated;

(3) A recommendation as to whether any legislation is necessary; and

(4) Any other issues considered relevant.

(o) The pilot program terminates July 1, 2019.

(p) No ordinances, acts, resolutions, rules or regulations may be enacted by a municipality or metro government, after July 1, 2019, pursuant to the provisions of this section, unless otherwise authorized by the Legislature.

(q) An ordinance, act, resolution, rule or regulation enacted by a participating municipality under the provisions of this section during the period of the Municipal Home Rule Pilot Program shall continue in full force and effect until repealed, but is null and void if it is amended and such amendment is not approved by the Municipal Home Rule Board."

On motion of Delegate Lane, the amendment was amended on page eight, line twenty-four, immediately following the word "code", by inserting a colon and the following:

"*Provided*, That, notwithstanding the provisions of subsection (r) of this section, municipalities may regulate the carrying of a firearm in municipal buildings dedicated to government operations, other than parking buildings or garages"

And,

On page nine following line twenty by inserting the following new subsection:

"(r) *Additional requirements for participation.* –The Class I, Class II, Class III and/or Class IV municipalities, that wish to participate in the Municipal Home Rule Pilot Program, pursuant to the provisions of this section, must agree to the requirements set forth in this subsection, concerning regulation of firearms, ammunition and firearm accessories: *Provided,* That if the four municipalities participating in the pilot program on July 1, 2012, wish to continue in the pilot program then those municipalities must also agree to comply with the requirements of this subsection.

(1) Definitions.

As used in this subsection:

(A) 'Ammunition' means fixed cartridge ammunition, shotgun shells, the individual components of fixed cartridge ammunition and shotgun shells, projectiles for muzzle-loading firearms and any propellant used in firearms or ammunition.

(B) 'Firearm accessory' means a device specifically designed or adapted to enable the wearing or carrying about one's person, or the storage or mounting in or on a conveyance, of a firearm, or an attachment or device specifically designed or adapted to be inserted into or affixed onto a firearm to enable, alter or improve the functioning or capabilities of the firearm.

(C) 'Firearm' has the same meaning as in section two, article seven of chapter sixty-one.

(2) General rule.

(A) Notwithstanding any other provision of this Code to the contrary, except as otherwise provided for within this section, municipalities participating in the home rule program pursuant to this

section shall not restrict in any manner the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any revolver, pistol, rifle or shotgun, or any other firearm, or any ammunition or ammunition components to be used therewith, or the keeping of gunpowder so as to directly or indirectly prohibit the ownership of the ammunition, or, to restrict in any manner the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any other firearm accessory or accouterment; to the complete exclusion of any order, ordinance or rule promulgated or enforced by any political subdivision of this state.

(B) The authority of a political subdivision to regulate firearms, ammunition, or firearm accessories may not be inferred from its proprietary authority, home rule status or any other inherent or general power.

(C) Any existing or future orders, ordinances, or rules promulgated or enforced in violation of this subsection are null and void.

(3) Applicability and effective dates.

This subsection applies to any order, ordinance or rule adopted by a municipality covered by the provisions of this section or to official actions taken by an employee or agent of such municipality, on or after the effective date of this article. Upon the effective date of this article, any grandfathered municipal gun ordinances which were in effect at the time of the original passage of section five-a, article twelve, chapter eight of this code shall no longer be of any force or effect for any municipality participating in this program, to the extent they are in conflict with the provisions of this article: *Provided*, That no provision in this subsection may be construed to limit the authority of a county or municipality to restrict the commercial use of real estate in designated areas through planning or zoning ordinances."

There being no further amendments, the amendment recommended by the Committee on Government Organization, as amended, was then adopted.

The bill was then ordered to third reading.

Com. Sub. for S. B. 440, Relating to disclosure of specified tax information for enforcement of Tobacco Master Settlement Agreement; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 445, Allowing Tax Commissioner divert lottery prizes to offset tax liabilities of lottery winners; on second reading, coming up in regular order, was read a second time.

Delegate Shott moved to amend the bill on page three, line fifteen, immediately following the word "section", by inserting a semicolon and the words "which procedure shall result in the expeditious payment of the prize winner of the amount of the prize, less any delinquent taxes, at the time of the presentation of the winning ticket or other proof of claim".

And,

On page three, line fifteen, immediately following the word "section" and the period, by striking out the word, "The director shall include in the agreement a method by which Lottery Director will provide the names of lottery winners as expeditiously as possible."

The Speaker put the question on the adoption of the foregoing amendment, and the same did not prevail.

The bill was then ordered to third reading.

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

S. B. 446, Conforming motor fuel taxes with International Fuel Tax Agreement,

S. B. 462, Extending time for informal conferences on surface mining permit applications,

Com. Sub. for S. B. 478, Redefining "video lottery games"; permitting wagering by historic resort hotel employees,

S. B. 491, Relating to rental car license cost recovery fee,

S. B. 504, Relating to cooperative associations,

S. B. 524, Supplementing, amending, decreasing and increasing appropriations from State Road Fund to DOT,

S. B. 526, Making supplementary appropriation of federal funds to DHHR, Division of Human Services-Temporary Assistance for Needy Families,

Com. Sub. for S. B. 534, Correcting internal code reference regarding insurance information disclosure,

Com. Sub. for S. B. 542, Relating to restricted races at pari-mutuel thoroughbred horse race tracks,

Com. Sub. for S. B. 544, Scheduling departmental performance reviews,

And,

Com. Sub. for S. B. 553, Relating to Highway Design-Build Program.

Com. Sub. for S. B. 557, Continuing Preventive Care Pilot Program; on second reading, coming up in regular order, was read a second time.

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

"That §16-2J-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2J. PREVENTIVE CARE PILOT PROGRAM.

§16-2J-3. Authorization of preventive care pilot program; number of participants and sites; Health Care Authority considerations in selection of participating providers; funding.

(a) (1) The Health Care Authority shall, in consultation with the Insurance Commissioner, develop and implement during the fiscal year beginning July 1, 2006, a pilot program that permits providers to market and sell prepaid memberships entitling subscribers to obtain preventive and primary health care from the participating providers.

(2) Participating providers shall not be allowed to offer their qualifying services at more than six separate sites.

(3) The pilot program shall expire on June 30, ~~2011~~ 2016.

(4) Those providers participating in the pilot program as of its expiration date may continue to operate pursuant to this article._

(5) The Health Care Authority shall report to the Legislative Oversight Commission on Health and Human Resources Accountability on the pilot program by December 1, 2015.

(b) Subject to this article, the Health Care Authority is vested with discretion to select providers using diversity in practice organization, geographical diversity and other criteria it deems appropriate. The Health Care Authority also shall give consideration to providers located in rural areas or serving a high percentage or large numbers of uninsured.

(c) In furtherance of the objectives of this article, the Health Care Authority is authorized to accept any and all gifts, grants and matching

funds whether in the form of money or services. However, no gifts, grants and matching funds shall be provided to the Health Care Authority by the State of West Virginia to further the objectives of this article."

The bill was then ordered to third reading.

S. B. 561, Establishing Tucker County Cultural District Authority; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 658, Extending time for Madison City Council to meet as levying body; on second reading, coming up in regular order, was read a second time and ordered to third reading.

FIRST READING

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

S. B. 65, Exempting PERS retirement income of DNR police officers from state income tax,

S. B. 82, Requiring rate-paying residential customer on public service board,

S. B. 194, Repealing code relating to Medicaid program contract procedure,

Com. Sub. for S. B. 195, Removing tax rate expiration date on eligible acute care hospitals,

Com. Sub. for S. B. 200, Relating to Eyewitness Identification Act,

Com. Sub. for S. B. 202, Creating WV Spay Neuter Assistance Program and Fund,

Com. Sub. for S. B. 243, Authorizing DEP promulgate legislative rules,

Com. Sub. for S. B. 250, Authorizing Department of Commerce promulgate legislative rules,

Com. Sub. for S. B. 265, Authorizing DHHR promulgate legislative rules,

Com. Sub. for S. B. 270, Authorizing Department of Revenue promulgate legislative rules,

Com. Sub. for S. B. 281, Authorizing Department of Transportation promulgate legislative rules,

S. B. 331, Permitting Courthouse Facilities Improvement Authority to issue bonds,

Com. Sub. for S. B. 355, Relating to final wage payment to discharged employees,

Com. Sub. for S. B. 369, Relating to concealed handgun license reciprocity,

Com. Sub. for S. B. 371, Relating to prison overcrowding,

Com. Sub. for S. B. 386, Relating to personal safety orders,

Com. Sub. for S. B. 401, Relating to Board of Registration for Professional Engineers,

S. B. 407, Requiring cellular and phone companies provide certain information to Bureau for Child Support Enforcement,

Com. Sub. for S. B. 426, Relating to filings under Uniform Commercial Code as to secured transactions,

Com. Sub. for S. B. 437, Regulating commercial dog-breeding operations,

S. B. 441, Relating to withdrawal of erroneous state tax liens,

Com. Sub. for S. B. 454, Relating to taxation of alternative motor fuels,

Com. Sub. for S. B. 464, Regulating tanning facilities,

Com. Sub. for S. B. 469, Clarifying service credit for certain PERS members,

Com. Sub. for S. B. 477, Relating to electronic registration of voters,

Com. Sub. for S. B. 481, Relating to juvenile mental health treatment,

Com. Sub. for S. B. 482, Relating to sale of voter registration lists,

S. B. 515, Relating to use of television receivers and other devices in vehicles,

S. B. 523, Making supplementary appropriation of unappropriated moneys to various accounts,

S. B. 525, Making supplementary appropriation of federal funds to various accounts,

Com. Sub. for S. B. 535, Relating to process for maintaining voter registration lists,

Com. Sub. for S. B. 538, Eliminating requirement law enforcement maintain files of domestic violence orders,

Com. Sub. for S. B. 586, Transferring authority to license cosmetology, barber and massage schools to Council for Community and Technical College Education,

S. B. 596, Determining grant awards for Chesapeake Bay and Greenbrier River watershed compliance projects,

Com. Sub. for S. B. 604, Expanding definition of "electioneering communication",

S. B. 623, Relating to funding for probation officers to address truancy,

S. B. 663, Creating WV Feed to Achieve Act,

S. B. 664, Decreasing appropriations of public moneys in State Fund, General Revenue,

And,

Com. Sub. for H. B. 2014, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution.

At 12:11 P.M., on motion of Delegate Boggs, the House of Delegates recessed until 5:00 P.M., and reconvened at that time.

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AFTERNOON SESSION

At the request of Delegate Boggs, and by unanimous consent, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

COMMITTEE REPORTS

Delegate Staggers, Chair of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

S. B. 157, Exempting certain nonresidents from Class D license requirement,

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

In accordance with the former direction of the Speaker, the bill (S. B. 157) was referred to the Committee on the Judiciary.

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

Your Committee on Finance has had under consideration:

Com. Sub. for S. B. 172, Relating to nonintoxicating beer distributor licensees,

Com. Sub. for S. B. 423, Providing certain convicted persons reduction in sentence,

And,

Com. Sub. for S. B. 489, Permitting community enhancement districts to decrease annual property assessments,

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

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

Your Committee on Finance has had under consideration:

S. B. 190, Relating to public-private transportation projects funding,

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

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

Your Committee on the Judiciary has had under consideration:

S. B. 507, Relating to PERS and State Police Retirement System contribution rates,

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

Delegate Miley, 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. 21, Creating Health Care Provider Transparency Act,

Com. Sub. for S. B. 22, Requiring maternity services coverage for all health insurance plan dependents in certain circumstances,

Com. Sub. for S. B. 101, Clarifying Medical Professional Liability Act applies to nursing homes and their health care providers,

Com. Sub. for S. B. 564, Increasing minimum construction cost of municipal public works project before competitive bidding is required,

And,

S. B. 652, Requiring criminal background checks for home inspector applicants,

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

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

Your Committee on Finance has had under consideration:

Com. Sub. for S. B. 103, Creating WV Commuter Rail Access Act,

S. B. 125, Permitting Monongalia County Commission to levy special district excise tax,

Com. Sub. for S. B. 146, Collecting unpaid magistrate court charges through income tax refund withholding,

S. B. 394, Relating to scholarships for dependent children of state troopers who die in performance of duty,

Com. Sub. for S. B. 438, Authorizing reorganization of certain community and technical colleges,

And,

Com. Sub. for S. B. 444, Relating to higher education generally,

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

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

Your Committee on Finance has had under consideration:

S. B. 403, Relating to judicial retirement system contribution rates,

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

On motion for leave, resolutions were introduced (Originating in the Committee on Finance and reported with the recommendation that they each be adopted), which were read by their titles and referred to the Committee on Rules, as follows:

By Delegates White, Reynolds, Williams, Perdue, Anderson, E. Nelson, Skaff, A. Evans, Guthrie, Gearheart, Pethtel, Storch, L. Phillips, Moye, Andes, D. Poling, Canterbury, Miller, Craig, Walters, Cowles, R. Phillips, Ashley, Iaquinta and Marshall:

H. C. R. 148 - "Requesting the Joint Committee on Government and Finance to undertake a study of current procurement and purchasing procedures,"

WHEREAS, A wide variety of products and services are contracted for by state agencies every year; and

WHEREAS, Using the most efficient and fair purchasing and procurement procedures may result in savings of state funds for those products and services; and

WHEREAS, A number of models and procedures are used by government entities for purchasing and procurement of products and services; and

WHEREAS, Uniformity of these purchasing and procurement procedures will ensure fairness and equality in obtaining products and services on behalf of the state; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby requests the Joint Committee on Government and Finance to undertake a study of current purchasing procedures, including statutes, legislative rules and any handbook or policies adopted by the Purchasing Division; the possible adoption of the Model Procurement Act, in whole or in part; and procurement methods currently being utilized, including open-ended contracts, piggyback contracts, secondary bidding, and contracts awarded to multiple vendors; and, be it

Further Resolved, That the Joint Committee on Government and Finance be authorized to require the testimony of acknowledged experts and others, as well as all records, that it deems necessary to

complete a thorough study of these issues and matters ancillary thereto; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the 2014 Regular Session of the Legislature on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

And,

By Delegates White, Reynolds, Williams, Perdue, Anderson, E. Nelson, Skaff, A. Evans, Guthrie, Gearheart, Pethtel, Storch, L. Phillips, Moye, Andes, D. Poling, Canterbury, Miller, Craig, Walters, Cowles, R. Phillips, Ashley, Iaquinta and Marshall:

H. C. R. 149 – "Requesting the Joint Committee on Government and Finance to study the proposals of the executive department of this state for the disposition of general revenue surplus revenues and earnings accruing on moneys held in reserve."

WHEREAS, Legislative enactments have for a number of years dedicated up to one-half of any surplus revenues in the General Revenue Fund of the State that may exist at the end of a fiscal year to the State's Revenue Shortfall Reserve Fund, popularly known as "Rainy Day A"; and

WHEREAS, Those enactments have afforded the Legislature the flexibility to use the balance of those surplus revenues to exercise its discretion in the discharge of its constitutional duty to appropriate the general revenues of this state for the benefit of its citizens; and

WHEREAS, Legislative enactments direct that earnings continue to accrue until 2025 on the moneys of the Revenue Shortfall Reserve Fund - Part B, popularly known as "Rainy Day B" to increase its

principal in order that, beginning in 2025, its earnings will provide significant funding for medical programs of the state; and

WHEREAS, The Governor has introduced legislation that would eliminate the Legislature's discretion over the use of the balance of surplus revenues in the appropriations process and the accompanying flexibility to apply those funds where they are most needed as dictated by the needs of the citizens of this state under circumstances that arise when those surplus revenues become available and, instead, immediately and permanently restrict the expenditure of the surplus revenues for two purpose selected by the Governor; and

WHEREAS, The Governor's proposed legislation would also dismantle the Legislature's savings plan and, instead, immediately and permanently restrict the expenditure of the Rainy Day B earnings for a sole purpose selected by the Governor; and

WHEREAS, The Governor has introduced legislation that proposes findings that the State of West Virginia has suffered a revenue shortfall of approximately $49 million as compared to revenue estimates; that current economic and fiscal trends will result in projected year-end revenue deficits, including projected shortfalls in Business and Occupation Tax, Severance Tax and Interest Income; that projected year-end revenue surpluses in various other General Revenue sources will only offset a small portion of these deficits; and that on March 19, 2013, the Governor issued a memorandum to cabinet secretaries implementing temporary restrictions on general revenue funded hiring to help reduce expenditures and close the anticipated budget gap in fiscal year 2013; and

WHEREAS, It now appears unlikely that there will be any significant amount of surplus revenues in the General Revenue Fund of the State at the end of fiscal year 2013 available for disposition, and that, therefore, sufficient time is available to the Legislature to engage in deliberative consideration of the Governor's proposals in relation to the highest and best exercise of the constitutional responsibilities vested in the Legislature; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the proposals made in House Bill No. 2509 and Senate Bill No. 191, both introduced during the regular session of the Legislature, 2013, at the request of the executive; and, be it

Further Resolved, That the committee report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Delegate Miley, 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. 630, Relating to Chief Technology Officer's duties with regard to security of government information,

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

Delegate Miley, 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. 74, Relating to jury service qualification,

Com. Sub. for S. B. 336, Relating to interscholastic athletics concussions and head injuries,

Com. Sub. for S. B. 461, Relating to procedures and protections for child witnesses in domestic relations proceedings,

S. B. 470, Permitting wine sale on Sunday mornings at fairs and festivals,

Com. Sub. for S. B. 498, Relating to hearing location for Alcohol Beverage Control Administration's appeal hearings,

Com. Sub. for S. B. 527, Relating to process of filling vacancies in certain elected offices,

And,

S. B. 601, Removing requirement certain juvenile proceedings be sealed,

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

MESSAGES FROM THE EXECUTIVE

The Speaker laid before the House of Delegates a communication from His Excellency, the Governor, as follows:

STATE OF WEST VIRGINIA
EXECUTIVE DEPARTMENT
CHARLESTON

A P R O C L A M A T I O N

By the Governor

WHEREAS, The Constitution of West Virginia delineates the respective powers, duties and responsibilities of the three separate branches of government; and

WHEREAS, Article VI, Section 22 of the Constitution of West Virginia provides that the current session of the Legislature shall not exceed sixty calendar days computed from and including the second Wednesday of February; and

WHEREAS, Pursuant to Article VI, Section 22 of the Constitution of West Virginia, the 2013 regular session of the Legislature concludes on the thirteenth day of April, two thousand thirteen; and

WHEREAS, Article VI, Section 51 of the Constitution of West Virginia sets forth the legal authority of the Governor and the Legislature relating to the preparation and enactment of the Budget Bill; and

WHEREAS, Subsection D, Article VI, Section 51 of the Constitution of West Virginia requires the Governor to issue a proclamation to extend the regular session of the Legislature if the Budget Bill shall not have been finally acted upon by the Legislature three days before the expiration of its regular session.

NOW, THEREFORE, I, EARL RAY TOMBLIN, Governor of the State of West Virginia, do hereby issue this Proclamation, in accordance with Article VI, Section 51, Subsection D(8) of the Constitution of West Virginia, to extend this regular session of the Legislature for consideration of the Budget Bill for an additional period not to exceed six days, through the nineteenth day of April, two thousand thirteen; but no matters other than the Budget Bill shall be considered during this extension of the session, except a provision for the cost thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.

DONE at the Capitol in the City of Charleston, State of West Virginia, this seventh day of March, in the year of our Lord, Two Thousand Twelve, and in the One Hundred Forty-Ninth year of the State.

EARL RAY TOMBLIN,
Governor.

BY THE GOVERNOR:

NATALIE E. TENNANT
Secretary of State.

* * * * * * *

MESSAGES FROM THE SENATE

A message from the Senate, by

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

Com. Sub. for H. B. 2108, Making the offense of failure to wear safety belts a primary offense.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2395, Relating to senior services.

On motion of Delegate Boggs, the bill was taken up for immediate consideration.

The following Senate amendment was reported by the Clerk:

On page one, by striking out everything after the enacting section and inserting in lieu thereof the following:

"ARTICLE 5P. SENIOR SERVICES.

§16-5P-15. Establishment of In-home Care Registry.

(a) There is ~~established~~ continued within the Bureau of Senior Services an in-home care worker registry which is to be maintained by the bureau. The purpose of the registry is to provide the public a list of in-home care workers, along with their qualifications, who voluntarily agree to be included and who have ~~passed~~ obtained a criminal background check.

(b) 'In-home care worker' means an unlicensed person who provides personal care or other services and supports to persons with disabilities or to the elderly in order to enhance their well-being and which involves face-to-face direct contact with the person. Functions performed may include, but are not limited to, assistance and training in activities of daily living, personal care services, and job-related supports.

(c) The bureau shall propose rules for legislative approval during the 2014 legislative session in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish the following:

(1) The registry of in-home care workers;

(2) The requirements for inclusion on the registry as an 'in-home care worker', including educational attainment;

(3) A fee schedule: ~~of proposed rates for those services and supports provided by the in-home care worker based upon qualifications of the in-home care workers, such as educational attainment~~ *Provided*, That the Commissioner of the Bureau of Senior Services shall waive the initial registration fee for the first sixty days the registration is active;

(4) ~~Requirement of completion and passage~~ Requiring an applicant to obtain ~~of~~ a state or federal criminal background check, as determined in legislative rule by the bureau; ~~consisting of checking the National Instant Criminal Background Check System and the West Virginia criminal history record responses. If an in-home care worker is included on the list with a criminal history indicated on his or her criminal back ground check, that information shall be noted on the registry. The bureau may not remove a person from the registry if the criminal background check reveals any negative information;~~

(5) How a person obtains information from the registry; and

(6) Any other requirement necessary to implement the provisions of this section."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2395 - "A Bill to amend and reenact §16-5P-15 of the Code of West Virginia, 1931, as amended, relating to senior services in-home care registry; providing for sixty-day waiver of initial registration fee; clarifying rule-making authority for the Bureau of Senior Services to require an applicant to obtain a state or federal criminal background check; and requiring legislative rules to be proposed for legislative approval during the 2014 legislative session."

On motion of Delegate Boggs, the House of Delegates concurred in the Senate amendments.

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 242**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Anderson, Hamrick, J. Nelson, Romine and Walters.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2395) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2471, Prohibiting the restriction or otherwise lawful possession, use, carrying, transfer, transportation, storage or display of a firearm or ammunition during a declared state of emergency.

On motion of Delegate Boggs, the bill was taken up for immediate consideration.

The following Senate amendments were reported by the Clerk:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

"That §61-7-4 and §61-7-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-4. License to carry deadly weapons; how obtained.

(a) Except as provided in subsection (h) of this section, any person desiring to obtain a state license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for the license, and shall pay to the sheriff, at the time of application, a fee of $75, of which $15 of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter

twenty-nine of this code. Concealed weapons permits may only be issued for pistols or revolvers. Each applicant shall file with the sheriff a complete application, as prepared by the Superintendent of the West Virginia State Police, in writing, duly verified, which sets forth only the following licensing requirements:

(1) The applicant's full name, date of birth, Social Security number, a description of the applicant's physical features, the applicant's place of birth, the applicant's country of citizenship and, if the applicant is not a United States citizen, any alien or admission number issued by the United States Bureau of Immigration and Customs enforcement, and any basis, if applicable, for an exception to the prohibitions of 18 U. S. C. §922(g)(5)(B);

(2) That, on the date the application is made, the applicant is a bona fide resident of this state and of the county in which the application is made and has a valid driver's license or other state-issued photo identification showing the residence;

(3) That the applicant is twenty-one years of age or older: *Provided,* That any individual who is less than twenty-one years of age and possesses a properly issued concealed weapons license as of the effective date of this article shall be licensed to maintain his or her concealed weapons license notwithstanding the provisions of this section requiring new applicants to be at least twenty-one years of age: *Provided, however,* That upon a showing of any applicant who is eighteen years of age or older that he or she is required to carry a concealed weapon as a condition for employment, and presents satisfactory proof to the sheriff thereof, then he or she shall be issued a license upon meeting all other conditions of this section. Upon discontinuance of employment that requires the concealed weapons license, if the individual issued the license is not yet twenty-one years of age, then the individual issued the license is no longer eligible and must return his or her license to the issuing sheriff;

(4) That the applicant is not addicted to alcohol, a controlled substance or a drug and is not an unlawful user thereof as evidenced by

either of the following within the three years immediately prior to the application:

(A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug treatment; or

(B) Two or more convictions for driving while under the influence or driving while impaired;

(5) That the applicant has not been convicted of a felony ~~or of an act of a misdemeanor crime of violence involving the misuse of a deadly weapon within the five years immediately preceding the application~~ unless the conviction has been expunged or set aside or the applicant's civil rights have been restored or the applicant has been unconditionally pardoned for the offense;

(6) That the applicant has not been convicted of a misdemeanor crime of violence other than an offense set forth in subsection (7) of this section in the five years immediately preceding the application.

~~(6)~~ (7) That the applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U. S. C. §921(a)(33), or a misdemeanor offense of assault or battery either under the provisions of section twenty-eight, article two of this chapter or the provisions of subsection (b) or (c), section nine, article two of this chapter in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense, or a misdemeanor offense with similar essential elements in a jurisdiction other than this state;

~~(7)~~ (8) That the applicant is not under indictment for a felony offense or is not currently serving a sentence of confinement, parole, probation or other court-ordered supervision imposed by a court of any jurisdiction or is the subject of an emergency or temporary domestic

violence protective order or is the subject of a final domestic violence protective order entered by a court of any jurisdiction;

~~(8)~~ (9) That the applicant has not been adjudicated to be mentally incompetent or involuntarily committed to a mental institution. If the applicant has been adjudicated mentally incompetent or involuntarily committed the applicant must provide a court order reflecting that the applicant is no longer under such disability; and the applicant's right to possess or receive a firearm has been restored.

~~(9)~~ (10) That the applicant has qualified under the minimum requirements set forth in subsection (d) of this section for handling and firing the weapon: *Provided,* That this requirement shall be waived in the case of a renewal applicant who has previously qualified; and

~~(10)~~ (11) That the applicant authorizes the sheriff of the county, or his or her designee, to conduct an investigation relative to the information contained in the application.

(b) For both initial and renewal applications, the sheriff shall conduct an investigation including a nationwide criminal background check consisting of ~~checking~~ inquiries of the National Instant Criminal Background Check System, ~~and~~ the West Virginia criminal history record responses and the National Interstate Identification Index and shall review the information received in order to verify that the information required in subsection (a) of this section is true and correct.

(c) Sixty dollars of the application fee and any fees for replacement of lost or stolen licenses received by the sheriff shall be deposited by the sheriff into a Concealed Weapons License Administration Fund. The fund shall be administered by the sheriff and shall take the form of an interest-bearing account with any interest earned to be compounded to the fund. Any funds deposited in this Concealed Weapon License Administration Fund are to be expended by the sheriff to pay for the costs associated with issuing concealed weapons

licenses. Any surplus in the fund on hand at the end of each fiscal year may be expended for other law-enforcement purposes or operating needs of the sheriff's office, as the sheriff may consider appropriate.

(d) All persons applying for a license must complete a training course in handling and firing a handgun. The successful completion of any of the following courses fulfills this training requirement:

(1) Any official National Rifle Association handgun safety or training course;

(2) Any handgun safety or training course or class available to the general public offered by an official law-enforcement organization, community college, junior college, college or private or public institution or organization or handgun training school utilizing instructors duly certified by the institution;

(3) Any handgun training or safety course or class conducted by a handgun instructor certified as such by the state or by the National Rifle Association;

(4) Any handgun training or safety course or class conducted by any branch of the United States Military, Reserve or National Guard or proof of other handgun qualification received while serving in any branch of the United States Military, Reserve or National Guard.

Current members of the United States Military, Reserve or National Guard or persons with an honorable discharge from any branch of the United States Military who apply, after the effective date of the amendments to this section enacted during the 2013 regular session of the Legislature, for a license under this section are exempt from the payment of any fees required by this section, but are subject to the remaining licensing requirements of this section.

A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization or group that conducted or taught said course or class attesting to the

successful completion of the course or class by the applicant or a copy of any document which shows successful completion of the course or class shall constitute evidence of qualification under this section.

(e) All concealed weapons license applications must be notarized by a notary public duly licensed under article four, chapter twenty-nine of this code. Falsification of any portion of the application constitutes false swearing and is punishable under the provisions of section two, article five, chapter sixty-one of this code.

(f) The sheriff shall issue a license unless he or she determines that the application is incomplete, that it contains statements that are materially false or incorrect or that applicant otherwise does not meet the requirements set forth in this section. The sheriff shall issue, reissue or deny the license within forty-five days after the application is filed if all required background checks authorized by this section are completed.

(g) Before any approved license shall be issued or become effective, the applicant shall pay to the sheriff a fee in the amount of $25 which the sheriff shall forward to the Superintendent of the West Virginia State Police within thirty days of receipt. The license shall be valid for five years throughout the state, unless sooner revoked.

(h) Each license shall contain the full name and address of the licensee and a space upon which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign and attach his or her seal to all license cards. The sheriff shall provide to each new licensee a duplicate license card, in size similar to other state identification cards and licenses, suitable for carrying in a wallet, and the license card is considered a license for the purposes of this section.

(i) The Superintendent of the West Virginia State Police shall prepare uniform applications for licenses and license cards showing that the license has been granted and shall do any other act required to be done to protect the state and see to the enforcement of this section.

(j) If an application is denied, the specific reasons for the denial shall be stated by the sheriff denying the application. Any person denied a license may file, in the circuit court of the county in which the application was made, a petition seeking review of the denial. The petition shall be filed within thirty days of the denial. The court shall then determine whether the applicant is entitled to the issuance of a license under the criteria set forth in this section. The applicant may be represented by counsel, but in no case may the court be required to appoint counsel for an applicant. The final order of the court shall include the court's findings of fact and conclusions of law. If the final order upholds the denial, the applicant may file an appeal in accordance with the Rules of Appellate Procedure of the Supreme Court of Appeals.

(k) If a license is lost or destroyed, the person to whom the license was issued may obtain a duplicate or substitute license for a fee of $5 by filing a notarized statement with the sheriff indicating that the license has been lost or destroyed.

(l) Whenever any person after applying for and receiving a concealed handgun license moves from the address named in the application to another county within the state, the license remains valid for the remainder of the five years: *Provided,* That the licensee within twenty days thereafter notifies the sheriff in the new county of residence in writing of the old and new addresses.

(m) The sheriff shall, immediately after the license is granted as aforesaid, furnish the Superintendent of the West Virginia State Police a certified copy of the approved application. The sheriff shall furnish to the Superintendent of the West Virginia State Police at any time so requested a certified list of all licenses issued in the county. The Superintendent of the West Virginia State Police shall maintain a registry of all persons who have been issued concealed weapons licenses.

(n) Except when subject to an exception under section six, article seven of this chapter, all licensees must carry with them a state-issued

photo identification card with the concealed weapons license whenever the licensee is carrying a concealed weapon. Any licensee who, in violation of this subsection, fails to have in his or her possession a state-issued photo identification card and a current concealed weapons license while carrying a concealed weapon is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 or more than $200 for each offense.

(o) The sheriff shall deny any application or revoke any existing license upon determination that any of the licensing application requirements established in this section have been violated by the licensee.

(p) A person who is engaged in the receipt, review or in the issuance or revocation of a concealed weapon license does not incur any civil liability as the result of the lawful performance of his or her duties under this article.

(q) Notwithstanding the provisions of subsection (a) of this section, with respect to application by a former law-enforcement officer honorably retired from agencies governed by article fourteen, chapter seven of this code; article fourteen, chapter eight of this code; article two, chapter fifteen of this code; and article seven, chapter twenty of this code, an honorably retired officer is exempt from payment of fees and costs as otherwise required by this section. All other application and background check requirements set forth in this shall be applicable to these applicants.

(r) Except as restricted or prohibited by the provisions of this article or as otherwise prohibited by law, the issuance of a concealed weapon permit issued in accordance with the provisions of this section authorizes the holder of the permit to carry a concealed pistol or revolver on the lands or waters of this state.

§61-7-7. Persons prohibited from possessing firearms; classifications; reinstatement of rights to possess; offenses; penalties.

(a) Except as provided in this section, no person shall possess a firearm, as such is defined in section two of this article, who:

(1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Is habitually addicted to alcohol;

(3) Is an unlawful user of or habitually addicted to any controlled substance;

(4) Has been adjudicated ~~as a mental defective~~ to be mentally incompetent or who has been involuntarily committed to a mental institution pursuant to the provisions of chapter twenty-seven of this code or in similar law of another jurisdiction: *Provided*, That once an individual has been adjudicated as a mental defective or involuntarily committed to a mental institution, he or she shall be duly notified that they are to immediately surrender any firearms in their ownership or possession: *Provided, however*, That the mental hygiene commissioner or circuit judge shall first make a determination of the appropriate public or private individual or entity to act as conservator for the surrendered property;

(5) Is an alien illegally or unlawfully in the United States;

(6) Has been discharged from the armed forces under dishonorable conditions;

(7) Is subject to a domestic violence protective order that:

(A) Was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate;

(B) Restrains such person from harassing, stalking or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(8) Has been convicted of a misdemeanor offense of assault or battery either under the provisions of section twenty-eight, article two of this chapter or the provisions of subsection (b) or (c), section nine of said article or a federal or state statute with the same essential elements in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or has been convicted in any court of any jurisdiction of a comparable misdemeanor crime of domestic violence.

Any person who violates the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000 or confined in the county jail for not less than ninety days nor more than one year, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, any person:

(1) Who has been convicted in this state or any other jurisdiction of a felony crime of violence against the person of another or of a felony sexual offense; or

(2) Who has been convicted in this state or any other jurisdiction of a felony controlled substance offense involving a Schedule I controlled substance other than marijuana, a Schedule II or a Schedule III controlled substance as such are defined in sections two hundred four, two hundred five and two hundred six, article two, chapter sixty-a of this code and who possesses a firearm as such is defined in section two of this article shall be guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not more than five years or fined not more than $5,000, or both. The provisions of subsection (c) of this section shall not apply to persons convicted of offenses referred to in this subsection or to persons convicted of a violation of this subsection.

(c) Any person prohibited from possessing a firearm by the provisions of subsection (a) of this section may petition the circuit court of the county in which he or she resides to regain the ability to possess a firearm and if the court finds by clear and convincing evidence that the person is competent and capable of exercising the responsibility concomitant with the possession of a firearm, the court may enter an order allowing the person to possess a firearm if such possession would not violate any federal law: *Provided*, That a person prohibited from possessing a firearm by the provisions of subdivision (4), subsection (a) of this section may petition to regain the ability to possess a firearm in accordance with the provisions of section five, article seven-a of this chapter.

(d) Any person who has been convicted of an offense which disqualifies him or her from possessing a firearm by virtue of a criminal conviction whose conviction was expunged or set aside or who subsequent thereto receives an unconditional pardon for said offense shall not be prohibited from possessing a firearm by the provisions of the section."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2471 - "A Bill to amend and reenact §15-5-6 and §15-5-19a of the Code of West Virginia, 1931, as amended, all relating to possession of firearms and ammunition during a declared state of emergency; prohibiting the restriction of lawful possession of a firearm or ammunition during a declared state of emergency; clarifying right to seize or confiscate lawfully possessed firearms or ammunition during a declared state of emergency; providing exceptions; providing a cause of action for the return of the firearms or ammunition; and establishing jurisdiction for actions."

On motion of Delegate Boggs, the House of Delegates refused to concur in the Senate amendments and requested the Senate to recede therefrom.

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

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. 2992, Eliminating duplicative reporting requirements imposed on distributors of imported cigarettes.

A message from the Senate, by

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

Com. Sub. for H. B. 3003, Facilitating compliance with the Tobacco Master Settlement Agreement.

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. 3159, Granting exceptions from certain compulsory attendance statutes to the Monroe and Nicholas County school systems.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

Com. Sub. for S. C. R. 37 - "Requesting the Division of Highways to name the bridge over Lost River on Corridor H near Wardensville, Hardy County, West Virginia, bridge number 16-55/20-24.56, the 'Army 1SG Boyd "Doc" Slater Memorial Bridge'."

WHEREAS, Boyd "Doc" Slater was born on August 1, 1930, in Winchester, Virginia, the son of the late Golda Wilkins Slater; and

WHEREAS, Boyd "Doc" Slater was raised in Mathias, Hardy County, and attended Hardy County public schools; and

WHEREAS, Boyd "Doc" Slater married Betty Funkhouser in Wardensville on June 8, 1955; and

WHEREAS, Boyd "Doc" Slater was a 21-year veteran of the U. S. Army, serving primarily with airborne units, flying on helicopters and working on them as a flight engineer and flight mechanic; and

WHEREAS, Boyd "Doc" Slater served two tours of duty in Korea and two tours of duty in Vietnam, and he was awarded two Bronze Stars and numerous other service medals, ribbons, citations and commendations during his distinguished 21-year career; and

WHEREAS, Boyd "Doc" Slater attained the rank of First Sergeant before retiring from the Army in 1969; and

WHEREAS, Boyd "Doc" Slater returned home to Hardy County and began a second career with the Division of Highways, putting the

mechanical and maintenance skills he had learned in the Army to good use on behalf of the State of West Virginia; and

WHEREAS, Boyd "Doc" Slater rose to the position of Assistant County Superintendent before retiring from the Division of Highways in 1987; and

WHEREAS, Boyd "Doc" Slater was active in veterans' affairs and was a member of VFW Post 2102 in Wardensville and American Legion Post 64 in Moorefield; and

WHEREAS, Sadly, Boyd "Doc" Slater passed away on April 28, 2011, at the age of eighty, leaving behind a wonderful legacy of service to his country and state, and having earned the love and respect of all who knew him; and

WHEREAS, Boyd "Doc" Slater is survived by his loving wife of fifty-five years, Betty Slater of Wardensville; three daughters, Charlotte Bowman of Wardensville, Carmen Sager of Mathias and Kathy McDaniel of Hedgesville; two grandchildren, Jennifer Sundstrom and Heather Bowman; and two great grandchildren, Elaina Bowman and Graham Sundstrom; and

WHEREAS, It is only fitting and proper that this bridge on Corridor H near Wardensville be named for Boyd "Doc" Slater, that we may honor his outstanding military service on behalf of a grateful nation, his dedicated service to the State of West Virginia and his many good works for the people of Hardy County; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name the bridge over Lost River on Corridor H near Wardensville, Hardy County, West Virginia, bridge number 16-55/20-24.56, the "Army 1SG Boyd 'Doc' Slater Memorial Bridge"; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "Army 1SG Boyd 'Doc' Slater Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Secretary of the Department of Transportation and to Betty Slater, Charlotte Bowman, Carmen Sager and Kathy McDaniel.

LEAVES OF ABSENCE

At the request of Delegate Boggs, and by unanimous consent, leave of absence for the day was granted Delegate J. Nelson.

At 5:35 P.M., the House of Delegates adjourned until 11:00 A.M., Thursday, April 11, 2013.

THURSDAY, APRIL 11, 2013

FIFTY-EIGHTH DAY

[MR. SPEAKER, MR. THOMPSON, IN THE CHAIR]

The House of Delegates met at 11:00 A.M., and was called to order by the Honorable Rick Thompson, Speaker.

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

The Clerk proceeded to read the Journal of Wednesday, April 10, 2013, being the first order of business, when the further reading thereof was dispensed with and the same approved.

COMMITTEE REPORTS

Mr. Speaker, Mr. Thompson, from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

H. C. R. 140, Recognizing July 16 as "Atomic Veterans Day of Remembrance" in West Virginia,

S. C. R. 10, Requesting DOH name bridge in Lincoln County "Shelton Topping Bridge",

S. C. R. 15, Requesting DOH name Logan County Route 5/12 "Army Private First Class Troy Franklin Tomblin Memorial Highway",

S. C. R. 20, Requesting DOH name portion of State Route 80 in McDowell County "Army PFC Phill G. McDonald Memorial Highway",

S. C. R. 29, Requesting DOH name bridge number 20-64-54.37 "Army Cpl. Kenneth R. Hess Bridge",

S. C. R. 30, Requesting DOH name bridge in Wyoming County "Army SP4 Jackie (Hearn) McMillion Memorial Bridge",

And,

S. C. R. 32, Requesting DOH name bridge in Monongalia County "U. S. Army and Air National Guard Col. Garry L. Bowers-Ices Ferry Bridge",

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

Delegate Miley, 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. 533, Modifying definitions of "domestic battery" and "domestic assault",

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

Delegate Miley, 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. 521, Creating amnesty program for certain drivers with suspended or revoked licenses,

And,

Com. Sub. for S. B. 565, Creating reverse auction pilot program for purchasing office supplies,

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

MESSAGES FROM THE EXECUTIVE

Mr. Speaker, Mr. Thompson, presented a communication from His Excellency, the Governor, advising that on April 10, 2013, he approved **H. B. 2487, H. B. 2784, H. B. 3013 and Com. Sub. for S. B. 359**.

MESSAGES FROM THE SENATE

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with a title amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2815, Clarifying and modifying the process of appointing and terminating guardians for minors.

On motion of Delegate Boggs, the bill was taken up for immediate consideration.

The following Senate title amendment was reported by the Clerk:

On page one, by amending the title to read as follows:

Com. Sub. for H. B. 2815 - "A Bill to amend and reenact §44-10-3 of the Code of West Virginia, 1931, as amended, relating generally to clarifying and modifying the process of appointing and terminating guardians for minors; authorizing concurrent jurisdiction of circuit and family courts for appointment of guardian for a minor; providing venue for petition for appointment; providing proceedings to be conducted in accordance with the Rules of Practice and Procedure for Minor Guardianship Proceedings; providing process for appointment of guardian; setting forth when the circuit clerk is to notify the court of the filing of a petition and when the court is to hold a hearing; setting forth what the court is to consider in appointing a guardian; providing for the appointment of a temporary guardian;

providing for the termination or revocation of the guardianship appointment; and providing for the confidentiality of a guardian proceeding."

On motion of Delegate Boggs, the House of Delegates concurred in the Senate title amendment.

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken **(Roll No. 243)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2815) passed.

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

A message from the Senate, by
The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

S. C. R. 62 - "Urging the United States Army Corps of Engineers and Federal Highways Administration to respect state land use planning processes in carrying out their duties under the National Environmental Policy Act and Clean Water Act and to reject any proposed alternatives which fail to give full effect to state land use planning decisions and urging the United States Environmental Protection Agency to cease its interference with achievement of the goals of state land use planning."

WHEREAS, The Constitution of the United States of America establishes a system of dual sovereignty in which certain powers and authority are assigned to the federal government and certain powers and authority are reserved to state governments; and

WHEREAS, The Constitution reserves power and authority over land use planning to state and local governments; and

WHEREAS, Congress, in the first section of the federal Clean Water Act, makes it clear that "[i]t is the policy of the Congress to recognize, preserve and protect the primary responsibilities of States . . . to plan the development and use (including restoration, preservation and enhancement) of land and water resources. . . .", 33 U. S. C. §1251(b); and

WHEREAS, Historically, the economies of the coalfield counties of West Virginia have lacked the diversification necessary to sustain them following the extraction of the readily mineable coal in these counties, primarily due to a lack of developable land; and

WHEREAS, The Legislature recognized the unique ability of the mining industry to address this issue by creating developable land as a post-mine land use. Therefore, it has established a land use planning process calling for Land Use Master Plans to be developed at the county level, subject to standards established by the Office of Coalfield Community Development, to plan for post-coal mining economic development in these areas; and

WHEREAS, It was the intent of the Legislature that counties emulate in their land use planning processes the model developed by the Mingo County Redevelopment Authority under the direction of former executive director, the late Mike Whitt; and

WHEREAS, In 2002, the Mingo County Redevelopment Authority hired an engineering company to develop a Land Use Master Plan. The authority entered into a collective agreement with a mining

contractor to construct a utilities corridor, whereby the following year the West Virginia Department of Transportation signed a contract with the contractor for construction of the I-73/I-74 King Coal Highway, Red Jacket Section, and the Federal Highway Administration authorized funds for the project; and

WHEREAS, In 2004, Mike Whitt and the Mingo County Redevelopment Authority were awarded the EPA's Region 3 Phoenix Award, an award that recognizes individuals and groups who are working to solve the critical environmental challenge of transforming abandoned industrial areas into productive new uses. The most notable of new uses are development of the Mingo County Wood Products and Industrial Park; development of the Belo Industrial Park; development of Mingo County Fish Hatchery; construction of the new Mingo Central High School; construction of the Air Transportation Park; and construction of the Coal-To-Liquids Plant; as well as future housing subdivisions, commercial developments and recreation areas such as the Twisted Gun Golf Course; and

WHEREAS, These plans were developed by the Mingo County Redevelopment Authority through public meetings and public hearings and were eventually approved by the Mingo County commission; and

WHEREAS, The Mingo County Land Use Master Plan envisions that the land on the top of Buffalo Mountain and vicinity in Mingo County be utilized for construction of the four-lane I-73/I-74 King Coal Highway along with hundreds of acres of flat land alongside it for economic development; and

WHEREAS, Senator Robert Byrd secured $3 million for infrastructure development for the corridor construction and secured an additional $3.2 million in 2008; and

WHEREAS, The West Virginia Department of Environmental Protection (DEP) has approved a surface mine permit for Consol of Kentucky which authorizes Consol of Kentucky to mine Buffalo

Mountain and vicinity and requires it to provide the road bed for a five-mile segment of the King Coal Highway, along with hundreds of acres of developable land alongside it, all at no cost to the state or the federal government; and

WHEREAS, The construction of the I-73/I-74 Corridor from Taylorsville to Gilbert Creek, approximately eleven miles, includes infrastructure improvements and planned development, utilizing each valuable section of property for a "greater and better use" as defined in the Clean Water Act of 1972; and

WHEREAS, The post-mine land use approved by the Department of Environmental Protection for Buffalo Mountain and vicinity fully comports with the Mingo County Land Use Master Plan and will save the federal and state governments over $110 million in highway construction costs and will provide Mingo County the opportunity to achieve a diversified post-coal economy, all as intended by the Legislature; and

WHEREAS, The Army Corps of Engineers is considering the application of Consol of Kentucky for the permit Consol needs under Section 404 of the federal Clean Water Act in order to accomplish its mining and approved post-mine land use in accordance with the Mingo County Land Use Master Plan; and

WHEREAS, Incident to the Corps' Section 404 permitting, it is participating with the Federal Highways Administration in development of a Supplemental Environmental Impact Statement under the National Environmental Policy Act for the highway alignment on Buffalo Mountain, economic development, mining and other ancillary activities; and

WHEREAS, The United States Environmental Protection Agency (EPA) is advocating that the Federal Highways Administration and the Corps consider its alternative design for the mine and highway road bed, which would eliminate all of the flat land for economic

development along the highway, disregarding and contradicting the Mingo County Land Use Master Plan and the whole purpose behind the land use planning policy established for this sovereign state by the Legislature; and

WHEREAS, The Federal Highways Administration and the Corps are accepting comments on their Draft Supplemental Environmental Impact Statement through May 22, 2013; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby urges the United States Army Corps of Engineers and Federal Highways Administration to respect state land use planning processes in carrying out their duties under the National Environmental Policy Act and Clean Water Act and to reject any proposed alternatives which fail to give full effect to state land use planning decisions and urges the United States Environmental Protection Agency to cease its interference with achievement of the goals of state land use planning; and, be it

Further Resolved, That the West Virginia Legislature declares that the post-mine land use approved by the Department of Environmental Protection for Buffalo Mountain to be in accordance with the Mingo County Land Use Master Plan and the state's policy for land use planning; and, be it

Further Resolved, That the Legislature strongly believes the alternative design advocated by the United States EPA: (1) Violates the Mingo County Land Use Master Plan and the state's policy for land use planning; (2) cannot be considered to be a legitimate alternative to the design approved by the DEP; and (3) must be rejected by the Army Corps of Engineers and Federal Highways Administration; and, be it

Further Resolved, That the Legislature requests that the United States EPA respect the state's land use planning processes and cease its interference in the state's attempts to achieve the goals of these processes in this case and in all others; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Governor of West Virginia for inclusion, along with any remarks he cares to provide as to the comments of the State of West Virginia on this matter, to the Army Corps of Engineers, Federal Highways Administration, United States EPA, Council on Environmental Quality and such other persons as he sees fit.

RESOLUTIONS INTRODUCED

Delegates Paxton, Guthrie, Wells, P. Smith, Poore, Walker, Moore, Craig, Caputo, D. Poling, Boggs, Hunt, Morgan, Perry and Swartzmiller offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 144 - "Requesting that the Division of Highways name bridge number 27-15-6.53, currently known as Old Town Bridge on County Route 15 (Sandhill Rd.) near Pt. Pleasant, Mason County, West Virginia the 'Quentin H. Wickline Memorial Bridge'."

WHEREAS, Quentin H. Wickline was born on July 4, 1918, a proud patriot; and

WHEREAS, Quentin H. Wickline was one of the first in his town to enlist in the U.S. Navy when World War II broke out and served a tour of duty in Japan before returning to West Virginia and going to work for the railroad; and

WHEREAS, Quentin H. Wickline was drafted into the U.S. Army during the Korean War and spent over a year in Korea, achieving the rank of Sargent, before returning once again to West Virginia where he got a job with Appalachian Power; and

WHEREAS, Quentin H. Wickline volunteered in his community as a baseball and softball coach, a member of the PTA, American Legion, VFW and SAR; and

WHEREAS, Quentin H. Wickline was instrumental in starting the clothes closet and food bank at Pt. Pleasant Presbyterian Church, where he volunteered once a week for many years; and

WHEREAS, Quentin H. Wickline was an active volunteer at Pleasant Valley Hospital and the Pt. Pleasant Senior Center, where he served on the Board of Directors, and even volunteered for a time at the V.A. Hospital in Huntington, where he was receiving cancer treatments; and

WHEREAS, It is fitting and proper to honor the tireless work of Quentin H. Wickline on behalf of his fellow veterans, church and community by dedicating a bridge in his honor; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is requested to name bridge number 27-15-6.53, currently known as Old Town Bridge on County Route 15 (Sandhill Rd.) near Pt. Pleasant, Mason County, West Virginia the "Quentin H. Wickline Memorial Bridge"; and, be it

Further Resolved, That the Division of Highways is requested to have made and be placed signs identifying the bridge as the "Quentin H. Wickline Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a certified copy of this resolution to the Secretary of the Department of Transportation and to the family of Quentin H. Wickline.

Delegates Manypenny, Ambler, Anderson, Andes, Arvon, Ashley, Azinger, Barill, Border, Campbell, Caputo, Cooper, Craig, Diserio, Eldridge, Ellington, A. Evans, Faircloth, Ferns, Fleischauer, Folk, Gearheart, Guthrie, Hamilton, Hamrick, Hartman, Iaquinta, Jones, Lawrence, Lynch, Marshall, Miller, Moye, Pasdon, Paxton, Perdue, Perry, L. Phillips, D. Poling, Poore, Raines, Reynolds, Romine, Rowan, Skaff, R. Smith, Sobonya, Sponaugle, Staggers, Storch,

Stowers, Sumner, Swartzmiller, Walker, Westfall, Williams and Young offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 145 - "Requesting the Joint Committee on Government and Finance to study how West Virginia can fully fund the West Virginia Veterinarian's Tuition Contract Program."

WHEREAS, With rising tuition and financial cuts to the West Virginia Higher Education Policy Commission budget on the horizon, a wider gap is being created between funding for this program and the necessary funds to send West Virginia students out of state to study veterinary medicine since West Virginia lacks a veterinary school; and

WHEREAS, While Kentucky is similar to West Virginia in many different aspects, Kentucky has almost twice as many student candidates that are funded as West Virginia; and

WHEREAS, Currently, there are thirteen designated slots each year for West Virginia students wishing to pursue an education in veterinarian medicine at the following partner institutions; Auburn University (two students), Mississippi State University (five students), and Virginia-Maryland Regional College of Veterinary Medicine (six students); and

WHEREAS, The program promises the guaranteed seats to West Virginia students while also lowering their tuition rates at the partnering schools to instate values; and

WHEREAS, The support per student for the 2013-2014 year is $26,600; and

WHEREAS, According to the Governor's anticipated seven and one-half percent decrease from the current budget, this would leave a $263,000 deficit for the program for the 2013-2014 school year, $158,000 from the seven and one-half percent decrease in the current

budget and $108,000 increase in Southern Regional Education Board fees; and

WHEREAS, This study should consider increasing the number of students funded while also meeting the ongoing increases in tuition; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study how West Virginia can fully fund the West Virginia Veterinarian's Tuition Contract Program; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature, no later than the first day of the regular session, 2014, on its findings, conclusions, and recommendations, if any, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Delegates Fleischauer, Barill, Barrett, Butler, Caputo, Eldridge, Ellington, Faircloth, Ferns, Guthrie, Lynch, Manypenny, Marshall, Paxton, Perdue, D. Poling, Romine, Rowan, Storch, Swartzmiller, Walker and Williams offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 146 - "Requesting the Joint Committee on Government and Finance to study the need for regulations of anesthesia for surgery performed in physicians' and dentists' offices in order to eliminate preventable office-based surgery-patient injury and death."

WHEREAS, Under current West Virginia law, the Board of Medicine and Board of Osteopathy have no regulations for

office-based surgery or office-based safety standards of care for physicians' offices where procedures are performed with moderate sedation/analgesia, deep sedation/analgesia or general anesthesia; and

WHEREAS, Doses needed to control pain during surgery may significantly decrease the patient's respiratory rate, obstruct the patient's airway, or even stop the patient's breathing altogether; and

WHEREAS, Due to the levels of anesthesia being on a continuum, patients can easily slip into a deeper than intended level of sedation; and

WHEREAS, Physicians who intend to induce moderate sedation/analgesia must be prepared to rescue the patient from deeper than intended levels of anesthesia; and

WHEREAS, There is a need for research on the need for office-based surgery standards of care, registration requirements, inspection for compliance requirements, registration and inspection fees for procedures with anesthesia; and

WHEREAS, The West Virginia Board of Dental Examiners has extensive state laws and regulations for anesthesia to govern dentists' offices and their staff and may have expertise to share regarding the need for regulation as well as what has worked and what has not worked; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study considering the adoption of regulations of anesthesia for surgery performed in physicians' offices in order to eliminate preventable office-based surgery-patient injury and death and to further review the standards governing surgery with anesthesia performed in dentists' offices; and, be it

Further Resolved, That this study will review physicians' and dentists' offices where procedures are performed; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature, no later than the first day of the regular session, 2014, on its findings, conclusions, and recommendations, if any, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Delegates Fleischauer, Ambler, Arvon, Ashley, Barill, Barrett, Butler, Cadle, Canterbury, Caputo, Cooper, Craig, Eldridge, Ellington, A. Evans, D. Evans, Faircloth, Ferns, Gearheart, Guthrie, Hamrick, Hartman, Iaquinta, Lynch, Manypenny, Marshall, Moye, Pasdon, Paxton, Perdue, L. Phillips, D. Poling, Poore, Raines, Reynolds, Romine, Rowan, Skinner, R. Smith, Sponaugle, Staggers, Storch, Stowers and Walker offered the following resolution, which was read by its title and referred to the Committee on Rules:

Com. Sub. for H. C. R. 147 - "Requesting the Joint Committee on Government and Finance to authorize a study to consider a sentencing revision for DUI with death cases."

WHEREAS, Under current West Virginia law, DUI with death can be considered a felony or a misdemeanor; and

WHEREAS, A DUI with death case will be considered a misdemeanor if the driver can not be proven to have been driving with reckless disregard for the safety of others; and

WHEREAS, A DUI with death case will be considered a felony if the driver is driving with reckless disregard for the safety of others; and

WHEREAS, Currently, a person's blood alcohol content (BAC) is not a major consideration when determining whether a DUI with death case is a misdemeanor or a felony; and

WHEREAS, A person guilty of a felony DUI with death, shall be imprisoned for two to ten years and shall be fined from $1,000 to $3,000; and

WHEREAS, A person guilty of a misdemeanor DUI with death, shall be confined in jail from 90 days to one year and shall be fined from $500 to $1,000; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to authorize a study to see if the laws concerning DUI with death cases should be revised, including the elements of the crimes and appropriate sentences; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature, no later than the first day of the regular session, 2014, on its findings, conclusions and recommendations, if any, together with drafts of any legislation to effectuate its recommendations; and, be it

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

Delegates Craig, Hamilton, Pino, Ireland and Ellem offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 150 - "Requesting that the Joint Committee on Government and Finance conduct a study in regard to whether crossbow hunting should be authorized and, if authorized, when it should be permitted, and, if authorized, the requirements for the use of crossbows, and a study in regard to whether three hundred acres is necessary for a commercial shooting preserve for hunting birds, and, if not, what is the proper acreage for such a preserve, and a study in

regard to whether the spring season for hunting turkey gobblers should be the third Monday in April, and a study in regard to whether non-resident landowners should continue to pay for licenses to hunt, trap or fish on their own property."

WHEREAS, Legislation to authorize crossbow hunting for persons other than those who are disabled has been introduced in several legislative sessions; and

WHEREAS, There is concern about when crossbow hunting should be permitted, if authorized; and

WHEREAS, There is concern as to the requirements for the use of crossbows, if authorized, and

WHEREAS, Current code requires that a commercial shooting preserve must have a minimum of three hundred acres in one tract of land, and

WHEREAS, A commercial shooting preserve for bird hunting may have less acreage,

WHEREAS, The spring season for gobbler turkey commences, by regulation on the fourth Monday in April, and

WHEREAS, That makes the spring gobbler to be later in the spring, and

WHEREAS, Resident land owners may hunt, trap or fish on their property without a license, but non-resident land owners are required to purchase a license to hunt, trap or fish on their own property, therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study whether crossbow hunting should be authorized and,

if authorized, when it should be permitted, and, if authorized, the requirements for the use of crossbows; and, the Joint Committee on Government and Finance is hereby requested to study whether three hundred acres is necessary for a shooting preserve for hunting birds, and, if not, what is the proper acreage for such a preserve, and the Joint Committee on Government and Finance is hereby requested to study whether the spring season for hunting turkey gobblers should be the third Monday in April, and the Joint Committee on Government and Finance is hereby requested to study whether non-resident landowners should continue to pay for licenses to hunt, trap or fish on their own property; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature on the first day of the regular session, 2014, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

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

Mr. Speaker, Mr. Thompson, and Delegates Eldridge, Iaquinta, Ambler, Anderson, Andes, Armstead, Arvon, Ashley, Azinger, Barill, Barrett, Boggs, Border, Butler, Cadle, Campbell, Canterbury, Caputo, Cooper, Cowles, Craig, Diserio, Ellem, Ellington, Espinosa, A. Evans, D. Evans, Faircloth, Ferns, Ferro, Fleischauer, Folk, Fragale, Frich, Gearheart, Guthrie, Hamilton, Hamrick, Hartman, Householder, Howell, Hunt, Ireland, Jones, Kump, Lane, Lawrence, Longstreth, Lynch, Manchin, Manypenny, Marcum, Marshall, McCuskey, Miley, Miller, Moore, Morgan, Moye, E. Nelson, O'Neal, Overington, Pasdon, Paxton, Perdue, Perry, Pethtel, L. Phillips, R. Phillips, Pino, D. Poling, M. Poling, Poore, Raines, Reynolds, Romine, Rowan, Shott, Skaff, Skinner, P. Smith, R. Smith, Sobonya, Sponaugle, Staggers, Stephens, Storch, Stowers, Sumner, Swartzmiller, Tomblin, Walker, Walters, Wells, Westfall, White, Williams and Young offered the following resolution, which was read by the Clerk as follows:

H. R. 35 - "Recognizing the one hundredth year of the West Virginia Division of Highways."

WHEREAS, Prior to 1913, the West Virginia Legislature designated that all road work was under the direct authority of the county courts and the county road engineer; and

WHEREAS, In 1913, the West Virginia Legislature saw fit to create the State Road Bureau to oversee a coordinated roadway system to serve the citizens of this state; and

WHEREAS, The Federal Aid Road Act of 1916 provided federal aid to those states for the improvement of any road on which the United States mail is or may be transported; and

WHEREAS, The Federal Aid Road Act of 1916 required states to provide a match to receive federal funds, to establish a state highway department that shall oversee the maintenance of state highways; and

WHEREAS, The West Virginia Legislature replaced the State Road Bureau with the State Road Commission in 1917 and agreed to match federal funds and maintain all roads constructed with Federal-aid funds; and

WHEREAS, In 1920, the first bonds were issued under the Good Roads Amendment which provided up to $50 million for construction of roads to connect county seats in the state; and

WHEREAS, In 1921, the West Virginia Legislature dedicated motor vehicle license fees to a newly created State Road Fund; and

WHEREAS, In 1923, the West Virginia Legislature enacted the first gasoline tax of two cents per gallon dedicated to the State Road Fund for the repayment of highway bonds and for the repair, maintenance and reconstruction of roads and highways; and

WHEREAS, In 1933, the West Virginia Legislature passed an act to place practically all roads on the state road system and relieve the counties of their maintenance of roads; and

WHEREAS, Said act transferred 4,417 roads designated as the State's Primary System and 29,098 miles of roadways in a Secondary System; and

WHEREAS, In 1948, construction began on the state's first limited-access highway: US 119/WV 10 in Logan County; and

WHEREAS, In November 1954, the first high speed expressway was opened as a two-lane toll road from Charleston to Princeton and named the West Virginia Turnpike; and

WHEREAS, The Appalachian Regional Development Act was passed by Congress in 1965 to promote commerce in Appalachia with the development of a highway system; and

WHEREAS, The Federal-Aid Highway Act was passed in 1968 by Congress that established the National Bridge inspection standards as a result of the 1967 tragedy when forty-six souls lost their lives as a result of the collapse of the Silver Bridge in Point Pleasant; and

WHEREAS, The West Virginia Legislature renamed the State Road Commission to the Department of Highways; and

WHEREAS, The Department of Highways completed construction of the award winning New River Gorge Bridge on US 19 in Fayetteville creating the world's longest single-span steel arch bridge with a length of 3,030 feet and a 876 feet rise above the New River; and

WHEREAS, In 1988, the Department of Highways completed the final section of Interstate with the opening of Interstate 64 from Sam Black Church to Beckley and the 2,179 foot Glade Creek Bridge in Raleigh County; and

WHEREAS, In 1989, the West Virginia Legislature reorganized State Government creating a Department of Transportation and renaming the Department as the Division of Highways; and

WHEREAS, During the construction of the Interstate Highway System and the Appalachian Corridor System, the Division of Highways had over 10,000 employees and served as a major economic source for the State by employing thousands of construction workers, suppliers and manufacturers; and

WHEREAS, With the completion of the majority of major highways, the Division of Highways today oversees approximately 36,000 miles of highways with approximately 5,000 employees; and

WHEREAS, The Division of Highways is only one of four states charged with the massive task of maintaining most highways in the state; therefore, be it

Resolved by the House of Delegates:

That the House of Delegates hereby honor the West Virginia Division of Highways for 100 years of service in developing a safe statewide transportation system; and, be it

Further Resolved, That the House of Delegates invites all citizens of West Virginia to join in recognizing the West Virginia Division of Highways and its employees for 100 years of contributions to the State in providing a safe highway system; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a certified copy of this resolution to the West Virginia Division of Highways.

At the respective requests of Delegate Boggs, and by unanimous consent, reference of the resolution (H. R. 35) to a committee was dispensed with, and it was taken up for immediate consideration and adopted.

SPECIAL CALENDAR

UNFINISHED BUSINESS

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

S. C. R. 16, Requesting DOH name County Route 5/07 in Logan County "Army PFC James Edward Workman Memorial Road",

S. C. R. 17, Requesting DOH name bridge in Randolph County "Army Captain Bernard Francis Jones Memorial Bridge",

S. C. R. 19, Requesting DOH name bridge in Kanawha County "U. S. Army Sgt. Archie W. Searls Memorial Bridge",

S. C. R. 21, Requesting DOH name bridge in Logan County "Navy Lieutenant, Junior Grade, Edsel Carl Varney Memorial Bridge",

Com. Sub. for S. C. R. 22, Requesting DOH name bridge in Kanawha County "Joseph Albert 'Joey' King, Jr., Memorial Bridge",

S. C. R. 23, Requesting DOH name bridge in Wyoming County "Reverend Edward and Mary Mullins Memorial Bridge",

S. C. R. 24, Requesting DOH name portion of U. S. Route 60 in Kanawha County "Lou Tabit Highway",

H. C. R. 100, Requesting a study of Medical Amnesty and Good Samaritan policies in other states,

H. C. R. 101, Requesting a study on the legality and the potential consequences of the use of drones by public and private entities in the State,

H. C. R. 113, Requesting a study on the need for and the constitutionality of a revenue surcharge designated for live adult entertainment establishments that serve alcohol,

H. C. R. 127, Requesting the Joint Committee on Government and Finance to study adult day care services in West Virginia,

H. C. R. 129, Requesting the Joint Committee on Government and Finance to study the deficiencies in home caregiver assistance for senior citizens,

H. C. R. 130, Requesting the Joint Committee on Government and Finance to study the feasibility of updating state laws that strengthen protections against elder abuse, exploitation and fraud,

H. C. R. 138, Requesting that the Joint Committee on Government and Finance authorize a study on state recognition of Native American Tribes,

And,

H. C. R. 139, Requesting a study for the potential for creating new jobs and improving our economy by increasing agribusiness in the state.

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

THIRD READING

S. B. 208, Making supplementary appropriation from State Fund, General Revenue, to Department of Commerce, Division of Labor, and DHHR, Division of Human Services; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken **(Roll No. 244)**, and there were—yeas 71, nays 28, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Armstead, Arvon, Border, Cadle, Canterbury, Cooper, Cowles, Espinosa, D. Evans, Faircloth, Folk, Gearheart, Hamrick, Householder, Howell, Ireland, Kump, Lane, McCuskey, O'Neal, Overington, Rowan, Shott, R. Smith, Sobonya, Storch, Sumner and Walters.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 208) passed.

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

On this question, the yeas and nays were taken **(Roll No. 245)**, and there were—yeas 73, nays 26, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Armstead, Arvon, Border, Butler, Cadle, Cooper, Cowles, Espinosa, D. Evans, Faircloth, Folk, Gearheart, Hamrick, Householder, Howell, Ireland, Kump, Lane, McCuskey, Overington, Rowan, Shott, R. Smith, Sumner, Walters and Westfall.

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 208) takes effect from its passage.

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

S. B. 214, Eliminating interview requirement for certain medical licensee applicants; 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. 246)**, and there were—yeas 92, nays 7, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Border, Cadle, Howell, McCuskey, Raines, Sobonya and Sumner.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 214) passed.

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

S. B. 214 - "A Bill to amend and reenact §30-3-10 of the Code of West Virginia, 1931, as amended, relating generally to requirements of applicants for a license to practice medicine and surgery or podiatry; eliminating the requirement for all licensure applicants to appear for a personal interview with the Board of Medicine in certain circumstances; and authorizing the board to require applicants, on a case-by-case basis, to appear for a personal interview or to produce original documents for review by the board."

Delegate Boggs moved that the bill take effect July 1, 2013.

On this question, the yeas and nays were taken **(Roll No. 247)**, and there were—yeas 90, nays 8, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Border, Cadle, Gearheart, Howell, McCuskey, Raines, Sobonya and Sumner.

ABSENT AND NOT VOTING: Eldridge and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 214) takes effect July 1, 2013.

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

Com. Sub. for S. B. 358, Relating to municipal policemen and firemen pensions: 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. 248)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 358) passed.

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

On this question, the yeas and nays were taken **(Roll No. 249)**, and there were—yeas 99, nays none, absent and not voting 1, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 358) takes effect from its passage.

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

S. B. 387, Relating to family court judge supervision of criminal background investigations; 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. 250)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 387) passed.

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

On this question, the yeas and nays were taken **(Roll No. 251)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 387) takes effect from its passage.

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

Com. Sub. for S. B. 435, Continuing Municipal Home Rule Pilot Program; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 252)**, and there were—yeas 95, nays 3, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Guthrie, Poore and Skinner.

ABSENT AND NOT VOTING: J. Nelson and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 435) passed.

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

Com. Sub. for S. B. 435 - "A Bill to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating to continuing the Municipal Home Rule Pilot Program; continuing the Municipal Home Rule Pilot Program; continuing the Municipal Home Rule Board; setting forth legislative findings; authorizing Class I, II, III and IV municipalities to participate in the program; clarifying the voting privileges of members of the Municipal Home Rule Board; clarifying

the powers and duties of the board; establishing written plan requirements for municipalities; establishing requirements for the adoption of ordinances; requiring public hearings; setting forth powers and duties of the participating municipalities; prohibiting certain acts by participating municipalities; providing the opportunity for participating municipalities to withdraw from the program; providing for amendments to the written plan; requiring a performance review of the pilot program; establishing reporting requirements; validating the continuance of certain ordinances passed by the municipalities participating in the pilot program; prohibiting municipalities participating in the pilot program from restricting the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any firearm, firearm accessory or accouterment, or any ammunition or ammunition component; providing limited exceptions to the firearms prohibition; and establishing a termination date of the pilot program."

Delegate Boggs moved that the bill take effect July 1, 2013.

On this question, the yeas and nays were taken (**Roll No. 253**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 435) takes effect July 1, 2013.

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

Com. Sub. for S. B. 440, Relating to disclosure of specified tax information for enforcement of Tobacco Master Settlement Agreement; 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. 254)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 440) passed.

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

On this question, the yeas and nays were taken **(Roll No. 255)**, and there were—yeas 99, nays none, absent and not voting 1, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 440) takes effect from its passage.

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

Com. Sub. for S. B. 445, Allowing Tax Commissioner divert lottery prizes to offset tax liabilities of lottery winners; 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. 256)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 445) passed.

Delegate Boggs moved that the bill take effect July 1, 2013.

On this question, the yeas and nays were taken **(Roll No. 257)**, and there were—yeas 99, nays none, absent and not voting 1, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 445) takes effect July 1, 2013.

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

S. B. 446, Conforming motor fuel taxes with International Fuel Tax Agreement; 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. 258)**, and there were—yeas 96, nays 3, absent and not voting 1, with the absent and not voting being as follows:

NAYS: Howell, R. Smith and Sobonya.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 446) passed.

Delegate Boggs moved that the bill take effect July 1, 2013.

On this question, the yeas and nays were taken **(Roll No. 259)**, and there were—yeas 97, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Howell and Sobonya.

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 446) takes effect July 1, 2013.

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

S. B. 462, Extending time for informal conferences on surface mining permit applications; 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. 260**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 462) passed.

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

Com. Sub. for S. B. 478, Redefining "video lottery games"; permitting wagering by historic resort hotel employees; 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. 261**), and there were—yeas 75, nays 24, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Anderson, Armstead, Arvon, Border, Butler, Cadle, Faircloth, Frich, Gearheart, Hamrick, Howell, Iaquinta, Kump, Lane, Moye, Overington, Pasdon, L. Phillips, Rowan, R. Smith, Sobonya, Sponaugle, Sumner and Walker.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 478) passed.

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

Com. Sub. for S. B. 478 - "A Bill to amend and reenact §29-22A-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §29-22B-332 of said code; and to amend and reenact §29-25-2 and §29-25-24 of said code, all relating to wagering at video lottery and gaming facilities; deleting those video lottery games that allow players an option to select replacement symbols or numbers or additional symbols or numbers after the game is initiated and in the course of play from the definition of 'video lottery game'; deleting prohibition against game themes commonly associated with casino gambling; and permitting certain employees of an historic resort hotel to wager at the gaming facility of that historic hotel."

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

On this question, the yeas and nays were taken **(Roll No. 262)**, and there were—yeas 79, nays 19, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Armstead, Arvon, Border, Butler, Cadle, Faircloth, Frich, Gearheart, Hamrick, Householder, Howell, Kump, Overington, Rowan, R. Smith, Sobonya, Sumner, Walters and Westfall.

ABSENT AND NOT VOTING: Ellem and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 478) 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.

S. B. 491, Relating to rental car license cost recovery fee; 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. 263)**, and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Skinner.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 491) passed.

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

S. B. 504, Relating to cooperative associations; 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. 264)**, and there were—yeas 99, nays none, absent and not voting 1, with the nays and absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 504) passed.

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

S. B. 524, Supplementing, amending, decreasing and increasing appropriations from State Road Fund to DOT; 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. 265)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 524) passed.

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

On this question, the yeas and nays were taken (**Roll No. 266**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 524) takes effect from its passage.

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

S. B. 526, Making supplementary appropriation of federal funds to DHHR, Division of Human Services-Temporary Assistance for Needy Families; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken **(Roll No. 267)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 526) passed.

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

On this question, the yeas and nays were taken **(Roll No. 268)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 526) takes effect from its passage.

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

Com. Sub. for S. B. 534, Correcting internal code reference regarding insurance information disclosure; 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. 269)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 534) passed.

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

On this question, the yeas and nays were taken **(Roll No. 270)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 534) takes effect from its passage.

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

Com. Sub. for S. B. 542, Relating to restricted races at pari-mutuel thoroughbred horse race tracks; 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. 271)**, and there were—yeas 95, nays 4, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Armstead, Kump, Sobonya and Sponaugle.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 542) passed.

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

Com. Sub. for S. B. 544, Scheduling departmental performance reviews; 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. 272)**, and there were—yeas 88, nays 11, absent

and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Arvon, Border, Cadle, Folk, Howell, Miller, Raines, R. Smith, Sobonya, Sumner and Westfall.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 544) passed.

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

Com. Sub. for S. B. 553, Relating to Highway Design-Build Program; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 273)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 553) passed.

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

On this question, the yeas and nays were taken **(Roll No. 274)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 553) takes effect from its passage.

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

Com. Sub. for S. B. 557, Continuing Preventive Care Pilot Program; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 275)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 557) passed.

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

Com. Sub. for S. B. 557 - "A Bill to amend and reenact §16-2J-3 of the Code of West Virginia, 1931, as amended, relating to authorizing continued operation of certain pilot programs after expiration date; adding a reporting requirement; and resetting expiration date."

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

On this question, the yeas and nays were taken **(Roll No. 276)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 557) 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.

S. B. 561, Establishing Tucker County Cultural District Authority; 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. 277)**, and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Kump.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 561) passed.

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

On this question, the yeas and nays were taken **(Roll No. 278)**, and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Kump.

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 561) takes effect from its passage.

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

S. B. 658, Extending time for Madison City Council to meet as levying body; 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. 279)**, and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Howell.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 658) passed.

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

On this question, the yeas and nays were taken **(Roll No. 280)**, and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Howell.

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 658) takes effect from its passage.

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

At 11:51 A.M., on motion of Delegate Boggs, the House of Delegates recessed until 1:30 P.M., and reconvened at that time.

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AFTERNOON SESSION

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SECOND READING

S. B. 65, Exempting PERS retirement income of DNR police officers from state income tax; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 82, Requiring rate-paying residential customer on public service board; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Government Organization, was reported by the Clerk and adopted, amending the bill as follows:

"That §16-13A-3 and §16-13A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

From and after the date of the adoption of the order creating any public service district, it is a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, or for furnishing storm water services for the city, town or other

municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district: *Provided,* That no contract shall extend beyond a maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders of any outstanding bonds issued by the municipalities for the public service properties.

The powers of each public service district shall be vested in and exercised by a public service board consisting of not less than three members who shall be persons residing within the district, who possess certain educational, business or work experience which will be conducive to operating a public service district. In the event the public service district is providing any utility service and billing rates and charges to its customers, at least one board member shall be a rate-paying residential customer of the public service district: *Provided,* That if an existing public service board does not have a member who is a rate-paying residential customer of the public service district on July 1, 2013, the next following appointment to the board shall be a rate-paying residential customer of that public service district. For purposes of this section, 'rate-paying residential customer' means a person who:

(1) In the case of a water or sewer public service district, is physically connected to and actively receiving residential public service district utility services; or

(2) In the case of a storm water public service district, has storm water conveyed away from the residential property by a utility owned system; and

(3) Has an active account in good standing and is the occupier of the residential property which is on the public service district utility service account.

Each board member shall, within six months of taking office, successfully complete the training program to be established and administered by the Public Service Commission in conjunction with the ~~Division~~ Department of Environmental Protection and the Bureau of Public Health. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the district nor shall a former board member be hired by the district in any capacity within a minimum of twelve months after board member's term has expired or such board member has resigned from the district board. The members shall be appointed in the following manner:

Each city, incorporated town or other municipal corporation having a population of more than three thousand but less than eighteen thousand is entitled to appoint one member of the board, and each city, incorporated town or other municipal corporation having a population in excess of eighteen thousand shall be entitled to appoint one additional member of the board for each additional eighteen thousand population. The members of the board representing such cities, incorporated towns or other municipal corporations shall be residents thereof and shall be appointed by a resolution of the governing bodies thereof and upon the filing of a certified copy or copies of the resolution or resolutions in the office of the clerk of the county commission which entered the order creating the district, the persons so appointed become members of the board without any further act or proceedings. If the number of members of the board so appointed by the governing bodies of cities, incorporated towns or other municipal corporations included in the district equals or exceeds three, then no further members shall be appointed to the board and the members so appointed are the board of the district except in cases of merger or consolidation where the number of board members may equal five.

If no city, incorporated town or other municipal corporation having a population of more than three thousand is included within the district, then the county commission which entered the order creating the district shall appoint three members of the board, who are persons

residing within the district and residing within the State of West Virginia, which three members become members of the board of the district without any further act or proceedings except in cases of merger or consolidation where the number of board members may equal five.

If the number of members of the board appointed by the governing bodies of cities, incorporated towns or other municipal corporations included within the district is less than three, then the county commission which entered the order creating the district shall appoint such additional member or members of the board, who are persons residing within the district, as is necessary to make the number of members of the board equal three except in cases of merger or consolidation where the number of board members may equal five, and the member or members appointed by the governing bodies of the cities, incorporated towns or other municipal corporations included within the district and the additional member or members appointed by the county commission as aforesaid, are the board of the district. A person may serve as a member of the board in one or more public service districts.

The population of any city, incorporated town or other municipal corporation, for the purpose of determining the number of members of the board, if any, to be appointed by the governing body or bodies thereof, is the population stated for such city, incorporated town or other municipal corporation in the last official federal census.

Notwithstanding any provision of this code to the contrary, whenever a district is consolidated or merged pursuant to section two of this article, the terms of office of the existing board members shall end on the effective date of the merger or consolidation. The county commission shall appoint a new board according to rules promulgated by the Public Service Commission. Whenever districts are consolidated or merged no provision of this code prohibits the expansion of membership on the new board to five.

The respective terms of office of the members of the first board shall be fixed by the county commission and shall be as equally divided as may be, that is approximately one third of the members for a term of two years, a like number for a term of four years, the term of the remaining member or members for six years, from the first day of the month during which the appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county commission which entered the order creating the district as soon as practicable after the appointments and shall qualify by taking an oath of office: *Provided,* That any member or members of the board may be removed from their respective office as provided in section three-a of this article.

Any vacancy shall be filled for the unexpired term within thirty days; otherwise successor members of the board shall be appointed for terms of six years and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed. The district shall provide to the Public Service Commission, within thirty days of the appointment, the following information: The new board member's name, home address, home and office phone numbers, date of appointment, length of term, who the new member replaces and if the new appointee has previously served on the board. The Public Service Commission shall notify each new board member of the legal obligation to attend training as prescribed in this section.

The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after January 1 of each year by selecting one of its members to serve as chair and by appointing a secretary and a treasurer who need not be members of the board. The secretary shall keep a record of all proceedings of the board which shall be available for inspection as other public records. Duplicate records shall be filed with the county commission and shall include the minutes of all board meetings. The treasurer is lawful custodian of all funds of the public service district and shall pay same

out on orders authorized or approved by the board. The secretary and treasurer shall perform other duties appertaining to the affairs of the district and shall receive salaries as shall be prescribed by the board. The treasurer shall furnish bond in an amount to be fixed by the board for the use and benefit of the district.

The members of the board, and the chair, secretary and treasurer thereof, shall make available to the county commission, at all times, all of its books and records pertaining to the district's operation, finances and affairs, for inspection and audit. The board shall meet at least monthly.

§16-13A-4. Board chairman; members' compensation; procedure; district name.

(a) The chairman shall preside at all meetings of the board and may vote as any other member of the board. If the chairman is absent from any meeting, the remaining members may select a temporary chairman and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organization meeting.

(b) Salaries of the board members are:

(1) For districts with fewer than six hundred customers, up to ~~$75~~ $100 per attendance at regular monthly meetings and ~~$50~~ $75 per attendance at additional special meetings, total salary not to exceed ~~$1,500~~ $2,000 per annum;

(2) For districts with six hundred customers or more but fewer than two thousand customers, up to ~~$100~~ $125 per attendance at regular monthly meetings and ~~$75~~ $100 per attendance at additional special meetings, total salary not to exceed ~~$2,500~~ $3,250 per annum;

(3) For districts with two thousand customers or more, but fewer than four thousand customers, up to ~~$125~~ $150 per attendance at

regular monthly meetings and ~~$75~~ $100 per attendance at additional special meetings, total salary not to exceed ~~$3,750~~ $4,500 per annum; and

(4) For districts with four thousand or more customers, up to ~~$150~~ $200 per attendance at regular monthly meetings and ~~$100~~ $150 per attendance at additional special meetings, total salary not to exceed ~~$5,400~~ $6,400 per annum.

The public service district shall certify the number of customers served to the Public Service Commission ~~beginning~~ on July 1 ~~1986, and continue~~ of each fiscal year. ~~thereafter.~~

(c) Public service districts selling water to other water utilities for resale or public service districts which provide sewer treatment for other sewer utilities may adopt the following salaries for its board members:

(1) For districts with annual revenues of less than $50,000, up to ~~$75~~ $100 per attendance at regular monthly meetings and ~~$50~~ $75 per attendance at additional special meetings, total salary not to exceed ~~$1,500~~ $2,000 per annum;

(2) For districts with annual revenues of $50,000 or more, but less than $250,000, up to ~~$100~~ $125 per attendance at regular monthly meetings and ~~$75~~ $100 per attendance at special meetings, total salary not to exceed ~~$2,500~~ $3,250 per annum;

(3) For districts with annual revenues of $250,000 or more, but less than $500,000, up to ~~$125~~ $150 per attendance at regular monthly meetings and ~~$75~~ $100 per attendance at additional special meetings, total salary not to exceed ~~$3,750~~ $4,500 per annum; and

(4) For districts with annual revenues of $500,000 or more, up to ~~$150~~ $200 per attendance at regular monthly meetings and ~~$100~~ $150 per attendance at additional special meetings, total salary not to exceed ~~$5,400~~ $6,400 per annum.

The public service district shall certify the number of customers served and its annual revenue to the Public Service Commission ~~beginning~~ on July 1 ~~2000, and continue~~ of each fiscal year. ~~thereafter.~~

(d) Board members may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as provided ~~for~~ by the rules of the board. Notwithstanding any other provision of this code to the contrary, board members are not eligible for salary payment or reimbursement for expenses incurred prior to the public service district initiating service to its first customer. Salary and reimbursement for expenses may be incurred only at meetings occurring after the public service district initiated service to customers.

(e) The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings may be called. Public notice of meetings shall be given in accordance with section three, article nine-a, chapter six of this code. Emergency meetings may be called as provided ~~for~~ by ~~said~~ that section. A majority of the members constituting the board also constitute a quorum to do business.

(f) The members of the board are not personally liable or responsible for any obligations of the district or the board, but are answerable only for willful misconduct in the performance of their duties. The county commission which created a district or county commissions if more than one created the district may, upon written request of the district, adopt an order changing the official name of a public service district: *Provided,* That ~~such~~ the name change will not be effective until approved by the Public Service Commission of West Virginia and the owners of any bonds and notes issued by the district, if any, shall have consented, in writing, to the name change. If a district includes territory located in more than one county, the county commission or county commissions changing the name of the district shall provide any county commission into which the district also extends with a certified copy of the order changing the name of the district. The official name of any district created under the provisions

of this article may contain the name or names of any city, incorporated town or other municipal corporation included therein or the name of any county or counties in which it is located."

The bill was then ordered to third reading.

S. B. 194, Repealing code relating to Medicaid program contract procedure; on second reading, coming up in regular order, was read a second time.

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

"That §9-2-9b of the Code of West Virginia, as amended, be repealed; and to amend and reenact §9-2-6 of said code, all to read as follows:

§9-2-6. Powers of secretary.

Within limits of state appropriations and federal grants and subject to provisions of state and federal laws and regulations, the secretary, in addition to all other powers, duties and responsibilities granted and assigned to that office in this chapter and elsewhere by law, is authorized ~~and empowered~~ to:

(1) Promulgate, amend, revise and rescind department rules respecting the organization and government of the department and the execution and administration of those powers, duties and responsibilities granted and assigned by this chapter and elsewhere by law to the department and the secretary.

(2) Promulgate, amend, revise and rescind department rules and regulations respecting qualifications for receiving the different classes of welfare assistance consistent with or permitted by federal laws, rules and policies, but not inconsistent with state law: *Provided,* That ~~such~~

rules and policies respecting qualifications shall permit the expenditure of state funds to pay for care rendered in any birthing center licensed under the provisions of article two-e, chapter sixteen of this code by a licensed nurse midwife or midwife as this occupation is defined in section one, article fifteen, chapter thirty of this code and which care is within the scope of duties for such licensed nurse midwife or midwife as permitted by the provisions of section seven of said article.

(3) Obtain by purchase or lease ~~such~~ grounds, buildings, office or other space, equipment, facilities and services as may be necessary for the execution and administration of those powers, duties and responsibilities granted and assigned by this chapter and elsewhere by law to the department and the secretary.

(4) Sign and execute in the name of the state by the State Department of Health and Human Resources any contract or agreement with the federal government or its agencies, other states, political subdivisions of this state, corporations, associations, partnerships or individuals: *Provided,* That the provisions of article three, chapter five-a are followed.

(5) Sign and execute a contract to implement professional health care, managed care, actuarial and health care-related monitoring, quality review/utilization, claims processing and independent professional consultant contracts for the Medicaid program: *Provided,* That the provisions of article three, chapter five-a are followed: *Provided, however,* That a contract awarded under the agency purchasing process from April 1, 2009 to January 2, 2013 remains in full force and effect and the secretary sole retains authority to review, approve and issue changes to contracts issued under the former purchasing process, and is responsible for challenges, disputes, protests, and legal actions related to such contracts.

~~(5)~~ (6) Establish such special funds as may be required by the federal Social Security Act, as amended, or by any other Act or Acts of Congress, in order for this state to take full advantage of the benefits

and provisions thereof relating to the federal-state assistance and federal assistance programs administered by the department and to make payments into and disbursements out of any such special fund or funds in accordance with the requirements of the federal Social Security Act, as amended, or any other Act or Acts of Congress, and in accordance with applicable state law and the objects and purposes of this chapter. In addition, the State Department of Health and Human Resources, through the secretary, is hereby authorized to accept any and all gifts or grants, whether in money, land, services or materials, which gift or gifts, if in the form of moneys, shall be placed in a separate fund and expended solely for the purpose of public assistance programs. No part of this special fund shall revert to the General Revenue Funds of this state. No expenses incurred pursuant to this special fund shall be a charge against the General Funds of this state.

~~(6)~~ (7) Establish within the department an Office of Inspector General for the purpose of conducting and supervising investigations and for the purpose of providing quality control for the programs of the department. The Office of Inspector General shall be headed by the Inspector General who shall report directly to the secretary. Neither the secretary nor any employee of the department may prevent, inhibit or prohibit the Inspector General or his or her employees from initiating, carrying out or completing any investigation, quality control review or other activity oversight of public integrity by the Office of the Inspector General. The secretary shall place within the Office of Inspector General any function he or she deems necessary. Qualification, compensation and personnel practice relating to the employees of the Office of the Inspector General, including that of the position of Inspector General, shall be governed by the classified service provisions of article six, chapter twenty-nine of this code and rules promulgated thereunder. The Inspector General shall supervise all personnel of the Office of Inspector General.

~~(7)~~ (8) Provide at department expense a program of continuing professional, technical and specialized instruction for the personnel of the department.

~~(8)~~ (9) Pay from available funds all or part of the reasonable expenses incurred by a person newly employed by the department in moving his household furniture, effects and immediate family from his or her place of residence in this state to his or her place of employment in this state; and to pay from available funds all or part of the reasonable expenses incurred by a department employee in moving his or her household furniture, effects and immediate family as a result of a reassignment of the employee which is considered desirable, advantageous to and in the best interests of the state, but no part of the moving expenses of any one such employee shall be paid more frequently than once in twelve months or for any movement other than from one place of employment in this state to another place of employment in this state.

~~(9)~~ (10) Establish a program to provide reimbursement to employees of the department whose items of personal property, as defined by the department by policy, are damaged during the course of employment or other work-related activity as a result of aggressive behavior by a client or patient receiving services from the department: *Provided,* That such reimbursement is limited to a maximum amount of $250.00 per claim.

~~(10)~~ (11) Establish and maintain such institutions as are necessary for the temporary care, maintenance and training of children and other persons.

~~(11)~~ (12) Prepare and submit state plans which will meet the requirements of federal laws, rules governing federal-state assistance and federal assistance and which are not inconsistent with state law.

~~(12)~~ (13) Organize within the department a Board of Review, consisting of a Chairman appointed by the secretary and as many assistants or employees of the department as may be determined by the secretary and as may be required by federal laws and rules respecting state assistance, federal-state assistance and federal assistance, such Board of Review to have such powers of a review nature and such

additional powers as may be granted to it by the secretary and as may be required by federal laws and rules respecting federal-state assistance and federal assistance.

~~(13)~~ (14) Provide by rules ~~such~~ review and appeal procedures within the Department of Health and Human Resources as may be required by applicable federal laws and rules respecting state assistance, federal-state assistance and federal assistance and as will provide applicants for, and recipients of all, classes of welfare assistance an opportunity to be heard by the board of Review, a member thereof, or individuals designated by the board, upon claims involving denial, reduction, closure, delay or other action or inaction pertaining to public assistance.

~~(14)~~ (15) Provide by rules, consistent with requirements of applicable federal laws and rules, application forms and application procedures for the various classes of public assistance.

~~(15)~~ (16) Provide locations for making applications for the various classes of public assistance.

~~(16)~~ (17) Provide a citizen or group of citizens an opportunity to file objections and to be heard upon objections to the grant of any class of public assistance.

~~(17)~~ (18) Delegate to the personnel of the department all powers and duties vested in the secretary, except the power and authority to sign contracts and agreements.

~~(18)~~ (19) Make such reports in such form and containing such information as may be required by applicable federal laws and rules respecting federal-state assistance and federal assistance.

~~(19)~~ (20) Invoke any legal, equitable or special remedies for the enforcement of the provisions of this chapter."

The bill was then ordered to third reading.

Com. Sub. for S. B. 195, Removing tax rate expiration date on eligible acute care hospitals; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 200, Relating to Eyewitness Identification Act; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page fourteen, section three, line four, by striking out the word "section" and inserting in lieu thereof, the word "article".

The bill was then ordered to third reading.

Com. Sub. for S. B. 202, Creating WV Spay Neuter Assistance Program and Fund; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page three, section two, line three, following the words "Assistance Fund", by striking out the period and inserting the words "and administered by the Commissioner of Agriculture", followed by a period.

The bill was then ordered to third reading.

Com. Sub. for S. B. 243, Authorizing DEP promulgate legislative rules; on second reading, coming up in regular order, was read a second time.

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

"ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Department of Environmental Protection.

(a) The legislative rule filed in the State Register on August 30, 2012, authorized under the authority of section twenty-nine, article fifteen-a, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 13, 2012, relating to the Department of Environmental Protection (covered electronic devices recycling, 33 CSR 12), is authorized with the following amendment:

On page two, paragraph 4.1.b.1., by striking out all of paragraph 4.1.b.1. and inserting in lieu thereof a new paragraph 4.1.b.1., to read as follows:

4.1.b.1. Within one year after the effective date of this rule, receiving, storage, operations and shipping areas must be under a roof or in an enclosed area sufficient to prevent stormwater contamination.

(b) The legislative rule filed in the State Register on August 24, 2012, authorized under the authority of section seventeen, article eighteen, chapter twenty-two of this code, relating to the Department of Environmental Protection (hazardous waste administrative proceedings and civil penalty assessment, 33 CSR 27), is authorized.

(c) The legislative rule filed in the State Register on September 4, 2012, authorized under the authority of section six, article six-a, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on February 14, 2013, relating to the Department of Environmental Protection (horizontal well development, 35 CSR 8), is authorized with the following amendments:

On page two, after subsection 2.12., by inserting a new subsection 2.13. to read as follows:

2.13. "Health care professional" means a physician, physician assistant, nurse practitioner, registered nurse, or emergency medical technician licensed by the State of West Virginia.

And renumbering the remaining subsections;

And,

On page ten, Section 5.6.e., line 1 and 2, by deleting the sentence that reads, "A copy of the approved Water Management Plan shall be available upon request." and inserting in lieu there of the following:

"A copy of the approved Water Management Plan shall be maintained on site at the water withdraw location(s) and available for inspection upon request by employees and agents of he State and the general public."

And,

On page ten, subsection 5.7.a, line 5, following the words "is sought," by inserting the words "the MSDS Sheet, and"

And,

On page ten, subsection 5.7.1, line 12, following the words "emergency services." by inserting the following:

"The operator shall also provide the Well Site Safety Plan to the surface owner and any water purveyor or surface owner subject to notice and water testing as provided in subsection 15 of this rule.

And,

On page nineteen, Section 9.1.b.2, line 3, following the words "will be utilized" by striking out the period and inserting a comma and the following:

"and the telephone number for the Department of Environmental Protection."

And,

On page twenty-four, by striking out all of subsection 10.1. and inserting in lieu thereof a new subsection 10.1. to read as follows:

10.1. Well Records Made During Permitted Work - The well operator or its contractor (service provider, drilling contractor or other contractor, as appropriate) shall keep at the well location a copy of the application as permitted, including the associated plat and plans required by section 5 of this rule. The well operator or its contractor (service provider, drilling contractor or other contractor, as appropriate) shall also make and preserve at the well location accurate records of all well work performed pursuant to the permit, including documentation by the contractor or person performing the cementing services of the time of completion of cementing and the volume of cement used for the cementing of all casing operations. The records shall be complete enough to support, as applicable, the entries of well work done and related data on Form WR-35, "Well Operator's Report of Well Work", Form WR-36, "Well Operator's Report of Initial Gas-Oil Ratio Test", and Form WR-38, "Affidavit of Plugging and Filling Well", but these forms shall reflect information discovered or changes made after the permitted well work has been finished and before the reports are filed. The records made and preserved at the well location and the recordings made on Form WR-35 shall include, but not be limited to, indications of caverns, open mines or other voids, whether the freshwater casing cement circulated to the surface, and the efforts made to fill the annular space and the results. Unless the records of well work performed are prepared by the well operator or owner, a copy of all the records shall be delivered to the well owner or operator, except for those records the contractor (service provider, drilling contractor or other contractor, as appropriate) designates as a confidential trade secret.

10.1.a. As part of the well completion report (Form WR-35), the operator or its service provider shall list all the additives used in the hydraulic fracturing or stimulation process, including each additive's specific trade name, supplier, and purpose. The operator or its service provider shall also list each chemical of each additive intentionally added to a base fluid for the purpose of preparing a fracturing fluid, along with each chemical's CAS registry number, if applicable, its maximum concentration in the additive, and its maximum concentration as added to the base fluid, and the volume of the base fluid used. The concentrations shall be expressed as a mass percent. The operator or service provider may designate the information regarding the specific identity or concentration or both of a chemical as a confidential trade secret not to be disclosed to the agency or anyone else except in the event of an investigation by the office, medical emergency, or for diagnostic or treatment purposes involving the designated chemical, pursuant to subdivisions 10.1.d. and 10.1.e. below.

10.1.b. The operator or service provider shall fulfill the additive reporting requirement of subdivision 10.1.a. above by submitting the information to the office and the FracFocus Chemical Disclosure Registry.

10.1.c. As part of the well completion report (Form WR-35), the operator shall report the volumes of fluids pumped and treatment pressures recorded throughout the hydraulic fracturing process.

10.1.d. In the event of an investigation by the office involving a chemical designated as a confidential trade secret, the operator or service provider shall provide the specific identity of the chemical, the concentration of the chemical, or both the specific identity and concentration of the chemical, as needed, to the agency upon receipt of notification from the chief or his or her designee stating that such information is necessary in connection with an investigation by the office. Upon receipt of such notification of need, such information shall be disclosed by the operator or service provider, as applicable,

directly to the chief or his or her designee and shall in no way be construed as publicly available. The chief or designee may disclose information regarding the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical claimed to be a confidential trade secret to additional agency staff members to the extent that such disclosure is necessary to allow the agency staff member receiving the information to assist in such an investigation by the office, provided that such individuals shall not disseminate the information further and such information shall at all times be considered confidential and shall not be construed as publicly available. Upon request by the operator or service provider, and where a notification of need is provided orally, the chief shall execute a written statement of need indicating that the information was necessary in connection with an investigation by the office.

10.1.e. In the event of a medical emergency or for purposes of diagnosis of a patient who has been exposed, or may have been exposed, to a chemical used at a well drilling operation, the operator or service provider shall provide the contents of the chemicals used at the well site. A health care professional shall only use the information provided by the operator or service provider for diagnosis or treatment of an individual, and the operator or service provider may provide notice to the health care professional at the time of release of information, that the information provided is solely for diagnosis or treatment of the individual, that the information may be a trade secret, and that disclosure to others for any other purpose may subject that health care professional or the other persons so disclosed, to legal action by the operator or service provider for violation the operator or service provider's trade secret."

And,

On page thirty, by striking out all of subsection 13.5."

(d) The legislative rule filed in the State Register on August 15, 2012, authorized under the authority of section four, article five,

chapter twenty-two of this code, relating to the Department of Environmental Protection (permits for construction and major modification of major stationary sources for the prevention of significant deterioration of air quality, 45 CSR 14), is authorized.

(e) The legislative rule filed in the State Register on August 14, 2012, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (standards of performance for new stationary sources, 45 CSR 16), is authorized.

(f) The legislative rule filed in the State Register on August 15, 2012, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (control of air pollution from combustion of solid waste, 45 CSR 18), is authorized.

(g) The legislative rule filed in the State Register on August 15, 2012, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (control of air pollution from hazardous waste treatment, storage or disposal facilities, 45 CSR 25), is authorized.

(h) The legislative rule filed in the State Register on August 15, 2012, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (requirements for operating permits, 45 CSR 30), is authorized.

(i) The legislative rule filed in the State Register on August 15, 2012, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (emission standards for hazardous air pollutants, 45 CSR 34), is authorized.

(j) The legislative rule filed in the State Register on August 30, 2012, authorized under the authority of section ten, article eleven, chapter twenty-two of this code, relating to the Department of Environmental Protection (water pollution control permit fee schedules, 47 CSR 26), is authorized.

(k) The legislative rule filed in the State Register on August 28, 2012, authorized under the authority of section four, article eleven, chapter twenty-two of this code, relating to the Department of Environmental Protection (WV/NPDES regulations for coal mining facilities, 47 CSR 30), is authorized."

On motion of Delegate Ireland, the Judiciary amendment was amended on page two, section 1, by striking out the words "A copy of the approved Water Management Plan shall be maintained on site at the water withdraw location(s) and available for inspection upon request by employees and agents of he State and the general public" and insert in lieu thereof the words "Signage shall be posted at each water withdraw site that provides how to obtain the Water Management Plan, the phone number of the company conducting the withdraw, the office's web site name and phone number, and the permit number."

There being no further amendments, the amendment recommended by the Committee on the Judiciary, as amended, was then adopted.

The bill was then ordered to third reading.

Com. Sub. for S. B. 250, Authorizing Department of Commerce promulgate legislative rules; on second reading, coming up in regular order, was read a second time.

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

ARTICLE 10. AUTHORIZATION FOR OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.

§64-10-1. Development Office.

The legislative rule filed in the Office of the Secretary of State, authorized under the prior enactment of section twenty-a, article thirteen-a, chapter eleven of this code, relating to the Development Office (use of coalbed methane severance tax proceeds, 145 CSR 13), is repealed.

§64-10-2. Broadband Deployment Council.

The legislative rule filed in the State Register on August 10, 2012, authorized under the authority of section four, article fifteen-c, chapter thirty-one, of this code, modified by the Broadband Deployment Council to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 22, 2013, relating to the Broadband Deployment Council (broadband deployment grants programs, 208 CSR 1), is authorized.

§64-10-3. Board of Miners Training, Education and Certification.

The legislative rule filed in the State Register on August 22, 2012, authorized under the authority of section six, article seven, chapter twenty-two-a, of this code, modified by the Board of Miners Training, Education and Certification to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 17, 2012, relating to the Board of Miners Training, Education and Certification (standards for certification of coal mine electricians, 48 CSR 7), is authorized.

§64-10-4. Division of Natural Resources.

(a) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section seven, article one,

chapter twenty, of this code, relating to the Division of Natural Resources (special boating, 58 CSR 26), is authorized.

(b) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section twenty-three, article seven, chapter twenty, of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 18, 2012, relating to the Division of Natural Resources (special motorboating, 58 CSR 27), is authorized.

(c) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section seven, article one, chapter twenty, of this code, relating to the Division of Natural Resources (defining the terms used in all hunting and trapping rules, 58 CSR 46), is authorized.

(d) The legislative rule filed in the State Register on July 19, 2012, authorized under the authority of section seven, article one, chapter twenty, of this code, relating to the Division of Natural Resources (prohibitions when hunting and trapping, 58 CSR 47), is authorized.

(e) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section seven, article one, chapter twenty, of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 18, 2012, relating to the Division of Natural Resources (deer hunting, 58 CSR 50), is authorized.

(f) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section seven, article one, chapter twenty, of this code, relating to the Division of Natural Resources (general trapping, 58 CSR 53), is authorized.

(g) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section seven, article one,

chapter twenty, of this code, relating to the Division of Natural Resources (special waterfowl hunting, 58 CSR 58), is authorized.

(h) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section seven, article one, chapter twenty, of this code, relating to the Division of Natural Resources (special fishing, 58 CSR 61), is authorized.

(i) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section seven, article one, chapter twenty, of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 31, 2012, relating to the Division of Natural Resources (falconry, 58 CSR 65), is authorized with the following amendments:

On page one, subsection 2.8., after the word "Falconiformes", by inserting a comma and the words "the Order Accipitriformes";

On page one, after subsection 2.8., by inserting a new subsection 2.9. to read as follows:

"2.9. "Passage" means a first-year raptor that is no longer dependent upon parental care.";

On page three, by striking out all of subsection 4.5. and inserting in lieu thereof a new subsection 4.5. to read as follows:

"4.5. A permittee may use a falconry to take any bird species for which there is a depredation order in place in 50 CFR at any time in accordance with the conditions of the applicable depredation order. The permittee may not receive any compensation for depredation activities.";

On page four, subdivision 5.3.e., after the word "Falconiform" by inserting a comma and the word "Accipitriform";

On page six, subdivision 7.2.a., by striking out the word "Alymeri" and inserting in lieu thereof the word "Aylmeri";

On page eight, by striking out all of subsection 10.1. and inserting in lieu thereof a new subsection 10.1. to read as follows:

"10.1. A raptor taken, possessed, transported or used for falconry purposes shall be marked with: a seamless, numbered band issued by the Division for captive-bred birds or a U. S. Fish and Wildlife Service permanent, non-reusable numbered band issued by the Division for birds originating from the wild. An ISO (International Organization for Standardization)-compliant (134.2 kHz) microchip may be implanted in addition to the band.";

On page eight, by striking out all of subsection 10.3. and inserting in lieu thereof a new subsection 10.3. to read as follows:

"10.3. A permittee must report the loss or removal of any band within five (5) days by filing a Federal form 3-186A either electronically or in paper form. Lost bands must be replaced by a permanent, nonreusable numbered band supplied by the division. Upon remarking the raptor, the permittee shall immediately complete and submit a Federal form 3-186A either electronically or on paper reporting the new band.";

On page nine, by striking out all of subsection 10.6. and inserting in lieu thereof a new subsection 10.6. to read as follows:

"10.6. A permittee shall remove and surrender to the division any markers from an intentionally released raptor which is indigenous to the state. A standard Federal band may be attached to the birds at the discretion of the division prior to release.";

On page nine, subsection 11.1., by striking out the words "both the division and the U. S. Fish and Wildlife Service Regional Law-Enforcement office" and inserting in lieu thereof the words "the division";

And,

On page nine, by striking out all of subsection 11.3. and inserting in lieu thereof a new subsection 11.3. to read as follows:

"11.3. Resident General or Master Falconers may take from the wild any species of Falconiform, Accipitriform or Strigiform in West Virginia except: eagles; peregrine falcon (*Falco peregrines*); Northern harrier (*Circus cyaneus*); northern goshawk (*Accipiter gentilis*); American rough-legged hawk (*Buteo lagopus*); barn owl (*Tyto alba*); long-eared owl (*Asio otus*); short-eared owl (*Asio flammeus*); saw-whet owl (*Aegolius acadicus*); merlin (*Falco columbaris*) eyases; and sharp-shinned hawk (*Accipiter straitus*) eyases."

§64-10-5. Division of Labor.

(a) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section fifteen, article one-a, chapter forty-seven, of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 21, 2012, relating to the Division of Labor (bedding and upholstered furniture, 42 CSR 12), is authorized with the following amendment:

On page two, following subsection 3.6, by striking subsection 3.7 and renumbering the remaining subsections;

On page two, subsection 3.9, line two, following the word "manufacturing" and the comma, by striking the word "importing" and the comma;

On page three, subsection 5.1, line one, following the word "manufacturing" and the comma, by striking the word "importing" and the comma;

On page three, subsection 5.1, line three, following the word "manufacturer" and the comma, by striking the word "importer" and the comma;

On page three, subsection 6.1, line one, following the word "manufacturer" and the comma, by striking the word "importer" and the comma;

On page three, subsection 6.2, line one, following the word "manufacturer", by striking the words "or importer";

One page five, subsection 9.3, line one, following the word "manufacturer" and the comma, by striking the word "importer" and the comma;

On page five, subdivision 10.1.1, following the word "manufacturer", by striking the words "or importer";

On page ten, appendix C, line sixteen, by striking out the misspelled word "ADRESS" and inserting the in lieu thereof, the word "ADDRESS";

On page eleven, appendix D, line twenty, by striking out the misspelled word "ADRESS" and inserting the in lieu thereof, the word "ADDRESS";

On page fourteen, appendix G, line fourteen, by striking out the misspelled word "ADRESS" and inserting the in lieu thereof, the word "ADDRESS";

And,

On page fifteen, appendix H, line thirteen, by striking out the misspelled word "ADRESS" and inserting the in lieu thereof, the word "ADDRESS";.

(b) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section three, article ten, chapter twenty-one, of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 21, 2012, relating to the

Division of Labor (Amusement Rides and Amusement Attractions Safety Act, 42 CSR 17), is authorized with the following amendments:

On pages three and four, by re-designating subdivisions 4.1.1., 4.1.2., 4.1.3., 4.1.4., 4.1.5., 4.1.6., 4.1.7., 4.1.8., 4.1.9., 4.1.10. and 4.1.11., as 4.1.a., 4.1.b., 4.1.c., 4.1.d., 4.1.e., 4.1.f., 4.1.g., 4.1.h., 4.1.i., 4.1.j. and 4.1.k.;

On page seven, subdivision 9.2.b., line two, after the word "has", by striking out the word "of";

On page eight, subdivision 10.2.a., line two, after the word "has", by striking out the word "of";

On page eleven, subsection 17.4, line two, following the words "report of the", by inserting the word "serious";

On page eleven, subsection 17.5, line one, following the words "document the", by striking out the word "accident" and inserting in lieu thereof the words "serious injury or fatality";

On page eleven, subsection 18.1, line two, following the words "required by", by striking out the words "this section of the rule" and inserting in lieu thereof the words "sections 15 or 17 of this rule";

On page eleven, subsection 18.1, line three, following the word "cessation" and the comma, by striking out the words "imminent danger notification" and the comma;

On page twelve, subsection 19.4, line three, following the word "operation", by striking out the words "is prohibited" and inserting a colon;

On page twelve, by re-designating subdivisions 19.4.1 and 19.4.2 as 19.4.a. and 19.4.b.;

And,

On page twelve, by re-designating paragraphs 19.4.2.1., 19.4.2.2., 19.4.2.3., 19.4.2.4., 19.4.2.5., 19.4.2.6. as 19.4.b.1., 19.4.b.2., 19.4.b.3., 19.4.b.4., 19.4.b.5., 19.4.b.6.

(c) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section eleven, article three-c, chapter twenty-one, of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 21, 2012, relating to the Division of Labor (supervision of elevator mechanics and apprentices, 42 CSR 21A), is authorized, with the following amendments:

On page two, subsection 5.1., by un-striking the word "may" and striking out the word "shall";

On page two, subsection 5.2., by un-striking the word "may" and striking out the word "shall";

And,

On page six, subsection 9.2, line two, after the word "with", by striking out the word "the".

(d) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section three, article three-d, chapter twenty-one, of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 21, 2012, relating to the Division of Labor (Crane Operator Certification Act, 42 CSR 24), is authorized with the following amendments:

On page two, subsection 3.5, line four, following the word "November", by striking out "10" and inserting in lieu thereof "14".

(e) The legislative rule filed in the State Register on August 21, 2012, authorized under the authority of section three, article three-d, chapter twenty-one, of this code, relating to the Division of Labor

(Crane Operator Certification Act - practical examination, 42 CSR 25), is authorized with the following amendment:

On page two, subsection 3.5, line five, following the word "November", by striking out "10" and inserting in lieu thereof "14";

And,

On page three, line fifteen, after the stricken subdivision designation 4.5.d., by inserting the subdivision designation 4.4.d.."

The bill was then ordered to third reading.

Com. Sub. for S. B. 265, Authorizing DHHR promulgate legislative rules; on second reading, coming up in regular order, was read a second time.

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

"ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Bureau for Public Health.

(a) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section four, article one, chapter sixteen, of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 10, 2013, relating to the Department of Health and Human Resources (reportable diseases, events and conditions, 64 CSR 7), is authorized with the following amendments:

On page twenty-four, subsection 9.1., by striking out the words "the reporting" and inserting in lieu thereof the words "the access";

On page twenty-five, subsection 9.2., by striking out the words "be reported" and inserting in lieu thereof the words "be made available";

On page twenty-five, subsection 9.2., by striking out the words "the reporting" and inserting in lieu thereof the words "the access";

On page twenty-five, subsection 9.2., after the word "activities", by inserting the following: "consistent with the mission of the bureau. The responsibility for communication with healthcare facilities regarding data collection, data quality and completeness rests with the Office of Epidemiology and Prevention Services within the Bureau for Public Health";

And,

On page twenty-five, by striking out all of subsection 9.3. and renumbering the remaining subsection.

(b) The legislative rule filed in the State Register on June 29, 2012, authorized under the authority of section four, article one, chapter sixteen, of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 15, 2012, relating to the Department of Health and Human Resources (general sanitation, 64 CSR 18), is authorized with the following amendment:

On page three, subdivision 2.13, by removing the period and inserting the following words, "Bed and Breakfast Inn."

(c) The legislative rule filed in the State Register on August 27, 2012, authorized under the authority of section five, article seven, chapter sixteen, of this code, relating to the Department of Health and

Human Resources (Grade A pasturized milk, 64 CSR 34), is authorized with the following amendment:

On page four, subdivision 2.1.i.1, by striking out everything after the word "sold" and inserting in lieu thereof the following: "Unpasteurized milk produced in West Virginia may be sold, provided that said unpasteurized milk is conspicuously labeled as 'Unpasteurized Raw WV Milk'."

(d) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section one, article eleven, chapter sixteen, of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review committee and refiled in the State Register on January 10, 2013, relating to the Department of Health and Human Resources (fees for services, 64 CSR 51), is authorized with the following amendment:

On page eleven, subdivision 9.7, after the word "emergency", by inserting a period and removing the underscored words "or as a relevant factor associated with the provision of services and may include but is not limited to, supply shortages, federal or other funding restrictions of policy changes impacting the ability to provide services".

(e) The legislative rule filed in the State Register on October 11, 2012, authorized under the authority of section four, article one, chapter sixteen, of this code, relating to the Department of Health and Human Resources (regulation of opioid treatment programs, 64 CSR 90), is repealed.

(f) The legislative rule filed in the State Register on August 27, 2012, authorized under the authority of section four, article one, chapter sixteen, of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January

10, 2013, relating to the Department of Health and Human Resources (pulse oximetry newborn testing, 64 CSR 100), is authorized with the following amendment:

On page two, subdivision 5.3, by striking out the words "the closest" and inserting in lieu thereof the word "an".

§64-5-2. Department of Health and Human Resources.

(a) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section one, article eleven, chapter sixteen, of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on February 5, 2013, relating to the Department of Health and Human Resources (regulation of opioid treatment programs, 69 CSR 7), is authorized with the following amendment:

On page fourteen, by striking section 7.3 and inserting a new section 7.3 to read as follows:

"7.3. License Fees and Inspection Costs.

7.3.a. All applications for an initial or renewed license shall be accompanied by a non-refundable license fee in the amount required by this rule. The annual renewal fee is based upon the average daily total census of the program. In addition to the set fee, the annual renewal fee shall be adjusted on the first day of June of each year to correspond with increases in the consumer price index. The base amounts for initial and renewal fees are as follows:

7.3.a.1. Initial license fee - $250;

7.3.a.2. Renewal fee - fewer than 500 patients - $500 plus adjustment;

7.3.a.3. Renewal fee - 500 to 1,000 patients - $1,000 plus adjustment;

7.3.a.4. Renewal fee - more than 1,000 patients - $1,500 plus adjustment.

7.3.b. An opioid treatment program shall pay for the cost of the initial inspection made by the secretary prior to issuing a license. The cost of the initial inspection is $400, and shall be billed to the applicant by the secretary within five business days after the inspection. The cost of the initial inspection must be paid in full by the applicant before a license may be issued.

7.3c. The Office of Health Facility Licensure and Certification shall use the fee for increased oversight on opioid treatment programs.";

On page thirty-two, by inserting a new subdivision 18.3.j. to read as follows:

"18.3.j. There shall be one (1) counselor for every forty (40) clients in the program.";

On page fifty-three, by striking section 30.8 and inserting a new section 30.8 to read as follows:

"30.8. Each opioid treatment program must provide counseling on preventing exposure to, and the transmission of, human immunodeficiency virus (HIV) disease and Hepatitis C disease for each patient admitted or re-admitted to maintenance or detoxification treatment. Services rendered to patients with HIV disease shall comply with the requirements of section 44 of this rule.";

On page fifty-four, by striking subdivision 31.4.a and inserting a new subdivision 31.4.a to read as follows:

"31.4.a. Preventing exposure to, and the transmission of, HIV disease and Hepatitis C disease for each patient admitted or readmitted to maintenance or detoxification treatment; and";

On page fifty-six, by striking subdivision 32.2.a and inserting a new subdivision 32.2.a to read as follows:

"32.2.a. The initial post-admission assessment shall consist of a comprehensive medical evaluation, which shall include, but not be limited to:

32.2.a.1. A comprehensive physical evaluation;

32.2.a.2. A comprehensive psychiatric evaluation, including mental status examination and psychiatric history;

32.2.a.3. A personal and family medical history;

32.2.a.4. A comprehensive history of substance abuse, both personal and family;

32.2.a.5. A tuberculosis skin test and chest X-ray, if skin test is positive;

32.2.a.6. A screening test for syphilis;

32.2.a.7. A Hepatitis C test;

32.2.a.8. An HIV test; and

32.2.a.9. Other tests as necessary or appropriate (e.g., CBC, EKG, chest X-ray, pap smear, hepatitis B surface antigen and hepatitis B antibody testing).";

On page seventy, by striking section 37.14 and inserting a new section 37.14 to read as follows:

"37.14 The state authority may approve exceptional unsupervised-medication dosages, including alternative medications, on a case-by-case basis upon application for an exemption by the program physician. Any authorization for exceptions shall be consistent with guidelines and protocols of approved authorities, provided that the authority may

not grant any exceptions during a calendar month which exceed three (3) exceptions or ten (10) percent of the number of patients enrolled in the program on the last day of the previous month, whichever is greater.";

On page seventy-three, by inserting a new subdivision 38.14 to read as follows:

"38.14 Maintenance treatment shall be discontinued within two (2) continuous years after the treatment is begun unless, based upon the clinical judgement of the medical director or program physician and staff which shall be recorded in the client's record by the medical director or program physician, the client's status indicates that the treatment should be continued for a longer period of time because discontinuance from treatment would lead to a return to illicit opiate abuse or dependence.";

On page seventy-five, by striking subdivision 41.2.d.3 and inserting a new subdivision 41.2.d.3 to read as follows:

"41.2.d.3. When using urine as a screening mechanism, all patient drug testing shall be observed to minimize the chance of adulterating or substituting another individual's urine.";

And,

On page eighty-one, by striking subdivision 44.5.d.1. and inserting a new subdivision 44.5.d.1. to read as follows:

"44.5.d.1. Maintenance treatment dosage levels of pregnant clients shall be maintained at the lowest possible dosage level."

(b) The legislative rule filed in the State Register on January 7, 2013, authorized under the authority of section nine, article five-h, chapter sixteen, of this code, relating to the Department of Health and Human Resources (chronic pain management clinic licensure, 69 CSR 8), is authorized with the following amendments:

On page one, subsection 1.4, line eleven, following the number "2013.", by inserting the following words:

"This rule is effective upon the date specified in an emergency rule promulgated by the Department of Health and Human Resources as being the date funding for implementation of Chronic Pain Management Clinic Licensure will become available pursuant to a duly enacted appropriation bill authorizing the expenditure of funds for that purpose.";

On page four, subsection 3.1., by striking out all of subdivisions 3.1.a., 3.1.b., 3.1.c. and 3.1.d. and inserting in lieu thereof the following:

3.1.a. The primary component of the medical practice of the clinic, facility or office is treatment of chronic pain for non-malignant conditions;

3.1.b. More than fifty percent of patients in any one month of the prescribers are provided treatment for chronic pain for nonmalignant conditions and are prescribed, administered or dispensed tramadol, carisoprodol, opioid drug products or other Schedule II or Schedule III controlled substances for such diagnosis;

3.1.c. The calculation of more than fifty percent of patients will be calculated by dividing the number of unique patient encounters at the clinic, facility or office during any one month for a diagnosis of chronic nonmalignant pain and pursuant to such diagnosis of chronic nonmalignant pain were prescribed, administered or dispensed tramadol, carisoprodol, opioid drugs or other Scheduled II or Scheduled III controlled substances by the total number of all patient encounters at the clinic, facility or office during any month; and

3.1.d. Patients receiving tramadol, carisoprodol, opioid drug products or other Schedule II or Schedule III controlled substances for treatment of an injury or illness that lasts or is expected to last thirty

days or less shall not be included in the calculation of more than fifty percent of all patients." and renumbering the remaining subdivisions;

On page five, by inserting a new paragraph, 3.2.i.2., to read as follows:

"3.2.i.2. Medical practices, clinics or offices in which a physician treats an average of 20 or fewer patients a day during any month and with any diagnosis and, in which the physician holds a Competency Certification in Controlled Substances Management.";

And,

On page thirteen, subparagraph 6.5.b.2.B., after the words "Osteopathic Specialist;" by inserting the words "hold Competency Certification in Controlled Substances Management;".

(c) The legislative rule filed in the State Register on August 30, 2012, authorized under the authority of section four, article two-b, chapter forty-nine, of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 15, 2013, relating to the Department of Health and Human Resources (minimum licensing requirements for residential child care and treatment facilities for children and transitioning adults in West Virginia, 78 CSR 3), is authorized, with the following amendment:

On page fifty-two, paragraph 11.2.a.3., line five, by striking out the word "Training" and inserting the word "Certification".

§64-5-3. Health Care Authority.

The legislative rule filed in the State Register on May 14, 2012, authorized under the authority of section seven, article twenty-nine-g, chapter sixteen, of this code, modified by the Health Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on July 19, 2012, relating to the Health Care Authority to promulgate a legislative rule relating to (West Virginia Health Information Network, 65 CSR 28), is authorized.

§64-5-4. Bureau of Senior Services.

The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section fifteen, article five-p, chapter sixteen, of this code, modified by the Bureau of Senior Services to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on January 17, 2013, relating to the Bureau of Senior Services (in-home care worker registry, 76 CSR 2), is authorized with the following amendment:

On page two, subdivision 4.1(i), by striking out the word "training" and inserting the word "certification".

Delegate Lane moved to amend the amendment on page four, section one, following line one, by inserting the following:

"(f) The interpretative rule filed in the State Register on February 10, 2011, reciting therein that it is authorized under the authority of section nine, article sixteen, chapter five, sections four and five, article three, and section one, article four chapter sixteen of this code, relating to the Department of Health and Human Resources (immunizations requirements for new school enterers, 64 CSR95) is hereby determined by the Legislature to exceed the limits of the authority of the Department of Health and Human Resources to exercise rule making power to promulgate procedural or interpretative rules, and contains provisions that may only be promulgated as a legislative rule that is subject to the provisions of article three, chapter twenty-nine-a of this code and as such, has not been filed as a legislative rule and is therefore not authorized."

And,

By redesignating the remaining subdivision accordingly.

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

The yeas and nays having been ordered, they were taken **(Roll No. 281)**, and there were—yeas 47, nays 51, absent and not voting 2, with the yeas and absent and not voting being as follows:

YEAS: Ambler, Anderson, Andes, Armstead, Arvon, Ashley, Azinger, Border, Butler, Cadle, Canterbury, Cooper, Cowles, Ellem, Ellington, Espinosa, D. Evans, Faircloth, Ferns, Folk, Frich, Gearheart, Hamilton, Hamrick, Householder, Howell, Hunt, Ireland, Kump, Lane, Lawrence, Lynch, McCuskey, Miller, E. Nelson, O'Neal, Overington, Pasdon, Raines, Romine, Rowan, Shott, R. Smith, Sobonya, Storch, Sumner and Westfall.

ABSENT AND NOT VOTING: J. Nelson and Walters.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was not adopted.

The amendment, recommended by the Committee on the Judiciary, was then adopted.

The bill was then ordered to third reading.

Com. Sub. for S. B. 270, Authorizing Department of Revenue promulgate legislative rules; on second reading, coming up in regular order, was read a second time.

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

"ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Insurance Commissioner.

The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section five, article twenty-five-g,

chapter thirty-three, of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 18, 2012, relating to the Insurance Commissioner (provider sponsored networks, 114 CSR 43A), is authorized with the following amendments:

On page one, subsection 2.1., by striking out "ths" and inserting in lieu thereof the word "this";

And,

On page two, paragraph 4.3.b.1., after the words "financial statements" by adding the words "that reflect positive net worth".

§64-7-2. Athletic Commission.

The legislative rule filed in the State Register on August 27, 2012, authorized under the authority of section three-a, article five-a, chapter twenty-nine, of this code, modified by the Athletic Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 18, 2012, relating to the Athletic Commission (mixed martial arts, 177 CSR 2), is authorized with the following amendments:

On page four, section five, line one, after the number 2500, by inserting a period and striking out the remainder of the sentence;

On page four, section six, line four, by striking out the dollar amount $35,000 and inserting in lieu thereof, the dollar amount $10,000;

On page six, section eight, subsection 8.1, line five, by striking out the dollar amount $30,000 and inserting in lieu thereof, the dollar amount $20,000;

And,

On page six, section eight, subsection 8.2, line two, by striking out the dollar amount $30,000 and inserting in lieu thereof, the dollar amount $20,000.".

§64-7-3. Racing Commission.

(a) The legislative rule filed in the State Register on August 27, 2012, authorized under the authority of section six, article twenty-three, chapter nineteen, of this code, modified by the Racing Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 4, 2012, relating to the Racing Commission (thoroughbred racing, 178 CSR 1), is authorized with the following amendment:

On page thirty-seven, subdivision 24.1.i, by striking out the word "sixteen (16)" and inserting in lieu thereof the word "eighteen (18)".

(b) The legislative rule filed in the State Register on August 27, 2012, authorized under the authority of section six, article twenty-three, chapter nineteen, of this code, relating to the Racing Commission (greyhound racing, 178 CSR 2), is authorized.

(c) The legislative rule filed in the State Register on August 27, 2012, authorized under the authority of section six, article twenty-three, chapter nineteen, of this code, relating to the Racing Commission (pari-mutuel wagering, 178 CSR 5), is authorized.

§64-7-4. Lottery Commission.

The legislative rule filed in the State Register on August 10, 2012, authorized under the authority of section five, article twenty-two, chapter twenty-nine, of this code, modified by the Lottery Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 20, 2012, relating to the Lottery Commission (state lottery rules, 179 CSR 1), is authorized.

§64-7-5. State Tax Department.

The legislative rule filed in the State Register on August 30, 2012, authorized under the authority of section five, article one-c, chapter eleven, of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 6, 2012, relating to the State Tax Department (valuation of commercial and industrial real and personal property for ad valorem property tax purposes, 110 CSR 1P), is authorized, with the following amendments:

On page one, subsection 1.1, beginning on line ten, by striking out subsection 1.1 in its entirety and inserting in lieu thereof the following:

"1.1 Scope. – These regulations clarify and implement State law as it relates to the appraisal at market value of commercial and industrial real and personal property under W. Va. Code §11-10C-10. ~~Because these regulations provide context modifications of relevant parts of 110 C.S.R. 1 and such regulations with context modifications were adopted by the Tax Commissioner through inclusion in the valuation plan required by W. Va. Code §11-1C-10(c), W. Va. Code §11-1C-5(b) eliminated the requirement that this filing be subject to the proceeding requirements of W. Va. Code §29A-3-1 et seq.~~";

And,

On page two, subsection 2.14, line twenty-four, following the words "remaining in", by striking out the words "the landlord" and inserting in lieu thereof the word "one"."

On motion of Delegate Espinosa, the amendment was amended on page two, line twenty-four, by striking out the word "amendment" and inserting in lieu thereof the word "amendments" .

On page three, line one, immediately following the word "eighteen (18)" , by inserting "; and".

On page thirty-seven, subdivision 24.1.1, following the word "age", by inserting the following language: ": Provided, except that an occupational permit may be granted at sixteen (16) years of age for the children or grandchildren of licensed permit holders; licensed permit holders being defined for the purposes of this subdivision as owners, breeders, trainers and veterinarians".

The amendment, recommended by the Committee on the Judiciary, as amended, was then adopted.

The bill was then ordered to third reading.

Com. Sub. for S. B. 281, Authorizing Department of Transportation promulgate legislative rules; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 331, Permitting Courthouse Facilities Improvement Authority to issue bonds; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 355, Relating to final wage payment to discharged employees; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk, on page two, section four, lines fourteen and fifteen, by striking out the words "means a day on which state offices are open for regular business" and the period, and inserting in lieu thereof the words "means any day other that Saturday, Sunday or any legal holiday as set forth in section one, article two, chapter two of this code" and a period.

The amendment, recommended by the Committee on the Judiciary, was then adopted.

Delegate Storch moved to amend the amendment on page three, line twenty, immediately following the word "mail" and the period, by

striking out the remainder of the subsection; which motion did not prevail.

The bill was then ordered to third reading.

Com. Sub. for S. B. 369, Relating to concealed handgun license reciprocity; on second reading, coming up in regular order, was read a second time.

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

"ARTICLE 7. DANGEROUS WEAPONS.

§61-7-6. Exceptions as to prohibitions against carrying concealed handguns; exemptions from licensing fees.

(a) The licensure provisions set forth in this article do not apply to:

(1) Any person:

(A) Carrying a deadly weapon upon his or her own premises; ~~nor shall anything herein prevent a person from~~

(B) Carrying ~~any~~ a firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business; ~~nor shall anything herein prohibit a person~~ or

(C) ~~from~~ Possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site and returning to his or her home, residence or place of business;

(2) Any person who is a member of a properly organized target-shooting club authorized by law to obtain firearms by purchase

or requisition from this state or from the United States for the purpose of target practice from carrying any pistol, as defined in this article, unloaded, from his or her home, residence or place of business to a place of target practice and from any place of target practice back to his or her home, residence or place of business, for using any such weapon at a place of target practice in training and improving his or her skill in the use of the weapons;

(3) Any law-enforcement officer or law-enforcement official as defined in section one, article twenty-nine, chapter thirty of this code;

(4) Any employee of the West Virginia Division of Corrections duly appointed pursuant to the provisions of section ~~five~~ eleven-c, article ~~five~~ one, chapter twenty-five ~~twenty-eight of this code~~ while the employee is on duty;

(5) Any member of the armed forces of the United States or the militia of this state while the member is on duty;

~~(6) Any circuit judge, including any retired circuit judge designated senior status by the Supreme Court of Appeals of West Virginia, prosecuting attorney, assistant prosecuting attorney or a duly appointed investigator employed by a prosecuting attorney;~~

~~(7)~~(6) Any resident of another state who holds a valid permit or license to possess or carry a ~~concealed weapon~~ handgun issued by a state or a political subdivision ~~which has entered into a reciprocity agreement with this state,~~ subject to the provisions and limitations set forth in section six-a of this article;

~~(8)~~(7) Any federal law-enforcement officer or federal police officer authorized to carry a weapon in the performance of the officer's duty; ~~and~~

~~(9)~~(8) Any Hatfield-McCoy Regional Recreation Authority Ranger while the ranger is on duty; and

(9) Any parole officer appointed pursuant to section fourteen article twelve, chapter sixty-two of this code in the performance of their duties.

(b) On and after July 1, 2013, the following judicial officers and prosecutors and staff shall be exempted from paying any application fees or licensure fees required under this article. However, on and after that same date, they shall be required to make application and satisfy all licensure and handgun safety and training requirements set forth in section four of this article before carrying a concealed handgun in this state:

(1) Any justice of the Supreme Court of Appeals of West Virginia;

(2) Any circuit judge;

(3) Any retired justice or retired circuit judge designated senior status by the Supreme Court of Appeals of West Virginia;

(4) Any family court judge;

(5) Any magistrate;

(6) Any prosecuting attorney;

(7) Any assistant prosecuting attorney; or

(8) Any duly appointed investigator employed by a prosecuting attorney.

§61-7-6a. Reciprocity and recognition; out-of-state concealed handgun permits.

(a) A ~~holder of a~~ valid out-of-state permit or license to possess or carry a ~~concealed~~ handgun ~~as issued by another state with which the State of West Virginia has executed a reciprocity agreement shall be recognized as~~ is valid in this state for the carrying of a concealed handgun, if the following conditions are met:

(1) The permit or license holder is twenty-one years of age or older;

(2) The permit or license is in his or her immediate possession;

(3) The permit or license holder is not a resident of the State of West Virginia; and

(4) ~~The State of West Virginia has executed a valid and effective reciprocity agreement with the issuing state pertaining to the carrying and verification of concealed handgun licenses and permits issued in the respective states.~~ The Attorney General has been notified by the Governor of the other state that the other state allows residents of West Virginia who are licensed in West Virginia to carry a concealed handgun to carry a concealed handgun in that state or the Attorney General has entered into a written reciprocity agreement with the appropriate official of the other state whereby the state agrees to honor West Virginia concealed handgun licenses in return for same treatment in this state.

(b) A holder of a valid permit or license from another state who is authorized to carry a concealed handgun in this state pursuant to provisions of this section is subject to the same laws and restrictions with respect to carrying a concealed handgun as a resident of West Virginia who is so permitted, and must carry the concealed handgun in compliance with the laws of this state.

(c) A license or permit from another state is not valid in this state if the holder is or becomes prohibited by law from possessing a firearm.

(d) The West Virginia Attorney General shall seek to obtain recognition of West Virginia concealed handgun licenses and enter into and ~~may~~ execute reciprocity agreements on behalf of the State of West Virginia with states ~~which meet the following standards and requirements:~~

~~(1) The standards applied by the other state before issuing a concealed handgun license or permit must be similar to or greater than the standards imposed by this article;~~

~~(2) This state's law-enforcement officers have continuous access to databases on the criminal information network, 8twenty-four hours per day, seven days per week, to verify the continued validity of any license or permit to carry a concealed handgun that has been granted by the issuing state;~~

~~(3) The other state agrees to grant the right to carry a concealed handgun to residents of West Virginia who have valid concealed handgun permits issued pursuant to this article in their possession while carrying concealed weapons in that state; and~~

~~(4) The states agree to apprise one another of changes in permitting standards and requirements, to provide for a prompt reexamination of whether any adopted change in licensing or permitting standards negates the states' ability to continue with the reciprocity agreement.~~ for the recognition of concealed handgun permits issued pursuant to this article.

(e) The West Virginia State Police shall maintain a registry of states with which the State of West Virginia has entered into reciprocity agreements or which recognize West Virginia concealed handgun licenses on the criminal information network and make the registry available to law-enforcement officers for investigative purposes.

(f) Every twelve months after the effective date of this section, the West Virginia Attorney General shall make written inquiry of the concealed handgun licensing or permitting authorities in each other state as to: (i) Whether a West Virginia resident may carry a concealed handgun in their state based upon having a valid West Virginia concealed handgun permit; and (ii) whether a West Virginia resident may carry a concealed handgun in that state based upon having a valid

West Virginia concealed handgun permit, pursuant to the laws of that state or by the execution of a valid reciprocity agreement between the states.

(g) The West Virginia State Police shall make available to the public a list of states which have entered into reciprocity agreements with the State of West Virginia or that allow residents of West Virginia who are licensed in West Virginia to carry a concealed handgun to carry a concealed handgun in that state."

Delegate Folk moved to amend the amendment on page three, line seven, immediately following the word "attorney", by striking out the word "or" and inserting the following new subdivision:

"(8) Any municipal court judge; or".

And,

By renumbering the remaining subdivisions.

The question before the House being the amendment offered by Delegate Folk, the same was put and did not prevail.

The amendment, recommended by the Committee on the Judiciary, was then adopted.

The bill was then ordered to third reading.

Com. Sub. for S. B. 371, Relating to prison overcrowding; on second reading, coming up in regular order, was read a second time.

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

"That §25-1-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §28-5-27 of said code be amended and

reenacted; that said code be amended by adding thereto two new sections, designated §31-20-5g and §31-20-5h; that §61-7-6 of said code be amended and reenacted; that §62-11A-1a of said code be amended and reenacted; that §62-11B-9 of said code be amended and reenacted; that §62-11C-2, §62-11C-3 and §62-11C-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §62-11C-10; that §62-12-6, §62-12-7, §62-12-9, §62-12-10, §62-12-13, §62-12-14a, §62-12-15, §62-12-17 and §62-12-19 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §62-12-29; that §62-15-2 and §62-15-4 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §62-15-6a and §62-15-6b, all to read as follows:

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-15. Diagnostic and classification divisions.

(a) The Commissioner of Corrections may establish diagnostic and classification divisions.

(b) Notwithstanding any provision of ~~the~~ this code to the contrary, all persons committed to the custody of the Commissioner of the Division of Corrections for presentence diagnosis and classification and all persons sentenced to the custody of the Division of Corrections shall, upon transfer to the Division of Corrections, undergo diagnosis and classification, which ~~may~~ shall include: (1) Assessments of a person's criminogenic risk and need factors that are reliable, validated and normed for a specific population and responsive to cultural and gender-specific needs as well as individual learning styles and temperament; (2) application of a mental health preliminary screen; and (3) if the mental health preliminary screen suggests the need for

further assessment, a full psychological evaluation. The Division of Corrections shall perform mental health preliminary screens, appraisals and evaluations according to standards provided by the American Correctional Association.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 5. THE PENITENTIARY.

§28-5-27. Deduction from sentence for good conduct; mandatory supervision.

(a) All current and future adult inmates ~~now~~ in the custody of the Commissioner of Corrections, ~~or hereafter committed to the custody of the Commissioner of Corrections,~~ except those committed pursuant to article four, chapter twenty-five of this code, shall be granted commutation from their sentences for good conduct in accordance with this section.

(b) ~~Such~~ The commutation of sentence, ~~hereinafter called~~ known as 'good time', shall be deducted from the maximum term of indeterminate sentences or from the fixed term of determinate sentences.

(c) Each inmate committed to the custody of the Commissioner of Corrections and incarcerated in a correctional facility pursuant to ~~such~~ that commitment shall be granted one day good time for each day he or she is incarcerated, including any and all days in jail awaiting sentence ~~and~~ which ~~is~~ are credited by the sentencing court to his or her sentence pursuant to section twenty-four, article eleven, chapter sixty-one of this code or for any other reason relating to ~~such~~ the commitment. ~~No~~ An inmate may not be granted any good time for time served either on parole or bond or in any other status when he or she is not physically incarcerated.

(d) ~~No~~ An inmate sentenced to serve a life sentence ~~shall be~~ is not eligible to earn or receive any good time pursuant to this section.

(e) An inmate under two or more consecutive sentences shall be allowed good time as if the several sentences, when the maximum terms ~~thereof~~ of the consecutive sentences are added together, were all one sentence.

(f) The Commissioner of Corrections shall promulgate ~~separate~~ disciplinary rules ~~for each institution under his control in which adult felons are incarcerated, which rules~~. The rules shall describe acts ~~which~~ that inmates are prohibited from committing, procedures for charging individual inmates for violation of ~~such~~ the rules and for determining the guilt or innocence of inmates charged with ~~such~~ the violations and the sanctions which may be imposed for ~~such~~ the violations. A copy of such the rules shall be given to each inmate. For each ~~such violations~~ violation, by ~~an~~ a sanctioned inmate ~~so sanctioned~~, any part or all of the good time which has been granted to such the inmate pursuant to this section may be forfeited and revoked by the warden or superintendent of the institution in which the violation occurred. The warden or superintendent, when appropriate and with approval of the commissioner, may restore any forfeited good time ~~so forfeited~~.

(g) Each inmate, upon his or her commitment to and being ~~received~~ placed into the custody of the Commissioner of ~~the Department of~~ Corrections, or upon his or her return to custody as the result of violation of parole pursuant to section nineteen, article twelve, chapter sixty-two of this code, shall be given a statement setting forth the term or length of his or her sentence or sentences and the time of his or her minimum discharge computed according to this section.

(h) Each inmate shall be given a revision of the statement described in subsection (g) of this section if and when any part or all of the good time has been forfeited and revoked or restored pursuant to subsection (f) ~~whereby~~ of this section, by which the time of his or her earliest discharge is changed.

(i) The Commissioner of Corrections may, with the approval of the Governor, allow extra good time for inmates who perform exceptional work or service.

(j) In order to ensure equitable good time for all current and future inmates ~~now~~ in the custody of the Commissioner of Corrections ~~or hereafter committed to the custody of such commissioner~~, except as to those persons committed pursuant to article four, chapter twenty-five of this code, all good ~~times~~ time shall be computed according to this section and all previous computations of good time under prior statutes or ~~regulations~~ rules are ~~hereby voided~~ void. All inmates who have previously forfeited good time are hereby restored to good time computed according to this section and all inmates will receive a new discharge date computed according to this section. All inmates that have been awarded overtime good time or extra good time pursuant to sections twenty-seven-a and twenty-seven-b of this article which ~~are~~ were repealed simultaneously with the amendment to this section during the regular session of the Legislature in the year 1984 shall receive ~~such~~ that good time in addition to the good time computed according to this section.

(k) There shall be no grants or accumulations of good time or credit to any current or future inmate ~~now or hereafter~~ serving a sentence in the custody of the ~~Department~~ Division of Corrections except in the manner provided in this section.

(l)Prior to the calculated discharge date of an inmate serving a sentence for a felony crime of violence against the person, a felony offense where the victim was a minor child or a felony offense involving the use of a firearm, one year shall be deducted from the inmate's accumulated good time to provide for one year of mandatory post-release supervision following the first instance in which the inmate reaches his or her calculated discharge date. All inmates released pursuant to this subsection shall be subject to electronic or GPS monitoring for the entire period of supervision. The provisions of this subsection are applicable to offenses committed on or after July 1, 2013.

(m) Upon sentencing of an inmate for an offense not referenced in subsection (l) of this section, the court may order that one hundred and eighty days of the sentence, or some lesser period, be served through post-release mandatory supervision if the court determines supervision is appropriate and in the best interest of justice, rehabilitation and public safety. All inmates released pursuant to this subsection shall be subject to electronic or GPS monitoring for the entire period of supervision. The provisions of this subsection are applicable to offenses committed on or after July 1, 2013.

(n) The Commissioner of Corrections shall adopt policies and procedures to implement the mandatory supervision provided for in subsections (l) and (m) of this section, which may include terms, conditions and procedures for supervision, modification and violation applicable to persons on parole.

(o) As used in this section 'felony crime of violence against the person' means felony offenses set forth in articles two, three-e, eight-b or eight-d of chapter sixty-one of this code, and the felony offenses of arson, and burglary of a residence where an individual is physically located at the time of the offense, as set forth in article three of chapter sixty-one of this code.

(p) As used in this section, 'felony offense where the victim was a minor child' means any felony crime of violence against the person and any felony offense set forth in article eight, eight-a, eight-c or eight-d of chapter sixty-one of this code.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-5g. Pretrial risk assessment.

(a) Within three calender days of the arrest and placement of any person in a regional jail, the authority shall conduct a pretrial risk

assessment using a standardized risk assessment instrument approved and adopted by the Supreme Court of Appeals of West Virginia. The results of all standardized risk and needs assessments are confidential and shall only be provided to the court, court personnel, the prosecuting attorney, defense counsel and the person who is the subject of the pretrial risk assessment. Upon completion of the assessment, the authority shall provide it to the magistrate and circuit clerks for delivery to the appropriate circuit judge or magistrate.

(b) The pretrial risk assessment and all oral or written statements made by individual during risk assessment shall be inadmissable evidence at any criminal or civil trial.

§31-20-5h. Programs for inmates committed to prison.

The Division of Corrections may develop and implement a cognitive behavioral program to address the needs of inmates detained in a regional jail, but committed to the custody of the Commissioner of Corrections. The program shall be developed in consultation with the Regional Jail Authority, and may be offered by video teleconference or webinar technology. The costs of the program shall be paid out of funds appropriated to the Division of Corrections. The program shall be covered by the rehabilitation plan policies and procedures adopted by the Division of Corrections under subsection (h), section thirteen, article twelve, chapter sixty-two of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-6. Exceptions as to prohibitions against carrying concealed deadly weapons.

The licensure provisions set forth in this article do not apply to:

(1) Any person carrying a deadly weapon upon his or her own premises; nor shall anything ~~herein~~ in this article prevent a person from

carrying any firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business; nor shall anything ~~herein~~ in this article prohibit a person from possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site and returning to his or her home, residence or place of business;

(2) Any person who is a member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from this state or from the United States for the purpose of target practice from carrying any pistol, as defined in this article, unloaded, from his or her home, residence or place of business to a place of target practice and from any place of target practice back to his or her home, residence or place of business, for using ~~any such~~ the weapon at a place of target practice in training and improving his or her skill in the use of the weapons;

(3) Any law-enforcement officer or law-enforcement official as defined in section one, article twenty-nine, chapter thirty of this code;

(4) Any employee of the West Virginia Division of Corrections duly appointed pursuant to the provisions of section ~~five~~ eleven-c, article ~~five~~ one, chapter ~~twenty-eight~~ twenty-five of this code while the employee is on duty;

(5) Any member of the armed forces of the United States or the militia of this state while the member is on duty;

(6) Any circuit judge, including any retired circuit judge designated senior status by the Supreme Court of Appeals of West Virginia, prosecuting attorney, assistant prosecuting attorney or a duly appointed investigator employed by a prosecuting attorney;

(7) Any resident of another state who holds a valid license to carry a concealed weapon by a state or a political subdivision which has

entered into a reciprocity agreement with this state, subject to the provisions and limitations set forth in section six-a of this article;

(8) Any federal law-enforcement officer or federal police officer authorized to carry a weapon in the performance of the officer's duty; ~~and~~

(9) Any Hatfield-McCoy Regional Recreation Authority ranger while the ranger is on duty; and

(10) Any parole officer appointed pursuant to section fourteen, article twelve, chapter sixty-two of this code, while the employee is on duty.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

§62-11A-1a. Other sentencing alternatives.

(a) Any person who has been convicted in a circuit court or in a magistrate court under any criminal provision of this code of a misdemeanor or felony, which is punishable by imposition of a fine or confinement in ~~the~~ a regional jail or a state correctional ~~facility~~ institution, or both fine and confinement, may, in the discretion of the sentencing judge or magistrate, as an alternative to the sentence imposed by statute for the crime, be sentenced under one of the following programs:

(1) The weekend jail program under which ~~persons~~ a person would be required to spend weekends or other days normally off from work in jail;

(2) The work program under which a sentenced ~~persons~~ person would be required to spend the first two or more days of ~~their~~ his or her sentence in jail and then, in the discretion of the court, would be

assigned to a county agency to perform labor within the jail, or in and upon the buildings, grounds, institutions, bridges and roads, including orphaned roads used by the general public and public works within the county. Eight hours of labor are to be credited as one day of the sentence imposed. ~~Persons~~ A person sentenced under this program may be required to provide ~~their~~ his or her own transportation to and from the work site, lunch and work clothes; or

(3) The community service program under which ~~persons sentenced~~ a sentenced person would spend no time in jail, but would be sentenced to a number of hours or days of community service work with government entities or charitable or nonprofit entities approved by the circuit court. Regarding any portion of the sentence designated as confinement, eight hours of community service work is to be credited as one day of the sentence imposed. Regarding any portion of the sentence designated as a fine, the fine is to be credited at an hourly rate equal to the prevailing federal minimum wage at the time the sentence was imposed. In the discretion of the court, the sentence credits may run concurrently or consecutively. ~~Persons~~ A person sentenced under this program may be required to provide ~~their~~ his or her own transportation to and from the work site, lunch and work clothes.

~~(4) A day-reporting center program if the program has been implemented in the sentencing court's jurisdiction or in the area where the offender resides. For purposes of this subdivision 'day-reporting center' means a court-operated or court-approved facility where persons ordered to serve a sentence in this type of facility are required to report under the terms and conditions set by the court for purposes which include, but are not limited to, counseling, employment training, alcohol or drug testing or other medical testing.~~

(b) In no event may the duration of the alternate sentence exceed the maximum period of incarceration otherwise allowed.

(c) In imposing a sentence under the provisions of this section, the court shall first make the following findings of fact and incorporate them into the court's sentencing order:

(1) The person sentenced was not convicted of an offense for which a mandatory period of confinement is imposed by statute;

(2) In circuit court cases, that the person sentenced is not a habitual criminal within the meaning of sections eighteen and nineteen, article eleven, chapter sixty-one of this code;

(3) In circuit court cases, that the offense underlying the sentence is not a felony offense for which violence or the threat of violence to the person is an element of the offense;

(4) In circuit court cases, that adequate facilities for the administration and supervision of alternative sentencing programs are available through the court's probation officers or the county sheriff or, in magistrate court cases, that adequate facilities for the administration and supervision of alternative sentencing programs are available through the county sheriff; and

(5) That an alternative sentence under provisions of this article will best serve the interests of justice.

(d) ~~Persons~~ A person sentenced by the circuit court under the provisions of this article ~~remain~~ remains under the administrative custody and supervision of the court's probation officers or the county sheriff. ~~Persons~~ A person sentenced by a magistrate ~~remain~~ remains under the administrative custody and supervision of the county sheriff.

(e) ~~Persons~~ A person sentenced under the provisions of this section may be required to pay the costs of ~~their~~ his or her incarceration, including meal costs: *Provided,* That the judge or magistrate considers the person's ability to pay the costs.

(f) ~~Persons~~ A person sentenced under the provisions of this section ~~remain~~ remains under the jurisdiction of the court. The court may withdraw any alternative sentence at any time by order entered with or without notice and require that the remainder of the sentence be served in the county jail, a regional jail or a state correctional facility: *Provided,* That no alternative sentence directed by the sentencing judge or magistrate or administered under the supervision of the sheriff, his or her deputies, a jailer or a guard may require the convicted person to perform duties which would be considered detrimental to the convicted person's health as attested to by a physician.

(g) No provision of this section may be construed to limit a circuit ~~judge or magistrate's~~ judge's ability to impose a period of supervision or participation in a community corrections program created pursuant to article eleven-c, chapter sixty-two of this code, except that a person sentenced to a day report center must be identified as moderate to high risk of reoffending and moderate to high criminogenic need, as defined by the standardized risk and needs assessment adopted by the Supreme Court of Appeals of West Virginia under subsection (d), section six, article twelve of this chapter, and applied by a probation officer or day report staff: *Provided,* That a judge may impose a period of supervision or participation in a day report center, notwithstanding the results of the standardized risk and needs assessment, upon making specific written findings of fact as to the reason for departing from the requirements of this section.

(h) Magistrates may only impose a period of participation in a day report center with the consent by general administrative order of the supervising judge or chief judge of the judicial circuit in which he or she presides. The day report center staff shall determine which services a person receives based on the results of the standardized risk and needs assessment adopted by the Supreme Court of Appeals of West Virginia under subsection (d), section six, article twelve of this chapter, along with any other conditions of supervision set by the court.

ARTICLE 11B. HOME INCARCERATION ACT.

§62-11B-9. Violation of order of home incarceration procedures; penalties.

(a) If, at any time during the period of home incarceration, there is reasonable cause to believe that a participant in a home incarceration program has violated the terms and conditions of the circuit court's home incarceration order, he or she ~~shall be~~ is subject to the procedures and penalties set forth in section ten, article twelve of this chapter.

(b) If, at any time during the period of home incarceration, there is reasonable cause to believe that a participant sentenced to home incarceration by the circuit court has violated the terms and conditions of the court's order of home incarceration and ~~said~~ the participant's participation was imposed as an alternative sentence to another form of incarceration, ~~said~~ the participant ~~shall be~~ is subject to the same procedures involving confinement and revocation as would a probationer charged with a violation of the order of home incarceration. Any participant under an order of home incarceration ~~shall be~~ is subject to the same penalty or penalties, upon the circuit court's finding of a violation of the order of home incarceration, as he or she could have received at the initial disposition hearing: *Provided,* That the participant shall receive credit towards any sentence imposed after a finding of violation for the time spent in home incarceration.

(c) If, at any time during the period of home incarceration, there is reasonable cause to believe that a participant sentenced to home incarceration by a magistrate has violated the terms and conditions of the magistrate's order of home incarceration as an alternative sentence to incarceration in jail, the supervising authority may arrest the participant upon the obtaining of an order or warrant and take the offender before a magistrate within the county of the offense. The magistrate shall then conduct a prompt and summary hearing on whether the participant's home incarceration should be revoked. If it appears to the satisfaction of the magistrate that any condition of home

incarceration has been violated, the magistrate may revoke the home incarceration and order that the sentence of incarceration in jail be executed. Any participant under an order of home incarceration ~~shall be~~ is subject to the same penalty or penalties, upon the magistrate's finding of a violation of the order of home incarceration, as the participant could have received at the initial disposition hearing: *Provided,* That the participant shall receive credit towards any sentence imposed after a finding of violation for the time spent in home incarceration.

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.

§62-11C-2. Community Corrections Subcommittee.

(a) A Community Corrections Subcommittee of the Governor's Committee on Crime, Delinquency and Correction is ~~hereby created~~ continued and continues to be assigned responsibility for screening community corrections programs submitted by community criminal justice boards or from other entities authorized by the provisions of this article to do so for approval for funding by the Governor's committee and for making recommendations as to the disbursement of funds for approved community corrections programs. The subcommittee ~~is to~~ shall be comprised of fifteen members of the Governor's committee including: A representative of the Division of Corrections, a representative of the Regional Jail and Correctional Facility Authority, a representative of the Bureau for Behavioral Health and Health Facilities, a person representing the interests of victims of crime, an attorney employed by a public defender corporation, an attorney who practices criminal law, a prosecutor and a representative of the West Virginia Coalition Against Domestic Violence. At the discretion of the West Virginia Supreme Court of Appeals, the Administrator of the Supreme Court of Appeals, a probation officer and a circuit judge may serve on the subcommittee as ex officio, nonvoting members.

(b) The subcommittee shall elect a chairperson and a vice chairperson. The subcommittee shall meet quarterly. Special meetings

may be held upon the call of the chairperson, vice chairperson or a majority of the members of the subcommittee. A majority of the members of the subcommittee ~~constitute~~ constitutes a quorum.

§62-11C-3. Duties of the Governor's committee and the community corrections subcommittee.

(a) Upon recommendation of the community corrections subcommittee, the Governor's committee shall propose for legislative promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code, emergency and legislative rules to:

(1) Establish standards for approval of community corrections programs submitted by community criminal justice boards or other entities authorized by the provisions of this article to do so;

(2) Establish minimum standards for community corrections programs to be funded, including requiring annual program evaluations;

(3) Make any necessary adjustments to the fees established in section four of this article;

(4) Establish reporting requirements for community corrections programs; and

(5) Carry out the purpose and intent of this article.

(b) Upon recommendation of the community corrections subcommittee, the Governor's committee shall:

(1) Maintain records of community corrections programs including the corresponding community criminal justice board or other entity contact information and annual program evaluations, when available;

(2) Seek funding for approved community corrections programs from sources other than the fees collected pursuant to section four of this article; and

(3) Provide funding for approved community corrections programs, as available.

(c) The Governor's committee shall submit, on or before September 30 of each year, to the Governor, the Speaker of the House of Delegates, the President of the Senate and, upon request, to any individual member of the Legislature, a report on its activities during the previous year and an accounting of funds paid into and disbursed from the special revenue account established pursuant to section four of this article.

(d) The subcommittee shall review the implementation of evidence-based practices and conduct regular assessments for quality assurance of all community-based criminal justice services, including day report centers, probation, parole and home confinement. In consultation with the affected agencies, the subcommittee shall establish a process for reviewing performance. The process shall include review of agency performance measures and identification of new measures by the subcommittee, if necessary, for measuring the implementation of evidence-based practices or for quality assurance. After providing an opportunity for the affected agencies to comment, the subcommittee shall submit, on or before September 30 of each year, to the Governor, the Speaker of the House of Delegates, the President of the Senate and, upon request, to any individual member of the Legislature, a report on its activities and results from assessments of performance during the previous year.

§62-11C-6. Community criminal justice boards.

(a) Each county or combination of counties or a county or counties and a Class I or II municipality that seek to establish community-based corrections services shall establish a community criminal justice board: *Provided,* That if a county has not established a community criminal justice board by July 1, 2002, the chief probation officer of ~~such~~ that county, with the approval of the chief judge of the circuit, may apply for and receive approval and funding from the Governor's committee

for ~~such~~ any programs as authorized by the provisions of section five of this article. Any county which chooses to operate without a community criminal justice board ~~shall be~~ is subject to the regulations and requirements established by the community corrections subcommittee and the Governor's committee.

(b) ~~The~~ A community criminal justice board ~~is to~~ shall consist of no more than fifteen voting members.

(c) All members of ~~the~~ a community criminal justice board ~~are to~~ shall be residents of the county or counties represented.

(d) ~~The~~ A community criminal justice board ~~is to~~ shall consist of the following members:

(1) The sheriff or chief of police or, if the board represents more than one county or municipality, at least one sheriff or chief of police from the counties represented;

(2) The prosecutor or, if the board represents more than one county, at least one prosecutor from the counties represented;

(3) If a public defender corporation exists in the county or counties represented, at least one attorney employed by any public defender corporation existing in the counties represented or, if no public defender office exists, one criminal defense attorney from the counties represented;

(4) One member to be appointed by the local board of education or, if the board represents more than one county, at least one member appointed by a board of education of the counties represented;

(5) One member with a background in mental health care and services to be appointed by the commission or commissions of the county or counties represented by the board;

(6) Two members who can represent organizations or programs advocating for the rights of victims of crimes with preference given to

organizations or programs advocating for the rights of victims of the crimes of domestic violence or driving under the influence; ~~and~~

(7) One member with a background in substance abuse treatment and services to be appointed by the commission or commissions of the county or counties represented by the board; and

~~(7)~~ (8) Three at-large members to be appointed by the commission or commissions of the county or counties represented by the board.

(e) At the discretion of the West Virginia Supreme Court of Appeals, any or all of the following people may serve on a community criminal justice board as ex officio, nonvoting members:

(1) A circuit judge from the county or counties represented;

(2) A magistrate from the county or counties represented; or

(3) A probation officer from the county or counties represented.

(f) Community criminal justice boards may:

(1) Provide for the purchase, development and operation of community corrections services;

(2) Coordinate with local probation departments in establishing and modifying programs and services for offenders;

(3) Evaluate and monitor community corrections programs, services and facilities to determine their impact on offenders; and

(4) Develop and apply for approval of community corrections programs by the Governor's Committee on Crime, Delinquency and Correction.

(g) If a community criminal justice board represents more than one county, the appointed membership of the board, excluding any ex officio members, shall include an equal number of members from each

county, unless the county commission of each county agrees in writing otherwise.

(h) If a community criminal justice board represents more than one county, the board shall, in consultation with the county commission of each county represented, designate one county commission as the fiscal agent of the board.

(i) Any political subdivision of this state operating a community corrections program shall, regardless of whether or not the program has been approved by the Governor's Committee on Crime, Delinquency and Correction, provide to the Governor's committee required information regarding the program's operations as required by legislative rule.

§62-11C-10. Standardized risk and needs assessment; annual reviews; day report services.

The Division of Justice and Community Services shall:

(1) Require that staff of day reporting centers and other community corrections programs be trained in and use in each case a standardized risk and needs assessment as adopted by the Supreme Court of Appeals of West Virginia. The results of all standardized risk and needs assessments are confidential;

(2) Annually conduct a validation study of inter-rater reliability and risk cut-off scores by population to ensure that the standardized risk and needs assessment is sufficiently predictive of the risk of reoffending;

(3) Annually review the membership of all community criminal justice boards to ensure appropriate membership;

(4) Evaluate the services, sanctions and programs provided by each community corrections program to ensure that they address criminogenic needs and are evidence-based;

(5) Encourage community criminal justice boards to develop programs in addition to or in lieu of day report centers, through grants and more focused use of day report services; and

(6) Annually report to the community corrections subcommittee on the results of duties required by this section.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-6. Powers and duties of probation officers.

(a) Each probation officer shall:

(1) Investigate all cases which the court refers to the officer for investigation and shall report in writing on each case; ~~The probation officer shall furnish~~

(2) Conduct a standardized risk and needs assessment, using the instrument adopted by the Supreme Court of Appeals of West Virginia, for any probationer for whom an assessment has not been conducted either prior to placement on probation or by a specialized assessment officer. The results of all standardized risk and needs assessments are confidential;

(3) Supervise the probationer and enforce probation according to assessment and supervision standards adopted by the Supreme Court of Appeals of West Virginia;

(4) Furnish to each person released on probation under the officer's supervision a written statement of the probationer's conditions of probation together with a copy of the rules prescribed by the ~~court for the supervision of probationers. The probation officer shall stay~~ Supreme Court of Appeals of West Virginia;

(5) Stay informed concerning the conduct and condition of each probationer under the officer's supervision and ~~shall~~ report on the conduct and condition of each probationer in writing as often as the court requires; ~~The probation officer shall use~~

(6) Use all practicable and suitable methods to aid and encourage the probationer to improve his or her conduct and condition; ~~The probation officer shall maintain~~

(7) Perform random drug and alcohol testing on probationers under his or her supervision as directed by the circuit court;

(8) Maintain detailed work records; and ~~shall Perform any other duties the court requires.~~

(9) Perform any other duties the court requires.

(b) The probation officer ~~has authority~~ may, with or without an order or warrant, ~~to~~ arrest any probationer as provided in section ten of this article, and ~~to~~ arrest any person on supervised release when there is reasonable cause to believe that the person on supervised release has violated a condition of release. A person on supervised release ~~so~~ who is arrested shall be brought before the court for a prompt and summary hearing.

~~(b)~~ (c) Notwithstanding any provision of this code to the contrary:

(1) Any probation officer appointed on or after July 1, 2002, may carry handguns in the course of the officer's official duties after meeting specialized qualifications established by the Governor's Committee on Crime, Delinquency and Correction. ~~which~~ The qualifications shall include the successful completion of handgun training, ~~including~~ which is comparable to the handgun training provided to law-enforcement officers by the West Virginia State Police and includes a minimum of four hours' training in handgun safety ~~and comparable to the handgun training provided to law-enforcement officers by the West Virginia State Police~~.

(2) Probation officers may only carry handguns in the course of their official duties after meeting the specialized qualifications set forth in subdivision (1) of this subsection.

(3) Nothing in this subsection includes probation officers within the meaning of law-enforcement officers as defined in section one, article twenty-nine, chapter thirty of this code.

(d) The Supreme Court of Appeals of West Virginia may adopt a standardized risk and needs assessment with risk cut-off scores for use by probation officers, taking into consideration the assessment instrument adopted by the Division of Corrections under subsection (h), section thirteen of this article and the responsibility of the Division of Justice and Community Services to evaluate the use of the standardized risk and needs assessment. The results of any standardized risk and needs assessment are confidential.

§62-12-7. Pretrial and preliminary investigation; report on prospective probationers.

(a) The Supreme Court of Appeals of West Virginia may adopt a standardized pretrial risk assessment for use by the Regional Jail Authority to assist magistrates and circuit courts in making pretrial decisions under article one-c of this chapter.

(b) ~~When~~ Unless otherwise directed by the court, the probation officer shall, in the form adopted by the Supreme Court of Appeals of West Virginia, make a careful investigation of, and a written report with recommendations concerning, any prospective probationer. Insofar as practicable, this report shall include information concerning the offender's court and criminal record, occupation, family background, education, habits and associations, mental and physical condition, the names, relationship, ages and condition of those dependent upon him or her for support and ~~such~~ any other facts ~~as~~ that may aid the court in determining the propriety and conditions of his or her release on probation. ~~No~~ A person convicted of a felony or of any offense described in article eight-b or eight-d, chapter sixty-one of this code against a minor child may not be released on probation until this report ~~shall have~~ has been presented to and considered by the court. The court may ~~in its discretion~~ request ~~such~~ a report concerning any

person convicted of a misdemeanor. The presentence report of any person convicted of an offense, described in said articles or section twelve, article eight of said chapter, may include a statement from a therapist, psychologist or physician who is providing treatment to the child. A copy of all reports shall be filed with the Parole Board ~~of probation and parole~~.

§62-12-9. Conditions of release on probation.

(a) Release on probation is conditioned upon the following:

(1) That the probationer may not, during the term of his or her probation, violate any criminal law of this or any other state or of the United States;

(2) That ~~he or she~~ the probationer may not, during the term of his or her probation, leave the state without the consent of the court which placed him or her on probation;

(3) That ~~he or she~~ the probationer complies with the conditions prescribed by the court for his or her supervision by the probation officer;

(4) That in every case ~~wherein~~ in which the probationer has been convicted of an offense defined in section twelve, article eight, chapter sixty-one of this code or article eight-b or eight-d of said chapter, against a child, the probationer may not live in the same residence as any minor child, nor exercise visitation with any minor child and ~~has~~ may have no contact with the victim of the offense: *Provided,* That the probationer may petition the court of the circuit ~~wherein~~ in which he or she was convicted for a modification of this term and condition of his or her probation and the burden rests upon the probationer to demonstrate that a modification is in the best interest of the child;

(5) That the probationer ~~be required to~~ pay a fee, not to exceed $20 per month, to defray costs of supervision: *Provided,* That the court conducts a hearing prior to imposition of probation and makes a

determination on the record that the offender is able to pay the fee without undue hardship. All moneys collected as fees from probationers pursuant to this subdivision ~~are to~~ shall be deposited with the circuit clerk who shall, on a monthly basis, remit the moneys collected to the State Treasurer for deposit in the State General Revenue Fund; and

(6) That the probationer is required to pay the fee described in section four, article eleven-c of this chapter: *Provided,* That the court conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay the fee without undue hardship.

(b) In addition, the court may impose, subject to modification at any time, any other conditions which it may ~~deem~~ determine advisable, including, but not limited to, any of the following:

(1) That ~~he or she~~ the probationer make restitution or reparation, in whole or in part, immediately or within the period of probation, to any party injured by the crime for which he or she has been convicted: *Provided,* That the court conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay restitution without undue hardship;

(2) That ~~he or she pay~~ the probationer pays any fine assessed and the costs of the proceeding in installments ~~as~~ directed by the court ~~may direct~~: *Provided,* That the court conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay the costs without undue hardship;

(3) That ~~he or she make contribution~~ the probationer makes contributions from his or her earnings, in sums ~~as~~ directed by the court ~~may direct~~, for the support of his or her dependents; and

(4) That ~~he or she~~ the probationer, in the discretion of the court, ~~be~~ is required to serve a period of confinement in jail of the county in

which he or she was convicted for a period not to exceed one third of the minimum sentence established by law or one third of the least possible period of confinement in an indeterminate sentence, but in no case may the period of confinement exceed six consecutive months. The court ~~has the authority to~~ may sentence the defendant within the six-month period to intermittent periods of confinement including, but not limited to, weekends or holidays and may grant to the defendant intermittent periods of release in order that he or she may work at his or her employment or for other reasons or purposes as the court may ~~deem~~ determine appropriate: *Provided,* That the provisions of article eleven-a of this chapter do not apply to intermittent periods of confinement and release except to the extent ~~that~~ directed by the court ~~may direct~~. If a period of confinement is required as a condition of probation, the court shall make special findings that other conditions of probation are inadequate and that a period of confinement is necessary.

(c) Circuit courts may impose, as a condition of probation, participation in a day report center.

(1) To be eligible, the probationer must be identified as moderate to high risk of reoffending and moderate to high criminogenic need, as determined by the standardized risk and needs assessment adopted by the Supreme Court of Appeals of West Virginia under subsection (d), section six of this article, and applied by a probation officer or day report staff. In eligible cases, circuit courts may impose a term of up to one year: *Provided,* That notwithstanding the results of the standardized risk and needs assessment, a judge may impose, as a term of probation, participation in a day report center program upon making specific written findings of fact as to the reason for departing from the requirements of this subdivision.

(2) The day report center staff shall determine which services a person receives based on the results of the standardized risk and needs assessment and taking into consideration the other conditions of probation set by the court.

(d) For the purposes of this article, 'day report center' means a court-operated or court-approved facility where persons ordered to serve a sentence in this type of facility are required to report under the terms and conditions set by the court for purposes which include, but are not limited to, counseling, employment training, alcohol or drug testing or other medical testing.

§62-12-10. Violation of probation.

(a) If at any time during the period of probation there shall be reasonable cause to believe that the probationer has violated any of the conditions of his or her probation, the probation officer may arrest him or her with or without an order or warrant, or the court which placed him or her on probation, or the judge thereof in vacation, may issue an order for his or her arrest, whereupon he or she shall be brought before the court, or the judge thereof in vacation, for a prompt and summary hearing.

(1) If ~~it shall then appears to the satisfaction of~~ the court or judge finds reasonable cause exists to believe that ~~any condition of probation has been violated~~ the probationer:

(A) Absconded supervision;

(B) Engaged in new criminal conduct other than a minor traffic violation or simple possession of a controlled substance; or

(C) Violated a special condition of probation designed either to protect the public or a victim; the court or judge may revoke the suspension of imposition or execution of sentence, impose sentence if none has been imposed and order that sentence be executed.

(2) If the judge finds that reasonable cause exists to believe that the probationer violated any condition of supervision other than the conditions of probation set forth in subdivision (1) of this subsection, then, for the first violation, the judge shall impose a period of

confinement up to sixty days, or, for the second violation, a period of confinement up to one hundred twenty days. For the third violation, the judge may revoke the suspension of imposition or execution of sentence, impose sentence if none has been imposed and order that sentence be executed, with credit for time spent in confinement under this section.

(3) In computing the period for which the offender is to be confined, the time between his or her release on probation and his or her arrest may not be taken to be any part of the term of his or her sentence.

(b) A probationer confined for a first or second violation pursuant to subdivision (2), subsection (a) of this section may be confined in jail, and the costs of confining felony probationers shall be paid out of funds appropriated for the Division of Corrections. Whenever the court orders the incarceration of a probationer pursuant to the provisions of subdivision (2), subsection (a) of this section, a circuit clerk shall provide a copy of the order of confinement within five days to the Commissioner of Corrections.

(c) If, despite a violation of the conditions of probation, the court or judge ~~shall be~~ is of the opinion that the interests of justice do not require that the probationer serve his or her sentence or a period of confinement, the ~~court or~~ judge may, except when the violation was the commission of a felony, again release him or her on probation: *Provided*, That a judge may otherwise depart from the sentence limitations set forth in subdivision (2), subsection (a) of this section upon making specific written findings of fact supporting the basis for the departure.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

(a) The ~~board of parole~~ Parole Board, whenever it is of the opinion that the best interests of the state and of the inmate will be served, and

subject to the limitations ~~hereinafter~~ provided in this section, shall release any inmate on parole for terms and upon conditions ~~as are~~ provided by this article.

(b) Any inmate of a state correctional ~~center~~ institution is eligible for parole if he or she:

(1)(A) Has served the minimum term of his or her indeterminate sentence or has served one fourth of his or her definite term sentence, as the case may be; or

(B) He or she:

(i) Has applied for and been accepted by the Commissioner of Corrections into an accelerated parole program;

(ii) Does not have a prior criminal conviction for a felony crime of violence against the person, a felony offense involving the use of a firearm or a felony offense where the victim was a minor child.

~~(iii) Has no record of institutional disciplinary rule violations for a period of one hundred twenty days prior to parole consideration unless the requirement is waived by the commissioner;~~

~~(iv)~~ (iii) Is not serving a sentence for a crime of violence against the person, or more than one felony for a controlled substance offense for which the inmate is serving a consecutive sentence, a felony offense involving the use of a firearm or a felony ~~offence~~ offense where the victim was a minor child; and

~~(v)~~ (iv) Has successfully completed a rehabilitation treatment program created with the assistance of a standardized risk and needs assessment.

~~(I) As used in this section 'felony crime of violence against the person' means felony offenses set forth in articles two, three-e, eight-b or eight-d of chapter sixty-one of this code; and~~

~~(H) As used in this section 'felony offense where the victim was a minor child' means any felony crime of violence against the person and any felony violation set forth in article eight, eight-a, eight-c or eight-d of chapter sixty-one of this code.~~

(C) Notwithstanding any provision of this code to the contrary, any ~~person~~ inmate who committed, or attempted to commit, a felony with the use, presentment or brandishing of a firearm, is not eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum sentence imposed by the court, whichever is less: *Provided,* That any ~~person~~ inmate who committed, or attempted to commit, any violation of section twelve, article two, chapter sixty-one of this code, with the use, presentment or brandishing of a firearm, is not eligible for parole prior to serving a minimum of five years of his or her sentence or one third of his or her definite term sentence, whichever is greater. Nothing in this paragraph applies to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented or brandished a firearm. ~~A person~~ An inmate is not ineligible for parole under the provisions of this paragraph because of the commission or attempted commission of a felony with the use, presentment or brandishing of a firearm unless that fact is clearly stated and included in the indictment or presentment by which the person was charged and was either: (i) Found guilty by the court at the time of trial upon a plea of guilty or nolo contendere; (ii) found guilty by the jury, upon submitting to the jury a special interrogatory for such purpose if the matter was tried before a jury; or (iii) found guilty by the court, if the matter was tried by the court without a jury.

~~For the purpose of this section, the term 'firearm' means any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, gunpowder or any other similar means.~~

(D) The amendments to this subsection adopted in the year 1981:

(i) Apply to all applicable offenses occurring on or after August 1 of that year;

(ii) Apply with respect to the contents of any indictment or presentment returned on or after August 1 of that year irrespective of when the offense occurred;

(iii) Apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to the jury on or after August 1 of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: *Provided,* That the state gives notice in writing of its intent to seek such finding by the jury or court, as the case may be. ~~which~~ The notice shall state with particularity the grounds upon which the finding will be sought as fully as ~~such~~ the grounds are otherwise required to be stated in an indictment, unless the grounds ~~therefor~~ upon which the finding will be sought are alleged in the indictment or presentment upon which the matter is being tried; and

(iv) Does not apply with respect to cases not affected by the amendments and in ~~such~~ those cases the prior provisions of this section apply and are construed without reference to the amendments.

~~(1)~~ (v) Insofar as the amendments relate to mandatory sentences restricting the eligibility for parole, all matters requiring a mandatory sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(E) As used in this section 'felony crime of violence against the person' means felony offenses set forth in articles two, three-e, eight-b or eight-d of chapter sixty-one of this code; and

(F) As used in this section 'felony offense where the victim was a minor child' means any felony crime of violence against the person

and any felony violation set forth in article eight, eight-a, eight-c or eight-d of chapter sixty-one of this code.

(G) For the purpose of this section, the term 'firearm' means any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, gunpowder or any other similar means.

(2) Is not in punitive segregation or administrative segregation as a result of disciplinary action;

(3) Has maintained a record of good conduct in prison for a period of at least three months immediately preceding the date of his or her release on parole;

(4) Has prepared and submitted to the ~~board~~ Parole Board a written parole release plan setting forth proposed plans for his or her place of residence, employment and, if appropriate, his or her plans regarding education and post-release counseling and treatment *Provided,* That an inmate's application for parole may be considered by the board without the prior submission of a home plan, but the inmate shall have a home plan approved by the board prior to his or her release on parole. The Commissioner of Corrections or his or her designee shall review and investigate the plan ~~to be reviewed and investigated~~ and provide recommendations to the board as to the suitability of the plan: *Provided,* That in cases in which there is a mandatory thirty-day notification period required prior to the release of the inmate, pursuant to section twenty-three of this article, the board may conduct an initial interview and deny parole without requiring the development of a plan. In the event the board ~~does not believe parole should be denied~~ believes parole should be granted, it may defer a final decision pending completion of an investigation and receipt of recommendations. Upon receipt of the plan together with the investigation and recommendation, the board, through a panel, shall make a final decision regarding the granting or denial of parole; and

(5) Has satisfied the board that if released on parole he or she will not constitute a danger to the community.

(c) Except in the case of ~~a person~~ an inmate serving a life sentence, ~~no~~ a person who has been previously twice convicted of a felony may not be released on parole until he or she has served the minimum term provided by law for the crime for which he or she was convicted. ~~A person~~ An inmate sentenced for life may not be paroled until he or she has served ten years, and ~~a person~~ an inmate sentenced for life who has been previously twice convicted of a felony may not be paroled until he or she has served fifteen years: *Provided,* That ~~a person~~ an inmate convicted of first degree murder for an offense committed on or after June 10, 1994, is not eligible for parole until he or she has served fifteen years.

(d) In the case of ~~a person~~ an inmate sentenced to any state correctional ~~center, it is the duty of the board~~ institution, the Parole Board, as soon as ~~a person~~ that inmate becomes eligible, ~~to~~ shall consider the advisability of his or her release on parole.

(e) If, upon consideration, parole is denied, the board shall promptly notify the inmate of the denial. The board shall, at the time of denial, notify the inmate of the month and year he or she may apply for reconsideration and review. The board shall at least once a year reconsider and review the case of every inmate who was denied parole and who is still eligible: *Provided,* That the board may reconsider and review parole eligibility anytime within three years following the denial of parole of an inmate serving a life sentence with the possibility of parole.

(f) Any ~~person~~ inmate serving a sentence on a felony conviction who becomes eligible for parole consideration prior to being transferred to a state correctional ~~center~~ institution may make written application for parole. The terms and conditions for parole consideration established by this article apply to ~~such inmates~~ that inmate.

(g) The board shall, with the approval of the Governor, adopt rules governing the procedure in the granting of parole. No provision of this article and none of the rules adopted ~~hereunder~~ under this article are intended or may be construed to contravene, limit or otherwise interfere with or affect the authority of the Governor to grant pardons and reprieves, commute sentences, remit fines or otherwise exercise his or her constitutional powers of executive clemency.

(h) (1) The Division of Corrections shall promulgate policies and procedures for developing a rehabilitation treatment plan created with the assistance of a standardized risk and needs assessment. The policies and procedures shall ~~include, but not be limited to, policy and procedures for~~ provide for, at a minimum, screening and selecting inmates for rehabilitation treatment and development, ~~and use of~~ using standardized risk and needs assessment and substance abuse assessment tools, and prioritizing the use of residential substance abuse treatment resources based on the results of the standardized risk and needs assessment and a substance abuse assessment. The results of all standardized risk and needs assessments and substance abuse assessments are confidential.

(2) An inmate shall not be paroled under paragraph (B), subdivision (1), subsection (b) of this section solely due to having successfully completed a rehabilitation treatment plan, but completion of all the requirements of a rehabilitation ~~parole~~ treatment plan along with compliance with the requirements of subsection (b) of this section ~~shall~~ creates a rebuttable presumption that parole is appropriate. The presumption created by this ~~subsection~~ subdivision may be rebutted by a Parole Board finding that, according to the standardized risk and needs assessment, at the time parole release is sought the inmate still constitutes a reasonable risk to the safety or property of other persons if released. Nothing in subsection (b) of this section or in this subsection may be construed to create a right to parole.

(i) Notwithstanding the provisions of subsection (b) of this section, the Parole Board may, ~~in its discretion,~~ grant or deny parole to an

inmate against whom a detainer is lodged by a jurisdiction other than West Virginia for service of a sentence of incarceration, upon a written request for parole from the inmate. A denial of parole under this subsection ~~shall preclude~~ precludes consideration for parole for a period of one year or until the provisions of subsection (b) of this section are applicable.

(j) ~~Where~~ If an inmate is otherwise eligible for parole pursuant to subsection (b) of this section and has completed the rehabilitation treatment program required under subsection (h) of this section, ~~but~~ the Parole Board ~~determines that~~ may not require the inmate ~~should~~ to participate in an additional program, ~~or~~ but may determine that the inmate must complete an assigned task or tasks prior to actual release on parole. The board may grant parole contingently, effective upon successful completion of the ~~program or~~ assigned task or tasks, without the need for a further hearing. ~~The Commissioner of Corrections shall provide notice to the Parole Board of the imminent release of a contingently paroled inmate to effectuate appropriate supervision.~~

(k) (1) The Division of Corrections ~~is charged with the duty of supervising~~ shall supervise all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into pursuant to the Uniform Act For Out-of-State Parolee Supervision.

(2) The Division of Corrections shall provide supervision, treatment and support services for all persons released to mandatory supervision under section twenty-seven, article five, chapter twenty-eight of this code.

(l)(1) When considering an inmate of a state correctional center for release on parole, the Parole Board panel considering the parole ~~is to~~ shall have before it an authentic copy of or report on the inmate's current criminal record as provided through the West Virginia State Police, the United States Department of Justice or any other reliable criminal information sources and written reports of the warden or

superintendent of the state correctional ~~center~~ institution to which the inmate is sentenced:

(A) On the inmate's conduct record while in custody, including a detailed statement showing any and all infractions of disciplinary rules by the inmate and the nature and extent of discipline administered ~~therefor~~ for the infractions;

(B) On improvement or other changes noted in the inmate's mental and moral condition while in custody, including a statement expressive of the inmate's current attitude toward society in general, toward the judge who sentenced him or her, toward the prosecuting attorney who prosecuted him or her, toward the policeman or other officer who arrested the inmate and toward the crime for which he or she is under sentence and his or her previous criminal record;

(C) On the inmate's industrial record while in custody which shall include: The nature of his or her work, occupation or education, the average number of hours per day he or she has been employed or in class while in custody and a recommendation as to the nature and kinds of employment which he or she is best fitted to perform and in which the inmate is most likely to succeed when he or she leaves ~~prison~~ the state correctional institution; and

(D) On any physical, mental, ~~and~~ psychological or psychiatric examinations of the inmate. ~~conducted, insofar as practicable, within the two months next preceding parole consideration by the board.~~

(2) The Parole Board panel considering the parole may waive the requirement of any report when not available or not applicable as to any inmate considered for parole but, in every ~~such~~ case, shall enter in ~~the~~ its record ~~thereof~~ its reason for the waiver: *Provided,* That in the case of an inmate who is incarcerated because the inmate has been found guilty of, or has pleaded guilty to, a felony under the provisions of section twelve, article eight, chapter sixty-one of this code or under the provisions of article eight-b or eight-c of said chapter, the Parole

Board panel may not waive the report required by this subsection. ~~and~~ The report ~~is to~~ shall include a study and diagnosis of the inmate, including an on-going treatment plan requiring active participation in sexual abuse counseling at an approved mental health facility or through some other approved program: *Provided, however,* That nothing disclosed by the ~~person~~ inmate during the study or diagnosis may be made available to any law-enforcement agency, or other party without that ~~person's~~ inmate's consent, or admissible in any court of this state, unless the information disclosed indicates the intention or plans of the parolee to do harm to any person, animal, institution or to property. Progress reports of outpatient treatment are to be made at least every six months to the parole officer supervising the ~~person~~ parolee. In addition, in such cases, the Parole Board shall inform the prosecuting attorney of the county in which the person was convicted of the parole hearing and shall request that the prosecuting attorney inform the Parole Board of the circumstances surrounding a conviction or plea of guilty, plea bargaining and other background information that might be useful in its deliberations.

(m) Before releasing any inmate on parole, the ~~board of parole~~ Parole Board shall arrange for the inmate to appear in person before a Parole Board panel and the panel may examine and interrogate him or her on any matters pertaining to his or her parole, including reports before the Parole Board made pursuant to the provisions ~~hereof~~ of this section: *Provided,* That an inmate may appear by video teleconference if the members of the Parole Board panel conducting the examination are able to contemporaneously see the inmate and hear all of his or her remarks and if the inmate is able to contemporaneously see each of the members of the panel conducting the examination and hear all of the members' remarks. The panel shall reach its own written conclusions as to the desirability of releasing the inmate on parole and the majority of the panel considering the release ~~shall~~ must concur in the decision. The warden or superintendent shall furnish all necessary assistance and cooperate to the fullest extent with the Parole Board. All information, records and reports received by the Parole Board ~~are to~~ shall be kept on permanent file.

(n) The Parole Board and its designated agents are at all times to have access to inmates imprisoned in any state correctional ~~center~~ institution or in any jail in this state and may obtain any information or aid necessary to the performance of its duties from other departments and agencies of the state or from any political subdivision ~~thereof~~ of the state.

(o) The Parole board shall, if ~~so~~ requested by the Governor, investigate and consider all applications for pardon, reprieve or commutation and shall make recommendation ~~thereon~~ on the applications to the Governor.

(p) (1) Prior to making a recommendation for pardon, reprieve or commutation, ~~and prior to releasing any inmate on parole~~ the board shall notify the sentencing judge and prosecuting attorney at least ten days before the recommendation ~~or parole~~.

(2) Notwithstanding any other provision of law to the contrary, if the board grants a person parole, the board shall provide written notice to the prosecuting attorney and circuit judge of the county in which the inmate was prosecuted, that parole has been granted. The notice shall be sent by certified mail, return receipt requested and include the anticipated date of release and the person's anticipated future residence. A written statement of reasons for releasing the person, prepared pursuant to subsection (b), of this section, shall be provided upon request.

(q) ~~Any person released on parole~~ A parolee shall participate as a condition of parole in the litter control program of the county to which he or she is released to the extent directed by the Parole Board, unless the board specifically finds that this alternative service would be inappropriate.

~~(r) Except for the amendments to this section contained in subdivision (4), subsection (b) and subsection (i) of this section the amendments to this section enacted during the 2010 regular session of the Legislature shall become effective on January 1, 2011.~~

§62-12-14a. Director of employment; director of housing; released inmates; duties.

The ~~board~~ Commissioner of Corrections ~~shall have authority to~~ may employ or contract for a director of employment and a director of housing for ~~paroled or pardoned prisoners~~ released inmates. The director of employment shall work with federal, state, county and local government and private entities to negotiate agreements which facilitate employment opportunities for released inmates. The director of housing shall work with federal, state, county and local government and private entities to negotiate agreements which facilitate housing opportunities for released inmates. ~~It shall be the duty of~~ The director of employment ~~to~~ shall investigate job opportunities and ~~to~~ give every possible assistance in helping ~~prisoners, eligible to be paroled or who have been granted parole under this article to~~ released inmates find employment. The director of housing shall work in conjunction with the parole division and the Parole Board to reduce release delays due to lack of a home plan, develop community housing resources and provide short-term loans to released inmates for costs related to reentry into the community.

§62-12-15. Powers and duties of state parole officers.

(a) Each state parole officer shall:

(1) Investigate all cases referred to him or her for investigation by the Commissioner of Corrections and ~~shall~~ report in writing ~~thereon~~ on the investigation; ~~He or she or she shall furnish~~

(2) Update the standardized risk and needs assessment adopted by the Division of Corrections under subsection (h), section thirteen of this article for each parolee for whom an assessment has not been conducted for parole by a specialized assessment officer;

(3) Supervise each parolee according to the assessment and supervision standards determined by the Commissioner of Corrections;

(4) Furnish to each ~~person released on parole~~ parolee under his or her supervision a written statement of the conditions of his or her parole together with a copy of the rules prescribed by the ~~board, as the case may be~~ Commissioner of Corrections for the supervision of parolees; ~~He or she or she shall keep~~

(5) Keep informed concerning the conduct and condition of each ~~person~~ parolee under his or her supervision and ~~shall~~ report ~~thereon~~ on the conduct and condition of each parolee in writing as often as required by the Commissioner of Corrections ~~may require; He or she or she shall use~~;

(6) Use all practicable and suitable methods to aid and encourage ~~persons on parole~~ a parolee and to bring about improvement in ~~their~~ his or her conduct and condition; ~~He or she or she shall keep~~

(7) Keep detailed records of his or her work; ~~shall keep~~

(8) Keep accurate and complete accounts of and give receipts for all money collected from ~~persons~~ parolees under his or her supervision and ~~shall~~ pay over the money to ~~those~~ persons designated by a circuit court or the Commissioner of Corrections ~~may designate; He or she or she shall give~~;

(9) Give bond with good security, to be approved by the Commissioner of Corrections, in a penalty of not less than $1,000 nor more than $3,000, as determined by the Commissioner of Corrections ~~may determine~~; and ~~also perform~~

(10) Perform any other duties required by the Commissioner ~~may require~~ of Corrections.

(b) ~~He or she~~ Each state parole officer ~~has authority~~ may, with or without an order or warrant, ~~to~~ arrest or order confinement of any parolee. He or she has all the powers of a notary public, with authority to act anywhere within the state.

(c) The Commissioner of Corrections may issue a certificate authorizing any state parole officer who has successfully completed the Division of Corrections' training program for firearms certification, which is the equivalent of that required of deputy sheriffs, to carry firearms or concealed weapons. Any parole officer authorized by the Commissioner of Corrections may, without a state license, carry firearms and concealed weapons. Each state parole officer, authorized by the Commissioner of Corrections, shall carry with him or her a certificate authorizing him or her to carry a firearm or concealed weapon bearing the official signature of the Commissioner of Corrections.

§62-12-17. Conditions of release on parole.

(a) Release and supervision on parole of any person, including the supervision by the Division of Corrections of any person paroled by any other state or by the federal government, shall be upon the following conditions:

(1) That the parolee may not, during the period of his or her parole, violate any criminal law of this or any other state or of the United States;

(2) That ~~he or she~~ the parolee may not, during the period of his or her parole, leave the state without the consent of the Division of Corrections;

(3) That ~~he or she shall comply~~ the parolee complies with the rules prescribed by the Division of Corrections for his or her supervision by the parole officer;

(4) That in every case in which the parolee for a conviction is seeking parole from an offense against a child, defined in section twelve, article eight, chapter sixty-one of this code, or article eight-b or eight-d of said chapter, or similar convictions from other jurisdictions where the parolee is returning or attempting to return to

this state pursuant to the provisions of article six, chapter twenty-eight of this code, the parolee may not live in the same residence as any minor child nor exercise visitation with any minor child nor may he or she have any contact with the victim of the offense; and

(5) That the parolee, and all federal or foreign state probationers and parolees whose supervision may have been undertaken by this state, ~~is required to~~ pay a fee, based on his or her ability to pay, not to exceed $40 per month to defray the costs of supervision.

(b) The Commissioner of Corrections shall keep a record of all actions taken and account for moneys received. ~~No provision of this section prohibits the division from collecting the fees and conducting the checks upon the effective date of this section.~~ All moneys shall be deposited in a special account in the State Treasury to be known as the Parolee's Supervision Fee Fund. Expenditures from the fund shall be for the purposes of providing the parole supervision required by the provisions of this code and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(c) The Division of Corrections shall consider the following factors in determining whether a parolee or probationer is financially able to pay the fee:

(1) Current income prospects for the parolee or probationer, taking into account seasonal variations in income;

(2) Liquid assets of the parolee or probationer, assets of the parolee or probationer that may provide collateral to obtain funds and assets of the parolee or probationer that may be liquidated to provide funds to pay the fee;

(3) Fixed debts and obligations of the parolee or probationer, including federal, state and local taxes and medical expenses;

(4) Child care, transportation and other reasonably necessary expenses of the parolee or probationer related to employment; and

(5) The reasonably foreseeable consequences for the parolee or probationer if a waiver of, or reduction in, the fee is denied.

(d) In addition, the Division of Corrections may impose, subject to modification at any time, any other conditions which the Division considers advisable.

(e) The Division of Corrections may order substance abuse treatment as a condition or as a modification of parole, only if the standardized risk and needs assessment indicates the offender has a high risk for reoffending and a need for substance abuse treatment.

(f) The Division of Corrections may impose, as an initial condition of parole, a term of reporting to a day report center or other community corrections program only if the standardized risk and needs assessment indicates a moderate to high risk of reoffending and moderate to high criminogenic need. Any parolee required to report to a day report center or other community corrections program is subject to all the rules and regulations of the center or program and may be removed at the discretion of the center's or program's director. The Commissioner of Corrections shall enter into a master agreement with the Division of Justice and Community Services to provide reimbursement to counties for the use of community corrections programs by eligible parolees. Any placement by the Division of Corrections of a parolee in a day report center or other community corrections program may only be done with the center's or program's director's consent and the parolee is subject to all of the rules and regulations of the center or program and may be removed by the director.

§62-12-19. Violation of parole.

(a) If at any time during the period of parole there is reasonable cause to believe that the parolee has violated any of the conditions of his or her release on parole, the parole officer may arrest him or her with or without an order or warrant, or the Commissioner of Corrections may issue a written order or warrant for his or her arrest. ~~which~~ The written order or warrant is sufficient for his or her arrest by any officer charged with the duty of executing an ordinary criminal process. The commissioner's written order or warrant delivered to the sheriff against the ~~paroled prisoner~~ parolee shall be a command to keep custody of the parolee for the jurisdiction of the Division of Corrections. ~~and~~ During the period of custody, the parolee may be admitted to bail by the court before which the parolee was sentenced. If the parolee is not released on a bond, the costs of confining the paroled prisoner shall be paid out of the funds appropriated for the Division of Corrections.

(1) If reasonable cause is found to exist that a parolee has violated a term or terms of his or her release on parole that does not constitute:

(A) Absconding supervision;

(B) New criminal conduct other than a minor traffic violation or simple possession of a controlled substance; or

(C) Violation of a special condition of parole designed either to protect the public or a victim; the parole officer may, after consultation with and written approval by the director of parole services, for the first violation, require the parolee to serve a period of confinement up to sixty days, or, for the second violation, a period of confinement up to one hundred twenty days: *Provided*, That the Division of Corrections shall notify the Parole Board when a parolee is serving such a term of confinement and the Parole Board may deny further confinement. A parolee serving a term of confinement in the first or second instance may be confined in jail or any other facility designated by the commissioner, but shall be committed to the custody of the

Commissioner of Corrections, and the costs of confining the parolee shall be paid out of funds appropriated for the Division of Corrections: *Provided, however,* That upon written request, the parolee shall be afforded the right to a hearing within forty-five days before the Parole Board regarding whether he or she violated the conditions of his or her release on parole.

~~(b)~~ (2) When a parolee is ~~under arrest~~ in custody for a violation of the conditions of his or her parole, he or she shall be given a prompt and summary hearing before a Parole Board panel ~~of the Board~~ upon his or her written request, at which the parolee and his or her counsel ~~are~~ shall be given an opportunity to attend.

(A) If at the hearing it ~~appears to the satisfaction of the panel~~ is determined that reasonable cause exists to believe that the parolee has: ~~violated any condition of his or her release on parole, or any rules or conditions of his or her supervision~~

(i) Absconded supervision;

(ii) Committed new criminal conduct other than a minor traffic violation or simple possession of a controlled substance; or

(iii) Violated a special condition of parole design to protect either the public or a victim, the panel may revoke his or her parole and may require him or her to serve in ~~prison~~ a state correctional institution the remainder or any portion of his or her maximum sentence for which, at the time of his or her release, he or she was subject to imprisonment.

(B) If the Parole Board panel finds that reasonable cause exists to believe that the parolee has violated a condition of release or supervision other than the conditions of parole set forth in subparagraph (A), subdivision (2) of this subsection, the panel shall require the parolee to serve, for the first violation, a period of confinement up to sixty days, or, for the second violation, a period of confinement up to one hundred twenty days unless the Parole Board makes specific written findings of fact that a departure from the

specific limitations of this paragraph is warranted: *Provided,* That if the violation of the conditions of parole or rules for his or her supervision is not a felony as set out in section eighteen of this article, the panel may, if in its judgment the best interests of justice do not require ~~revocation~~ a period of confinement, reinstate him or her on parole. The Division of Corrections shall effect release from custody upon approval of a home plan.

(b) Notwithstanding any provision of this code to the contrary, when reasonable cause has been found to believe that a parolee has violated the conditions of his or her parole but the violation does not constitute felonious conduct, the commissioner may, ~~in his or her discretion and~~ with the written consent of the parolee, allow the parolee to remain on parole with additional conditions or restrictions. The additional conditions or restrictions may include, but are not limited to, participation in any program described in subsection (d), section five, article eleven-c of this chapter. ~~Compliance by~~ If the parolee complies with the conditions of parole ~~precludes revocation of~~ the commissioner may not revoke his or her parole for the conduct which constituted the violation. ~~Failure of~~ If the parolee fails to comply with the conditions or restrictions and all other conditions of release, that failure is an additional violation of parole and the commissioner may proceed against the parolee ~~may be proceeded against~~ under the provisions of this section for the original violation as well as any subsequent violations.

(c) When a parolee has violated the conditions of his or her release on parole by confession to, or being convicted of, any of the crimes set forth in section eighteen of this article, he or she shall be returned to the custody of the Division of Corrections to serve the remainder of his or her maximum sentence, during which remaining part of his or her sentence he or she is ineligible for further parole.

(d) Whenever ~~the~~ a person's parole ~~of a paroled prisoner~~ has been revoked, the commissioner shall, upon receipt of the panel's written order of revocation, convey and transport the paroled prisoner to a state

correctional institution. A ~~paroled prisoner~~ parolee whose parole has been revoked shall remain in custody ~~of the sheriff~~ until delivery to a corrections officer sent and duly authorized by the commissioner for the removal of the ~~paroled prisoner~~ parolee to a state ~~penal~~ correctional institution. The cost of confining the ~~paroled prisoner~~ parolee shall be paid out of the funds appropriated for the Division of Corrections.

(e) When a ~~paroled prisoner~~ parolee is convicted of, or confesses to, any one of the crimes enumerated in section eighteen of this article, it is the duty of the Parole Board to cause him or her to be returned to this state for a summary hearing as provided by this article. Whenever a parolee has absconded supervision, the commissioner shall issue a warrant for his or her apprehension and return to this state for the hearing provided ~~for~~ in this article: *Provided,* That the panel considering revocation may, if it determines the best interests of justice do not require revocation, cause the ~~paroled absconder~~ parolee to be reinstated to parole.

(f) A warrant filed by the commissioner shall stay the running of his or her sentence until the parolee is returned to the custody of the Division of Corrections and is physically in West Virginia.

(g) Whenever a parolee who has absconded supervision or has been transferred out of this state for supervision pursuant to section one, article six, chapter twenty-eight of this code is returned to West Virginia due to a violation of parole and costs are incurred by the Division of Corrections, the commissioner may assess reasonable costs from the parolee's inmate funds or the parolee as reimbursement to the Division of Corrections for the costs of returning him or her to West Virginia.

(h) Conviction of a felony for conduct occurring during the period of parole is proof of violation of the conditions of parole and the hearing procedures required by the provisions of this section are inapplicable.

(i) The Commissioner ~~of the Division~~ of Corrections may issue subpoenas for persons and records necessary to prove a violation of the terms and conditions of a parolee's parole either at a preliminary hearing or at a final hearing before a ~~panel of the~~ Parole Board panel. The subpoenas shall be served in the same manner provided in the Supreme Court of Appeals of West Virginia Rules of Criminal Procedure. The subpoenas may be enforced by the commissioner through application or petition of the commissioner to the circuit court for contempt or other relief.

§62-12-29. Shared information for community supervision.

(a) The Administrative Director of the Supreme Court of Appeals of West Virginia is requested to assemble a community supervision committee, to include representatives of the judiciary, probation, parole, day report centers, magistrates, sheriffs, corrections and other members at the discretion of the director. The administrative director shall appoint a chair from among the members, and attend the meeting ex officio.

(b) The committee shall:

(1) Design and deploy a method for probation officers, parole officers, day report centers and others providing community supervision to electronically share offender information and assessments;

(2) Coordinate information reporting and access across agencies continuing supervision;

(3) Collect and share information about assessed and collected restitution among agencies continuing supervision;

(4) Collect sentencing-level data to enable the study of sentencing practices across the state; and

(5) Coordinate with the Community Corrections Subcommittee of the Governor's Committee on Crime, Delinquency and Correction in the discharge of these duties.

(c) The committee shall annually submit a report on its activities during the previous year, on or before September 30, to the Governor, the Speaker of the House of Delegates, the President of the Senate and, upon request, to any individual member of the Legislature.

ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT.

§62-15-2. Definitions.

For the purposes of this article:

(1) 'Assessment' means a diagnostic evaluation to determine whether and to what extent a person is a drug offender under this article and would benefit from its provisions. The assessment shall be conducted in accordance with the ~~standards, procedures, and diagnostic criteria designed to provide effective and cost-beneficial use of available resources~~ standardized risk and needs assessment and risk cut-off scores adopted by the West Virginia Supreme Court of Appeals. The results of all standardized risk and needs assessments and risk cut-off scores are confidential.

(2) 'Continuum of care' means a seamless and coordinated course of substance abuse education and treatment designed to meet the needs of drug offenders as they move through the criminal justice system and beyond, maximizing self-sufficiency.

(3) 'Controlled substance' means a drug or other substance for which a medical prescription or other legal authorization is required for purchase or possession.

(4) 'Drug' means a controlled substance, an illegal drug or other harmful substance.

(5) 'Drug court' means a judicial intervention process that incorporates the Ten Key Components and may include preadjudication or post-adjudication participation.

(6) 'Drug court team' ~~may~~ shall consist of the following members who are assigned to the drug court:

(A) The drug court judge, which may include a magistrate, mental hygiene commissioner or other hearing officer;

(B) The prosecutor;

(C) The public defender or a member of the criminal defense bar;

(D) A representative from the day report center or community corrections program, if operating in the jurisdiction;

(E) A law-enforcement officer;

(F) The drug court coordinator;

(G) A representative from a circuit court probation office or the division of parole supervision or both;

(H) One or more substance abuse treatment providers; and

(I) Any other persons selected by the drug court team.

(7) 'Drug offender' means an adult person charged with a drug-related offense or an offense in which substance abuse is determined from the evidence to have been a factor in the commission of the offense.

(8) 'Dual Diagnosis' means a substance abuse and cooccurring mental health disorder.

(9) 'Local advisory committee' may consist of the following members or their designees:

(A) A drug court circuit judge, who shall serve as chair;

(B) Drug court ~~magistrate(s)~~ magistrates;

(C) The prosecutor;

(D) A public defender;

(E) The drug court coordinator;

(F) A member of the criminal defense bar;

(G) The circuit clerk;

(H) A day report center director;

(I) A circuit court probation officer, parole officer or both;

(J) Law enforcement;

(K) One or more substance abuse treatment providers;

(L) A corrections representative; and

(M) Any such other person or persons the chair ~~deems~~ considers appropriate.

(10) 'Illegal drug' means a drug whose manufacture, sale, use or possession is forbidden by law;

(11) 'Memorandum of Understanding' means a written document setting forth an agreed upon procedure.

(12) 'Offender' means an adult charged with a criminal offense punishable by incarceration.

(13) 'Other harmful substance' means a misused substance otherwise legal to possess, including alcohol.

(14) 'Preadjudication order' means a court order requiring a drug offender to participate in drug court before charges are filed or before conviction.

(15) 'Post adjudication' means a court order requiring a drug offender to participate in drug court after having entered a plea of guilty or *nolo contendre* or having been found guilty.

(16) 'Recidivism' means any subsequent arrest for a serious offense (carrying a sentence of at least one year) resulting in the filing of a charge.

(17) 'Relapse' means a return to substance use after a period of abstinence.

(18) 'Split sentencing' means a sentence which includes a period of incarceration followed by a period of supervision.

(19) 'Staffing' means the meeting before a drug offender's appearance in drug court in which the drug court team discusses a coordinated response to the drug offender's behavior.

(20) 'Substance' means ~~drug~~ drugs or alcohol.

(21) 'Substance abuse' means the illegal or improper consumption of a ~~drug~~ substance.

(22) 'Substance abuse treatment' means a program designed to provide prevention, education, and therapy directed toward ending substance abuse and preventing a return to substance usage, through a continuum of care, including: treatment of cooccurring substance abuse and mental health issues; outpatient care; intensive outpatient care; residential care; peer support; relapse prevention; and cognitive behavioral programming, based on research about effective treatment models for the offender population.

(23) 'Ten Key Components' means the following benchmarks intended to describe the very best practices, designs, and operations of

drug courts. These benchmarks are meant to serve as a practical, yet flexible framework for developing effective drug courts in vastly different jurisdictions and to provide a structure for conducting research and evaluation for program accountability:

(A) Drug courts integrate alcohol and other drug treatment services with justice system case processing;

(B) Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights;

(C) Eligible participants are identified early and promptly placed in the drug court program;

(D) Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services;

(E) Abstinence is monitored by frequent alcohol and other drug testing;

(F) A coordinated strategy governs drug court responses to participants' compliance;

(G) Ongoing judicial interaction with each drug court participant is essential;

(H) Monitoring and evaluation measure the achievement of program goals and gauge effectiveness;

(I) Continuing interdisciplinary education promotes effective drug court planning, implementation and operations; and

(J) Forging partnerships among drug courts, public agencies and community-based organizations generates local support and enhances drug court effectiveness.

(24) 'Treatment supervision' means a program under which an eligible felony drug offender, pursuant to section six-a of this article,

is ordered to undergo treatment for substance abuse by a circuit court judge as a condition of drug court, a condition of probation, or as a modification of probation.

§62-15-4. Court authorization and structure.

(a) Each judicial circuit or two or more adjoining judicial circuits may establish a drug court or regional drug court program under which drug offenders will be processed to address appropriately, the identified substance abuse problem as a condition of pretrial release, probation, incarceration, parole or other release from a correctional facility: *Provided*, that all judicial circuits must be participating in a drug court or regional drug court program in accordance with the provisions of this article by July 1, 2014.

(b) The structure, method, and operation of each drug court program may differ and should be based upon the specific needs of and resources available to the judicial circuit or circuits where the drug court program is located.

(c) A drug court program may be preadjudication or post-adjudication for an adult offender.

(d) Participation in drug court, with the consent of the prosecution and the court, shall be pursuant to a written agreement.

(e) A drug court may grant reasonable incentives under the written agreement if it finds that the drug offender:

(1) Is performing satisfactorily in drug court;

(2) Is benefitting from education, treatment and rehabilitation;

(3) Has not engaged in criminal conduct; or

(4) Has not violated the terms and conditions of the agreement.

(f) A drug court may impose reasonable sanctions on the drug offender, including incarceration for the underlying offense or

expulsion from the program, pursuant to the written agreement, if it finds that the drug offender:

(1) Is not performing satisfactorily in drug court;

(2) Is not benefitting from education, treatment or rehabilitation;

(3) Has engaged in conduct rendering him or her unsuitable for the program;

(4) Has otherwise violated the terms and conditions of the agreement; or

(5) Is for any reason unable to participate.

(g) Upon successful completion of drug court, a drug offender's case shall be disposed of by the judge in the manner prescribed by the agreement and by the applicable policies and procedures adopted by the drug court. This may include, but is not limited to, withholding criminal charges, dismissal of charges, probation, deferred sentencing, suspended sentencing, split sentencing, or a reduced period of incarceration.

(h) Drug court shall include the Ten Key Components and the drug court team shall act to ensure compliance with them.

(i) Nothing contained in this article confers a right or an expectation of a right to participate in a drug court nor does it obligate a drug court to accept every drug offender.

(j) Neither the establishment of a drug court nor anything herein may be construed as limiting the discretion of the jurisdiction's prosecutor to act on any criminal case which he or she deems advisable to prosecute.

(k) Each drug court judge may establish rules and may make special orders as necessary that do not conflict with rules and orders

promulgated by the Supreme Court of Appeals which has administrative authority over the courts. The Supreme Court of Appeals shall provide uniform referral, procedure and order forms that shall be used in all drug courts in this state.

§62-15-6a. Treatment supervision.

(a) A felony drug offender is eligible for treatment supervision only if the offender would otherwise be sentenced to prison, and the standardized risk and needs assessment indicates the offender has a high risk for reoffending and a need for substance abuse treatment: *Provided*, That an inmate who is, or has been, convicted for a felony crime of violence against the person, a felony offense where the victim was a minor child or a felony offense involving the use of a firearm, as defined in subsections (o) and (p), section twenty-seven, article five, chapter twenty-eight of this code, shall not be eligible for treatment supervision.

(b) As a condition of drug court, a condition of probation or as a modification of probation, a circuit court judge may impose treatment supervision on an eligible drug offender convicted of a felony: *Provided*, That a judge may impose treatment supervision on an eligible drug offender convicted of a felony, notwithstanding the results of the risk assessment, upon making specific written findings of fact as to the reason for the departure.

(c) Whenever a circuit court judge determines that a treatment supervision participant has violated the conditions of his or her treatment supervision involving the participant's use of alcohol or a controlled substance, the judge may order a period of incarceration to encourage compliance with program requirements.

(1) Upon written finding by the circuit court judge that the participant would otherwise be sentenced to the custody of the Commissioner of Corrections for service of the underlying sentence, the cost of the incarceration order under this subsection, not to exceed

a period of thirty days in any one instance, shall be paid by the Division of Corrections.

(2) Whenever a circuit court judge orders the incarceration of a treatment supervision participant pursuant to this subsection, a copy of the order of confinement shall be provided by the clerk of the circuit court within five days to the Commissioner of Corrections.

(d) The Division of Justice and Community Services shall in consultation with the Governor's Advisory Council on Substance Abuse, created by Executive Order No. 5-11, use appropriated funds to develop proposed substance abuse treatment plans to serve those offenders under treatment supervision in each judicial circuit and on parole supervision.

(e) The Division of Justice and Community Services, in consultation with the Governor's Advisory Committee on Substance Abuse, shall develop:

(1) Qualifications for provider certification to deliver a continuum of care to offenders;

(2) Fee reimbursement procedures; and

(3) Other matters related to the quality and delivery of services.

(f) The Division of Justice and Community Services shall require education and training for providers which shall include, but not be limited to, cognitive behavioral training. The duties of providers who provide services under this section may include: notifying the probation department and the court of any offender failing to meet the conditions of probation or referrals to treatment; appearing at revocation hearings when required; and providing assistance with data reporting and treatment program quality evaluation.

(g) The cost for all drug abuse assessments and certified drug treatment under this section and subsection (e), section seventeen, article twelve of this chapter shall be paid by the Division of Justice

and Community Services from funds appropriated for that purpose. The Division of Justice and Community Services shall contract for payment for the services provided to eligible offenders.

(h) The Division of Justice and Community Services, in consultation with the Governor's Advisory Council on Substance Abuse, shall submit an annual report on or before September 30, to the Governor, the Speaker of the House of Delegates, the President of the Senate and, upon request, to any individual member of the Legislature containing:

(1) The dollar amount and purpose of funds provided for the fiscal year;

(2) The number of people on treatment supervision who received services and whether their participation was the result of a direct sentence or in lieu of revocation;

(3) The number of people on treatment supervision who, pursuant to a judge's specific written findings of fact, received services despite the risk assessment indicating less than high risk for reoffending and a need for substance abuse treatment;

(4) The type of services provided;

(5) The rate of revocations and successful completions for people who received services;

(6) The number of people under supervision receiving treatment under this section who were rearrested and confined within two years of being placed under supervision;

(7) The dollar amount needed to provide services in the upcoming year to meet demand and the projected impact of reductions in program funding on cost and public safety measures; and

(8) Other appropriate measures used to measure the availability of treatment and the effectiveness of services.

(i) Subsections (a), (b), and (c) of this section shall take effect on January 1, 2014. The remaining provisions of this section shall take effect on July 1, 2013.

§62-15-6b. Intermediate incarceration sanctions for drug court participants; responsibility for costs of incarceration.

(a) Whenever a judge of a drug court determines that a participant who has pled to a felony offense has committed a violation of his or her conditions of participation which would, in the judge's opinion, warrant a period of incarceration to encourage compliance with program requirements, the cost of the incarceration, not to exceed a period of thirty days in any one instance, shall be paid by the Division of Corrections. The judge must make a written finding that the participant would otherwise be sentenced to the custody of the Commissioner of Corrections for service of the underlying sentence.

(b) Whenever a drug court judge incarcerates a participant pursuant to subsection (a) of this section, the clerk of the circuit court shall provide a copy of the order of confinement within five days to the Commissioner of Corrections."

Delegate Miley moved to amend the amendment on page nineteen, section six, by striking out section six in its entirety and inserting in lieu thereof the following:

"§61-7-6. Exceptions as to prohibitions against carrying concealed handguns; exemptions from licensing fees.

(a) The licensure provisions set forth in this article do not apply to:

(1) Any person:

(A) Carrying a deadly weapon upon his or her own premises; ~~nor shall anything herein prevent a person from~~

(B) Carrying ~~any~~ a firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business; ~~nor shall anything herein prohibit a person~~ or

(C) ~~from~~ Possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site and returning to his or her home, residence or place of business;

(2) Any person who is a member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from this state or from the United States for the purpose of target practice from carrying any pistol, as defined in this article, unloaded, from his or her home, residence or place of business to a place of target practice and from any place of target practice back to his or her home, residence or place of business, for using any such weapon at a place of target practice in training and improving his or her skill in the use of the weapons;

(3) Any law-enforcement officer or law-enforcement official as defined in section one, article twenty-nine, chapter thirty of this code;

(4) Any employee of the West Virginia Division of Corrections duly appointed pursuant to the provisions of section ~~five~~ eleven-c, article ~~five~~ one, chapter twenty-five ~~twenty-eight of this code~~ while the employee is on duty;

(5) Any member of the armed forces of the United States or the militia of this state while the member is on duty;

~~(6) Any circuit judge, including any retired circuit judge designated senior status by the Supreme Court of Appeals of West Virginia, prosecuting attorney, assistant prosecuting attorney or a duly appointed investigator employed by a prosecuting attorney;~~

~~(7)~~(6) Any resident of another state who holds a valid permit or license to possess or carry a ~~concealed weapon~~ handgun issued by a

state or a political subdivision ~~which has entered into a reciprocity agreement with this state,~~ subject to the provisions and limitations set forth in section six-a of this article;

~~(8)~~(7) Any federal law-enforcement officer or federal police officer authorized to carry a weapon in the performance of the officer's duty; ~~and~~

~~(9)~~(8) Any Hatfield-McCoy Regional Recreation Authority Ranger while the ranger is on duty; and

(9) Any parole officer appointed pursuant to section fourteen article twelve, chapter sixty-two of this code in the performance of their duties.

(b) On and after July 1, 2013, the following judicial officers and prosecutors and staff shall be exempted from paying any application fees or licensure fees required under this article. However, on and after that same date, they shall be required to make application and satisfy all licensure and handgun safety and training requirements set forth in section four of this article before carrying a concealed handgun in this state:

(1) Any justice of the Supreme Court of Appeals of West Virginia;

(2) Any circuit judge;

(3) Any retired justice or retired circuit judge designated senior status by the Supreme Court of Appeals of West Virginia;

(4) Any family court judge;

(5) Any magistrate;

(6) Any prosecuting attorney;

(7) Any assistant prosecuting attorney; or

(8) Any duly appointed investigator employed by a prosecuting attorney."

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

The yeas and nays having been ordered, they were taken **(Roll No. 282)**, and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Gearheart, J. Nelson and Walters.

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

Delegate Armstead moved to amend the amendment on page six, section twenty-seven, line thirteen, by striking out subsection (m) in its entirety and inserting in lieu thereof the following:

"(m) Prior to the calculated discharge date of an inmate who is serving a sentence for an offense not referenced in subsection (l) of this section, six months shall be deducted from the inmate's accumulated good time to provide six months of mandatory post release supervision following the first instance in which the inmate reaches his or her calculated discharge date. All inmates released pursuant to this subsection shall be subject to electronic or GPS monitoring for the entire period of supervision. The provisions of this subsection are applicable to offenses committed on or after July 1, 2013."

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

The yeas and nays having been ordered, they were taken **(Roll No. 283)**, and there were—yeas 37, nays 61, absent and not voting 2, with the yeas and absent and not voting being as follows:

YEAS: Ambler, Anderson, Andes, Armstead, Arvon, Azinger, Border, Butler, Cadle, Cooper, Cowles, Ellington, Espinosa, D. Evans,

Faircloth, Folk, Frich, Gearheart, Hamrick, Householder, Howell, Ireland, Kump, Lane, McCuskey, Miller, E. Nelson, O'Neal, Overington, Raines, Rowan, Shott, R. Smith, Sobonya, Storch, Sumner and Westfall.

ABSENT AND NOT VOTING: J. Nelson and Walters.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was not adopted.

Delegate Armstead then moved to amend the amendment on page six, section twenty-seven, line thirteen, after the following: "(m)", by inserting the following: "(1)"

And,

On page six, section twenty-seven, after line twenty-two, by inserting a new subdivision, to read as follows:

"(2) After September 1, 2013, the Division of Corrections, in consultation with the Division of Justice and Community Services, shall submit a monthly report on or before the fifteenth day of the following month, to the Governor, each member of the Joint Committee on Government and Finance and, upon request, to any individual member of the Legislature, providing information regarding inmates who have been released on post-release mandatory supervision pursuant to this subsection that have violated the terms and conditions of release or have been charged with or convicted of an offense, other than a minor traffic violation or violated a term or condition of release, and shall include the following:

(a) The name of each inmate who is on post-release mandatory supervision pursuant to this subsection that has been charged with or convicted of an offense while on post-release mandatory supervision, other than a minor traffic violation, together with:

(1) The date of release and the date of the offense or violation;

(2) The offense with which the inmate has been charged or convicted; and

(3) The disposition of the charge or conviction and/or the term or condition of supervised release violated.

(b) The number of inmates currently on mandatory supervised release;

(c) The number of inmates who have successfully post-release mandatory supervision during the previous month; and

(d) The total number of inmates placed on mandatory supervised release under this section who were charged or convicted of an offense within two years of being released from supervision, together with the identification of the offense."

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

The yeas and nays having been ordered, they were taken **(Roll No. 284)**, and there were—yeas 35, nays 62, absent and not voting 3, with the yeas and absent and not voting being as follows:

YEAS: Ambler, Anderson, Andes, Armstead, Arvon, Ashley, Border, Butler, Cadle, Cooper, Cowles, Ellington, Espinosa, D. Evans, Faircloth, Folk, Frich, Gearheart, Hamrick, Householder, Howell, Ireland, Kump, Lane, Miller, E. Nelson, O'Neal, Overington, Pasdon, Raines, R. Smith, Sobonya, Storch, Sumner and Westfall.

ABSENT AND NOT VOTING: J. Nelson, L. Phillips and Walters.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was not adopted.

Delegate Armstead moved to amend the amendment on page thirty-three, section ten, line eleven, by striking out the word "special".

On pages fifty-six and fifty-seven, section nineteen, lines four and ten, by striking out word "special" in each of said lines.

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

The yeas and nays having been ordered, they were taken **(Roll No. 285)**, and there were—yeas 36, nays 62, absent and not voting 2, with the yeas and absent and not voting being as follows:

YEAS: Ambler, Anderson, Andes, Armstead, Arvon, Border, Butler, Cadle, Cooper, Cowles, Ellington, Espinosa, D. Evans, Faircloth, Folk, Frich, Gearheart, Hamrick, Householder, Howell, Ireland, Kump, Lane, McCuskey, Miller, E. Nelson, O'Neal, Overington, Pasdon, Raines, Rowan, R. Smith, Sobonya, Storch, Sumner and Westfall.

ABSENT AND NOT VOTING: J. Nelson and Walters.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was not adopted.

Delegate Armstead moved to amend the amendment on page ten, following section six, line twenty-one, by inserting a new article to read as follows:

"ARTICLE 14. WEST VIRGINIA SENTENCING COMMISSION.

§61-14-1. Creation of sentencing commission; how members are appointed; no compensation for service of members; terms of office for members; what constitutes quorum; how chairperson elected; Executive Director.

(a) There is hereby created a West Virginia Sentencing Commission.

(b) The commission consists of the following members, who shall serve without compensation:

(1) Two members are from the West Virginia House of Delegates, to be appointed by the Speaker of the House;

(2) Two members are members of the West Virginia Senate, to be appointed by the President of the Senate;

(3) Seven members are current or retired circuit judges, magistrates or municipal court judges, to be appointed to their membership on this commission by the Governor;

(4) Two members that are citizens of the State of West Virginia, with no required prerequisite other than citizenship in this state, to be appointed by the Governor;

(5) The presiding Chief Justice of the West Virginia Supreme Court of Appeals, who shall serve as an ex officio member.

(c) Each member serves a two-year term, with the exception of the ex officio members who shall serve as long as they shall hold their respective offices.

(d) The chairperson of this commission shall be elected by the other members of the commission.

(e) Seven members of the commission constitute a quorum.

(f) The Commission shall elect one of its members to serve as the Executive Director of the Commission and will provide administrative services.

§61-14-2. Purpose of Sentencing Commission.

The Legislature hereby finds and declares that:

(a) There is a need for fair and uniform sentencing;

(b) There is a need for research on issues regarding sentencing in order to promote a fuller understanding of the efficient, just and fair operation of this state's criminal justice system;

(c) There is a need for establishing priorities with regard to the severity of the criminal offenses;

(d) There is a need to utilize the limited correctional resources in a manner best able to fulfill the goals of criminal punishment, rehabilitation and protection of the public.

§61-14-3. Objectives of the commission.

The Sentencing Commission shall pursue the following objectives:

(a) Promoting sentencing that more accurately reflects the time that an offender will actually be incarcerated;

(b) Reducing unwarranted disparity in sentences for offenders who have committed similar offenses and have similar criminal histories;

(c) Preserving meaningful judicial discretion in the imposition of sentences and sufficient flexibility to permit individualized sentences;

(d) Ensuring that sentencing judges in every jurisdiction in the state are able to impose the most appropriate criminal penalties including correctional options programs for appropriate nonviolent offenders; and

(e) Determining whether the state needs to set out all criminal offenses in terms of priority in order of severity and harm to society and to provide alternatives to incarceration for certain offenses.

§61-14-4. Powers and duties of the commission.

The Sentencing Commission established pursuant to this article has the following powers and duties:

(a) The commission shall establish general policies and propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code as are necessary to carry out the purposes of this article;

(b) The commission may request such information, data and reports from any officer or agency of the state government as the commission may from time to time require and as may be produced consistent with other law;

(c) The commission may issue invitations requesting the attendance and testimony of witnesses and the production of any evidence that relates directly to a matter with respect to which the commission or any member thereof is empowered to make a determination under this article;

(d) The commission shall establish a research and development program within the commission for the purpose of:

(1) Serving as a clearinghouse and information center for the collection, preparation and dissemination of information on sentencing practices;

(2) Assisting and serving in a consulting capacity to state courts, departments and agencies in the development, maintenance and coordination of sound sentencing practices;

(e) The commission shall collect data obtained from studies, research and the empirical experience of public and private agencies concerning the sentencing processes;

(f) The commission shall publish data concerning the sentencing process;

(g) The commission shall collect and disseminate information concerning sentences actually imposed;

(h) The commission shall, collect and disseminate information regarding effectiveness of sentences imposed;

(i) The commission shall make recommendations to the Legislature concerning modification or enactment of sentencing and correctional statutes which the commission finds to be necessary and advisable to carry out an effective, humane and rational sentencing policy;

(j) The commission shall establish a plan and timetable to collect and disseminate information relating to incapacitation, recidivism, deterrence and overall effectiveness of sentences imposed;

(k) The commission shall evaluate the state's sentencing and correctional laws and policies and make recommendations to the Governor and the Legislature on or before January 1, 2014, and at its discretion thereafter or at the request of the President of the Senate or the Speaker of the House of Delegates, regarding the following issues:

(1) Whether the state should adopt guided discretion sentencing guidelines and, if so, what type of guided discretion sentencing guidelines should be adopted;

(2) Whether the state should alter the manner in which an inmate may obtain credit for good time served or release on mandatory supervision;

(3) Whether the state needs to take action to ensure that there is a coordinated system of correctional options to incarceration at the state and county levels and, if so, what action should be taken; and

(4) Any other matters relating to state and local laws and policies governing sentencing, parole, mandatory supervision and correctional options programs."

And,

On page one, line one, by striking out the enacting section and inserting a new enacting section to read as follows:

"That §25-1-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §28-5-27 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §31-20-5g and §31-20-5h; that §61-7-6 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §61-13-1, §61-13-2, §61-13-3 and §61-13-4; that §62-11A-1a of said code be amended and reenacted; that §62-11B-9 of said code be amended and reenacted; that §62-11C-2, §62-11C-3 and §62-11C-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §62-11C-10; that §62-12-6, §62-12-7, §62-12-9, §62-12-10, §62-12-13, §62-12-14a, §62-12-15, §62-12-17 and §62-12-19 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §62-12-29; that §62-15-2 and §62-15-4 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §62-15-6a and §62-15-6b, all to read as follows:"

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

The yeas and nays having been ordered, they were taken **(Roll No. 286)**, and there were—yeas 33, nays 65, absent and not voting 2, with the yeas and absent and not voting being as follows:

YEAS: Ambler, Anderson, Armstead, Arvon, Ashley, Border, Butler, Cadle, Canterbury, Cooper, Cowles, Ellington, Espinosa, D. Evans, Faircloth, Folk, Frich, Hamrick, Howell, Ireland, Kump, Lane, Miller, E. Nelson, O'Neal, Overington, Raines, Rowan, Shott, R. Smith, Sobonya, Sumner and Westfall.

ABSENT AND NOT VOTING: J. Nelson and Walters.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was not adopted.

There being no further amendments, the amendment, recommended by the Committee on Finance, as amended, was then adopted.

The bill was then ordered to third reading.

Com. Sub. for S. B. 386, Relating to personal safety orders; on second reading, coming up in regular order, was read a second time.

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

"ARTICLE 8. PERSONAL SAFETY ORDERS.

§53-8-4. Petition seeking relief.

(a) *Underlying acts.* — A petitioner may seek relief under this article by filing with a magistrate court a petition that alleges the commission of any of the following acts against the petitioner by the respondent:

(1) A sexual offense or attempted sexual offense as defined in section one of this article; or

(2) ~~A violation of section nine-a, article two, chapter sixty-one of this code~~ Repeated credible threats of bodily injury when the person making the threats knows or has reason to know that the threats cause another person to reasonably fear for his or her safety.

(b) *Contents.* —

The petition shall:

(1) Be verified and provide notice to the petitioner that an individual who knowingly provides false information in the petition is

guilty of a misdemeanor and, ~~on conviction~~ upon conviction thereof, is subject to the penalties specified in subsection (d) of this section;

(2) Subject to the provisions of subsection (c) of this section, contain the address of the petitioner; and

(3) Include all information known to the petitioner of:

(A) The nature and extent of the act specified in subsection (a) of this section for which the relief is being sought, including information known to the petitioner concerning previous harm or injury resulting from an act specified in subsection (a) of this section by the respondent;

(B) Each previous and pending action between the parties in any court; and

(C) The whereabouts of the respondent.

(c) *Address may be stricken.* — If, in a proceeding under this article, a petitioner alleges, and the court finds, that the disclosure of the address of the petitioner would risk further harm to the petitioner or a member of the petitioner's household, that address may be stricken from the petition and omitted from all other documents filed with, or transferred to, a court.

(d) *Providing false information.* — An individual who knowingly provides false information in a petition filed under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $1,000 or confined in jail not more than ninety days, or both.

(e) *Withdrawal or dismissal of a petition prior to adjudication operates as a dismissal without prejudice.* — No action for a personal safety order may be dismissed because the respondent is being prosecuted for a crime against the petitioner. For any action commenced under this article, dismissal of a case or a finding of not

guilty does not require dismissal of the action for a civil protection order.

(f) *Venue.* — The action may be heard in the county in which any underlying act occurred for which relief is sought in the petition, in the county in which the respondent is living, or in the county in which the petitioner is living, either temporarily or permanently."

The bill was then ordered to third reading.

Com. Sub. for S. B. 401, Relating to Board of Registration for Professional Engineers; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page five, section thirteen, line forty-three, following the words "requirements of the", by striking out the word "forgoing" and inserting in lieu thereof the word "foregoing".

On page five, section thirteen, line fifty-three, following the words "this article and", by striking out the word "possessing" and inserting in lieu thereof the word "possesses".

On page six, section thirteen, line fifty-nine, by striking out subdivision (2) in it's entirety, and inserting in lieu thereof a new subdivision (2) to read as follows:

"(2) Holds a valid council record with NCEES, which is the compilation of documents maintained by NCEES of an applicant's qualifications as a professional engineer, including official transcripts, engineering examination results, employment verifications and references, which indicates that the applicant meets the requirements of this article."

On page six, section thirteen, line seventy-one, following the words "as a professional engineer", by striking out the comma and inserting in lieu thereof a period.

The bill was then ordered to third reading.

S. B. 407, Requiring cellular and phone companies provide certain information to Bureau for Child Support Enforcement; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 426, Relating to filings under Uniform Commercial Code as to secured transactions; on second reading, coming up in regular order, was read a second time.

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

"That §46-4A-108 of the Code of West Virginia, 1931, as amended, be amended and reenacted, that §46-9-510, §46-9-516, §46-9-521 and §46-9-525 of said code, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §46-9-516a, all to read as follows:

ARTICLE 4A. FUNDS TRANSFERS.

§46-4A-108. Relationship to Electronic Fund Transfer Act.

(a) Except as provided in subsection (b), this ~~This~~ article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. §1693 et seq.) as amended from time to time.

(b) This article applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. §1693o-1) as amended from time to time, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act(15 U.S.C. §1693a) as amended from time to time.

(c) In a funds transfer to which this Article applies, in the event of an inconsistency between an applicable provision of this article and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency.

ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER.

§46-9-510. Effectiveness of filed record.

(a) *Filed record effective if authorized.* – A filed record is effective only to the extent that it was filed by a person that may file it under section 9-509.

(b) *Authorization by one secured party of record.* – A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) *Continuation statement not timely filed.* – A continuation statement that is not filed within the six-month period prescribed by section 9-515(d) is ineffective.

(d) A filed record ceases to be effective if the filing office terminates the record pursuant to section 9-516a.

§46-9-516. What constitutes filing; effectiveness of filing.

(a) *What constitutes filing.* – Except as otherwise provided in subsection (b) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) *Refusal to accept record; filing does not occur.* – Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record does not provide a name for the debtor;

(B) In the case of an amendment or information statement, the record:

(i) Does not identify the initial financing statement as required by 9-512 or 9-518, as applicable; ~~or~~

(ii) Identifies an initial financing statement whose effectiveness has lapsed under section 9-515; or

(iii) Identifies an initial financing statement which was terminated pursuant to section 9-516a;

(C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname; ~~or~~

(D) In the case of a record filed or recorded in the filing office described in section 9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates; or

(E) In the case of a record submitted to the filing office described in section 9-501(a)(1), the filing office has reason to believe, from information contained in the record or from the person that communicated the record to the office, that:

(i) If the record indicates that the debtor is a transmitting utility, the debtor does not meet the definition of a transmitting utility as described in section 9-102(a)(81);

(ii) If the record indicates that the transaction relating to the record is a manufactured home transaction, the transaction does not meet the definition of a manufactured home transaction as described in section 9-102(a)(54); or

(iii) If the record indicates that the transaction relating to the record is a public finance transaction, the transaction does not meet the definition of a public finance transaction as described in section 9-102(a)(70);

(4) In the case of an initial financing statement or an amendment, if the filing office believes in good faith that the record was communicated to the filing office in violation of section 9-516a;

~~(4)~~ (5) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

~~(5)~~ (6) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor;

(B) Indicate whether the name provided as the name of the debtor is the name of an individual or an organization;

~~(6)~~ (7) In the case of an assignment reflected in an initial financing statement under section 9-514(a) or an amendment filed under section 9-514(b), the record does not provide a name and mailing address for the assignee; or

~~(7)~~ (8) In the case of a continuation statement, the record is not filed within the six-month period prescribed by section 9-515(d).

(c) *Rules applicable to subsection (b).* – For purposes of subsection (b):

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 9-512, 9-514 or 9-518, is an initial financing statement.

(d) *Refusal to accept record; record effective as filed record.* – A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

~~(e) *Administrative review.* – If the Secretary of State determines that a financing statement which identities a public official or employee as a debtor is fraudulent or that an individual debtor and an individual secured party would appear to be the same individual on the financing statement or that the individual debtor claims to be a transmitting utility, without supporting documents, the Secretary may commence administrative proceedings to remove the statement from its records in accordance with the provisions of article five, chapter twenty-nine-a of this code.~~

~~(1) Upon the commencement of proceedings pursuant to this subsection, the Secretary of State shall identify the financing statement in its records as subject to administrative review and publish a notice in the *West Virginia Register* regarding the proceedings.~~

~~(2) A financing statement may be found to be fraudulent only if, based upon clear and convincing evidence, no good faith basis exists upon which to conclude that the secured party was authorized to file the statement and the statement was submitted for the purpose of harassment or intimidation or fraudulent intent of the alleged debtor.~~

~~(3) If upon the completion of administrative review, it is determined that the filing of a financing statement was fraudulent, the~~

~~filing party shall be assessed all costs incurred by the Secretary in reaching a final determination, including reimbursement for all costs of the hearing. The filing party may also be subject to a civil penalty not exceeding $500 per fraudulent filing. If upon completion of administrative review or any subsequent appeal of a decision of the Secretary of State, it is determined that a filing subject to appeal is not fraudulent, the secretary or court may award the prevailing party reasonable costs and expenses, including attorney fees.~~

~~(4) The Secretary of State shall annually submit a report to the Legislature regarding actions taken against fraudulent filings pursuant to this section which identifies the number and characteristics of such proceedings, identifies any creditors found to have made fraudulent filings, describes proceedings initiated by the secretary in which it is ultimately determined that fraudulent filings did not occur, describes the number and type of complaints received by the secretary in which it is alleged that fraudulent filings have occurred, and describes the actions taken by the secretary to investigate complaints concerning allegedly fraudulent filings and the results of the investigations.~~

~~(5) A decision by the secretary to remove a financing statement determined to have been fraudulently filed subject to appeal *de novo* to the circuit court of Kanawha County. Pending the outcome of an appeal, the financing statement may not be removed from the records of the Secretary, but shall be identified in the records as having been adjudicated to be fraudulent, subject to a pending appeal by the putative creditor.~~

~~(6) A financing statement filed by a regulated financial institution is not subject to the provisions of this section. For the purposes of this section, a regulated financial institution is a bank, bank and trust company, trust company, savings bank, savings association, building and loan association, credit union, consumer finance company, insurance company, investment company, mortgage lender or broker, securities broker, dealer or underwriter, or other institution chartered,~~

~~licensed, registered or otherwise authorized under federal law, the law of this state or any other state, to engage in secured lending.~~

§46-9-516a. Filing fraudulent records; civil and criminal penalties; administrative proceedings; immunity from liability.

(a) No person may cause to be communicated to the filing office for filing a false record the person knows or reasonably should know:

(1) Is not authorized or permitted under sections 9-509, 9-708 or 9-808; and

(2) Is filed with the intent to harass or defraud the person identified as debtor in the record or any other person.

(b) Any person who violates subsection (a) of this section shall, for a first offense, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1000 or, in the discretion of the court, be confined in jail not more than twelve months, or both fined and confined. Any person who violates subsection (a) of this section shall, for a second or subsequent offense, be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years.

(c) Any person who violates subsection (a) of this section is liable in a civil action to each injured person for:

(1) The greater of the actual damages caused by the violation or up to $10,000 in lieu of actual damages;

(2) Reasonable attorney fees;

(3) Court costs and other related expenses of bringing an action including reasonable investigative expenses; and

(4) In the discretion of the court, punitive damages in an amount determined by the court or jury.

(d) A person identified as a debtor in a filed record the person believes was caused to be communicated to the filing office in violation of subsection (a) of this section may, under penalty of perjury, file with the Secretary of State an affidavit to that effect. The Secretary of State shall adopt and make available a form affidavit for use under this section.

(e) Upon receipt of an affidavit filed under this section, or upon administrative action by the Secretary of State, the Secretary of State shall communicate to the secured party of record on the record to which the affidavit or administrative action relates and to the person who communicated the record to the filing office, if different and known to the office, a request for additional documentation supporting the effectiveness of the record. The Secretary of State shall review all such documentation received within thirty days after the first request for additional documentation is sent if the Secretary of State has a reasonable basis for concluding that the record was communicated to the filing office in violation of subsection (a) of this section.

The Secretary of State may initiate an administrative action under this subsection with regard to a filed record if the Secretary of State has reason to believe, from information contained in the record or obtained from the person who communicated the record to the filing office, that the record was communicated to the filing office in violation of subsection (a) of this section. The Secretary of State may give heightened scrutiny to a record that indicates the debtor is a transmitting utility or that indicates the transaction to which the record relates is a manufactured home transaction or a public finance transaction.

(f) The Secretary of State may not charge a fee to file an affidavit under this section and may not return a fee paid for filing a record terminated under this section.

(g) The Secretary of State shall promptly communicate to the secured party of record a notice of the termination of a record under subsection (e) of this section. A secured party of record who believes in good faith that the record was not communicated to the filing office in violation of subsection (a) of this section may file an action to require that the record be reinstated by the filing office. A person who communicated a record to the filing office that the filing office rejected in reliance on section 9-516(b)(4), who believes in good faith that the record was not communicated to the filing office in violation of section 9-516(b)(4), may file an action to require that the record be accepted by the filing office. The jurisdiction for the action is the circuit court of Kanawha County.

(h) If the court determines that a record terminated under this section or rejected in reliance on section 9-516(b)(4) should be reinstated or accepted, the court shall provide a copy of an order to that effect to the Secretary of State. On receipt of an order reinstating a terminated record, the Secretary of State shall refile the record along with a notice indicating that the record was refiled pursuant to this section and its initial filing date. On receipt of an order requiring that a rejected record be accepted, the Secretary of State shall promptly file the record along with a notice indicating that the record was filed pursuant to this section and the date on which it was communicated for filing. A rejected record that is filed pursuant to an order of a court shall have the effect described in section 9-516(d) for a record the filing office refuses to accept for a reason other than one set forth in section 9-516(b).

(i) A terminated record that is refiled under subsection (h) of this section is effective as a filed record from the initial filing date. If the period of effectiveness of a refiled record would have lapsed during the period of termination, the secured party may file a continuation statement within thirty days after the record is refiled and the continuation statement has the same effect as if it had been filed during the six-month period described in section 9-515(d). A refiled record is considered never to have been ineffective against all persons and for

all purposes except that it is not effective as against a purchaser of the collateral that gave value in reasonable reliance on the absence of the record from the files.

(j) Neither the filing office nor any of its employees incur liability for the termination or failure to accept a record for filing in the lawful performance of the duties of the office or employee.

(k) This section does not apply to a record communicated to the filing office by a regulated financial institution or by a representative of a regulated financial institution, except that the Secretary of State may request from the secured party of record on the record or from the person that communicated the record to the filing office, if different and known to the office, additional documentation supporting that the record was communicated to the filing office by a regulated financial institution or by a representative of a regulated financial institution. For the purposes of this section the term 'regulated financial institution' means a financial institution subject to regulatory oversight or examination by a state or federal agency and includes banks, savings banks, savings associations, building and loan associations, credit unions, consumer finance companies, industrial banks, industrial loan companies, investment funds, installment sellers, mortgage servicers, sales finance companies and leasing companies.

(l) If a record was communicated to the filing office for filing before the effective date of this section, and its communication would have constituted a violation of subsection (a) of this section if it had occurred on or after the effective date of this section:

(i) Subsections (b) and (c) are not applicable; and

(ii) The remaining subsections of this section are applicable.

§46-9-521. Written financing statement and amendment thereto.

(a) *Initial financing statement.* – A filing office that accepts written records may not refuse to accept a written initial financing statement

~~in the following form and format~~ except for a reason set forth in section 9-516(b): *Provided*, That the written record must be on the most recent revision of the appropriate form as approved by the International Association of Commercial Administrators."

(b) *Amended financing statement.* – A filing office that accepts written records may not refuse to accept an amended written record ~~in the following form and format~~ except for a reason set forth in section 9-516(b): *Provided*, That the written record must be on the most recent revision of the appropriate form as approved by the International Association of Commercial Administrators.

§46-9-525. Fees.

(a) *Initial financing statement or other record: general rule.* — Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in subsection (b) of this section, is the amount specified in subsection (c) of this section, if applicable, plus:

(1) ~~Ten~~ $20 if the record is communicated in writing and consists of one or two pages; and

(2) ~~Ten~~ $20 if the record is communicated in writing and consists of more than two pages; and

(3) ~~Ten~~ $20 if the record is communicated by another medium authorized by filing-office rule.

(b) *Initial financing statement: Public-finance and manufactured housing transactions.* -- Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing an initial financing statement of the following kind is the amount specified in subsection (c) of this section, if applicable, plus:

(1) ~~Ten dollars~~ $20 if the financing statement indicates that it is filed in connection with a public-finance transaction;

(2) ~~Ten dollars~~ $20 if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

(c) *Number of names.* — The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b) of this section.

(d) *Response to information request.* — The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is:

(1) ~~Five dollars~~ $10 if the request is communicated in writing;

(2) ~~Five dollars~~ $10 if the request is communicated by another medium authorized by filing-office rule; and

(3) ~~Fifty cents~~ $1 per page for each active lien.

(e) *Record of mortgage.* — This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under section 9-502(c) ~~of this article~~. However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(f) *Deposit of funds.* -- All fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the special revenue account created by section 59-1-59(c)(4)(B), to provide civil legal services for low income persons, one-fourth shall be deposited in the state fund, general revenue, and ~~one-half~~ one-fourth shall be deposited in the service fees and collections account established by section ~~two, article one, chapter fifty-nine of this code~~ 59-1-2 for the operation of the office of the Secretary of State. Any balance remaining on June 30, 2001, in the existing special revenue account entitled 'uniform commercial code'

as established by chapter two hundred four, acts of the Legislature, 1989 regular session, shall be transferred to the service fees and collections account established by section ~~two, article one, chapter fifty-nine of this code~~ 59-1-2 for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article, unless otherwise provided by appropriation or other action by the Legislature."

The bill was then ordered to third reading.

Com. Sub. for S. B. 437, Regulating commercial dog-breeding operations; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 441, Relating to withdrawal of erroneous state tax liens; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page six, section twelve, line seventy-nine, following the word "lien", by striking out the remainder of the subsection and inserting in lieu thereof "shall be issued in duplicate. One copy shall be forwarded to the taxpayer, and the other copy shall be forwarded to the clerk of the county commission of the county wherein the lien is recorded. The clerk of the county commission shall record the withdrawal of lien without payment of any fee."

On page seven, section two, line nineteen, following the word "lien", by striking the words "for recordation shall be signed and delivered to the taxpayer by the proper officer" and inserting in lieu thereof "shall be issued in duplicate. One copy shall be forwarded to the taxpayer, and the other copy shall be forwarded to the clerk of the county commission of the county wherein the lien is recorded. The clerk of the county commission shall record the withdrawal of lien without payment of any fee."

The bill was then ordered to third reading.

Com. Sub. for S. B. 454, Relating to taxation of alternative motor fuels; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page four, section two, subdivision four, line twenty-four, following the words "motor to propel", by inserting the words "or operate".

On page twenty-five, section two, subdivision seventy-nine, line four hundred twenty-four, following the words "motor to propel", by inserting the words "or operate".

On page sixty-three, section nineteen, subsection (c), line twenty-four, by striking out subsection (c), and inserting in lieu thereof a new subsection (c) to read as follows:

"(c) For the calendar years beginning on or after January 1, 2014, the tax levied by this article on alternative fuel that is subject to tax at the point of imposition prescribed in section six-a of this article, shall be paid by the alternative-fuel bulk end user, provider of alternative fuel or retailer of alternative fuel on or before January 31 of every year, unless determined by the tax commissioner that payment must be made more frequently, by check, bank draft or money order payable to the tax commissioner for the amount of tax due. The tax commissioner may require all or certain taxpayers to file tax returns and payments electronically. The return required by the tax commissioner shall accompany the payment of tax. If no tax is due, the return required by the tax commissioner shall be completed and filed on or before January 31."

On page sixty-three, section eighteen-b, line one, following the word "(a) *General.* -", by striking out the words "Effective January 1, 2004, all" and inserting in lieu thereof the word "All".

And,

On page sixty-six, section eighteen-b, subsection (d), line fifty-eight, by striking out subdivision (2) in its entirety, and inserting in lieu thereof a new subdivision (2), to read as follows:

"(2) The tax due under this article comprising the variable component of the tax due under article fourteen-c of this chapter on alternative fuel, is due and shall be collected and remitted at the time the tax imposed by section five, article fourteen-c of this chapter is due, collected and remitted."

The bill was then ordered to third reading.

Com. Sub. for S. B. 464, Regulating tanning facilities; on second reading, coming up in regular order, was read a second time.

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

"That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-45-1, §16-45-2, §16-45-3, §16-45-4 and §16-45-5, all to read as follows:

ARTICLE 45. TANNING FACILITIES.

§16-45-1. Definitions.

As used in this article:

(1) 'Photo therapy device' means a device used for exposure to daylight or to specific wavelengths of light using lasers, light-emitting diodes, fluorescent lamps, dichroic lamps or very bright, full-spectrum light, usually controlled with various devices.

(2) 'Tanning device' means any equipment that emits radiation used for tanning of the skin, such as a sun lamp, tanning booth or

tanning bed, and includes any accompanying equipment, such as protective eye wear, timers and handrails.

(3) 'Tanning facility' means any commercial location, place, area, structure or business where a tanning device is used for a fee, membership dues or other compensation.

§16-45-2. Exception for health care providers.

Nothing in this article may be construed as prohibiting any health care provider licensed under chapter thirty of this code from performing any action within the scope of his or her practice that results in prescribing the use of a photo therapy device to a patient regardless of the patient's age for treatment of a medical condition.

§16-45-3. Operation standards.

(a) A tanning facility shall provide to any patron who wishes to use a tanning device located within its tanning facility a disclosure and consent form relating to use of a tanning device that contains the current United States Food and Drug Administration warning as follows: 'Danger. Ultraviolet Radiation. Follow instructions. Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin injury and allergic reactions. REPEATED EXPOSURE MAY CAUSE PREMATURE AGING OF THE SKIN AND SKIN CANCER. WEAR PROTECTIVE EYEWEAR; FAILURE TO DO SO MAY RESULT IN SEVERE BURNS OR LONG-TERM INJURY TO THE EYES. Medications or cosmetics may increase your sensitivity to the ultraviolet radiation. Consult physician before using tanning device if you are using medications or have a history of skin problems or believe yourself especially sensitive to sunlight. If you do not tan in the sun, you are unlikely to tan from use of this product.'

The disclosure and consent form must have a place for the patron's signature and the date. A signed and dated copy of the disclosure and consent form shall be maintained by the tanning facility and remains valid for one year from the date it was signed.

(b) All patrons are required to present proof of age prior to use of a tanning device. Proof of age shall be satisfied with a driver's license or other government-issued identification containing the date of birth and a photograph of the individual. Persons under the age of eighteen may not be permitted to use a tanning device without the prior written consent of the person's parent or legal guardian. Photographic identification of the parent or legal guardian is required. A copy of the signed parental or legal guardian consent shall be maintained by the tanning facility and remains valid for one year from the date it was signed. Persons under the age of fourteen may not be permitted to use a tanning device.

§16-45-4. Local health department authority to inspect.

Local health departments shall have the authority to enter and inspect a tanning facility to determine compliance with the requirements of this article.

§16-45-5. Violations and penalties.

(a) Any owner of a tanning facility who fails to obtain parental consent for a minor under the age of eighteen or otherwise violates the requirements of this article is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined $100.

(b) For a second offense, the owner is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $250 nor more than $500.

(c) For a third offense or subsequent offense, the owner is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000."

The bill was then ordered to third reading.

Com. Sub. for S. B. 469, Clarifying service credit for certain PERS members; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 477, Relating to electronic registration of voters; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 481, Relating to juvenile mental health treatment; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 482, Relating to sale of voter registration lists; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page two, following the enacting section, by striking out the remainder of the bill and inserting in lieu thereof, the following language: on page five, section thirty, line fifty-six, by striking out subsection "~~(c)~~ (d)" in its entirety and inserting in lieu thereof the following:

"~~(c)~~ (d) The fees received by the clerk of the county commission shall be kept in a separate fund under the supervision of the clerk and may be used for the purpose of defraying the cost of the preparation of the voter lists. ~~Any unexpended balance in the fund shall be transferred to the General Fund of the county commission.~~ After deducting the costs of preparing voter lists, the clerk shall deposit the net proceeds from the sale of the voter lists in the State Election Fund as set forth in subsection (b), section forty-eight, article one of this chapter."

The bill was then ordered to third reading.

S. B. 515, Relating to use of television receivers and other devices in vehicles; on second reading, coming up in regular order, was read a second time.

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

"ARTICLE 15. EQUIPMENT.

§17C-15-42. Video screens, video monitors and television receivers in view of driver prohibited; exceptions.

(a) No motor vehicle ~~shall~~ may be operated on ~~any~~ a street or highway in this state when equipped with a television receiver, video monitor, television or video screen unless ~~such receiver is so placed that the screen or picture tube of such receiver is visible only in the rear seat of such motor vehicle and not in view of the operator of such motor vehicle.~~ the receiver, screen or monitor is configured so that the moving images are not in view of the operator while the vehicle is in motion, or it falls within one or more of the categories set forth in subsections (b) or (c) of this section.

(b) This prohibition does not apply to the following equipment installed in a vehicle:

(1) A visual display if it does not show video or television broadcast images in view of the operator while the motor vehicle is in motion;

(2) A global positioning device;

(3) A mapping display;

(4) A visual display used to enhance or supplement the driver's view forward, behind or to the sides of a motor vehicle for the purpose of maneuvering the vehicle;

(5) A visual display used to enhance or supplement a driver's view of vehicle occupants; or

(6) Television-type receiving equipment used exclusively for safety or traffic engineering information.

(c) A television receiver, video monitor, television or video screen or other similar means of visually displaying a television broadcast or video signal is not prohibited if the equipment has an interlock device that, when the motor vehicle is driven, disables the equipment for all uses except as a visual display described in subdivisions (1) through (6) of subsection (b) of this section."

Delegate Howell moved to amend the amendment on page one, subsection (a), section forty-two, page one, line six, immediately following the word "when", by striking out the word "equipped with" and inserting the word "containing".

And,

On page one, line seven, immediately following the word "television", by inserting a comma and the words "computer display".

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

The yeas and nays having been ordered, they were taken **(Roll No. 287)**, and there were—yeas 35, nays 63, absent and not voting 2, with the yeas and absent and not voting being as follows:

YEAS: Ambler, Anderson, Andes, Armstead, Arvon, Ashley, Border, Butler, Cadle, Canterbury, Cooper, Cowles, Ellington, Espinosa, D. Evans, Faircloth, Folk, Frich, Gearheart, Hamilton, Hamrick, Householder, Howell, Ireland, Lane, Miller, O'Neal, Overington, Raines, Shott, R. Smith, Sobonya, Storch, Sumner and Westfall.

ABSENT AND NOT VOTING: J. Nelson and Walters.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was not adopted.

The amendment, recommended by the Committee on the Judiciary, was then adopted.

The bill was then ordered to third reading.

S. B. 523, Making supplementary appropriation of unappropriated moneys to various accounts; on second reading, coming up in regular order, was read a second time.

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

"That the total appropriation for the fiscal year ending June 30, 2013, to fund 1058, fiscal year 2013, organization 0100, be supplemented and amended to read as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

EXECUTIVE

100-Governor's Office
Minority Affairs Fund

(WV Code Chapter 5)

Fund 1058 FY 2013 Org 0100

		Act-ivity		Other Funds
1	Personal Services	001	$	125,000
2	Annual Increment	004		1,000
3	Employee Benefits	010		46,800
4	Current Expense	130		503,200
5	Total		$	676, 000

And, That the total appropriation for the fiscal year ending June 30, 2013, to fund 8664, fiscal year 2013, organization 0932, be supplemented and amended to read as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF EDUCATION AND THE ARTS

155-State Board of Rehabilitation - Division of Rehabilitation Services - West Virginia Rehabilitation Center - Special Account

(WV Code Chapter 18)

Fund 8664 FY 2013 Org 0932

		Act-ivity	Other Funds
1	Personal Services	001	$ 75,000
2	Employee Benefits	010	20,738
3	Current Expenses	130	2,289,622
4	Repairs and Alterations	064	150,000
5	Equipment	070	220,000
6	Other Assets	690	150,000
7	Total		$ 2,905,360

And, That the total appropriation for the fiscal year ending June 30, 2013, to fund 5156, fiscal year 2013, organization 0506, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

175-Division of Health -
Hospital Services Revenue Account
Special Fund
Capital Improvement, Renovation and Operations

(WV Code Chapter 16)

Fund 5156 FY 2013 Org 0506

		Act-ivity		Other Funds
1	Institutional Facilities			
2	Operations (R).	335	$	5,000,000
3	Medical Services Trust Fund -			
4	Transfer (R).	512		2,500,000

And, That the total appropriation for the fiscal year ending June 30, 2013, to fund 5204, fiscal year 2013, organization 0506, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

179-Division of Health -
Lead Abatement Account

(WV Code Chapter 16)

Fund 5204 FY 2013 Org 0506

		Act-ivity		Other Funds
1	Personal Services	001	$	3,000
2	Employee Benefits	010		2,076

And, That the total appropriation for the fiscal year ending June 30, 2013, to fund 6501, fiscal year 2013, organization 0612, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

196-West Virginia State Police - Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

Fund 6501 FY 2013 Org 0612

		Act-ivity		Other Funds
6a.	Buildings	258	$	534,000

And, That the total appropriation for the fiscal year ending June 30, 2013, to fund 7253, fiscal year 2013, organization 0706, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF REVENUE

223-Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2013 Org 0706

		Act-ivity		Other Funds
4a	Equipment	070	$	247,500

And, That the total appropriation for the fiscal year ending June 30, 2013, to fund 8254, fiscal year 2013, organization 0806, be supplemented and amended to read as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF TRANSPORTATION

233-Public Port Authority -
Special Railroad and Intermodal Enhancement Fund

(WV Code Chapter 17)

Fund 8254 FY 2013 Org 0806

		Act-ivity		Other Funds
1	Current Expenses.....	130	$`	250,000
2	Other Assets	690		7,750,000
3		Total	$	8,000,000

And, That the total appropriation for the fiscal year ending June 30, 2013, to fund 8520, fiscal year 2013, organization 0907, be supplemented and amended by increasing an existing item of appropriation and by adding a new item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

248-WV Board of Examiners for Registered Professional Nurses

(WV Code Chapter 30)

Fund 8520 FY 2013 Org 0907

		Act-ivity		Other Funds
6	Equipment.....	070	$	5,000
6a	Other Assets.....	690		5,000

And, That the total appropriation for the fiscal year ending June 30, 2013, to fund 8680, fiscal year 2013, organization 0936, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

256-WV Board of Licensed Dietitians

(WV Code Chapter 30)

Fund 8680 FY 2013 Org 0936

		Act-ivity		Other Funds
1	Personal Services	001	$	2,500
2	Employee Benefits	010		382

The purpose of this supplemental appropriation bill is to supplement, amend, increase, decrease and add items of appropriations in the aforesaid accounts for the designated spending units for expenditure during the fiscal year 2013.";

And,

On page three, line six, after "organization 0506," by inserting the following "in the Department of Military Affairs and Public Safety, West Virginia State Police, fund 6501, fiscal year 2013, organization 0612."

The bill was ordered to third reading.

S. B. 525, Making supplementary appropriation of federal funds to various accounts; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page eight, item 334, line 10, by striking out the number "200,000" and inserting in lieu thereof "750,000."

The bill was then ordered to third reading.

Com. Sub. for S. B. 535, Relating to process for maintaining voter registration lists; on second reading, coming up in regular order, was read a second time.

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

"ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-3. Persons entitled to vote.

Citizens of the state shall be entitled to vote at all elections held within the precincts of the counties and municipalities in which they respectively reside. But no person who has not been registered as a voter as required by law, or who is a minor, or ~~of unsound mind~~ who has been declared mentally incompetent by a court of competent jurisdiction, or who is under conviction of treason, felony or bribery in an election, or who is not a bona fide resident of the state, county or municipality in which he or she offers to vote, shall be permitted to vote at such election while such disability continues, unless otherwise specifically provided by federal or state code. Subject to the qualifications otherwise prescribed in this section, however, a minor shall be permitted to vote only in a primary election if he or she will have reached the age of eighteen years on the date of the general election next to be held after such primary election.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-2. Eligibility to register to vote.

(a) Any person who possesses the constitutional qualifications for voting may register to vote. To be qualified, a person must be a citizen of the United States and a legal resident of West Virginia and of the county where he or she is applying to register, shall be at least eighteen years of age, except that a person who is at least seventeen years of age and who will be eighteen years of age by the time of the next ensuing general election may also be permitted to register, and shall not be otherwise legally disqualified: *Provided,* That a registered voter who has not reached eighteen years of age may vote both partisan

and nonpartisan ballots in a federal, state, ~~or~~ county, municipal or special primary election~~, but may only vote in a municipal primary election~~ if he or she will be eighteen years of age by the time of the ~~next municipal~~ corresponding general election. ~~but is not eligible to vote in a special election.~~

(b) Any person who has been convicted of a felony, treason or bribery in an election, under either state or federal law, is disqualified and is not eligible to register or to continue to be registered to vote while serving his or her sentence, including any period of incarceration, probation or parole related thereto. Any person who has been ~~determined to be~~ declared mentally incompetent by a court of competent jurisdiction is disqualified and shall not be eligible to register or to continue to be registered to vote for as long as that ~~determination remains in effect~~ disability continues.

§3-2-4a. Statewide voter registration ~~list~~ database.

(a) The Secretary of State shall implement and maintain a single, official, statewide, centralized, interactive computerized voter registration ~~list~~ database of every legally registered voter in the state, ~~which shall include the following~~ as follows:

(1) The ~~computerized list~~ statewide voter registration database shall serve as the single system for storing and managing the official list of registered voters throughout the state.

(2) The ~~computerized list~~ statewide voter registration database shall contain the name, registration information and voter history of every legally registered voter in the state.

(3) ~~Under the computerized list,~~ In the statewide voter registration database, the Secretary of State shall assign a unique identifier to each legally registered voter in the state.

(4) The ~~computerized list~~ statewide voter registration database shall be coordinated with other agency databases within the state~~;~~ and elsewhere, as appropriate. ~~including, but not limited to, the vital~~

~~statistics database maintained by the Department of Health and Human Resources. The Department of Health and Human Resources by January 31st of each calendar year shall provide to each county clerk a list from this database of all decedents in that county in the preceding year and shall provide to the Secretary of State the list of all decedents in the state in the preceding year.~~

(5) The Secretary of State, ~~and~~ any clerk of the county commission or any authorized designee of the Secretary of State or clerk of the county commission may obtain immediate electronic access to the information contained in the ~~computerized list~~ statewide voter registration database.

(6) The clerk of the county commission shall electronically enter voter registration information into the ~~computerized list~~ statewide voter registration database on an expedited basis at the time the information is provided to the clerk.

(7) The Secretary of State shall provide necessary support to enable every clerk of the county commission in the state to enter information as described in subdivision (6) of this subsection.

(8) The ~~computerized list~~ statewide voter registration database shall serve as the official voter registration list for conducting all elections in the state.

(b) The Secretary of State or any clerk of a county commission shall perform maintenance with respect to the ~~computerized list~~ statewide voter registration database on a regular basis as follows:

(1) If an individual is to be removed from the ~~computerized list~~ statewide voter registration database, he or she shall be removed in accordance with the provisions of 42 U. S. C. §1973gg, *et seq.*, the National Voter Registration Act of 1993.

(2) The Secretary of State shall coordinate the ~~computerized list~~ statewide voter registration database with state agency records and

~~remove the~~ shall establish procedures for the removal of names of individuals who are not qualified to vote because of felony status or death. ~~: *Provided,* That~~ No state agency may withhold information regarding a voter's status as deceased or as a felon unless ordered by a court of law. ~~: *Provided further,* the Secretary of State shall, in each calendar year, certify that the removal of individuals who are not qualified to vote because of a felony conviction as provided in section two of this article or death is completed at least thirty days preceding the date of any primary election.~~

(c) The list maintenance performed under subsection (b) of this section shall be conducted in a manner that ensures that:

(1) The name of each registered voter appears in the ~~computerized list~~ statewide voter registration database;

(2) Only voters who are not registered, who have requested in writing that their voter registration be canceled or who are not eligible to vote are removed from the ~~computerized list~~ statewide voter registration database;

(3) Duplicate names are eliminated from the ~~computerized list~~ statewide voter registration database; and

(4) Deceased ~~individuals~~ individuals' names are eliminated from the ~~computerized list~~ statewide voter registration database.

(d) The Secretary of State and the clerks of all county commissions shall provide adequate technological security measures to prevent the unauthorized access to the ~~computerized list~~ statewide voter registration database established under this section.

(e) The Secretary of State shall ensure that voter registration records in the state are accurate and updated regularly, including the following:

(1) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of

eligible voters. Under the system, consistent with 42 U. S. C. §1973gg, *et seq.*, registrants who have not responded to a notice sent pursuant to section twenty six, article two of this chapter, who have not otherwise updated their voter registration address and who have not voted in two consecutive general elections for federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote; ~~and~~

(2) By participation in programs across state lines to share data specifically for voter registration to ensure that voters who have moved across state lines or become deceased in another state are removed in accordance with state law and 42 U. S. C. §1973gg, *et seq.*; and

~~(2)~~(3) Through safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(f) Applications for voter registration may only be accepted when the following information is provided:

(1) Except as provided in subdivision (2) of this subsection and notwithstanding any other provision of law to the contrary, an application for voter registration may not be accepted or processed unless the application includes:

(A) In the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number;

(B) In the case of an applicant who has been issued an identification card by the Division of Motor Vehicles, the applicant's identification number; or

(C) In the case of any other applicant, the last four digits of the applicant's Social Security number; and

(2) If an applicant for voter registration has not been issued a current and valid driver's license, Division of Motor ~~Vehicles'~~ Vehicles identification card or a Social Security number, the Secretary

of State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. ~~To the extent that the state has a computerized list in effect under this section and the list assigns unique identifying numbers to registrants,~~ The number assigned under this ~~section~~ subdivision shall be the unique identifying number assigned under the ~~list~~ statewide voter registration database.

(g) The Secretary of State and the Commissioner of the Division of Motor Vehicles shall enter into an agreement to match and transfer applicable information in ~~the database of~~ the statewide voter registration ~~system~~ database with information in the database of the Division of Motor Vehicles to the extent required to enable each official to verify the accuracy of the information provided on applications for voter registration.

(h) The Commissioner of the Division of Motor Vehicles shall enter into an agreement with the Commissioner of Social Security under 42 U. S. C. ~~§301~~ §401, *et seq.*, the Social Security Act. All fees associated with this agreement shall be paid for from moneys in the fund created under section twelve of this article ~~two of this chapter~~.

§3-2-18. Registration records; active, inactive, canceled, pending and rejected registration files; procedure; voting records.

(a) For the purposes of this article:

(1) 'Original voter registration record' means all records submitted or entered in writing or electronically, where permitted by law, for voter registration purposes, including:

(A) Any original application or notice submitted by any person for registration or reinstatement, change of address, change of name, change of party affiliation, correction of records, cancellation, confirmation of voter information or other request or notice for voter registration purposes; and

(B) Any original entry made on any voter's registration record at the polling place, or made or received by the clerk of the county commission relating to any voter's registration, such as records of voting, presentation of identification and proof of age, challenge of registration, notice of death or obituary notice, notice of disqualifying conviction or ruling of mental incompetence or other original document which may affect the status of any person's voter registration.

(2) 'Active voter registration ~~files~~ records' means the ~~files of~~ registration records, whether ~~maintained~~ on paper ~~forms~~ or in ~~digitized data~~ electronic format, containing the names, addresses, birth dates and other required information for all persons within a county who are registered to vote and whose registration has not been designated as ~~'inactive'~~ inactive or ~~'canceled'~~ canceled pursuant to the provisions of this article.

(3) 'Inactive voter registration ~~files~~ records' means the ~~files of~~ registration records, whether ~~maintained~~ on paper ~~forms~~ or in ~~digitized data~~ electronic format, containing the names, addresses, birth dates and other required information for all persons designated ~~'inactive'~~ inactive pursuant to the provisions of section twenty-seven of this article following the return of the prescribed notices as undeliverable at the address provided by the United States Postal Service or entered on the voter registration, ~~. For the purposes of this chapter or of any other provisions of this code relating to elections conducted under the provisions of this chapter, whenever a requirement is based on the number of registered voters, including, but not limited to, the number of ballots to be printed, the limitations on the size of a precinct, or the number of petition signatures required for election purposes, only those registrations included on the active voter registration files shall be counted and voter registrations included on the inactive voter registration files, as defined in this subdivision, shall not be counted.~~ or for failure of the contacted voter to return a completed confirmation notice within thirty days of the mailing.

(4) 'Canceled voter registration ~~files~~ records' means the ~~files~~ records containing all required information for all persons who have been removed from the active and inactive voter registration ~~files~~ records and who are no longer registered to vote within the county.

(5) 'Pending application ~~files~~ records' means the temporary ~~files~~ records containing all information submitted on a voter registration application, pending the expiration of the verification period.

(6) 'Rejected application ~~files~~ records' means the ~~files~~ records containing all information submitted on a voter registration application which was rejected for reasons as described in this article.

(7) 'Confirmation pending records' means the records containing all required information for persons who have been identified to be included in the next succeeding mailing of address confirmation notices as set forth by the National Voter Registration Act of 1993(42 U. S. C. §1973gg, *et seq.*).

(b) For the purposes of this chapter or of any other provisions of this code relating to elections conducted under the provisions of this chapter, whenever a requirement is based on the number of registered voters, including, but not limited to, the number of ballots to be printed, the limitations on the size of a precinct, or the number of petition signatures required for election purposes, only those registrations included on the active voter registration files shall be counted and voter registrations included on the inactive voter registration files, as defined in this subdivision, shall not be counted.

~~(b)~~ (c) Active voter registration ~~files~~ records, confirmation pending records and inactive voter registration ~~files~~ records may be maintained in the same physical location ~~or database~~, providing the records are coded, marked or arranged in such a way as to make the status of the registration immediately obvious. Canceled voter registration ~~files~~ records, pending application ~~files~~ records and rejected application ~~files~~ records ~~shall each~~ may be maintained in separate

physical locations. ~~or databases.~~ However, all such records shall be maintained in the statewide voter registration database, subject to this article.

~~(c)~~ (d) The effective date of any action affecting any voter's registration status shall be entered on the voter record ~~in the appropriate file~~, including the effective date of registration, change of name, address or party affiliation or correction of the record, effective date of transfer to inactive status, return to active status or cancellation. When any registration is designated inactive or is canceled, the reason for the designation or cancellation and any reference notation necessary to locate the original documentation related to the change shall be entered on the voter record.

~~(d)~~ (e) Within one hundred twenty days after each primary, general, municipal or special election, the clerk of the county commission shall ~~as evidenced by the presence or absence of signatures on the pollbooks for such election, correct any errors or omissions on the voter registration records resulting from the poll clerks erroneously checking or failing to check the registration records as required by the provisions of section thirty-four, article one of this chapter, or shall~~ enter the voting records into the ~~state uniform data system if the precinct books have been replaced with printed registration books as provided in section twenty-one of this article.~~ statewide voter registration database.

§3-2-19. Maintenance of active and inactive registration ~~files in precinct record books and county alphabetical registration file~~ records for municipal elections.

~~(a) Each county shall continue to maintain a record of each active and inactive voter registration in precinct registration books until the statewide voter registration system is adopted pursuant to the provisions of section four-a of this article, fully implemented and given final approval by the Secretary of State. The precinct registration books shall be maintained as follows:~~

~~(1) Each active voter registration shall be entered in the precinct book or books for the county precinct in which the voter's residence is located and shall be filed alphabetically by name, alphabetically within categories, or by numerical street address, as determined by the clerk of the county commission for the effective administration of registration and elections. No active voter registration record shall be removed from the precinct registration books unless the registration is lawfully transferred or canceled pursuant to the provisions of this article.~~

~~(2) Each voter registration which is designated 'inactive' pursuant to the procedures prescribed in section twenty-seven of this article shall be retained in the precinct book for the county precinct in which the voter's last recorded residence address is located until the time period expires for which a record must remain on the inactive files. Every inactive registration shall be clearly identified by a prominent tag or notation or arranged in a separate section in the precinct book clearly denoting the registration status. No inactive voter registration record shall be removed from the precinct registration books unless the registration is lawfully transferred or canceled pursuant to the provisions of this article.~~

~~(b)~~ (a) For municipal elections, the registration records of active and inactive voters shall be maintained as follows:

(1) ~~County precinct books shall~~ Clerks of the county commissions shall prepare pollbooks or voter lists to be used in municipal elections when the county precinct boundaries and the municipal precinct boundaries are the same and all registrants of the precinct are entitled to vote in state, county and municipal elections within the precinct or when the registration records of municipal voters within a county precinct are separated and maintained in a separate municipal section or book for that county precinct and can be used either alone or in combination with other ~~precinct books~~ pollbooks or voter lists to make up a complete set of registration records for the municipal election precinct.

(2) Upon request of the municipality, and if the clerk of the county commission does not object, separate municipal precinct books shall be maintained in cases where municipal or ward boundaries divide county precincts and it is impractical to use county ~~precinct books~~ pollbooks or voter lists or separate municipal sections of those ~~precinct books~~ pollbooks or voter lists. If the clerk of the county commission objects to the request of a municipality for separate municipal precinct books, the State Election Commission must determine whether the separate municipal precinct books should be maintained.

(3) No registration record may be removed from a municipal registration record unless the registration is lawfully transferred or canceled pursuant to the provisions of this article in both the county and the municipal registration records.

~~(c)~~ (b) Within thirty days following the entry of any annexation order or change in street names or numbers, the governing body of an incorporated municipality shall file with the clerk of the county commission a certified current official municipal boundary map and a list of streets and ranges of street numbers within the municipality to assist the clerk in determining whether a voter's address is within the boundaries of the municipality.

~~(d) Each county, so long as precinct registration books are maintained, shall maintain a duplicate record of every active and inactive voter registration in a county alphabetical file. The alphabetical file may be maintained on individual paper forms or, upon approval of the Secretary of State of a qualified data storage program, may be maintained in digitized format. A qualified data storage program shall be required to contain the same information for each voter registration as the precinct books, shall be subject to proper security from unauthorized alteration and shall be regularly duplicated to backup data storage to prevent accidental destruction of the information on file.~~

§3-2-21. Maintenance of records in the statewide voter registration database in lieu of precinct record books.

(a) The clerk of the county commission of each county~~, upon installation of the state uniform voter data system,~~ shall ~~prepare~~ maintain a voter registration data system record book into which all required records of appointments of authorized personnel, tests, repairs, program alterations or upgrades and any other action by the clerk of the county commission or by any other person under supervision of the clerk affecting the programming or records contained in the system, other than routine data entry, alteration, use, transfer or transmission of records shall be entered.

(b) The clerk of the county commission shall appoint all personnel authorized to add, change or transfer voter registration information within the ~~state uniform voter data system~~ statewide voter registration database, and a record of each appointment and the date of authorization shall be entered as provided in subsection (a) of this section. The assignment and confidential record of assigned system identification or authorized user code for each person appointed shall be as prescribed by the Secretary of State.

(c) Voter registration records entered into and maintained in the ~~state uniform voter data system~~ statewide voter registration database shall include the information required for application for voter registration, for maintenance of registration and voting records, for conduct of elections and for statistical purposes, as prescribed by the Secretary of State.

(d) No person shall make any entry or alteration of any voter record which is not specifically authorized by law. Each entry or action affecting the status of a voter registration shall be based on information in an original voter registration record, as defined in section eighteen of this article.

(e) The clerk of the county commission shall maintain, within the ~~data system~~ statewide voter registration database, active and inactive

voter registration ~~files~~ records, confirmation pending records, canceled voter registration ~~files~~ records, pending application ~~files~~ records and rejected application ~~files~~ records, all as defined in section eighteen of this article.

(f) Upon receipt of a completed voter registration application, the clerk shall enter into the statewide voter registration database the information provided on the application, mark the records as pending and ~~into the pending application file and~~ initiate the verification or notice of disposition procedure as provided in section sixteen of this article. Upon completion of the verification or notice of disposition, the status of the voter record shall be ~~transferred to the proper file~~ properly noted in the statewide voter registration database.

(g) Upon receipt of an application or written confirmation from the voter of a change of address within the county, change of name, change of party affiliation or other correction to ~~a~~ an active voter registration record, ~~in the active voter registration file,~~ the change shall be entered in the record and the required notice of disposition mailed.

(h) Upon receipt of an application or written confirmation from ~~the~~ an inactive voter of a change of address within the county, change of name, change of party affiliation or other correction to a registration record, ~~in the inactive voter registration file, the~~ any necessary change shall be entered in the record, the required notice of disposition mailed and the record ~~transferred~~ updated to ~~the active registration file or returned to~~ active status, and the date of the transaction shall be recorded. Receipt of an application or written confirmation from an inactive voter that confirms the voter's current address shall be treated in the same manner.

(i) Upon receipt of a notice of death, a notice of conviction or a notice of a determination of mental incompetence, as provided ~~for~~ in section twenty-three of this article, the date and reason for cancellation shall be entered on the voter's record and the record status shall be ~~transferred~~ changed to ~~the~~ canceled. ~~voter registration file.~~

(j) Upon receipt from the voter of a request for cancellation or notice of change of address to an address outside the county pursuant to the provisions of section twenty-two of this article, or as a result of a determination of ineligibility through a general program of removing ineligible voters as authorized by the provisions of this article, the date and reason for cancellation shall be entered on the voter's record and the record status shall be ~~transferred~~ changed to ~~the~~ canceled. ~~voter registration file.~~

~~(k) At least once each month during a period prescribed by the Secretary of State, the clerk of the county commission of each county utilizing the state uniform voter data system shall transmit to the Secretary of State, by electronic transmission or by the mailing of one or more data disks or other approved means, a copy of the active, inactive and pending application files as of the date of transmission, for the purpose of comparison of those records to the voter registration records of other counties in the state and for any other list maintenance procedures authorized by the provisions of this article.~~

~~(l) The Secretary of State shall promulgate legislative rules pursuant to the provisions of chapter twenty-nine-a of this code establishing procedures for the elimination of separate precinct registration books as the official active and inactive voter registration files and for the use of the state uniform voter data system to maintain all files, to produce voter lists for public inspection and to produce precinct voter records for election day use. Separate precinct registration books shall be maintained pursuant to the provisions of section nineteen of this article until all necessary provisions required for the conduct of elections at the polling place and for the implementation of the provisions of this chapter have been made. When a county is authorized to use the state uniform voter data system exclusively for all prescribed files, the clerk of the county commission shall transfer the original voter records contained in the precinct registration books to alphabetical record storage files which shall be retained in accordance with the provisions of section twenty-nine of this article, and any rules issued pursuant thereto.~~

§3-2-23. Cancellation of registration of deceased or ineligible voters.

The clerk of the county commission shall cancel the registration of a voter:

~~(a)~~(1) Upon the voter's death as verified by:

~~(1)~~(A) A death certificate from the Registrar of Vital Statistics or a notice from the Secretary of State that a comparison of the records of the registrar with the county voter registration records show the person to be deceased;

~~(2)~~(B) The publication of an obituary or other writing clearly identifying the deceased person by name, residence and age corresponding to the voter record; or

~~(3)~~(C) An affidavit signed by the parent, legal guardian, child, sibling or spouse of the voter giving the name and birth date of the voter, and date and place of death;

~~(b)~~(2) Upon receipt of an official notice from a state or federal court that the person has been convicted of a felony, of treason or bribery in an election; ~~in which event, the clerk shall enter a notation on the voter record of the date upon which the term of any sentence for such conviction will cease, unless sooner vacated by court action or pardon;~~

~~(c)~~(3) Upon receipt of a notice from the appropriate court of competent jurisdiction of a determination of a voter's mental incompetence;

~~(d)~~(4) Upon receipt from the voter ~~registration~~ of a written request to cancel the voter's registration, upon confirmation by the voter of a change of address to an address outside the county, upon notice from a voter registrar of another jurisdiction outside the county or state of the receipt of an application for voter registration in that

jurisdiction, or upon notice from the Secretary of State that a voter registration application was accepted in another county of the state subsequent to the last registration date in the first county, as determined from a comparison of voter records; or

~~(c)~~(5) Upon failure to respond and produce evidence of continued eligibility to register following the challenge of the voter's registration pursuant to the provisions of section twenty-eight of this article.~~; or~~

~~(f) As required under the provisions of section twenty-seven of this article.~~

§3-2-25. Systematic purging program for removal of ineligible voters from active voter registration ~~records~~ files; comparison of data records; confirmation notices; public inspection list. ~~for counties with state approved uniform voter data system; modified program for counties using otherdigitized record storage systems.~~

(a) ~~In any county maintaining active voter registration files in the state uniform voter data system, as defined in section twenty of this article,~~ The systematic purging program provided ~~for~~ in this section shall begin no earlier than October 1 of each odd-numbered year and shall be completed no later than February 1 of the following year. The clerk of the county commission shall transmit or mail ~~on data disk to the Secretary of State a copy of the digitized records contained in the active voter registration file as of October 1, to be received by the Secretary of State no later than October 15,~~. to the Secretary of State a certification that the systematic purging program has been completed and all voters identified as no longer eligible to vote have been canceled in the statewide voter registration database in accordance with the law no later than February 15 in the year in which the purging program is completed.

(b) ~~Upon receipt of the voter records in data format,~~ The Secretary of State shall provide for the comparison of data records of all ~~participating~~ counties. The Secretary of State shall, based on the comparison, prepare a ~~data file or printed~~ list for each county which shall include the voter registration record for each voter shown on that county's list who appears to have registered or to have updated a voter registration in another county at a subsequent date. The resulting ~~files and/or~~ lists shall be returned to the appropriate county and the clerk of the county commission shall proceed with the confirmation procedure for those voters as prescribed in section twenty-six of this article.

(c) The Secretary of State may provide for the comparison of data records of ~~participating~~ counties with the data records of the Division of Motor Vehicles, the registrar of vital statistics and with the data records of any other state agency which maintains records of residents of the state, if the procedure is practical and the agency agrees to participate. Any resulting information regarding potentially ineligible voters shall be returned to the appropriate county and the clerk of the county commission shall proceed with the confirmation procedure as prescribed in section twenty-six of this article.

(d) The records of all ~~of the~~ voters ~~of all participating counties~~ not identified pursuant to the procedures set forth in subsections (b) and (c) of this section shall be combined for comparison with United States Postal Service change of address information, as described in section 8(c)(A) of the National Voter Registration Act of 1993 (42 U. S. C. §1973gg, *et seq.*). The Secretary of State shall contract with an authorized vendor of the United States Postal Service to perform the comparison. ~~Not less than thirty percent nor more than fifty percent of~~ The cost of the change of address comparison procedure shall be paid for from the combined voter registration and licensing fund established in section twelve of this article and ~~participating counties shall reimburse the fund for the balance of the cost prorated on a per voter basis~~ the cost of the confirmation notices, labels and postage shall be paid for by the counties.

(e) The Secretary of State shall return to each county the identified matches of the county voter registration records and the postal service change of address records.

(1) When the change of address information indicates the voter has moved to a new address within the county, the clerk of the county commission shall enter the new address on the voter record ~~in the active registration file~~ and assign the proper precinct.

(2) The clerk of the county commission shall then mail to each voter who appears to have moved from the residence address shown on the registration records a confirmation notice pursuant to section twenty-six of this article and of section 8(d)(2) of the National Voter Registration Act of 1993 (42 U. S. C. §1973gg, *et seq.*). The notice shall be mailed, no later than December 31, to the new address provided by the postal service records or to the old address if a new address is not available.

(f) The clerk of the county commission shall ~~prepare a list containing~~ indicate in the statewide voter registration database the name and address of each voter to whom a confirmation notice was mailed and the date on which the notice was mailed. ~~The list shall be titled 'Systematic Purging Program Notices' and shall include the name of the county and the date of the preparation of the list and shall be arranged in alphabetical order within precincts or for the entire county.~~

(g) Upon receipt of any response or returned mailing sent pursuant to the provisions of subsection (e) of this section, the clerk shall immediately enter the date and type of response received ~~on~~ in the ~~list of voters prepared pursuant to the provisions of this section~~ statewide voter registration database and shall then proceed in accordance with the provisions of section twenty-six of this article.

(h) For purposes of complying with the record keeping and public inspection requirements of the National Voter Registration Act

of 1993 (42 U. S. C. §1973gg, *et seq.*), and with the provisions of section twenty-seven of this article, the public inspection lists shall be maintained either in printed form kept in a binder prepared for such purpose and available for public inspection during regular business hours at the office of the clerk of the county commission or in read-only data format available for public inspection on computer terminals set aside and available for regular use by the general public. Information concerning whether or not each person has responded to the notice shall be entered ~~onto the list~~ into the statewide voter registration database upon receipt and shall be available for public inspection as of the date the information is received.

(i) Any voter to whom a confirmation notice was mailed pursuant to the provisions of subsection (e) of this section who fails to respond to the notice or to update his or her voter registration address by February 1 immediately following the completion of the program, shall be designated inactive ~~and placed within the inactive voter registration file, as defined in section nineteen of this article.~~ in the statewide voter registration database. Any voter designated inactive shall be required to affirm his or her current residence address, on a form prescribed by the Secretary of State, upon appearing at the polls to vote.

~~(j) A county which uses a digitized data system for voter registration other than the state uniform voter data system shall conduct the systematic purging program for removal of ineligible voters from active voter registration files by contracting directly with an authorized vendor of the United States postal service for change of address information, at county expense, for the identification of potentially ineligible voters, and upon receipt of the list of matches, shall perform the steps required by the provisions of subsections (e) through (i) of this section within the same time limits and procedures required for those counties participating in the state approved system.~~

~~(k)~~ (j) In addition to the preceding purging procedures, all counties using the change of address information of the United States

Postal Service shall also, once each four years during the period established for systematic purging in the year following a presidential election year, conduct the same procedure by mailing a confirmation notice to those persons not identified as potentially ineligible through the change of address comparison procedure but who have not updated their voter registration records and have not voted in any election during the preceding four calendar years. The purpose of this additional systematic confirmation procedure shall be to identify those voters who may have moved without filing a forwarding address, moved with a forwarding address under another name, died in a another county or state so that the certificate of death was not returned to the clerk of the county commission, or who otherwise have become ineligible.

§3-2-29. Custody of original registration records ~~and voter registration data files.~~

(a) All original registration records ~~and voter registration data files~~ in paper format shall remain in the custody of the county commission, by its clerk, or, electronically, in the statewide voter registration database and shall not be removed except for use in an election or by the order of a court of record or in compliance with a subpoena duces tecum issued by the Secretary of State pursuant to the provisions of section six, article one-a of this chapter.

(b) All original voter registration records shall be retained for a minimum of five years following the last recorded activity relating to the record, except that any application which duplicates and does not alter an existing registration shall be retained for a minimum of two years following its receipt. The Secretary of State shall promulgate rules pursuant to the provisions of chapter twenty-nine-a of this code for the specific retention times and procedures required for original voter registration records.

(c) Prior to the destruction of original voter registration applications or registration cards of voters whose registration has been

canceled at least five years previously, the clerk of the county commission shall notify the Secretary of State of the intention to destroy those records. If the Secretary of State determines, within ninety days of the receipt of the notice, that those records are of sufficient historical value that microfilm or other permanent data storage is desirable, the Secretary of State may require that the records be delivered to a specified location for processing at state expense.

(d) ~~When a county maintains in digitized data format the~~ Active, inactive, pending, rejected and canceled registration ~~files, a data format copy of each of the files~~ records shall be maintained as a permanent record, as follows:

(1) Individual canceled registration records shall be maintained in ~~a regularly accessible data file~~ the statewide voter registration database for a period of at least ~~three~~ five years following cancellation. Upon the expiration of ~~three~~ five years, those individual records may be removed from the ~~regularly accessible canceled registration file and stored on tape or disk. The records removed may be added to a single file containing previously canceled registration records for permanent storage, and the tape or disk shall be clearly labeled.~~ statewide voter registration database and disposed of in accordance with the appropriate documented retention policy.

(2) Rejected registration ~~record files~~ records shall be maintained in the same manner as provided for canceled registration ~~files~~ records.

~~(3) At least once each calendar year, during the month of February, a data format copy of the active registration file, inactive registration file and pending application file shall be made containing all records maintained in those files as of the date of the copy. The copy shall be stored on tape or disk and shall be clearly labeled with the types of files and the date the copy was made.~~"

The bill was then ordered to third reading.

Com. Sub. for S. B. 538, Eliminating requirement law enforcement maintain files of domestic violence orders; on second reading, coming up in regular order, was read a second time.

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

"ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART 6. DISPOSITION OF DOMESTIC VIOLENCE ORDERS.

§48-27-601. Transmitting orders to domestic violence database; affidavit as to award of possession of real property; service of order on respondent.

(a) Upon entry of an order pursuant to section 27-403 or part 27-501, et seq., or an order entered pursuant to part 5-501, et seq., granting relief provided for by this article, a copy of the order shall ~~no later than the close of the next business day,~~ be immediately transmitted electronically by the court or the clerk of the court ~~electronically~~ to the domestic violence database established pursuant to the provisions of section twenty-one, article one, chapter fifty-one of this code. ~~by the court or the clerk of the court~~ No later than the close of the next business day ~~by~~ the court or the clerk of the court shall transmit the order to a local office of the municipal police, the county sheriff and the West Virginia State Police ~~where it shall be placed in a confidential file, with access provided only to the law-enforcement agency and the respondent named on the order.~~ for service upon the respondent named in the order. The law-enforcement agency or agencies to which a copy of the order is supplied are not required ~~do not have~~ to maintain a copy of the order after the respondent is served.

(b) A sworn affidavit may be executed by a party who has been awarded exclusive possession of the residence or household, pursuant to an order entered pursuant to section 27-503, and shall be delivered to ~~such~~ law-enforcement agencies simultaneously with any order giving the party's consent for a law-enforcement officer to enter the residence or household, without a warrant, to enforce the protective order or temporary order.

(c) Orders shall be promptly served upon the respondent. Failure to serve a protective order on the respondent does not stay the effect of a valid order if the respondent has actual notice of the existence and contents of the order.

(d) Any law-enforcement agency in this state in possession of or with notice of the existence of an order issued pursuant to the provisions of sections 27-403 or 27-501 of this article or the provisions of section 5-509 of this chapter which is in effect or has been expired for thirty days or less that receives a report that a person protected by ~~such~~ an order has been reported to be missing shall immediately follow its procedures for investigating missing persons. No agency or department policy delaying the beginning of an investigation ~~shall have~~ has any force or effect.

(e) The provisions of subsection (d) of this section shall be applied where a report of a missing person is made which is accompanied by a sworn affidavit that the person alleged to be missing was, at the time of his or her alleged disappearance, being subjected to treatment which meets the definition of domestic battery or assault set forth in section twenty-eight, article two, chapter sixty-one of this code."

The bill was then ordered to third reading.

Com. Sub. for S. B. 586, Transferring authority to license cosmetology, barber and massage schools to Council for Community and Technical College Education; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Education, was reported by the Clerk and adopted, amending the bill on page one, by striking out everything after the enacting section, and inserting in lieu thereof the following:

"ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-3. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) 'Aesthetics' or 'esthetics' means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease:

(1) Administering cosmetic treatments to enhance or improve the appearance of the skin, including cleansing, toning, performing effleurage or other related movements, stimulating, exfoliating or performing any other similar procedure on the skin of the human body or scalp;

(2) Applying, by hand or with a mechanical or electrical apparatus, any cosmetics, makeups, oils, powders, clays, antiseptics, tonics, lotions, creams or chemical preparations necessary for the practice of aesthetics to another person's face, neck, back, shoulders, hands, elbows and feet up to and including the knee;

(3) The rubbing, cleansing, exercising, beautifying or grooming of another person's face, neck, back, shoulders, hands, elbows and feet up to and including the knee;

(4) The waxing, tweezing and threading of hair on another person's body;

(5) The wrapping of another person's body in a body wrap;

(6) Applying artificial eyelashes and eyebrows; and

(7) The lightening of hair on the body except the scalp.

(b) 'Aesthetician' or 'esthetician' means a person licensed under the provisions of this article who engages in the practice of aesthetics.

(c) 'Applicant' means a person making application for a professional license, license, certificate, registration, permit or renewal under the provisions of this article.

(d) 'Barber' means a person licensed under the provisions of this article who engages in the practice of barbering.

(e) 'Barbering' means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease:

(1) Shaving, shaping and trimming the beard, or both;

(2) Cutting, singeing, shampooing, arranging, dressing, tinting, bleaching, or applying lotions or tonics on human hair, or a wig or hairpiece; and

(3) Applications, treatments or rubs of the scalp, face, or neck with oils, creams, lotions, cosmetics, antiseptics, powders, or other preparations in connection with the shaving, cutting or trimming of the hair or beard.

(f) 'Barber crossover' or 'cosmetologist crossover' is a person who is licensed to perform barbering and cosmetology.

(g) 'Barber permanent waving' means the following acts done on the human body for compensation and not for the treatment of disease:

(1) The bleaching or tinting of hair; and

(2) The permanent waving of hair.

(h) 'Barber permanent wavist' means a person licensed to perform barbering and barber permanent waving.

(i) 'Board' means the West Virginia Board of Barbers and Cosmetologists.

(j) 'Certificate' means an instructor certificate to teach in a school under the provisions of this article.

(k) 'Certificate holder' means a person certified as an instructor to teach in a school under the provisions of this article.

(l) 'Cosmetologist' means a person licensed under the provisions of this article who engages in the practice of cosmetology.

(m) 'Cosmetology' means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease:

(1) Cutting, styling, shaping, arranging, braiding, weaving, dressing, adding extensions, curling, waving, permanent waving, relaxing, straightening, shampooing, cleansing, singeing, bleaching, tinting, coloring, waxing, tweezing, or similarly work on human hair, or a wig or hairpiece, by any means, including hands, mechanical or electrical devices or appliances;

(2) Nail care;

(3) Applying by hand or with a mechanical or electrical device or appliance, any cosmetics, makeups, oils, powders, clays, antiseptics, tonics, lotions, creams or chemical preparations necessary for the practice of aesthetics to another person's face, neck, shoulders, hands, elbows and feet up to and including the knee;

(4) The rubbing, cleansing, exercising, beautifying or grooming of another person's face, neck, shoulders, hands, elbows and feet up to and including the knee;

(5) The wrapping of another person's body in a body wrap; and

(6) Performing aesthetics.

(n) 'General supervision' means:

(1) For schools, a master or certified instructor is on the premises and is quickly and easily available; or

(2) For salons, a professional licensee is on the premises and is quickly and easily available.

(o) 'Hair braiding' means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease: Braiding, plaiting, twisting, wrapping, threading, weaving, extending or locking of natural human hair by hand or mechanical device.

(p) 'Hair Styling' means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease:

(1) Cutting, styling, shaping, arranging, braiding, weaving, dressing, adding extensions, curling, waving, permanent waving, relaxing, straightening, shampooing, cleansing, singeing, bleaching, tinting, coloring, waxing, tweezing, threading or similarly work on human hair, or a wig or hairpiece, by any means, including hands, mechanical or electrical devices or appliances;

(2) The rubbing, cleansing, exercising, beautifying or grooming of another person's face, neck, shoulders, hands, elbows and feet up to and including the knee.

(q) 'Hair Stylist' means a person licensed under the provisions of this article who engages in the practice of hair styling.

(r) 'License' means a professional license, a salon license or a school license.

(s) 'Licensed school' means a facility which has been approved by the West Virginia Council for Community and Technical College Education pursuant to section nine, article two-b, chapter eighteen-b of this code, to educate persons to be licensed or issued certain permits under the provisions of this article.

~~(s)~~ (t) 'Licensee' means a person, corporation or firm holding a license issued under the provisions of this article.

~~(t)~~ (u) 'Nail care' means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease:

(1) The cleansing, dressing, or polishing of nails of a person;

(2) Performing artificial nail service; and

(3) The cosmetic treatment of the feet up to the knee and the hands up to the elbow.

~~(u)~~ (v) 'Nail technician' or 'manicurist' means a person licensed under the provisions of this article who engages in the practice of nail care.

~~(v)~~ (w) 'Permit' means a work permit.

~~(w)~~ (x) 'Permitee' means a person holding a work permit.

~~(x)~~ (y) 'Professional license' means a license to practice as a aesthetician, barber, barber crossover, barber permanent wavist, cosmetologist, cosmetologist crossover or nail technician.

~~(y)~~ (z) 'Registration' means a registration issued by the board to a person who rents or leases a booth or chair from a licensed salon owner and operator, or both, or a registration issued by the board to a person who is a student in a school.

~~(z)~~ (aa) 'Registrant' means a person who holds a registration under the provisions of this article.

~~(aa)~~ (bb) 'Salon' means a shop or other facility where a person practices under a professional license.

~~(bb)~~ (cc) 'Salon license' means a license to own and operate a salon.

~~(cc) 'School' means a facility to educate persons to be licensed under the provisions of this article.~~

~~(dd) 'School license' means a license to own and operate a school.~~

~~(ee)~~ (dd) 'Student registration' means a registration issued by the board to a student to study at a school licensed under the provisions of this article.

§30-27-5. Powers and duties of the board.

(a) The board has all the powers and duties set forth in this article, by rule, in article one of this chapter and elsewhere in law.

(b) The board shall:

(1) Hold meetings, conduct hearings and administer examinations;

(2) Establish requirements for licenses, permits, certificates and registrations;

(3) Establish procedures for submitting, approving and rejecting applications for licenses, permits, certificates and registrations;

(4) Determine the qualifications of any applicant for licenses, permits, certificates and registrations;

(5) Prepare, conduct, administer and grade examinations for professional licenses and certificates;

(6) Determine the passing grade for the examinations;

(7) Maintain records of the examinations the board or a third party administers, including the number of persons taking the examinations and the pass and fail rate;

(8) Set operational standards and requirements for licensed schools;

~~(8)~~ (9) Hire, discharge, establish the job requirements and fix the compensation of the executive director;

~~(9)~~ (10) Maintain an office, and hire, discharge, establish the job requirements and fix the compensation of employees, investigators/inspectors and contracted employees necessary to enforce the provisions of this article: *Provided,* That any investigator/inspector employed by the board on July 1, 2009, shall retain their coverage under the classified service, including job classification, job tenure and salary, until that person retires or is dismissed: *Provided, however,* That nothing may prohibit the disciplining or dismissal of any investigator/inspector for cause;

~~(10)~~ (11) Investigate alleged violations of the provisions of this article, legislative rules, orders and final decisions of the board;

~~(11)~~ (12) Establish the criteria for the training of investigators/inspectors;

~~(12)~~ (13) Set the requirements for investigations and inspections;

~~(13)~~ (14) Conduct disciplinary hearings of persons regulated by the board;

~~(14)~~ (15) Determine disciplinary action and issue orders;

~~(15)~~ (16) Institute appropriate legal action for the enforcement of the provisions of this article;

(17) Report violations of the provisions of this article, and legislative rules promulgated pursuant to this article, alleged to have been committed by a licensed school to the West Virginia Council for Community and Technical College Education. The board may continue to investigate any alleged violation that it receives by May 1, 2013, and shall conclude any such investigation by July 1, 2013. If the board determines that probable cause exists that a violation occurred, the board immediately shall advise and provide its investigation file to the West Virginia Council for Community and Technical College Education;

~~(16)~~ (18) Maintain an accurate registry of names and addresses of all persons regulated by the board;

~~(17)~~ (19) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

~~(18)~~ (20) Establish the continuing education requirements for professional licensees and certificate holders;

~~(19)~~ (21) Issue, renew, combine, deny, suspend, revoke or reinstate licenses, permits, certificates and registrations;

~~(20)~~ (22) Establish a fee schedule;

~~(21)~~ (23) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article; and

~~(22)~~ (24) Take all other actions necessary and proper to effectuate the purposes of this article.

(c) The board may:

(1) Establish joint licenses;

(2) Contract with third parties to administer the examinations required under the provisions of this article;

(3) Sue and be sued in its official name as an agency of this state;

(4) Confer with the Attorney General or his or her assistant in connection with legal matters and questions.

§30-27-8. Professional license requirements.

(a) An applicant for a professional license to practice as a aesthetician, barber, barber crossover, barber permanent wavist, cosmetologist, hair stylist, cosmetologist crossover or nail technician shall present satisfactory evidence that he or she:

(1) Is at least eighteen years of age;

(2) Is of good moral character;

(3) Has a high school diploma, a GED, or has passed the 'ability to benefit test' approved by the United States Department of Education;

(4) Has graduated from a licensed school which has been approved by the ~~board~~ West Virginia Council for Community and Technical College Education or has completed education requirements in another state and meets the licensure provisions of the board;

(5) Has passed an examination that tests the applicant's knowledge of subjects specified by the board: *Provided,* That the board may recognize a certificate or similar license in lieu of the examination or part of the examination that the board requires;

(6) Has paid the applicable fee;

(7) Presents a certificate of health from a licensed physician;

(8) Is a citizen of the United States or is eligible for employment in the United States; and

(9) Has fulfilled any other requirement specified by the board.

(b) A license to practice issued by the board prior to July 1, 2009, shall for all purposes be considered a professional license issued under

this article: *Provided,* That a person holding a license issued prior to July 1, 2009, must renew the license pursuant to the provisions of this article.

§30-27-11. Work permit.

(a) The board may issue a work permit to practice to an applicant who meets the following conditions:

(1) Has graduated from a licensed school approved by the ~~board or has completed the course requirements in a specific field;~~ West Virginia Council for Community and Technical College Education or has completed education requirements in another state and meets the licensure provisions of the board;

(2) Is waiting to take the examination;

(3) Has employment in the field in which he or she applied to take the examination and is working under the general supervision of a professional licensee;

(4) Has paid the work permit fee;

(5) Has presented a certificate of health issued by a licensed physician;

(6) Is a citizen of the United States or is eligible for employment in the United States; and

(7) Meets all the other requirements specified by the board.

(b) A work permit expires at the end of the month after issuance following the next examination in the specific field. A work permit may be renewed once.

(c) While in effect, a work permitee is subject to the restrictions and requirements imposed by this article.

§30-27-12. Student registration.

(a) Prior to commencing studies in a licensed school, ~~licensed under the provisions of this article~~ a student shall acquire a student registration issued by the board.

(b) An applicant for a student registration shall present satisfactory evidence that he or she meets the following conditions:

(1) Is enrolled as a student in ~~an approved~~ a licensed school; ~~or enrolled in an approved course;~~

(2) Is of good moral character;

(3) Has paid the required fee;

(4) Has presented a certificate of health issued by a licensed physician; and

(5) Is a citizen of the United States or is eligible for employment in the United States.

(c) The student registration is good during the prescribed period of study for the student.

(d) The student may perform acts constituting barbering, barber permanent waving, cosmetology, aesthetics or nail care in a school under the general supervision of a master or certified instructor.

ARTICLE 37. MASSAGE THERAPISTS.

§30-37-7. Requirements for licensure; renewal of licenses; reinstatement; penalties.

(a) The board shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, establishing a procedure for licensing of massage therapists. License requirements shall include the following:

(1) Completion of a program of massage education at a school approved by the West Virginia ~~Higher Education Policy Commission~~ Council for Community and Technical College Education pursuant to section nine, article two-b, chapter eighteen-b of this code or by a state agency in another state, the District of Columbia or a United States territory which approves educational programs and which meets qualifications for the National Certification Exam administered through the National Certification Board for Therapeutic Massage and Bodywork. This school shall require a diploma from an accredited high school, or the equivalent, and require completion of at least five hundred hours of supervised academic instruction;

(2) Successful completion of the National Certification for Therapeutic Massage and Bodywork (NCTMB) examination, or other board approved examination; and

(3) Payment of a reasonable fee every two years required by the board which shall compensate and be retained by the board for the costs of administration.

(b) A license to practice massage therapy issued by the board prior to July 1, 2006, shall for all purposes be considered a license issued under this section: *Provided,* That a person holding a license to practice massage therapy issued prior to July 1, 2006, must renew the license pursuant to the provisions of this article: *Provided, however,* That a person whose license was issued by the board prior to July 1, 2006, and whose license subsequently lapses may, in the discretion of the board, be subject to the licensing requirements of this section.

(c) In addition to provisions for licensure, the rules shall include:

(1) Requirements for completion of continuing education hours conforming to NCTMB guidelines; and

(2) Requirements for issuance of a reciprocal license to licensees of states with requirements which may include the successful

completion of the NCTMB examination or other board approved examination.

(d) Subject to the provisions of subsection (b) of this section, the board may deny an application for renewal for any reason which would justify the denial of an application for initial licensure.

(e) Any person practicing massage therapy during the time his or her license has lapsed is in violation of this article and is subject to the penalties provided in this article.

(f) A massage therapist who is licensed by the board shall be issued a certificate and a license number. The current, valid license certificate shall be publicly displayed and available for inspection by the board and the public at a massage therapist's work site."

The bill was then ordered to third reading.

S. B. 596, Determining grant awards for Chesapeake Bay and Greenbrier River watershed compliance projects; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 604, Expanding definition of "electioneering communication"; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 623, Relating to funding for probation officers to address truancy; on second reading, coming up in regular order, was read a second time.

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

"That §18-5B-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.

§18-5B-11. Local Solution Dropout Prevention and Recovery Innovation Zone Act.

(a) *Legislative findings, intent and purpose.*

The Legislature finds that:

(1) High school graduation is an essential milestone for all West Virginia students and impacts the future success of the individual, community and state;

(2) There are significant correlations between educational attainment and labor market outcomes, greater labor force participation rate, increased employment rates, improved health, and decreased levels of poverty and crime. The negative impact on these linkages is most evident in the absence of high school completion;

(3) Dropping out of school is a process, not an event, with factors building and compounding over time;

(4) Students at risk of not completing high school can be identified as early as sixth grade using the indicators of attendance, behavior and course failures. Therefore, a comprehensive graduation plan must include a comprehensive systemic approach that emphasizes early interventions;

(5) Research identifies a number of effective strategies for engaging students that have the most positive impact on improving high school graduation rates. Some of these strategies are school-community collaboration, safe learning environments, family engagement, early literacy development, mentoring and tutoring services, service learning opportunities, alternative and nontraditional schooling, offering multiple pathways and settings for attaining high school diplomas, after-school opportunities, individualized instruction and career and technical education;

(6) Schools cannot solve the dropout problem alone. Research shows when educators, parents, elected officials, business leaders, faith-based leaders, human service personnel, judicial personnel and civic leaders collectively work together they are often able to find innovative solutions to address school and community problems; and

(7) Increasing high school graduation rates is an important factor in preparing a college and career-ready citizenry. Higher education institutions, including community and technical colleges, are essential partners in creating local and statewide solutions.

(b) Therefore, the intent of the Legislature is to provide a separate category of innovation zones designated "Local Solution Dropout Prevention and Recovery Innovation Zones" intended to achieve the following purposes:

(1) Provide for the establishment of Local Solution Dropout Prevention and Recovery Innovation Zones to increase graduation rates and reduce the number of dropouts from West Virginia schools;

(2) Provide schools and communities with opportunities for greater collaboration to plan and implement systemic approaches that include evidence-based solutions for increasing graduation rates and reducing the number of dropouts;

(3) Provide a testing ground for innovative graduation programs, incentives and approaches to reducing the number of dropouts;

(4) Provide information regarding the effects of specific innovations, collaborations and policies on graduation rates and dropout prevention and recovery; and

(5) Document educational strategies that increase graduation rates, prevent dropouts and enhance student success.

(c) *Local Solution Dropout Prevention and Recovery Innovation Zones.*

A school, a group of schools or a school district may be designated as a Local Solution Dropout Prevention and Recovery Innovation Zone in accordance with the provisions of this article, subject to the provisions of this section. The state board shall propose rules for legislative promulgation, including an emergency rule if necessary, in accordance with article three-b chapter twenty-nine of this code to implement the provisions of this section. All provisions of this article apply to Local Solution Dropout Prevention and Recovery Innovation Zones, including, but not limited to, the designation, application, approval, waiver of statutes, policies, rule and interpretations, employee approval, employee transfers, progress reviews, reports and revocations, and job postings, subject to the following:

(1) For purposes of this section, a 'school, a group of schools or a school district' means a high school, a group of schools comprised of a high school and any of the elementary and middle schools whose students will attend the high school, or a school district whose graduation rate in the year in which an application is made is less than ninety percent based on the latest available school year data published by the Department of Education;

(2) The contents of the application for designation as a Local Solution Dropout Prevention and Recovery Innovation Zone must include a description of the dropout prevention and recovery strategies and that the school, group of schools or school district plans to implement if designated as a Local Solution Dropout Prevention and Recovery Innovation Zone, and any other information the state board requires. The application also shall include a list of all county and state board rules, policies and interpretations, and all statutes, if any, identified as prohibiting or constraining the implementation of the plan, including an explanation of the specific exceptions to the rules, policies and interpretations and statutes required for plan implementation. A school, a group of schools, or school district may not request an exception nor may an exception be granted from any of the following:

(i) An assessment program administered by the West Virginia Department of Education;

(ii) Any provision of law or policy required by the No Child Left Behind Act of 2001, Public Law No. 107-110 or other federal law; and

(iii) Section seven, article two and sections seven-a, seven-b, eight and eight-b, article four, chapter eighteen-a of this code, except as provided in section eight of this article;

(3) The factors to be considered by the state board when evaluating an application shall include, but are not limited to, the following:

(A) Evidence that other individuals or entities and community organizations are involved as partners to collectively work with the applicant to achieve the purposes as outlined in the dropout prevention and recovery plan. These individuals or entities and community organizations may include, but are not limited to, individuals or entities and community organizations such as parents, local elected officials, business leaders, faith-based leaders, human service personnel, judicial personnel, civic leaders community and technical colleges Higher education institutions;

(B) The level of commitment and support of staff, parents, students, the county board of education, the local school improvement council and the school's business partners as determined in accordance with this article apply to become a Local Solutions Dropout Prevention and Recovery Innovation Zone;

(C) The potential for an applicant to be successful in building community awareness of the high school dropout problem and developing and implementing its dropout prevention and recovery plan; and

(D) Implementation of the statewide system of easily identifiable early warning indicators of students at risk of not completing high

school developed by the state board in accordance with section six, article eight of this chapter, known as The High School Graduation Improvement Act, along with a plan of interventions to increase the number of students earning a high school diploma;

(4) The rule shall provide standards for the state board to review applications for designation as a Local Solutions Dropout Prevention and Recovery Innovation Zones;

(5) The application for designation as a Local Solutions Dropout Prevention and Recovery Innovation Zone under this section is subject to approval in accordance with sections five and six of this article. In addition to those approval stages, the application, if approved by the school employees, shall be presented to the local school improvement council for approval prior to submission to county superintendent and board. Approval by the local school improvement council is obtain when at least eighty percent of the local school improvement council members present and voting after a quorum is established vote in favor of the application; and

(6) Upon approval by the state board and state superintendent of the application, all exceptions to county and state board rules, policies and interpretations listed within the plan are granted. The applicant school, group of schools or school district shall proceed to implement the plan as set forth in the approved application and no further plan submissions or approval are required, except that if an innovation zone plan, or a part thereof, may not be implemented unless an exception to a statute is granted by Act of the Legislature, the state board and state superintendent may approve the plan, or the part thereof, only upon the condition that the Legislature acts to grant the exception as provided in this article.

(d) A county board that enters into a truancy program agreement with the circuit court of the county that (1) provides for the referral of truant juveniles for supervision by the court's probation office pursuant to section eleven, article five, chapter forty-nine of this code and (2)

requires the county board to pay the costs of the probation officer or officers assigned to supervise truant juveniles, may apply to the state board for a dropout prevention and recovery innovation zone grant for reimbursement of one-half of the costs of the probation officer or officers. This application is not subject to any of the requirements for other applications under this section. The state board shall coordinate the application deadlines and grant approvals under this section to ensure funding for this purpose. If the funds available are insufficient to award all eligible grant applications at the full amount, the award amounts shall be reduced prorata.

~~(d)~~ *(e) Local solutions dropout prevention and recovery fund.*

There is hereby created in the State Treasury a special revenue fund to be known as the 'Local Solutions Dropout Prevention and Recovery Fund'. The fund shall consist of all moneys received from whatever source to further the purpose of this article. The fund shall be administered by the state board solely for the purposes of this section. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year. Fund balances shall be invested with the state's consolidated investment fund and any and all interest earnings on these investments shall be used solely for the purposes that moneys deposited in the fund may be used pursuant to this section."

The bill was then ordered to third reading.

S. B. 663, Creating WV Feed to Achieve Act; on second reading, coming up in regular order, was read a second time.

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

"ARTICLE 5D. WEST VIRGINIA FEED TO ACHIEVE ACT.

§18-5D-1. Short title.

This act shall be known and may be cited as the West Virginia Feed to Achieve Act.

§18-5D-2. Legislative findings; intent.

(a) The Legislature finds and declares that:

(1) Every child in school needs to have nutritious meals in order to achieve his or her potential. Providing the best schools and teachers alone does not ensure a child is mentally present and able to learn. A growing body of research establishes that a hungry child is less able to process the information provided and is less likely to be attentive to the lessons being taught.

(2) President Harry S. Truman began the national school lunch program in 1946 as a measure of national security to safeguard the health and well-being of the nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food. Last year in West Virginia, 32.3 million school lunches were served to students in public schools.

(3) Research shows that healthy eating, proper nutrition and regular physical activity result in students who have: (A) Increased standardized achievement test scores; (B) improved attendance; (C) reduced tardiness; (D) improved academic, behavioral and emotional functioning; and (E) improved nutrition, and for many students, the nutritious breakfast at school is essential.

(4) Schools that provide universal breakfast programs also report: (A) Decreases in discipline and psychological problems; (B) decreases in visits to school nurses; (C) decreases in tardiness; (D) increases in student attentiveness; (E) increases in attendance; and (F) improved learning environments, and these positive attributes are

furthered through comprehensive healthy schools policies that include quality nutrition, integrating physical activity during the school day, and teaching children about the importance of embracing a healthy active lifestyle.

(5) An effective school breakfast program is not an interruption of the school day; it is an integral and vital part of the school day.

(6) The participation rate for the school breakfast program varies greatly among our counties. Those counties which have made a determined effort to increase participation by offering programs to best meet student needs, such as Grab-And-Go Breakfasts, providing Breakfast in the Classroom or providing Breakfast After First Period, are feeding significantly higher percentages of their students.

(7) The West Virginia Center on Budget and Policy reports that in 2011 more than 25 percent of the children in West Virginia lived in homes with a household income below the federal poverty line, which is $23,050 for a family of four. About 50 percent of West Virginia children live in homes with a household income below twice the federal poverty level, $46,100 for a family of four, which is approximately the level of the Work Force West Virginia self-sufficiency standard.

(8) The majority of students from families below the self-sufficiency standard are currently not eating breakfast at school. On the average school day during the 2011-2012 school year, less than half of the West Virginia students eligible for a federally funded free breakfast actually received one. On that same average day, only about one third of the students eligible to receive a reduced price breakfast actually received one.

(9) In order to maximize each child's potential to learn and develop, the Legislature, schools and communities must partner to provide the most basic support for learning: nutritious meals.

(10) In order to maximize student participation in school nutrition programs and to reduce the secondary adverse impacts of poverty, it is important that schools provide nutritious meals without a risk to students of being stigmatized as poor.

(11) High rates of childhood hunger and childhood obesity occur simultaneously because children are not receiving healthy, nutritious food. According to the Data Resource Center for Child and Adolescent Health and others, in 2008 West Virginia ranked 44 in overall prevalence of childhood obesity, with 35.5 percent of children considered either overweight or obese.

(12) According to the 2008 Pediatric Nutrition Surveillance System, which assesses weight status of children from low-income families participating in the Women Infants and Children program, 28.3 percent of low income children age 2-5 are overweight or obese in West Virginia.

(13) The Food Research and Action Center has found that providing a balanced school breakfast may protect against childhood obesity. School breakfast participation, particularly when combined with comprehensive efforts that include regular physical activity and promote healthy eating habits, is associated with a lower body mass index, a lower probability of being overweight and a lower probability of obesity, all of which help prevent a range of chronic diseases including Type II Diabetes, high blood cholesterol, high blood pressure, heart disease and stroke.

(14) Participation in federally funded meals in child care, preschool, school, or summer settings is associated with a lower body mass index among young, low income children.

(15) Private and nonprofit sectors have shown a willingness to commit significant resources to addressing hunger in America, leveraging federal programs and enlisting their employees, customers and clients to improve the availability and accessibility of affordable, healthy food for those in need of assistance.

(16) Public schools in this state and others are adopting a continuum of policies to implement low cost, effective programs that include physical activity, physical education, proper nutrition and the promotion of healthy eating habits, along with involvement by school staff, families and communities, and a variety of resources to assist schools in adopting and implementing these programs are easily accessible on the internet and through the Office of Healthy Schools in the West Virginia Department of Education.

(b) In order to maximize the economies of scale and to access all available federal funds to support our school nutrition programs, the Feed to Achieve initiative directs schools to make available and to promote the federally approved and subsidized meals to all pre-kindergarten through twelfth grade students, to make them readily available, and to consider reducing or eliminating the cost to students if sufficient funds become available.

(c) The Legislature intends to provide a framework for the State Board of Education and the county boards of education to provide, as effectively and as efficiently as possible, a minimum of two nutritious, meals each school day to all students.

(d) The Legislature intends for the state and county boards of education to enter into public-private partnerships to eventually provide free nutritious meals for all pre-kindergarten through twelfth grade school children in West Virginia.

(e) The Legislature encourages county boards to examine the options available for comprehensive policies and programs to improve student health and promote academic achievement and to establish a comprehensive policy on healthy schools that best meets the needs of their student population.

(f) It is not the intention of the Legislature to allow or encourage parents to abdicate their parental responsibility related to providing healthy, nutritious meals for their children. However, it is the intent of the Legislature that no child be denied nutritious meals.

(g) It is the intent of the Legislature that healthy nutritious school lunches be made available to all students in a manner which maximizes participation and minimizes stigma attached to participating low income students.

§18-5D-3. School nutrition programs.

(a) Each county board of education shall establish and operate school nutrition programs under which, at a minimum, a nutritious breakfast and lunch are made effectively available to all students enrolled in the schools of the county in accordance with the State Board of Education standards. The standards shall include guidelines for determining the eligibility of students for paid, free and reduced meals. The standards shall also establish procedures and guidelines for the Feed to Achieve initiative to allow for the provision of healthy, nutritious meals to all elementary school students, without cost to students, where schools find it practical to do so.

(b) The Feed to Achieve initiative will be phased in for all elementary schools as sufficient funds become available, through donations, contributions and payments made by individuals, communities, businesses, organizations and parents or guardians on behalf of students. Nothing in this article prohibits any school from providing free meals to all of its students.

(c) Each county board of education shall:

(1) Require all schools to adopt a delivery system approved by the state Office of Child Nutrition, no later than the 2015 school year, that ensures all students are given an adequate opportunity to eat breakfast. These approved systems shall include, but are not limited to, Grab-And-Go Breakfasts, Breakfast In The Classroom or Breakfast After First Period; and

(2) Collaborate with the state Office of Child Nutrition to develop strategies and methods to increase the percentage of children participating in the school breakfast and lunch nutrition programs.

(d) In addition to other statistics, the county boards of education, in consultation with the state Office of Child Nutrition, shall determine the number of children in each school who are participating in each meal offered by the school; the number of children who are not eating each meal offered by the school; and the total daily attendance.

(e) The state Office of Child Nutrition shall report to the Joint Committee on Government and Finance, the Select Committee on Children and Poverty and the Legislative Oversight Commission on Education Accountability on or before December 31, 2015, and each year thereafter, on the impacts of the Feed to Achieve Act and any recommendations for legislation.

(f) County boards of education may utilize the nonprofit funds or foundations established in section four of this article or other available funds to offset the costs of providing free meals, after school and summer nutrition programs to elementary students.

(g) If at any time federal financial appropriations to this state for school nutrition programs are terminated, county boards of education are hereby authorized, but not required, to continue the programs at their own expense.

(h) Classroom teachers may not be required to participate in the operation of the school breakfast program as part of their regular duties.

§18-5D-4. Creating public-private partnerships; creating non-profit foundation or fund; audit.

(a) The Department of Education and each county board of education shall promptly establish a fund that is restricted solely for the receipt and expenditure of gifts, grants and bequests for the purposes of this article and may establish in lieu thereof a nonprofit foundation for this purpose. The purpose of the fund or nonprofit foundation is to provide supplemental or matching funds to increase participation in the nutrition programs in the Feed to Achieve initiative set forth in

subsection (c) of this section. The Department of Education shall utilize its fund or nonprofit foundation to assist county boards of education in counties whose fund or foundation lacks sufficient business, industry and individual contributors to fund the Feed to Achieve nutrition programs.

(b) Financial support for the fund or foundation may come from either public or private gifts, grants, contributions, bequests and endowments.

(c) Expenditures from the state or county funds or by the foundations shall be used for provision of food to students through any of the programs or initiatives approved by the Office of Child Nutrition, including the following programs: School Breakfast Program, National School Lunch Program, the Summer Food Service Program, the Fresh Fruit and Vegetable Program, the Child and Adult Care Food Program, the farm to school initiative, and community gardens. Expenditures may also be made for initiatives developed with the Department of Health and Human Resources and public-private partnerships to provide outreach and nutritional meals when students are not in school.

(d) No administrative expenses or personnel expenses for any of the state departments implementing this act, the State Board of Education, any county board of education, school or program may be paid from the funds or by the foundations.

(e) Individuals or businesses that contribute to the funds or foundations may specify schools or nutrition programs for which the contribution is to be used.

(f) The Department of Education and county boards of education may establish public-private partnerships to enhance current or advance additional nutrition programs that provide nutritious food for children to take home for weekend meals.

(g) The Department of Education and county boards of education shall form or expand existing partnerships with the federal and state departments of agriculture, Department of Health and Human Resources, local master gardeners, county extension agents or other experts in the field of agriculture or gardening to develop community gardens, farm to school programs and other such programs that teach students how to grow and produce healthy food and provide healthy food to the students.

(h) The Department of Education shall collaborate with the Department of Health and Human Resources to develop effective strategies and programs such as after school nutrition outreach and programs that improve the healthy lifestyle of all students in pre-kindergarten through twelfth grade. The Department of Health and Human Resources may propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate any programs so developed.

(i) All moneys contributed to a fund or foundation established pursuant to this section and all expenditures made therefrom shall be audited as part of the annual independent audit of the State Board of Education and the county boards of education."

The bill was then ordered to third reading.

S. B. 664, Decreasing appropriations of public moneys in State Fund, General Revenue: on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page seven, by striking out the words "Whereas, The Constitution of the State of West Virginia requires that there be a balance between the state's revenues and expenditures for each fiscal year; and".

The bill was then ordered to third reading.

Com. Sub. for H. B. 2014, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution; on second reading, coming up in regular order, was read a second time.

Delegates Lane, Cowles, Armstead, Gearheart, Ambler, Arvon, Border, Butler, Cadle, Cooper, Espinosa, D. Evans, Faircloth, Folk, Frich, Hamrick, Howell, Ireland, Kump, McCuskey, Miller, Overington, Pasdon, Rowan, R. Smith, Sobonya, Storch, Sumner, Walters and Westfall moved to amend the bill on page eighty-seven, Item 67, following line ninety, by inserting the following:

"From the above appropriation for Medical Services (Fund 0403, Activity 189) no funds shall be used to perform abortions if the probable gestation age of the unborn child has been determined to be 20 weeks or more or, if earlier, after the unborn child has reached the stage of development which accepted medical science has determined to be the earliest that the fetus can experience pain, unless the attending physician and two consulting physicians certify that the abortion is necessary in their best clinical judgment to preserve the life or health of the pregnant woman or to avert serious risk of substantial physical impairment of a major bodily function of the pregnant woman."

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

The yeas and nays having been ordered, they were taken **(Roll No. 288)**, and there were—yeas 45, nays 53, absent and not voting 2, with the yeas and absent and not voting being as follows:

YEAS: Ambler, Anderson, Andes, Armstead, Arvon, Ashley, Azinger, Border, Butler, Cadle, Canterbury, Cooper, Cowles, Ellem, Ellington, Espinosa, A. Evans, D. Evans, Faircloth, Ferns, Folk, Frich, Gearheart, Hamilton, Hamrick, Householder, Howell, Ireland, Kump, Lane, McCuskey, Miller, E. Nelson, O'Neal, Overington, Pasdon, Raines, Romine, Rowan, Shott, R. Smith, Sobonya, Storch, Sumner and Westfall.

ABSENT AND NOT VOTING: J. Nelson and Walters.

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

Delegates Lane, Cowles, Ambler, Armstead, Arvon, Azinger, Border, Butler, Cadle, Cooper, Espinosa, D. Evans, Faircloth, Folk, Frich, Gearheart, Hamrick, Howell, Ireland, Kump, McCuskey, Miller, Rowan, R. Smith, Sobonya, Sumner, Walters and Westfall moved to amend the bill on page one hundred ninety-seven, Item 245, following line one, by inserting the following:

"Funds from this fund may not be expended for a health benefit exchange established pursuant to section three, article sixteen-g, chapter thirty-three of the West Virginia Code, or any activities or duties of the exchange, or to fund any duties or activities necessary or incidental to providing any services or duties necessary to be performed by this state to regulate, oversee, coordinate, monitor enforcement or otherwise provide any other state related services required by, related to, incidental to, or to be a member of or participate or partner in, a federal or national insurance or health benefit exchange established or existing pursuant to the Federal Patient Protection Act (Public Law 111-148), as amended by the Federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152)."

And,

On page two hundred eighty, Item 359, following line eight, by inserting the following:

"Funds from this fund may not be expended for a health benefit exchange established pursuant to section three, article sixteen-g, chapter thirty-three of the West Virginia Code, or any activities or duties of the exchange, or to fund any duties or activities necessary or incidental to providing any services or duties necessary to be

performed by this state to regulate, oversee, coordinate, monitor enforcement or otherwise provide any other state related services required by, related to, incidental to, or to be a member of or participate or partner in, a federal or national insurance or health benefit exchange established or existing pursuant to the Federal Patient Protection Act (Public Law 111-148), as amended by the Federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152)."

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

The yeas and nays having been ordered, they were taken (**Roll No. 289**), and there were—yeas 41, nays 57, absent and not voting 2, with the yeas and absent and not voting being as follows:

YEAS: Ambler, Anderson, Andes, Armstead, Arvon, Ashley, Azinger, Border, Butler, Cadle, Canterbury, Cooper, Cowles, Ellington, Espinosa, A. Evans, D. Evans, Faircloth, Folk, Frich, Gearheart, Hamilton, Hamrick, Householder, Howell, Ireland, Kump, Lane, McCuskey, Miller, E. Nelson, O'Neal, Overington, Raines, Romine, Rowan, Shott, R. Smith, Sobonya, Sumner and Westfall.

ABSENT AND NOT VOTING: J. Nelson and Walters.

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

Delegates Cowles, Ambler, Azinger, Cadle, Cooper, Espinosa, D. Evans, Folk, Gearheart, Ireland, McCuskey and R. Smith moved to amend the bill on page forty, Item 29, line one, by striking out "3,500,000" and inserting in lieu thereof the following: "0".

On page one hundred ninety-four, Item 238, line three, by striking out "4,000,000"and inserting in lieu thereof the following: "0".

On page one hundred ninety-four, Item 238, line four by striking out "10,800,000" and inserting in lieu thereof the following: "6,800,000".

On page one hundred twenty-nine, Item 118, line four by striking out "60,000,000" and inserting in lieu thereof the following: "67,500,000".

And,

On page one hundred thirty, Item 118, line fifteen, by striking out "1,115,890,000" and inserting in lieu thereof the following: "1,123,390,000".

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

The yeas and nays having been ordered, they were taken (**Roll No. 290**), and there were—yeas 23, nays 75, absent and not voting 2, with the yeas and absent and not voting being as follows:

YEAS: Armstead, Arvon, Azinger, Border, Cadle, Cooper, Cowles, Ellington, Espinosa, D. Evans, Faircloth, Folk, Gearheart, Hamrick, Householder, Howell, Ireland, Lane, Miley, Overington, Rowan, Shott and R. Smith.

ABSENT AND NOT VOTING: J. Nelson and Walters.

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

Delegates Gearheart, Cowles, Ambler, Azinger, Border, Butler, Cadle, Cooper, D. Evans, Faircloth, Hamrick, Miller, E. Nelson, Pasdon, R. Smith, Walters and Westfall moved to amend the bill on page forty-six, Item 36, line thirty-six, by striking out "2,000,000" and inserting in lieu thereof "1,880,000".

On page forty-seven, Item 36, line forty-four, by striking out "17,348,000" and inserting in lieu thereof "17,228,794".

On page seventy-six, Item 63, line sixteen, by striking out "233,985" and inserting in lieu thereof "353,985".

On page seventy, Item 63, line thirty-nine, by striking out "76,958,601" and inserting in lieu thereof "77,078,601".

And,

On page seventy-nine, Item 63, line seventy-eight, after the word "Inc.", by inserting a semicolon and the following:

"$10,000 for the mortgage payment for the Lincoln Primary Care Center, Inc.; $10,000 for the mortgage payment for Roane County Family Health Care, Inc.; $10,000 for the mortgage payment for the Belington Clinic; $10,000 for the mortgage payment for Valley Health Care (Randolph); $10,000 for the mortgage payment for the Preston-Taylor Community Health Center, Inc.; $10,000 for the mortgage payment for the Pendleton Community Care, Inc.; $10,000 for the mortgage payment for Bluestone Health Association, Inc.; $10,000 for the mortgage payment for the Minnie Hamilton Health Care Center, Inc.; $10,000 for the mortgage payment for the Shenandoah Valley Medical Systems, Inc.; $10,000 for the mortgage payment for the Change, Inc.; $10,000 for the mortgage payment for Valley Health Systems, Inc.; and $10,000 for the mortgage payment for the Wirt County Health Services Association."

Delegate Gearheart then asked and obtained unanimous consent to withdraw the foregoing amendment.

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 S. B. 21, Creating Health Care Provider Transparency Act,

Com. Sub. for S. B. 22, Requiring maternity services coverage for all health insurance plan dependents in certain circumstances,

Com. Sub. for S. B. 74, Relating to jury service qualification,

Com. Sub. for S. B. 101, Clarifying Medical Professional Liability Act applies to nursing homes and their health care providers,

Com. Sub. for S. B. 103, Creating WV Commuter Rail Access Act,

S. B. 125, Permitting Monongalia County Commission to levy special district excise tax,

Com. Sub. for S. B. 146, Collecting unpaid magistrate court charges through income tax refund withholding,

Com. Sub. for S. B. 172, Relating to nonintoxicating beer distributor licensees,

Com. Sub. for S. B. 185, Relating to alternative-fuel motor vehicles and qualified refueling infrastructure tax credits,

S. B. 190, Relating to public-private transportation projects funding,

Com. Sub. for S. B. 335, Permitting certain hospitals exemption from certificate of need,

Com. Sub. for S. B. 336, Relating to interscholastic athletics concussions and head injuries,

S. B. 394, Relating to scholarships for dependent children of state troopers who die in performance of duty,

S. B. 403, Relating to judicial retirement system contribution rates,

Com. Sub. for S. B. 414, Clarifying hunting and fishing license-issuing authorities,

S. B. 423, Providing certain convicted persons reduction in sentence,

Com. Sub. for S. B. 438, Authorizing reorganization of certain community and technical colleges,

Com. Sub. for S. B. 444, Relating to higher education generally,

S. B. 460, Exempting certain residents' active duty military pay from state income tax,

Com. Sub. for S. B. 461, Relating to procedures and protections for child witnesses in domestic relations proceedings,

S. B. 470, Permitting wine sale on Sunday mornings at fairs and festivals,

S. B. 489, Permitting community enhancement districts to decrease annual property assessments,

Com. Sub. for S. B. 498, Relating to hearing location for Alcohol Beverage Control Administration's appeal hearings,

S. B. 507, Relating to PERS and State Police Retirement System contribution rates,

Com. Sub. for S. B. 527, Relating to process of filling vacancies in certain elected offices,

Com. Sub. for S. B. 564, Increasing minimum construction cost of municipal public works project before competitive bidding is required,

S. B. 601, Removing requirement certain juvenile proceedings be sealed,

Com. Sub. for S. B. 630, Relating to Chief Technology Officer's duties with regard to security of government information,

And.

S. B. 652, Requiring criminal background checks for home inspector applicants.

MISCELLANEOUS BUSINESS

Delegate Lane asked and obtained unanimous consent that the remarks of Delegate Perdue regarding S. B. 265, Authorizing DHHR promulgate legislative rules, be printed in the Appendix to the Journal.

Delegate Perdue asked and obtained unanimous consent that the remarks of Delegate Lane regarding S. B. 265, Authorizing DHHR promulgate legislative rules, be printed in the Appendix to the Journal.

Delegate Perdue then asked and obtained unanimous consent that the remarks of Delegate White regarding the amendment offered by Delegate Lane to Com. Sub. for H. B. 2014, Budget Bill, be printed in the Appendix to the Journal.

LEAVES OF ABSENCE

At the request of Delegate Boggs, and by unanimous consent, leave of absence for the day was granted Delegate J. Nelson.

At 3:48 P.M., the House of Delegates adjourned until 11:00 A.M., Friday, April 12, 2013.

FRIDAY, APRIL 12, 2013

FIFTY-NINTH DAY

[MR. SPEAKER, MR. THOMPSON, IN THE CHAIR]

The House of Delegates met at 11:00 A.M., and was called to order by the Honorable Rick Thompson, Speaker.

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

The Clerk proceeded to read the Journal of Thursday, April 11, 2013, being the first order of business, when the further reading thereof was dispensed with and the same approved.

COMMITTEE REPORTS

Mr. Speaker, Mr. Thompson, from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

H. C. R. 43, Designating "Take Me Home, Country Roads" written by John Denver, Taffy Nivert and Bill Danoff and initially recorded by John Denver, an official state song of West Virginia,

H. C. R. 95, The "Army PFC Willie P. 'Jenkie' Wilson Memorial Bridge",

H. C. R. 107, Expressing support for the President's proposal to increase the minimum wage to $9 per hour from $7.25 per hour,

H. C. R. 123, Requesting a study of the feasibility of reapportioning the number of magistrates among our counties,

H. C. R. 128, Requesting the Joint Committee on Government and Finance to study the needs, challenges and issues facing senior citizens in finding personal care services,

H. C. R. 132, Requesting a study on whether insurers licensed to sell motor vehicle insurance should be prohibited from raising premiums after a claim which no insured person was at fault,

H. C. R. 134, Requesting a study on whether employees of the State whose salaries are not set my statute should be granted an annual salary increase of $1,000 per year,

H. C. R. 141, Requesting a study to require social workers to be employed in each public school, K through 8 in the state,

H. C. R. 142, Urging Congress to swiftly take bipartisan, concrete action to address the growing scourge of prescription drug abuse in West Virginia and other states,

H. C. R. 143, The "Sloan Brother's Memorial Bridge",

H. C. R. 144, The "Quentin H. Wickline Memorial Bridge",

H. C. R. 150, Requesting a study in regard to whether crossbow hunting should be authorized,

H. R. 21, Calling upon the United States Congress to protect Social Security benefits,

H. R. 31, Requesting Congress to revoke the policy of extending "trusted traveler" status under the Global Entry Program to Saudi Arabian travelers,

H. R. 33, Requesting the House of Delegates Women's Caucus, acting as an Interim Study Committee, study crimes against children,

And,

Com. Sub. for S. C. R. 37, Requesting DOH name bridge in Hardy County "Army 1SG Boyd 'Doc' Slater Memorial Bridge",

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

At the respective requests of Delegate Boggs, and by unanimous consent, reference of **H. C. R. 107** to a committee was dispensed with, and it was taken up for immediate consideration.

The question now being on the adoption of the resolution, Delegate Caputo demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken **(Roll No. 291)**, and there were—yeas 87, nays 11, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Andes, Cowles, Ellington, Espinosa, Folk, Gearheart, Householder, Ireland, Kump, Overington and Shott.

ABSENT AND NOT VOTING: Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the resolution (H. C. R. 107) adopted.

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

On motions for leave, resolutions were introduced (Originating in the Committee on Education and reported with the recommendation that they each be adopted), which were read by their titles, as follows:

By Delegates M. Poling, Stowers, Barill, Campbell, Fragale, Lawrence, Perry, Pethtel, Tomblin, Walker, Westfall, Williams, Young, Pasdon, Ambler, Butler, Cooper, Espinosa, D. Evans, Hamrick, Raines, Rowan and Sumner:

H. C. R. 155 - "Requesting the Joint Committee on Government and Finance to conduct a study on better connecting the education

system to workforce and career futures, improving career and technical education and making West Virginia a leader in remote technology and distance learning."

WHEREAS, Among the education delivery improvements addressed by the Education Efficiency Audit of West Virginia's Primary and Secondary Education System conducted by Public Works, LLC, are thirteen recommendations for better connecting the education system to workforce and career futures, including the areas of strengthening state-level coordination and planning, expanding high school options and strengthening PK-12/higher education articulation; and

WHEREAS, Among the education delivery improvements addressed by the Education Efficiency Audit of West Virginia's Primary and Secondary Education System conducted by Public Works, LLC, are fifteen recommendations related to making West Virginia a leader in remote technology and distance learning, including the areas of on-line access, on-line content, on-line instruction and teacher training; and

WHEREAS, In a letter to the State Board, the Governor asks them to pursue cross-counseling between public education and career and technical colleges to help students understand and prepare for career options, to require every career center to adopt or develop at least one career pathway meets the SREB quality standards for Preparation for Tomorrow, and to investigate Project 24 and advise him how the State can take advantage of this planning approach; and

WHEREAS, Success in each of these areas is critical to the development of West Virginia's workforce and economic growth; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to conduct a study on better connecting the education system to workforce and career futures, improving career and technical

education and making West Virginia a leader in remote technology and distance learning; and, be it

Further Resolved, That the Joint Committee on Government and Finance is requested to report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

By Delegates M. Poling, Stowers, Barill, Campbell, Fragale, Lawrence, Perry, Pethtel, Tomblin, Walker, Westfall, Williams, Young, Pasdon, Ambler, Butler, Cooper, Espinosa, D. Evans, Hamrick, Rowan and Sumner:

H. C. R. 156 - "Requesting the Joint Committee on Government and Finance to conduct a study on establishing a comprehensive educator career development continuum."

WHEREAS, West Virginia has a very experienced teaching force, a large percentage of whom are eligible for retirement but still working, and the State should be concerned about methods for attracting and preparing the next generation of educators and supporting their development through the first years of their careers; and

WHEREAS, The profession of teaching, like other professions, should provide for a routine progression continuing education for license maintenance and opportunities for salary progression as additional knowledge is acquired that directly affects their teaching ability; and

WHEREAS, The time and resources available for professional development are precious and must be carefully allocated among

competing state and local level identified needs and routine annual requirements; and

WHEREAS, Like other professionals, teachers should be afforded an opportunity to progress in their teaching careers, take on more responsibility and share their expertise with other less experienced teachers without leaving classroom teaching completely; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to conduct a study on establishing a comprehensive educator career development continuum; and be it

Further Resolved, That the study should consider as part of the continuum elements such as:

(A) Encouraging and supporting an interest in the teaching profession among middle and high school students and increasing their preparation for success in college;

(B) Increasing the academic and professional practice preparation of graduates from colleges of teacher education;

(C) Improving the efficiency and focus of professional development including, but not limited to:

(i) Support for improving the professional practice of new and emerging teachers and principals;

(ii) Efficient and least time consuming methods for providing routine information and annually required professional development requirements of statute and policy; and

(iii) Uniform, effective professional development necessary to implement state initiatives, including changes in standards,

assessments, instructional strategies and other major policies affecting teachers and building level administrators;

(D) Establishing a progression of required continuing education for periodic certificate renewal;

(E) Aligning course work and professional development allowed for salary progression with the knowledge and skills directly related to the profession of teaching in the public schools; and

(F) Establishing a pathway for master teachers to progress in teacher leadership positions without leaving the classroom completely; and, be it

Further Resolved, That the Joint Committee on Government and Finance is requested to report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

By Delegates M. Poling, Stowers, Barill, Campbell, Fragale, Lawrence, Perry, Pethtel, Tomblin, Walker, Westfall, Williams, Young, Pasdon, Ambler, Butler, Cooper, Espinosa, D. Evans, Hamrick, Rowan and Sumner:

H. C. R. 157 - "Requesting the Joint Committee on Government and Finance to conduct a study on restoring the authority, flexibility, and capacity of schools and school systems to improve student learning to meet or exceed the expectations established by the state board and Legislature."

WHEREAS, Among the major issues raised by the Education Efficiency Audit of West Virginia's Primary and Secondary Education

System conducted by Public Works, LLC, is a description of West Virginia's system of schools as heavily regulated; and

WHEREAS, Among the general conclusions of the Audit is the need to drive more educational decision-making down to the level closest to the students, to the classroom and building level - allowing principals to lead and teachers to deliver the most effective curriculum for their students - and then holding them accountable for student success; and

WHEREAS, The Audit reviewed many areas of operational efficiency in the education system including overall organization, administration and management; design and delivery of programs and services and oversight of each program; facilities; delivery of educational services; purchasing; food services and child nutrition; transportation; human resources; and information technology, and made recommendations that represent savings of just over $18.1 million in Year One and $115.7 million over five years that could be reinvested in improving education; and

WHEREAS, The Legislature should continue to review the effects of its statutes on the authority, flexibility, and capacity of schools and school systems to improve student learning, as well as the policies and practices in place within the school system that impede efficiency; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to conduct a study on restoring the authority, flexibility, and capacity of schools and school systems to improve student learning to meet or exceed the expectations established by the state board and Legislature; and be it

Further Resolved, That the study should include at least the following:

(A) Areas that should be addressed to enhance the authority, flexibility and capacity of local school systems and schools to meet the

state's educational objectives for student achievement through local level policy, planning and practices that are the most appropriate for their students, families, employers and community given the characteristics of their districts;

(B) The performance and progress of students on the state summative assessment, other state mandated assessments and the National Assessment of Educational Progress, including ten-year trend data, and the amount of instructional time consumed by state mandated assessments; and

(C) The results of efforts to improve the operational efficiency of West Virginia's public elementary and secondary school system; and, be it

Further Resolved, That the Joint Committee on Government and Finance is requested to report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

By Delegates M. Poling, Stowers, Barill, Campbell, Fragale, Lawrence, Perry, Pethtel, Tomblin, Walker, Westfall, Williams, Young, Pasdon, Ambler, Butler, Cooper, Espinosa, D. Evans, Hamrick, Rowan and Sumner:

H. C. R. 158 – "Requesting the Joint Committee on Government and Finance to conduct a study on how the governance of Regional Education Service Agencies can be best aligned, focused and directed to assist county boards in achieving administrative and purchasing efficiencies, meeting the professional development needs identified by schools and school systems within the RESA membership, providing

specialized services that are otherwise financially difficult or impractical for any one county of the RESA to provide, and developing programs or services that the county school systems consider beneficial to their goals and that can be more efficiently provided at the RESA level."

WHEREAS, Regional Education Service Agencies were established in 1972 to consolidate and more effectively administer existing regional education programs, equalize and extend educational opportunities and provide educational services to the county school systems; and

WHEREAS, Regional Education Service Agencies have been the subject of considerable legislative attention, particularly in the late 1980s and early 1990 when additional state determined duties were added to the charge of the RESAs and were funded through a step in the school aid formula; and

WHEREAS, Regional Education Service Agency funding has been capped and reduced for many years and RESA governance was restructured through the passage of legislation in 2002 which established agency governance and oversight with the state Board of Education, including employment of the RESA directors; and

WHEREAS, The Governor's Education Efficiency Audit of West Virginia's Primary and Secondary Education System found that RESAs have become entrepreneurial in providing programs and services not related to their basic mission and the state should make much better use of the RESAs for improving operational efficiency; and

WHEREAS, County Boards of Education and county school superintendents, among other policy officials, question the efficacy of the current Regional Education Service Agency governance structure, contending that it effectively distances RESAs from the very county boards of education, county schools superintendents, school administrators and school personnel they are to serve; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to conduct a study on how the governance of Regional Education Service Agencies can be best aligned, focused and directed to assist county boards in achieving administrative and purchasing efficiencies, meeting the professional development needs identified by schools and school systems within the RESA membership, providing specialized services that are otherwise financially difficult or impractical for any one county of the RESA to provide, and developing programs or services that the county school systems consider beneficial to their goals and that can be more efficiently provided at the RESA level; and, be it

Further Resolved, That county school officials, including county boards of education members, county schools superintendents and other persons, be called upon to provide information and testimony for this study; and, be it

Further Resolved, That the Joint Committee on Government and Finance is requested to report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

By Delegates M. Poling, Stowers, Barill, Campbell, Fragale, Lawrence, Perry, Pethtel, Tomblin, Walker, Westfall, Williams, Young, Pasdon, Ambler, Butler, Cooper, Espinosa, D. Evans, Hamrick, Rowan and Sumner:

H. C. R. 159 – "Requesting the Joint Committee on Government and Finance to conduct a study regarding higher education governance and capital projects and facilities in West Virginia."

WHEREAS, The Legislature very recently conducted an exhaustive study regarding the capital projects and facilities needs in West Virginia; and

WHEREAS, The Legislature developed and codified a comprehensive, system-wide and state-wide system for capital development; and

WHEREAS, The state system of higher education recently has experienced significant development and expansion in the areas of capital construction and improvements; and

WHEREAS, A study is needed regarding the adherence of institutions to the current laws governing capital planning and development; and

WHEREAS, A study is needed regarding whether any amendments to the established planning and development system are necessary or beneficial; and

WHEREAS, A study is needed regarding the impact of the dual authority of governing boards and the commission or council, as appropriate, over state institutions of higher education; and

WHEREAS, A study is needed regarding the impact of commission and council oversight of and approval authority over institutions and their capital projects; and

WHEREAS, A study is needed regarding the impact of public-private partnerships in higher education capital projects and facilities, including the ability of an institution to avoid application of state laws governing public contracts; and

WHEREAS, A study is needed regarding the effect of institutions avoiding state laws regarding capital development by combining smaller projects for which commission or council approval is not required to form a larger project which would require commission or council approval if regarded in total; and therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to conduct a study regarding higher education governance and capital projects and facilities in West Virginia; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session, 2014, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

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

By Delegates M. Poling, Stowers, Barill, Campbell, Fragale, Lawrence, Perry, Pethtel, Tomblin, Walker, Westfall, Williams, Young, Pasdon, Ambler, Butler, Cooper, Espinosa, D. Evans, Hamrick, Rowan and Sumner:

H. C. R. 160 – "Requesting the Joint Committee on Government and Finance to conduct a study regarding outcomes-based funding models used in higher education and a method of incorporating one or more of these models as an effective piece of the state's higher education financing policy."

WHEREAS, It is in the best interest of the citizens of West Virginia to have an affordable, effective and comprehensive system for the delivery of public higher education services; and

WHEREAS, In order to achieve desired goals of economic growth and societal well being, it is critical that more citizens have some level of education beyond high school; and

WHEREAS, West Virginia Code has established goals and objectives that state institutions are expected to work toward achieving

by the year 2020, and also provides mechanisms for measuring success, and for holding the state systems of higher education accountable; and

WHEREAS, Clear connections can be made between the budget cycle, the goals and objectives for higher education and both positive and negative consequences for institutions; and

WHEREAS, An effective tool for influencing and directing public higher education behavior, and ensuring that institutions focus on the public policy agenda, is to establish outcomes-based goals, accountability measures and regulatory devices; and

WHEREAS, Resources appropriated to public higher education are used most effectively and efficiently when the attention of state colleges and universities is focused on meeting established priorities; and

WHEREAS, This focus is developed and sustained only when the state financing policy contains a direct connection between the Legislature's power to appropriate money and desired institutional outcomes; and

WHEREAS, Establishing a financing policy that ties funding directly to progress on achieving established state goals and objectives is a critical component of achieving those goals for higher education; and therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to conduct a study regarding outcomes-based funding models used in higher education and a method of incorporating one or more of these models as an effective piece of the state's higher education financing policy; and, be it

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

2014, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

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

By Delegates M. Poling, Stowers, Barill, Campbell, Fragale, Lawrence, Perry, Pethtel, Tomblin, Walker, Westfall, Williams, Young, Pasdon, Ambler, Butler, Cooper, Espinosa, D. Evans, Hamrick, Rowan and Sumner:

H. C. R. 161 - "Requesting the Joint Committee on Government and Finance to conduct a study regarding the full cost of an education at the state institutions of higher education in West Virginia, and the tuition and fee charges for non-resident students attending public colleges in West Virginia."

WHEREAS, In order to achieve desired goals of economic growth, educated workforce, improved quality of life and societal well being, it is critical that state citizens pursue education beyond high school; and

WHEREAS, A substantial portion of state revenues are derived from taxes paid by the citizens of West Virginia; and

WHEREAS, There is an important state purpose in subsidizing the cost of higher education for West Virginia citizens and requiring a tuition differential between resident and non-resident students attending public college in the state; and

WHEREAS, It is important to ensure that state appropriations are used in the most effective and efficient manner possible, and that revenue sources available to public colleges are utilized to the maximum degree possible; and

WHEREAS, Non-resident tuition rates among the public colleges in West Virginia are often lower than the resident tuition rates set in the states from which non-resident students are attracted; and

WHEREAS, Metro student rates are authorized and utilized in West Virginia in order to benefit the individuals residing in the vicinity of public colleges and contributing to the local economies of those colleges; and

WHEREAS, It is important that state institutions of higher education be required to charge non-resident students for the actual cost of educating such students, and set non-resident tuition and fee rates at that level; and

WHEREAS, In order for the state to ensure that public colleges are maximizing resources available from non-resident students, it is imperative that the true and actual cost of education be determined for each state institution of higher education in the state; and therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to conduct a study regarding the full cost of an education at the state institutions of higher education in West Virginia, and the tuition and fee charges for non-resident students attending public colleges in West Virginia; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session, 2014, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid

from legislative appropriations to the Joint Committee on Government and Finance.

And,

By Delegates M. Poling, Stowers, Barill, Campbell, Fragale, Lawrence, Perry, Pethtel, Tomblin, Walker, Westfall, Williams, Young, Pasdon, Ambler, Butler, Cooper, Espinosa, D. Evans, Hamrick, Rowan and Sumner:

H. C. R. 162 – "Requesting the Joint Committee on Government and Finance to conduct a study regarding the administrative level of the state institutions of higher education in this state, and the impact that the degree of administrative overhead at the institutions has on the increasing cost of attending college in the state."

WHEREAS, Since the mid-twentieth century the annual cost of attending college in West Virginia has risen dramatically; and

WHEREAS, The cost of attending college in West Virginia increases every year, and at a rate that is grossly disproportionate to increases in state average household income, inflationary rate or economic growth rate; and

WHEREAS, As the cost of attendance rises, students and their families are more frequently required to increase debt loads and reduce lifestyle standards in order to finance the cost of higher education; and

WHEREAS, The increasing cost of higher education in West Virginia negatively impacts state budgets, student financial aid programs, family budgets, and the overall education attainment level of the state's citizenry; and

WHEREAS, The steadily rising cost of higher education in West Virginia, compared to the average ability to pay, inhibits many eager and capable students from pursing education beyond the high school level purely for financial reasons; and

WHEREAS, One apparent and significant reason for the steady and disproportionate increase in the cost of a college education in the state is the consistent increase in administrative functions and positions across the higher education system; and

WHEREAS, An examination is needed of the administration level of the state institutions of higher education in this state, including but not limited to administrative functions, duties, costs and expansion; and

WHEREAS, An examination is needed regarding the impact that the degree of administrative overhead at the institutions has on the increasing cost of attending college in the state; and

WHEREAS, It is in the best interest of the students in West Virginia, as well as the overall economic health and well-being of citizens and the general quality of life in the state, to examine these issue and explore solutions; and therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to conduct a study regarding the administration level of the state institutions of higher education in this state, and the impact that the degree of administrative overhead at the institutions has on the increasing cost of attending college in the state; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session, 2014, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

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

In the absence of objection, the Speaker referred the resolutions to the Committee on Rules.

MESSAGES FROM THE SENATE

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had receded from its amendments and again passed a bill of the House of Delegates as follows:

Com. Sub. for H. B. 2471, Prohibiting the restriction or otherwise lawful possession, use, carrying, transfer, transportation, storage or display of a firearm or ammunition during a declared state of emergency.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

H. B. 2542, Relating to publication of the State Register.

On motion of Delegate Boggs, the bill was taken up for immediate consideration.

The following Senate amendments were reported by the Clerk:

On page five, section seven, lines seventy though seventy-three, by striking out subsection (d) and inserting in lieu thereof a new subsection, designated subsection (d), to read as follows:

"(d) The Secretary of State may propose rules for legislative approval, in accordance with the provisions of article three of this chapter, to change the procedures outlined in this section."

And,

By amending the title of the bill to read as follows:

H. B. 2542 - "A Bill to amend and reenact §29A-2-7 of the Code of West Virginia, 1931, as amended, relating to publications of the Secretary of State; requiring the State Register, Code of State Rules and other documents of the Secretary of State be available only in electronic format; exceptions; rule-making authority; and providing that the fees collected for the sale of certain records will be deposited in equal amounts into the General Revenue Fund and the service fees and collections account."

On motion of Delegate Boggs, the House of Delegates concurred in the Senate amendments.

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken **(Roll No. 292)**, 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: Howell and J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2542) passed.

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

On this question, the yeas and nays were taken **(Roll No. 293)**, 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: Howell and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2542) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had refused to recede from its amendment and requested the House of Delegates to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses as to

Com. Sub. for H. B. 2585, Increasing the time to file a petition in response to notice of an increased assessment.

The message further announced that the President of the Senate had appointed as conferees on the part of the Senate the following:

Senators Tucker, Cookman and Carmichael.

On motion of Delegate Boggs, the House of Delegates agreed to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates Skaff, Sponaugle and Hamilton.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2979, Relating to broadband deployment projects.

On motion of Delegate Boggs, the bill was taken up for immediate consideration.

The following Senate amendments were reported by the Clerk:

On page one, by striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 15C. BROADBAND DEPLOYMENT.

§31-15C-2. Definitions.

~~(a)~~ For the purposes of this article:

(1) "Broadband" or "broadband service" means any service providing advanced telecommunications capability with ~~either a~~ the same downstream data rate ~~or~~ and upstream data rate ~~of at least 200 kilobits per second~~ as is specified by the Federal Communications Commission and that does not require the end-user to dial up a connection that has the capacity to always be on, and for which the transmission speeds are based on regular available bandwidth rates, not sporadic or burstable rates, with ~~a minimum downstream to upstream data ratio of 10:1 for services with a downstream data rate of up to five megabits per second, and with a minimum upstream data rate of 500 kilobits per second for services with a downstream data rate of five megabits per second or greater~~ latency suitable for real-time applications and services such as a VoIP and video conferencing, and with monthly usage capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban areas: *Provided,* That as the Federal Communications Commission updates the downstream data rate and the upstream data rate the Council will publish the revised data rates in the State Register within seixty days of the federal update.

(2) "Broadband demand promotion project" means a statewide or regional project to undertake activities to promote demand for broadband services and broadband applications.

~~(2)~~ (3) "Broadband deployment project means ~~either: (A) A~~ a project to provide broadband services to in a type 2 and/or type 3

unserved area, as defined in section six of this article. ~~or (B) a project to undertake activities to promote demand for broadband services and broadband applications~~

(4) "Council" means the Broadband Deployment Council.

~~(3)~~ (5) "Downstream data rate" means the transmission speed from the service provider source to the end-user.

~~(4)~~ (6) "Upstream data rate" means the transmission speed from the end-user to the service provider source.

~~(5)~~ (7) "Unserved area" means a community that has no access to broadband service.

~~(B) The definition of the term "broadband", the designation of areas that are "unserved", and the level of service required to qualify for funding of state programs and projects, are based on the Federal Communications Commission's current definition of broadband, which is stated in terms of the number of Kilobits (Kbps) per second, either upstream or downstream. It is the intention of the Legislature that the definition of broadband in this article and the level of service requirements for state funding be promptly updated by future Legislatures to conform with any revisions enacted by Congress or any rule or regulation promulgated by the Federal Communications Commission or other federal agencies involved with deploying and enhancing broadband services.~~

§31-15C-4. Powers and duties of the council generally.

(a) The Council shall:

(1) Explore the potential for increased use of broadband service for the purposes of education, career readiness, workforce preparation and alternative career training;

(2) Explore ways for encouraging state and municipal agencies to expand the development and use of broadband services for the purpose

of better serving the public, including audio and video streaming, voice-over Internet protocol, teleconferencing and wireless networking; and

(3) Cooperate and assist int eh expansion of electronic instruction and distance education services by July 2004.

(B) In addition to the powers set forth elsewhere in this article, the council is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effuctuate the purpose and intent of this article. The council shall have the power and capacity to:

(1) Provide consultation services to project sponsores in connection with the planning, acquisition, improvment, construction or development of any broadband deployment project;

(2) Promote awareness of public facilities that have community broadband access that can be used for distance education and workforce development;

(3) Advise on deployment of e-government portals such that all public bodies and political subdivisions have homepages, encourage one-stop government access and that all public entities stream audio and video of all public meetings;

(4) To make and execute contracts, commitments and other agreements necessary or convenient for the exercise fo its powers, including, but not limited to, the hiring of consultants to assist in the mapping of the state, categorization of areas within the state and evaluation of project applications: *Provided,* That the provisions of article three, chapter five-a of this code do not apply to the agreements and contracts executed under the provisions of this article;

(5) Aquire by gift or purchase, hold or dispose of real property and personal property in the exercise of its powers and performance of its duties as set forth in this article;

(6) Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for and receive any funds, property or services from any person, governmental agency or organization to carry out its statutory duties; and

(7) Perform any and all other activities in furtherance of its purpose.

(c) The council shall exercise its powers and authority to bring broadband service to unserved areas. The council may not duplicate or displace broadband service in areas already served or where private industry feasibly can be expected to offer services in the reasonably foreseeable future.

In providing governmental funding for broadband deployment projects, the council shall give priority to funding for projects in areas to broadband service of any type or any speed before providing governmental funding for projects in areas with exisiting broadband service below the minimum speeds specified in section two of this article.

(d) The council shall report to the Joint Committee on Government and Finance on or before January 1 of each year. The report shall include the action that was taken by the council during the previous year in carrying out the provisions of this article. The council shall also make any other reports as may be required by the Legislature or the Governor.

§31-15C-8. Stimulation of demand through public outreach and education.

In order to implement and carry out the intent of this article, the council may take such actions as it deems necessary or advisable in order to stimulate demand through public outreach and education. ~~in unserved areas~~ The council shall consider the views, if offered, of affected members of the public, including private industry.

§31-15C-9. Development of guidelines and application for funding assistance; emergency rule-making authority.

(a) In order to implement and carry out the intent of this article in type 2 and type 3 unserved areas, the council shall ~~promulgate emergency~~ propose rules for legislative approval, pursuant to the provisions of ~~section fifteen,~~ article three, chapter twenty-nine-a of this code, to develop comprehensive, uniform guidelines for use by the council in evaluating any request by a project sponsor for funding assistance to plan, acquire, construct, improve or otherwise develop and execute a broadband deployment project in a type 2 or type 3 unserved area. The council may promulgate emergency rules pending authorization of the legislative rules.

(b) The guidelines shall include the following: ~~factors~~

(1) The cost-effectivness of the project;

(2) The economic development benefits of the project;

(3) The availability of alternative sources of funding that could help finance the project, including, but not limited to, private grants or federal funding and the efforts undertaken to obtain such funding;

(4) If the project requires the construction of a network, the applicant's ability to operate and maintain such network;

(5) The degree to which the project advances statewide broadband access and other state broadband planning goals;

(6) If the project involves the construction of a network, the proposed technologies, bandwidths, upstream data rates and downstream data rates;

(7) The estimated ~~date~~ dates the project would commence and be completed;

(8) How the proposed project compares to alternative proposals for the same unserved area with regard to the number of people served, the amount of financial assistance sought, and the long-term viability of the proposed project; and

(9) Any other consideration the council deems pertinent in evaluating requests for funding assistance.

~~(b)~~ (c) Under no circumstances may the council's guidelines allow for the approval of any project for broadband service ~~that does not includea minimum downstream transmission rate of 600 kilobits per second (Kbps) and a minimum downstream-to-upstream ratio of 8.5:1 for services with a downstream rate of up to five megabits per second (Mbps). In those cases where a project's broadband service's downstream rate is five Mbps or greater, the council's guidelines must require a minimum upstream data rate of 500 Kbps and allow information applications and market demands to dictate acceptable downstream-to-upstream data ratios~~ involving the construction of a network that does not meet the minimum specifications for a broadband service as set by the Federal Communications Commission.

~~(c)~~ (d) The council shall create an application form that shall be used by all project sponsors requesting funding assistance from the council to plan, acquire, construct, improve or otherwise develop and execute broadband deployment projects in type 2 or type 3 unserved areas or broadband demand promotion projects. The application form shall ~~contain all~~ advise applicants of information required by ~~all~~ state agencies that will ~~be required to~~ issue permits and certificates regarding the project.

(e) The application form shall require the project sponsor to set forth:

(1) The proposed location of the project;

(2) If the project involves the construction of a network, the type(s) of unserved area(s) the project proposes to address;

(3) The estimated total cost of the project;

(4) The amount of funding assistance required and the specific uses of the funding;

(5) Other sources of funding available or potentially available for the project;

(6) Information demonstrating the need for the project;

(7) That the proposed funding of the project is the most economically feasible and viable alternative to completing the project; and

(8) Such other information as the council considers necessary.

§31-15C-10. Requirements for project funding assistance; review of project application by council; competitive applications.

(a) ~~Once the council has categorized unserved areas pursuant to section six of this article,~~ As determined by the council, project sponsors may submit applications for funding assistance. ~~for projects in those unserved areas. Upon receiving its first completed application for a categorized unserved area, the council shall post notice of such application with the Secretary of State~~

(b) Broadband deployment projects, including projects involving the construction of a network, may be submitted for type 2 and/or type 3 unserved areas as those areas are categorized pursuant to section six of this article. Broadband demand promotion projects may be submitted on a statewide or regional basis.

(c) When a completed application is received for a project area, the council shall post notice with the Secretary of State of the first completed application received for that project area. The notice shall be published in the State Register for sixty days ~~so as~~, to allow for competing applications to be submitted to the council.

(d) Within thirty days of the close of the ~~aforementioned~~ sixty-day notice period, the council shall review all applications timely received during the sixty-day period and either:

~~(i)~~ (1) Approve funding for the one or more projects after determining that the funding sould constitute an appropriate investment of public funds; or

~~(ii)~~ (2) Deny the project funding request if the council determines that:

(A) The application does not contain all of the required information; ~~or otherwise~~

(B) Is incomplete; ~~or that~~

(C) A proposed project is not eligible for funding assistance; or ~~that~~

(D) The proposed project is otherwise not an appropriate or prudent investment of state funds. ~~the council shall deny the project funding request~~

~~(c)~~ Prior to approving or denying any funding request, the council may seek the advice of any expert consultant retained pursuant to section seven of this article, but the council is not bound by that advice. The council shall also consider the views, if offered, of affecting members of the public, including private industry.

~~(b)~~ (f) To apply for or receive any funding assistance for a broadband deployment project or a broadband demand promotion project from the council pursuant to ~~subsection (a) of~~ this section, the project sponsor seeking thje funding assistance shall for such purpose by the council pursuant to section nine of this article.

(g) In reviewing such application, the council may use the engineering, financial and technical expertise of outside consultants in

addtion to the respective staffs of the government agencies and private-sector entities represented on the council or other government agencies.

(h) Notwithstanding any provision of article fifteen-a, chapter thirty-one or any other provision of this code, broadband deployment proposals and broadband demand promotion project proposals submitted to the council for its consideration pursuant to this article and the council's decision with regard to such projects shall not be subject to review by the West Virginia Infrastructure and Jobs Development Council.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2979 - "A Bill to amend and reenact §31-15C-2, §31-15C-4, §31-15C-8, §31-15C-9 and §31-15C-10 of the Code of West Virginia, 1931, as amended, all relating to the Broadband Deployment Council; modifying and adding definitions; clarifying that the data rate for broadband will be the same as specified by the Federal Communications Commission; requiring the Council to give priority for funding for broadband service to unserved areas; requiring annual reports to the Joint Committee on Government and Finance; extending the council's public outreach and education efforts beyond unserved areas; rule-making and emergency rule-making authority; revising the council's guidelines and criteria for funding assistance; modifying the application process for project assistance; and revising notice and publication requirements."

On motion of Delegate Boggs, the House of Delegates concurred in the Senate amendments.

The bill, as amended by the Senate, was then put upon its passage.

Delegate Espinosa requested to be excused from voting on the passage of Com. Sub. for H. B. 2979 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the Member from voting.

On the passage of the bill, the yeas and nays were taken **(Roll No. 294)**, and there were—yeas 96, nays 2, absent and not voting 2, with the absent and not voting being as follows:

NAYS: Armstead and Kump.

ABSENT AND NOT VOTING: Howell and J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2979) passed.

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

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

Com. Sub. for S. B. 60, Relating to name-change notice publication requirements.

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

Com. Sub. for S. B. 71, Requiring descriptions of easements and rights-of-way include width in addition to centerline; exception.

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

the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

S. C. R. 35 - "Requesting the Joint Committee on Government and Finance study West Virginia's aging watershed dams and channels to determine how to address the operation, maintenance, repair and ownership of the watershed dams to ensure they continue to provide flood control, water supply and recreational benefits to the citizens of the state."

WHEREAS, The mission of the West Virginia Conservation Agency is to preserve West Virginia's natural resources by working with partners to promote soil and water conservation; and

WHEREAS, The West Virginia Conservation Agency, working with the state's conservation districts and local governments, is responsible for the inspection, operation, maintenance and repair of 170 watershed dams and twenty-two channels throughout West Virginia, and is also responsible for the rehabilitation of the state's aging watershed dam infrastructure; and

WHEREAS, Of the 170 flood control dams, 169 have been classified as high hazard by the West Virginia Department of Environmental Protection's Dam Safety Office; and

WHEREAS, A high-hazard classification means a failure would cause probable loss of life or catastrophic economic damage; and

WHEREAS, Forty-two of the 170 dams have been in operation for more than fifty years, and by 2017 another forty-one will exceed fifty years of age; and

WHEREAS, Based on an analysis by the federal Natural Resources Conservation Service, 104 of the 170 dams do not meet current engineering design standards; and

WHEREAS, The current method of financing the operation, maintenance and repair of the watershed dams and channels is inadequate to meet ongoing maintenance and repair needs; and

WHEREAS, Common repair problems include seeps, deteriorated metal, broken drain gates, damaged concrete risers, erosion, plugged drains, inadequate spillways and encroachment; and

WHEREAS, Due to federal budget constraints the Natural Resources Conservation Service is unable to assist in the rehabilitation of West Virginia's watershed infrastructure; and

WHEREAS, A number of the watershed dams are predominately on private land owned by farmers and state citizens and represent a danger of causing significant damage to agricultural land and, possibly, human life; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study West Virginia's aging watershed dams and channels to determine how to address the operation, maintenance, repair and ownership of the watershed dams to ensure they continue to provide flood control, water supply and recreational benefits to the citizens of the state; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

S. C. R. 38 - "Requesting the Joint Committee on Government and Finance study the effectiveness and efficiency of the implementation of the federal Moving Ahead for Progress in the 21st Century (MAP21) program in West Virginia."

WHEREAS, MAP21 is a graduated licensing program which provides federal funds to states that implement certain stages and requirements for teenage drivers before they are able to obtain an unrestricted license; and

WHEREAS, Motor vehicle crashes continue to be the number one killer of American teens; and

WHEREAS, Graduated licensing programs, like MAP21, have been shown to reduce teen traffic accidents and fatalities in states which have implemented the programs; and

WHEREAS, The West Virginia Legislature has already adopted a graduated licensing system for its teenage drivers; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the effectiveness and efficiency of the implementation of the federal Moving Ahead for Progress in the 21st Century (MAP21) program in West Virginia; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature on the first day of the regular session, 2014, on its findings, conclusions and recommendations together with drafts of any legislation necessary to effectuate its recommendations

in order to make certain that West Virginia's teenage drivers are being fully and adequately protected while they gain experience and skill; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

S. C. R. 41 - "Requesting the Joint Committee on Government and Finance study the critical access need for emergency electric generators; the best methods to ensure that businesses, public services and citizens have access to such emergency electric generators; and the feasibility of a tax credit to offset the costs of purchasing such emergency electric generators."

WHEREAS, Recent natural events, including the derecho of June 2012, have increased the awareness of and need for emergency electric generators in West Virginia; and

WHEREAS, The rural and mountainous terrain of much of West Virginia slows the restoration of electric service following natural disasters and other natural events, further underscoring the importance of access to emergency electric generators; and

WHEREAS, Future preparedness for potential natural disasters and emergencies requires increased access to emergency electric generators; and

WHEREAS, Uninterrupted access to certain critical services and goods, including health care, water, food and fuel, during emergency

situations is an essential element in ensuring the safety and well being of the citizens of West Virginia; and

WHEREAS, The cost of purchasing an emergency electric generator can be very expensive, especially to small businesses and individual citizens; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the critical access need for emergency electric generators; the best methods to ensure that businesses, public services and citizens have access to such emergency electric generators; and the feasibility of a tax credit to offset the costs of purchasing such emergency electric generators; and, be it

Further Resolved, That the West Virginia Division of Homeland Security is requested to assist the Joint Committee on Government and Finance in its study of emergency electric generators; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

S. C. R. 48 - "Requesting the Joint Committee on Government and Finance study the availability of affordable housing in West Virginia;

the effect of insufficient affordable housing on a child's education; the best methods to increase availability of affordable housing to those in poverty with children; and potential sources of funding and financing for additional affordable housing."

WHEREAS, It is recognized that West Virginia lacks sufficient availability of affordable housing for the most impoverished of its citizens; and

WHEREAS, Those in poverty who face the greatest difficulties with locating safe, affordable housing are families with school-aged children; and

WHEREAS, The effects of a transient and unstable lifestyle are the greatest on and most detrimental to a child's education; and

WHEREAS, Several entities exist that provide assistance in addressing this problem, including the West Virginia Housing Development Fund and the West Virginia Affordable Housing Trust Fund; and

WHEREAS, There are many options in funding additional affordable housing, many of which need further exploration and consideration; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the availability of affordable housing in West Virginia; the effect of insufficient affordable housing on a child's education; the best methods to increase availability of affordable housing to those in poverty with children; and potential sources of funding and financing for additional affordable housing; and, be it

Further Resolved, That the Senate Select Committee on Children and Poverty, the West Virginia Housing Development Fund and the West Virginia Affordable Housing Trust Fund are requested to assist

the Joint Committee on Government and Finance in its study of affordable housing availability; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

S. C. R. 51 - "Requesting the Joint Committee on Government and Finance study the needs, challenges and issues facing West Virginia's senior citizens in finding personal care services."

WHEREAS, West Virginia currently has the second largest senior population in the country with sixteen percent of the state's population being sixty-five years of age or older; and

WHEREAS, It is projected that by 2035 nearly one in four state residents will be sixty-five years of age or older; and

WHEREAS, It has been estimated that over eight out of ten individuals sixty-five years of age and older will suffer one or more chronic disease conditions in their lifetime with six out of ten facing the need for long-term care; and

WHEREAS, The availability of personal care services is crucial to allowing individuals to remain in their homes, preserving a better quality of life as they age by avoiding long-term institutional care; and

WHEREAS, A recent informal survey of personal care providers in West Virginia determined many personal care programs currently operating in the state provide limited hours of service availability may face workforce issues limiting availability including a lack of educational incentives, training programs and low compensation and have inestimable waiting lists for services; and

WHEREAS, An increasingly aged population will place more demand on the availability of such personal care services with national studies estimating the need for personal care aides to grow by seventy percent in the current decade; and

WHEREAS, The current certificate of need standards and processes for personal care services have not been updated for several years which may have the effect of limiting the availability of personal care services and freedom of choice; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to conduct a study of the needs, challenges and issues facing West Virginia's senior citizens in finding personal care services; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the legislature, 2014, on its findings, conclusions and recommendations together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

RESOLUTIONS INTRODUCED

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

H. C. R. 151 - "Requesting the Joint Committee on Government and Finance to study the need for legislation to grant the Secretary of State authority to extend the deadline during which a city council must meet as a levying body in order to present to the voters of the city an election for the laying and collecting levies."

WHEREAS, Under current law, if a city council misses the deadline to meet as a levying body for the purpose of presenting to voters of the city an election for the purpose of laying and collecting levies, an act of the Legislature by means of a local bill is required to extend the deadline to allow the city to present the levy to voters; and

WHEREAS, Every session local bills are taken up by the Legislature to extend the time that the city council could meet as a levying body; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance study the need for legislation to grant the Secretary of State the authority to extend the deadline during which a city council must meet as a levying body in order to present to the voters an election for the laying and collecting levies; and, be it

Further Resolved, That the study conducted by the Joint Committee on Government and Finance specifically evaluate allowing cities 30 days following the original deadline to file with the Secretary of State office for an extension of time to meet as a levying body; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session, 2014, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid

from legislative appropriations to the Joint Committee on Government and Finance.

Delegates Fleischauer, Barill, Caputo, Diserio, Eldridge, A. Evans, Ferns, Ferro, Fragale, Guthrie, Hartman, Iaquinta, Jones, Lawrence, Moore, Paxton, Perry, Pethtel, M. Poling, Poore, Romine, Skaff, Skinner, Sponaugle, Staggers, Storch, Stowers and Wells offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 152 - "Requesting the Joint Committee on Government and Finance to study how to engage West Virginia's large employers, public and private, to bring about a health-culture transformation among their employee bases."

WHEREAS, West Virginia ranks 48th in the nation in overall health outcomes while being among the highest in the nation in categories such as smoking, drug and alcohol use, and poor nutritional choices; and

WHEREAS, Behavior change is difficult for most people to start and sustain, especially in a state-wide culture that supports unhealthy behaviors; and

WHEREAS, Health benefit incentive and cost sharing programs for healthy behaviors engage people in making more informed consumer healthcare decisions, but do not necessarily result in behavior changes; and

WHEREAS, Only 10 percent of the average employee population currently uses their employers' health and wellness programs; and

WHEREAS, Employers play an important role in their employees' lives and can serve as an extremely powerful point of leverage to encourage health behaviors; and

WHEREAS, There is a natural business imperative to encouraging employees to adopt healthy lifestyles to enhance personal and organizational success; and

WHEREAS, We have world-class behavior-change programs developed in West Virginia that can be used to improve the health of West Virginia's workforce and used in a way that protects personal privacy while encouraging health cultural change; and

WHEREAS, West Virginia's large employers have always been powerful forces for cultural change for behaviors that at one time were considered to be optional, such as safety, education and retirement planning; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study how to engage West Virginia's large employers, public and private, to bring about a health-culture transformation among their employee bases; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature, no later than the first day of the regular session, 2014, on its findings, conclusions and recommendations, if any, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Delegates Canterbury and Ambler offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 153 - "Requesting the Joint Committee on Government and Finance to study the feasibility of including historic resort hotel lottery table games employees among those lottery table games employees receiving a four percent table games fund allocation toward an employee pension plan."

WHEREAS, Under West Virginia Code §29-22C-27 (d)(2) racetrack lottery table games employees receive four percent of adjusted gross revenues from the Racetrack Table Games Fund that goes into a pension plan for those employees; and

WHEREAS, Lottery table games employees at a historic resort hotel gaming facility licensed under West Virginia Code §29-25 et seq. currently do not receive a similar pension benefit; and

WHEREAS, Lottery table games employees at respective licensed gaming facilities in this state should be treated similarly with respect to this important employee benefit; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the feasibility of including historic resort hotel lottery table games employees among those lottery table games employees receiving a four percent table games fund allocation toward an employee pension plan; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Delegates Armstead, Ambler, Arvon, Ashley, Azinger, Butler, Cadle, Cooper, Ellem, Ellington, Espinosa, A. Evans, D. Evans, Faircloth, Ferns, Fleischauer, Folk, Frich, Gearheart, Guthrie, Hamilton, Hamrick, Howell, Ireland, Kump, McCuskey, Miley, Miller, E. Nelson, Overington, Pasdon, Raines, Romine, Rowan, Shott, R.

Smith, Sobonya, Storch, Walker, Walters, Wells and Westfall offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 154 - "Requesting the Joint Committee on Government and Finance to study the possible revision of the current law of the state relating to the disclosure of public records, including the definition of public records, exemptions to disclosure of public records and the impact of the current exemptions on the right of the public and the media to gain access to the actions of public bodies."

WHEREAS, All persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees; and

WHEREAS, The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know; and

WHEREAS, The right of the public and the media to access information relating to the operation of state government and the expenditure of public funds is crucial to the public oversight of its government and assists in preventing inappropriate conduct, malfeasance and corruption, and revealing wasteful and inefficient spending; and

WHEREAS, West Virginia law provides that "every person has a right to inspect or copy any public record of a public body in this State,..." subject to enumerated exemptions of certain categories of information to protect certain information of a confidential, personal or proprietary nature, or for the protection of the public; and

WHEREAS, Some of the enunciated exemptions, through practice or by judicial interpretation, have been applied in an overly broad manner resulting in the denial of requests for disclosure of certain information in a manner that is contrary to the expressed public policy of the state; and

WHEREAS, Certain exemptions limiting the right of access to public records may result in the denial of requests for the disclosure of public records which should be disclosed to the public or the media; and

WHEREAS, The exemption to the Freedom of Information Act permitting governmental agencies to withhold correspondence and internal memoranda has resulted in the public and the media being denied information that should be disclosed; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study needed revision of the current law of the state relating to the disclosure of public records, including the definition of public records, exemptions to disclosure of public records and the impact of the current exemptions on the right of the public and the media to gain access to records related to the actions of public bodies; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

SPECIAL CALENDAR

UNFINISHED BUSINESS

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

Com. Sub. for S. C. R. 10, Requesting DOH name bridge in Lincoln County "Shelton Topping Bridge",

Com. Sub. for S. C. R. 15, Requesting DOH name Logan County Route 5/12 "Army Private First Class Troy Franklin Tomblin Memorial Highway",

Com. Sub. for S. C. R. 20, Requesting DOH name portion of State Route 80 in McDowell County "Army PFC Phill G. McDonald Memorial Highway",

Com. Sub. for S. C. R. 29, Requesting DOH name bridge number 20-64-54.37 "Army Cpl. Kenneth R. Hess Bridge",

S. C. R. 30, Requesting DOH name bridge in Wyoming County "Army SP4 Jackie McMillion Memorial Bridge",

S. C. R. 32, Requesting DOH name bridge in Monongalia County "U. S. Army and Air National Guard Col. Garry L. Bowers-Ices Ferry Bridge",

And,

H. C. R. 140, Recognizing July 16 as "Atomic Veterans Day of Remembrance" in West Virginia.

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

Delegate Boggs asked and obtained unanimous consent that, for the remainder of the session, members of a Conference Committee be permitted to vote on any question or issue before the House which they may have missed as a direct result of their duties on Conference Committees, provided that such members notify the Clerk of the House in writing as to how they wished to vote and on the day the votes were missed, and that any such vote not change the outcome on any question.

THIRD READING

S. B. 65, Exempting PERS retirement income of DNR police officers from state income 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. 295)**, 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: Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 65) passed.

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

S. B. 82, Requiring rate-paying residential customer on public service board; 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. 296)**, 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: Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 82) passed.

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

S. B. 82 - "A Bill to amend and reenact §16-13A-3 and §16-13A-4 of the Code of West Virginia, 1931, as amended, all relating to public service district board membership; requiring a public service board to

have at least one rate-paying residential customer of the public service district on the board; increasing the salary of public service district board members; clarifying when salary and expenses payments may be made; and adding sewer service to the salary schedule for public service districts which contract with others to provide service."

Delegate Boggs moved that the bill take effect July 1, 2013.

On this question, the yeas and nays were taken **(Roll No. 297)**, 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: Howell and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 82) takes effect July 1, 2013.

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

S. B. 194, Repealing code relating to Medicaid program contract procedure; 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. 298)**, 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: Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 194) 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:

S. B. 194 - "A Bill to repeal §9-2-9b of the Code of West Virginia, 1931, as amended; and to amend and reenact §9-2-6 of said Code, all to relating to contract procedures for the Medicaid program; providing that previous contracts awarded would remain in full force and effect; and eliminating Department of Health and Human Resources' exemption for contracts for the Medicaid program from purchasing requirements."

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

On this question, the yeas and nays were taken **(Roll No. 299)**, 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: Howell and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 194) 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 S. B. 195, Removing tax rate expiration date on eligible acute care hospitals; 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. 300)**, 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: Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 195) passed.

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

On this question, the yeas and nays were taken **(Roll No. 301)**, 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: Howell and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 195) takes effect from its passage.

Com. Sub. for S. B. 200, Relating to Eyewitness Identification Act; 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. 302)**, and there were—yeas 97, nays 1, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: P. Smith.

ABSENT AND NOT VOTING: Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 200) passed.

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

Com. Sub. for S. B. 202, Creating WV Spay Neuter Assistance Program and Fund; 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. 303)**, and there were—yeas 93, nays 5, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Andes, Border, Folk, Hamilton and Householder.

ABSENT AND NOT VOTING: Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 202) passed.

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

Com. Sub. for S. B. 243, Authorizing DEP promulgate legislative rules; on third reading, coming up in regular order, was read a third time.

Delegate Armstead requested to be excused from voting on the passage of Com. Sub. for S. B. 243 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill but exhibited no direct personal or pecuniary interest therein, and refused to excuse the Member from voting.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 304)**, and there were—yeas 93, nays 5, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Andes, Folk, Lane, McCuskey and Walters.

ABSENT AND NOT VOTING: Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 243) passed.

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

On this question, the yeas and nays were taken **(Roll No. 305)**, and there were—yeas 96, nays 2, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Folk and Walters.

ABSENT AND NOT VOTING: Howell and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 243) 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 S. B. 250, Authorizing Department of Commerce promulgate legislative rules; 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. 306)**, and there were—yeas 85, nays 13, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Andes, Armstead, Butler, Cadle, D. Evans, Folk, Gearheart, Lane, McCuskey, Overington, Raines, R. Smith and Walters.

ABSENT AND NOT VOTING: Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 250) passed.

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

Com. Sub. for S. B. 250 - "A Bill to amend and reenact article 10, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Commerce; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; repealing the Development Office to promulgate a legislative rule relating to the use of coalbed methane severance tax proceeds; authorizing the Broadband Deployment Council to promulgate a legislative rule relating to broadband deployment grants programs; authorizing the Board of Miner Training, Education and Certification to promulgate a legislative rule relating to the standards for certification of coal mine electricians; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special motorboating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to defining the terms used in all hunting and trapping rules; authorizing the Division of Natural Resources to promulgate a legislative rule relating to prohibitions when hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to deer hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to general trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special waterfowl hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special fishing; authorizing the Division of Natural Resources to promulgate a legislative rule relating to falconry; authorizing the

Division of Labor to promulgate a legislative rule relating to bedding and upholstered furniture; authorizing the Division of Labor to promulgate a legislative rule relating to the Amusement Rides and Amusement Attractions Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to the supervision of elevator mechanics and apprentices; authorizing the Division of Labor to promulgate a legislative rule relating to the Crane Operator Certification Act; and authorizing the Division of Labor to promulgate a legislative rule relating to the Crane Operator Certification Act – practical examination."

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

On this question, the yeas and nays were taken **(Roll No. 307)**, and there were—yeas 92, nays 6, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Cadle, Gearheart, Raines, R. Smith, Walters and Westfall.

ABSENT AND NOT VOTING: Howell and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 250) 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 S. B. 265, Authorizing DHHR promulgate legislative rules; 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. 308)**, and there were—yeas 84, nays 14, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Anderson, Andes, Armstead, Ashley, Canterbury, D. Evans, Gearheart, Lane, McCuskey, E. Nelson, Romine, R. Smith, Storch and Walters.

ABSENT AND NOT VOTING: Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 265) passed.

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

Com. Sub. for S. B. 265 - "A Bill to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Health and Human Resources; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to reportable diseases, events and conditions; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to general sanitation; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to Grade A

pasturized milk; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to fees for services; repealing the Bureau of Public Health's legislative rule relating to the regulation of opioid treatment programs, 64 CSR 90; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to pulse oximetry newborn testing; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the regulation of opioid treatment programs, 69 CSR 7; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to chronic pain management clinic licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to minimum licensing requirements for residential child care and treatment facilities for children and transitioning adults in West Virginia; authorizing the Health Care Authority to promulgate a legislative rule relating to the West Virginia Health Information Network; and authorizing the Bureau of Senior Services to promulgate a legislative rule relating to the in-home care worker registry."

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

On this question, the yeas and nays were taken **(Roll No. 309)**, and there were—yeas 91, nays 7, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Armstead, Ashley, Cowles, Gearheart, R. Smith, Storch and Walters.

ABSENT AND NOT VOTING: Howell and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 265) 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 S. B. 270, Authorizing Department of Revenue promulgate legislative rules; 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. 310)**, and there were—yeas 82, nays 16, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Andes, Armstead, Arvon, Border, Butler, Folk, Gearheart, Lane, McCuskey, Miller, Overington, R. Smith, Sobonya, Sumner, Walters and Westfall.

ABSENT AND NOT VOTING: Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 270) passed.

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

On this question, the yeas and nays were taken **(Roll No. 311)**, and there were—yeas 87, nays 11, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Armstead, Arvon, Butler, Folk, Gearheart, Miller, R. Smith, Sobonya, Sumner, Walters and Westfall.

ABSENT AND NOT VOTING: Howell and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 270) 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 S. B. 281, Authorizing Department of Transportation promulgate legislative rules; 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. 312)**, and there were—yeas 85, nays 13, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Andes, Armstead, Arvon, Border, Folk, Gearheart, Householder, Lane, McCuskey, R. Smith, Sobonya, Walters and Westfall.

ABSENT AND NOT VOTING: Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 281) passed.

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

On this question, the yeas and nays were taken **(Roll No. 313)**, and there were—yeas 88, nays 10, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Armstead, Arvon, Border, Folk, Gearheart, Hamrick, R. Smith, Sobonya, Walters and Westfall.

ABSENT AND NOT VOTING: Howell and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 281) takes effect from its passage.

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

S. B. 331, Permitting Courthouse Facilities Improvement Authority to issue bonds; 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. 314)**, 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: Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 331) passed.

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

Com. Sub. for S. B. 355, Relating to final wage payment to discharged employees; 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. 315)**, and there were—yeas 93, nays 5, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Gearheart, Hamilton, Ireland, Kump and Storch.

ABSENT AND NOT VOTING: Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 355) passed.

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

Com. Sub. for S. B. 369, Relating to concealed handgun license reciprocity; 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. 316)**, and there were—yeas 97, nays 1, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Wells.

ABSENT AND NOT VOTING: Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 369) passed.

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

Com. Sub. for S. B. 369 - "A Bill to amend and reenact §61-7-6 and §61-7-6a of the Code of West Virginia, 1931, as amended, all relating to exemptions and exceptions for West Virginia conceal and carry handgun license requirements; allowing a resident of another state to carry a handgun in West Virginia if the nonresident person holds a valid permit or license to possess or carry a handgun from another state when certain conditions are met; establishing a precondition that West Virginia residents with a West Virginia issued conceal and carry permit must be authorized to carry a concealed handgun in that other state; removing or modifying other concealed handgun reciprocity requirements; prescribing methods of verification of reciprocal conceal and carry handgun rights between West Virginia and another state; clarifying or modifying reciprocity requirements and responsibilities of the Attorney General and the State Police; exempting judicial officers, magistrates, prosecutors, assistant prosecutors and investigators employed by prosecutors staff from paying handgun conceal and carry license fees when applying for a conceal and carry permit in this state; requiring the judicial officers, magistrates, prosecutors, assistant prosecutors and investigators

employed by prosecutors to satisfy all other licensing requirements and possess a conceal and carry license before carrying a concealed handgun in this state on and after July 1, 2013; removing exemption from remaining conceal and carry licensing requirements for judicial officers, prosecutors and prosecutor investigators as of July 1, 2013; and amending provisions of bill consistent with other legislative action."

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

Com. Sub. for S. B. 371, Relating to prison overcrowding; on third reading, coming up in regular order, was read a third time.

Extensive debate ensued.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 317)**, and there were—yeas 81, nays 17, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Andes, Armstead, Arvon, Border, Butler, Cooper, Cowles, Ellington, Frich, Householder, Ireland, Kump, O'Neal, Raines, R. Smith, Sobonya and Sumner.

ABSENT AND NOT VOTING: Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 371) 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:

Com. Sub. for S. B. 371 - "A Bill to amend and reenact §25-1-15 of the Code of West Virginia, 1931, as amended; to amend and reenact

§28-5-27 of said code; to amend said code by adding thereto two new sections, designated §31-20-5g and §31-20-5h; to amend and reenact §61-7-6 of said code; to amend and reenact §62-11A-1a of said code; to amend and reenact §62-11B-9 of said code; to amend and reenact §62-11C-2, §62-11C-3 and §62-11C-6 of said code; to amend said code by adding thereto a new section, designated §62-11C-10; to amend and reenact §62-12-6, §62-12-7, §62-12-9, §62-12-10, §62-12-13, §62-12-14a, §62-12-15, §62-12-17 and §62-12-19 of said code; to amend said code by adding thereto a new section, designated §62-12-29; to amend and reenact §62-15-2 and §62-15-4 of said code; and to amend said code by adding thereto two new sections, designated §62-15-6a and §62-15-6b, all relating to public safety; requiring the Division of Corrections to perform graduated methods of mental health screens, appraisals and evaluations on persons committed to its custody; eliminating requirement for separate disciplinary rules at each institution; mandating one year of supervised release for violent inmates and deducting one year of their good time; authorizing judges to require up to one hundred eighty days of a nonviolent offender's sentence to be served as post-release mandatory supervision; setting an effective date for supervised release provisions; requiring the Commissioner of Corrections to adopt policies regarding mandatory supervised release; requiring the West Virginia Regional Jail and Correctional Facility Authority to use a standardized pretrial risk-screening instrument adopted by the Supreme Court of Appeals of West Virginia to screen persons arrested and placed in a regional jail; providing for the confidentiality of risk assessments and their inadmissability at criminal and civil trials; requiring the Division of Corrections to develop and implement a cognitive behavioral program for inmates in regional jails committed to the custody of the Commissioner of Corrections and requiring the Division of Corrections to pay its cost; exempting parole officers from prohibitions against carrying concealed weapons; moving definition of 'day report center' to section relating to conditions of release on probation; providing standards and limitations under which judges and magistrates may impose a period of supervision or participation in day report program;

clarifying language regarding confinement and revocation for violations of the conditions of home incarceration; adding representative of the Bureau for Behavioral Health and Health Facilities to the community corrections subcommittee of the Governor's Committee on Crime, Delinquency and Correction; requiring that the community corrections subcommittee review, assess and report on the implementation of evidence-based practices in the criminal justice system; adding member with a background in substance abuse treatment and services to the community criminal justice boards to be appointed by the Commission or Commissions of the county or counties represented by the board; providing oversight responsibility to Division of Justice and Community Services to implement standardized risk and needs assessment, evaluate effectiveness of other modifications to community corrections programs and provide annual report; requiring probation officers to conduct a standardized risk and needs assessment for individuals placed on probation and to supervise probationer and enforce probation according to assessment and supervision standards adopted by the West Virginia Supreme Court of Appeals; requiring probation officers to perform random drug and alcohol tests of persons under their supervision; authorizing the Supreme Court of Appeals of West Virginia to adopt a standardized risk and needs assessment for use by probation officers; authorizing the Supreme Court of Appeals of West Virginia to adopt a standardized pretrial screening instrument for use by the Regional Jail Authority; providing standards and limitations under which judges may impose a term of reporting to a day report center as a condition of probation; authorizing day report center programs to provide services based on the results of a person's standardized risk and needs assessment; providing for graduated sanctions in response to violations of the conditions of release on probation other than absconding, committing certain new criminal conduct or violating special condition of probation; creating exceptions to new criminal conduct provisions; making standardized risk and needs assessments confidential court documents; requiring copies of graduated sanctions confinement orders be supplied to the

Commissioner of Corrections; providing that graduated sanctions confinement be paid by the Division of Corrections; providing that judges may depart from graduated sanctions limitations upon specific written findings; revising eligibility requirements for accelerated parole program; providing that parole applications may be considered by the parole board without prior submission a home plan; requiring that Division of Corrections' policies and procedures for developing a rehabilitation treatment plan include the use of substance abuse assessment tools and prioritize treatment resources based on the risk and needs assessment and substance abuse assessment results; providing for rebuttable presumption that parole is appropriate for inmates completing the accelerated parole program and a rehabilitation treatment program; providing standards and limitations for Parole Board; outlining duties of the Division of Corrections to supervise, treat and provide support services for persons released on mandatory supervised release; removing temporal standard for requirement that the Parole Board have access to a copy of an inmate's physical, mental or psychiatric examination; clarifying the Parole Board's duty to notify prosecuting attorneys of an offender's release on parole; authorizing Division of Corrections to employ directors of housing and employment for released inmates with duties relating to the reduction of parole release delays and finding employment; requiring parole officers to update the standardized risk and needs assessment for each person for whom an assessment has not been conducted for parole and to supervise each person according to the assessment and the commissioner's supervision standards; authorizing the Commissioner of Corrections to issue a certificate authorizing an eligible parole officer to carry firearms or concealed weapons; providing standards and limitations under which the Division of Corrections may order substance abuse treatment or impose a term of reporting to a day report center or other community corrections program as a condition or modification of parole; authorizing the Commissioner of Corrections to enter into a master agreement with the Division of Justice and Community Services to reimburse counties for use of the community corrections programs; clarifying that parolee participation in

community corrections is at program director's discretion; providing for graduated sanctions in response to violations of the conditions of release on parole other than absconding, certain new criminal conduct or violating a special condition of parole; providing a parolee with the right to a hearing, upon request, regarding whether he or she violated the conditions of his or her release on parole; providing the authority for the Board of Parole to depart from graduated sanction; providing that graduated sanctions incarceration for parolees be paid for by Division of Corrections; providing for a Community Supervision Committee to be appointed by the Administrative Director of the Supreme Court of Appeals of West Virginia to coordinate the sharing of information for community supervision and requiring an annual report; revising definitions for Drug Offender Accountability and Treatment Act; requiring all judicial circuits to participate in a drug court or regional drug court program by July 1, 2016; providing standards and limitations under which judges may order treatment supervision for drug offenders; providing that a judge may order a period of confinement to encourage compliance with treatment supervision to be paid b the division of Correction for up to thirty days for each instance; requiring the Division of Justice and Community Services to use appropriated funds to implement substance abuse treatment to serve those under treatment supervision in each judicial circuit; providing that the Division of Justice and Community Services in consultation with the Governor's Advisory Committee on Substance Abuse is responsible for developing standards relating to quality and delivery of substance abuse services; requiring certain education and training; paying for drug abuse assessments and certified drug treatment from appropriated funds; requiring submittal of an annual report and specifying an effective date; outlining duties of treatment supervision service providers; providing effective dates for provisions related to treatment supervision; providing for state payment of drug court participants' incarceration under certain circumstances; defining terms; and making technical changes."

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

Delegates McCuskey, Miller and Perdue addressed the House regarding Com. Sub. for S. B. 371, and at the conclusion thereof, Delegate Craig asked and obtained unanimous consent that said remarks be printed in the Appendix to the Journal.

Delegate Lane then asked and obtained unanimous consent that all remarks regarding Com. Sub. for S. B. 371 be printed in the Appendix to the Journal.

[**CLERK'S NOTE**: The remarks of the individuals will be included following a review of proceedings by the Clerk.]

Com. Sub. for S. B. 195, still being in possession of the Clerk, was taken up for further consideration.

On motion of Delegate Boggs, the House of Delegates then reconsidered the vote on the effective date of the bill.

Delegate Boggs moved that the bill take effect July 1, 2013.

On this question, the yeas and nays were taken **(Roll No. 318)**, 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: Howell and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 195) takes effect July 1, 2013.

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

Com. Sub. for S. B. 386, Relating to personal safety orders; 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. 319)**, 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: Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 386) passed.

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

Com. Sub. for S. B. 386 - "A Bill to amend and reenact §53-8-4 of the Code of West Virginia, 1931, as amended, relating generally to personal safety orders; amending the grounds for issuance of a personal safety order; and establishing venue for issuance of a personal safety order."

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

On this question, the yeas and nays were taken (**Roll No. 320**), 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: Howell and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 386) 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 S. B. 401, Relating to Board of Registration for Professional Engineers; 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. 321**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Ferns, Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 401) 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:

Com. Sub. for S. B. 401 - "A Bill to amend and reenact §30-13-6, §30-13-13, §30-13-15 and §30-13-17 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-13-13a, all relating to the Board of Registration for Professional Engineers; providing requirements for registration and certification of engineers, engineer interns and engineering businesses; providing for compensation of, and reimbursement for, members of the board at same rate as legislative interim pay; providing for registration of engineers generally; adding additional classifications of registration; setting forth qualifications for engineer interns; establishing designations for engineers ineligible to practice; updating examination provisions to comport with changes at the national level; providing emergency rule-making authority to comply with changes in standardized tests; and clarifying the certificate of authorization requirements."

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

On this question, the yeas and nays were taken **(Roll No. 322)**, and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Ferns, Howell and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 401) 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.

S. B. 407, Requiring cellular and phone companies provide certain information to Bureau for Child Support Enforcement; 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. 323)**, 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: Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 407) passed.

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

S. B. 407 - "A Bill to amend and reenact §48-18-132 of the Code of West Virginia, 1931, as amended, relating to child support enforcement; locating parents for the purpose of establishing paternity or for establishing support; locating parents for the purpose of modifying, enforcing or distributing proceeds from support orders; and authorizing the Bureau for Child Support Enforcement to obtain names of addresses of customers and customer employers from customer records maintained by telephone companies and cellular telephone companies by administrative subpoena."

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

Com. Sub. for S. B. 426, Relating to filings under Uniform Commercial Code as to secured transactions; 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. 324)**, and there were—yeas 88, nays 10, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Butler, Espinosa, Folk, Frich, Gearheart, Householder, Overington, Raines, R. Smith and Walters.

ABSENT AND NOT VOTING: Howell and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 426) passed.

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

Com. Sub. for S. B. 426 - "A Bill to amend and reenact §46-4A-108 of the Code of West Virginia, 1931, as amended, to amend and reenact §46-9-510, §46-9-516, §46-9-521 and §46-9-525 of said code; and to amend said code by adding thereto a new section, designated §46-9-516a, all relating to amending the Uniform Commercial Code; clarifying the relationship between article 4A of the West Virginia code and the federal Electronic Fund Transfer Act; resolving conflicts between federal and state law; providing for the effectiveness of filed records; creating additional authority to refuse to accept a record for filing; creating circumstances under which a record filing is false; providing criminal penalties for filing or attempting to file a false record; providing civil penalties for filing or attempting to file a false record; setting forth an administrative procedure initiated by the Secretary of State or a person identified as a debtor on a record; requiring party to an adverse administrative decision by the Secretary of State to file action in Kanawha County Circuit Court if the party wishes to have the Secretary of State's decision reversed; exempting the filing office and its employees from liability; exempting filings by

a regulated financial institution or its representatives from certain provisions; clarifying the applicability of provisions to records filed prior to the effective date of this article; increasing fees for filing financing statements or other records in secured transactions; increasing fees for responding for requests for information related to secured transactions; and requiring that the increase in fees be deposited in the existing Fund for Civil Legal Services for Low Income Persons."

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

At 12:40 P.M., on motion of Delegate Boggs, the House of Delegates recessed until 3:00 P.M., and reconvened at that time.

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AFTERNOON SESSION

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MESSAGES FROM THE SENATE

A message from the Senate, by

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

Com. Sub. for H. B. 2351, Authorizing law enforcement to issue a charge by citation when making an arrest for driving with a suspended or revoked license.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2453, Expanding the Amber Alert Plan; "SKYLAR'S LAW".

On motion of Delegate Boggs, the bill was taken up for immediate consideration.

The following Senate amendments were reported by the Clerk:

On page three, section four, line thirteen, by striking out the word "phone" and inserting in lieu thereof the word "telephone".

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2453 - "A Bill to amend and reenact §15-3A-4 of the Code of West Virginia, 1931, as amended, relating to activating the Amber Alert Plan; requiring a reporting law-enforcement agency to report a suspected missing or abducted child to the West Virginia Sate Police in the initial stages of investigation; and requiring the West Virginia State Police to contact the Amber Alert Coordinator for a determination as to whether Amber Alert criteria has been satisfied."

On motion of Delegate Boggs, the House of Delegates concurred in the Senate amendments.

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken **(Roll No. 325)**, 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: J. Nelson and Skaff.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2453) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2497, Requiring applicants for real estate licensure to undergo criminal history record checks.

On motion of Delegate Boggs, the bill was taken up for immediate consideration.

The following Senate amendments were reported by the Clerk:

On page one, by striking out everything after the enacting section and inserting in lieu thereof the following:

"ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.

§30-40-11. Application for license.

The commission shall only issue an original license to an applicant if he or she:

(a) Submits an application, in writing, in a form prescribed by the commission which must contain, but is not limited to:

(1) The applicant's social security number;

(2) The recommendation of at least two persons who:

(A) Are property owners at the time of signing the application;

(B) Have been property owners for at least twelve months preceding the signing of the application;

(C) Have known the applicant for at least two years;

(D) Are not related to the applicant;

(E) Are not affiliated with the applicant as an employer, partner or associate or with the broker that will employ the applicant;

(F) Believe the applicant bears a good reputation for honesty, trustworthiness and fair dealing; and

(G) Believe the applicant is competent to transact the business of a real estate broker, associate broker or salesperson, as the case may be, in a manner that would protect the interest of the public.

(3) A clear record indicating all jurisdictions where the applicant holds or has held any professional license.

(4) A clear record indicating if the applicant has been convicted of any criminal offense or if there is any criminal charge pending against the applicant, or a member or officer of the brokerage business, at the time of application.

(b) Is at least eighteen years of age.

(c) Is a high school graduate or the holder of an equivalency diploma.

(d) Is trustworthy, of good moral character and competent to transact the business of a broker, associate broker or salesperson.

(e) Has paid the appropriate fee, if any, which must accompany all applications for original license or renewal.

(f) Has submitted to a state and national criminal history record check, as set forth in this subsection: *Provided*, That an applicant for a license who is an attorney at law may submit a letter of good standing from the Clerk of the Supreme Court of Appeals of West Virginia in lieu of submitting to a state and national criminal history record check.

(1) This requirement is found not to be against public policy.

(2) The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

(3) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(A) Submitting fingerprints for the purposes set forth in this subsection; and

(B) Authorizing the commission, the West Virginia State Police and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

(4) The results of the state and national criminal history record check may not be released to or by a private entity except:

(A) To the individual who is the subject of the criminal history record check;

(B) With the written authorization of the individual who is the subject of the criminal history record check; or

(C) Pursuant to a court order.

(5) The criminal history record check and related records are not public records for the purposes of chapter twenty-nine-b of this code.

(6) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

(7) Before implementing the provisions of this subsection, the commission shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code. The rules shall set forth the requirements and procedures for the criminal history check and must be consistent with standards established by the Federal

Bureau of Investigation and the National Crime Prevention and Privacy Compact as authorized by 42 U. S. C. A. §14611, *et seq.*"

And,

By amending the title of the bill to read as follows:

Com Sub. for H. B. 2497 - "A Bill to amend and reenact §30-40-11 of the Code of West Virginia, 1931, as amended, relating to application for a real estate license; requiring applicants for real estate licensure to undergo criminal history record checks; declaring the criminal history record check requirement is not against public policy; requiring applicants to submit fingerprints for the criminal history record check; requiring applicants to authorize the use of fingerprints to conduct the criminal history record check; prohibiting the release of criminal history records except in certain limited circumstances; declaring that criminal history records are not subject to the Freedom of Information Act; requiring the applicant to pay the actual costs of the criminal history record check; requiring the commission to promulgate a legislative rule to make the procedures and requirements consistent with federal standards before implementing the requirment for criminal history record checks; and requiring the commission to issue a license without requiring a criminal history record check to an an attorney in good standing."

On motion of Delegate Boggs, the House of Delegates concurred in the Senate amendments.

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken **(Roll No. 326)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2497) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect July 1, 2013, a bill of the House of Delegates as follows:

Com. Sub. for H. B. 2505, Increasing civil penalties imposed by the Public Service Commission for pipeline safety violations.

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. 2508, Changing the capital investment threshold amount.

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. 2516, Updating the meaning of federal adjusted gross income and certain other terms used in the West Virginia Personal Income Tax Act.

A message from the Senate, by

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

Com. Sub. for H. B. 2519, Relating to reallocation and repatriation of certain funds to the General Revenue Fund.

A message from the Senate, by

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

Com. Sub. for H. B. 2548, Increasing the criminal penalties for assaults and batteries against athletic officials.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with a title amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2554, Providing a procedure for the Secretary of State to reinstate certificates of authority for foreign corporations.

On motion of Delegate Boggs, the bill was taken up for immediate consideration.

The following Senate title amendment was reported by the Clerk:

On page one by amending the title to read as follows:

Com. Sub. for H. B. 2554 - "A Bill to amend and reenact §31D-15-1532 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §31D-15-1533; to amend and reenact §31E-14-1432 of said code; to amend said code by adding thereto a new section, designated §31E-14-1533; and to amend and reenact §59-1-2 of said code, all relating to providing a procedure for the Secretary of State to reinstate certificates of authority for foreign corporations after an administrative revocation; providing for contents of application; providing for effective date of reinstatement; providing for appeal from denial of reinstatement; providing that reinstatement fee is the same for foreign and domestic limited liability companies and foreign and domestic corporations; and establishing a fee for additional parties to a merger when filing articles of merger."

On motion of Delegate Boggs, the House of Delegates concurred in the Senate title amendment.

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken **(Roll No. 327)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2554) passed.

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

A message from the Senate, by
The Clerk of the Senate, announced that the Senate had passed, with amendment to take effect from passage, a bill of the House of Delegates, as follows:

H. B. 2586, Relating to qualifications for a license to practice embalming.

On motion of Delegate Boggs, the bill was taken up for immediate consideration.

The following Senate amendments were reported by the Clerk:

On page one, by striking out everything after the enacting section and inserting in lieu thereof the following:

"ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.

§30-6-8. Embalmer license requirements.

(a) The board shall issue a license to practice embalming to an applicant who: ~~meets the following requirements:~~

(1) Is of good moral character;

(2) Is eighteen years of age or over;

(3) Is a citizen of the United States or is eligible for employment in the United States;

(4) ~~Holds~~ Has a high school diploma or its equivalent;

(5) Has completed one of the following education requirements, as evidenced by a transcript submitted to the board for evaluation:

(A) ~~Holds~~ (i) Has an associate degree from an accredited college or university; or

(ii) Has successfully completed ~~not less than~~ at least sixty semester hours or ninety quarter hours of academic work in an accredited college or university toward a baccalaureate degree with a declared major field of study; ~~as evidenced by a transcript submitted for evaluation prior to beginning a one-year course of apprenticeship and prior to obtaining a diploma of graduation from a school of mortuary science, has completed a one-year course of apprenticeship under the supervision of a licensed embalmer and funeral director actively and lawfully engaged in the practice of embalming and funeral directing in this state, such apprenticeship to consist of diligent attention to the work in the course of regular and steady employment and not as a side issue to another employment, and under which the apprentice shall have taken an active part in the operation of embalming not less than thirty-five dead human bodies and an active part in conducting not less than thirty-five funeral services;~~ and ~~possesses a diploma of graduation~~

(iii) Has graduated from a school of mortuary science, accredited by the American Board of Funeral Service Education, Inc., which requires as a prerequisite to graduation the completion of a course of study of not less than twelve ~~months' duration~~ months; ~~and which said school of mortuary science must be one accredited by the American~~

~~Board of Funeral Service Education, Inc., and duly approved by the board;~~ or

(B) ~~Holds~~ Has a bachelor degree in mortuary science from an accredited college or university; ~~as evidenced by a transcript submitted for evaluation prior to beginning a one-year course of apprenticeship and~~

(6) Has completed a one-year ~~course of~~ apprenticeship, under the supervision of a licensed embalmer and funeral director actively and lawfully engaged in the practice of embalming and funeral directing in this state, ~~such~~ which apprenticeship ~~to consist~~ consisted of:

(A) Diligent attention to the work in the course of regular and steady employment and not as a side issue to another employment; and ~~under which~~

(B) The apprentice ~~shall have taken~~ taking an active part in:

(i) The operation of embalming not less than thirty-five dead human bodies; and ~~an active part in~~

(ii) Conducting not less than thirty-five funeral services;

~~(6)~~ (7) Passes, with an average score of not less than seventy-five percent, the following examinations:

(A) The National Conference of Funeral Services examination at a testing site provided by the national conference, ~~passes with a score of not less than seventy-five percent~~ which passage is a condition precedent to taking the state law examination;

(B) The state law examination administered by the board, which examination must be offered at least twice each year; and ~~passes such further~~

(C) Any other examination ~~as~~ required by the board; ~~may deem necessary to ascertain qualification and ability to engage in the practice~~

~~of embalming. Successfully passing the national conference of funeral services examination is a condition precedent to taking the state law examination administered by the board. The board shall offer the state law examination at least twice each year~~ and

~~(7)~~ (8) Has paid all the appropriate fees.

(b) A license to practice embalming issued by the board prior to July 1, ~~2002~~ 2012, shall for all purposes be considered a license issued under this section: *Provided,* That a person holding a license issued prior to July 1, ~~2002~~ 2012, must renew the license pursuant to the provisions of this article."

And,

By amending the title of the bill to read as follows:

H. B. 2586 - "A Bill to amend and reenact §30-6-8 of the Code of West Virginia, 1931, as amended, relating to qualifications for a license to practice embalming; and clarifying the education, apprentice and examination requirements."

On motion of Delegate Boggs, the House of Delegates concurred in the Senate amendments.

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken **(Roll No. 328)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2586) passed.

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

On this question, the yeas and nays were taken **(Roll No. 329)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2586) takes effect from its passage.

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

A message from the Senate, by
The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2603, Relating to the Family Protection Services Board.

On motion of Delegate Boggs, the bill was taken up for immediate consideration.

The following Senate amendments were reported by the Clerk:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

"That §48-26-404, §48-26-405, §48-26-601, §48-26-602, §48-26-901, §48-26-902, §48-26-1003, §48-26-1005, §48-26-1006 and §48-26-1007 of the Code of West Virginia, 1931, as amended, be repealed; that §48-26-202, §48-26-203, §48-26-204, §48-26-205, §48-26-206, §48-26-301, §48-26-401, §48-26-402, §48-26-403, §48-26-406, §48-26-603, §48-26-604, §48-26-701, §48-26-1001, §48-26-1002 and §48-26-1004 of said code be amended and reenacted;

and that said code be amended by adding thereto nine new sections, designated §48-26-207, §48-26-208, §48-26-209, §48-26-210, §48-26-211, §48-26-212, §48-26-213, §48-26-214 and §48-26-408, all to read as follows:

ARTICLE 26. DOMESTIC VIOLENCE ACT.

PART II. DEFINITIONS.

§48-26-202. Advocacy defined.

'Advocacy' means assisting victims and survivors of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children, in securing rights, remedies and services, by directly providing for, or referring to public and private agencies to provide for, safety planning; shelter; housing; legal services; outreach; counseling; case management; information and referral; training; employment; child care; health care; transportation; financial literacy education, financial planning and related economic empowerment services; parenting and other educational services; and other support services.

§48-26-203. Batterer Intervention and Prevention Program defined.

'Batterer intervention and prevention program', previously referred to as a program of intervention for perpetrators, means a licensed educational program that provides classes to individuals who commit acts of domestic violence or abuse, offering nonviolent strategies and values that promote respect and equality in intimate partner relationships.

§48-26-204. Board defined.

'Board' means the Family Protection Services Board created pursuant to Chapter 53 of the Acts of the Legislature of 1989 and subsequently recodified by this article.

§48-26-205. Closure defined.

'Closure' means the temporary or permanent prohibition of specified services and the corresponding suspension of licensure of a program or program component that violates the standards established by the board or that threatens the health, well being or safety of its program participants or staff.

§48-26-206. Department defined.

'Department' means the Department of Health and Human Resources.

§48-26-207. Domestic Violence Legal Services Fund defined.

'Domestic Violence Legal Services Fund' means the special revenue account established by section six hundred three of this article for the purposes set forth in that section.

§48-26-208. Domestic violence program defined.

'Domestic violence program' means a licensed program of a locally controlled nonprofit organization, established primarily for the purpose of providing advocacy services, comprising both a shelter component and an outreach component, to victims of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children: *Provided,* That the board may temporarily or permanently close either the shelter component or the outreach component of a domestic violence program.

§48-26-209. Family Protection Fund defined.

'Family Protection Fund' means the special revenue account established by Chapter 74 of the Acts of the Legislature of 1981, held by the department, for the purpose of collecting marriage license fees pursuant to section ten, article one, chapter fifty-nine of this code, divorce surcharge fees pursuant to section twenty-eight-a, article one,

chapter fifty-nine of this code, fees for failure to present a premarital education course completion certificate pursuant to section ten, article one, chapter fifty-nine of this code and any other funding source, including any source created in another section of this code, and distributed to licensed domestic violence programs, in accordance with the formula designated by the board.

§48-26-210. Intimate partner defined.

'Intimate partner' means a current or former spouse, a person with whom one shares a child in common, a person with whom one is cohabiting or has cohabited, or a person with whom one is or has been in a relationship of a romantic or intimate nature.

§48-26-211. Licenses defined.

(a) 'Conditional license' means a license issued for up to ninety days, to programs that have violations of safety or accountability standards that may threaten the health, well-being or safety of its program participants or staff, or the responsible operation of the program, or that have a history or pattern of noncompliance with established standards.

(b) 'Provisional license' means a license issued for up to one hundred and eighty days, to programs that are not in compliance with nonlife threatening safety, programmatic, facility or administrative standards, that may be extended for an additional six months, if the board determines that the program is making active progress toward compliance.

(c) 'Full license' means a license issued for up to the maximum licensure period of three years, to programs that are in compliance with the standards established by the board and have no violations of safety or accountability standards that may threaten the health, well-being or safety of its program participants or staff, or the responsible operation of the program.

§48-26-212. Monitored parenting and exchange defined.

(a) 'Monitored parenting' means the contact between a parent without custodial responsibility, guardian or other adult and one or more children, in the presence of a third person who monitors the contact to promote the safety of the participants.

(b) 'Monitored exchange' means the observation of movement of a child or children from the custodial responsibility of one parent or guardian to the custodial responsibility of the other parent or other adult without allowing contact between the adults.

(c) 'Monitored parenting and exchange program' means a licensed program offered by a locally controlled nonprofit organization for purposes of providing a neutral, safe and child-friendly environment to allow the child or children access to a parent or other adult without allowing contact between the adults.

§48-26-213. Outreach defined.

'Outreach' means a licensed domestic violence program's community-based activities that increase awareness and availability of services, in every county within the program's regional service area, to victims and survivors of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children.

§48-26-214. Shelter defined.

'Shelter' means residential services offered by a licensed domestic violence program on a temporary basis, to persons who are victims of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children.

PART III. FAMILY PROTECTION SERVICES BOARD.

§48-26-301. Family protection services board continued; terms.

(a) The family protection services board, ~~previously created,~~ is continued.

(b) Membership of the board is comprised of ~~five~~ seven persons. The Governor, with the advice and consent of the Senate, shall appoint ~~three~~ five members of the board who meet the following qualifications:

(1) One ~~appointed~~ member must be a ~~commissioner of a shelter~~ director of a licensed domestic violence program;

(2) One ~~appointed~~ member must be a ~~member of a major trade association that represents shelters across the state~~ representative of the West Virginia Coalition Against Domestic Violence;

(3) One member must be a representative of a batterer intervention and prevention program licensed by the board;

(4) One member must be a representative of the West Virginia Supreme Court of Appeals who is familiar with monitored parenting and exchange program services; and

(5) ~~The final gubernatorial appointee~~ One member must be a ~~member of the public~~ citizen who is a resident of this state and who is not employed by, under contract with or a volunteer for a program licensed by the board, and who is knowledgeable about services for victims and survivors of domestic violence;

(c) The ~~other two members are the~~ secretary of the Department of Health and Human Resources, or his or her designee, and the ~~chairperson~~ chair of the Governor's Committee on Crime, Delinquency and Correction, or his or her designee shall serve as ex officio voting members.

~~(b)~~ (d) The terms of the ~~three~~ five members appointed by the Governor are ~~staggered terms of~~ for three years, staggered in accordance with prior enactments of this act. ~~The initial term of the commissioner of the shelter is a one-year term, the initial term of the representative of the trade association is a two-year term and the initial term of the appointed member of the public is a three-year term.~~

(e) No person who is employed by, under contract with or volunteers for an organization that is licensed to operate any program under the provisions of this article may serve on the board at the same time as another person who is employed by, under contract with or volunteers for that organization.

~~(c) In the event that a member of the board ceases to be qualified for appointment, then his or her appointment terminates.~~

~~(g)~~ (f) If a member resigns or is unable to complete his or her term or ceases to be qualified, the Governor shall appoint within ninety days a person who meets the qualifications of this section to serve the remainder of the unexpired term.

PART IV. DUTIES OF FAMILY PROTECTION SERVICES BOARD.

§48-26-401. Powers and duties of board.

~~It is the duty of the board to:~~

(a) The board shall:

(1) ~~Regulate its procedural practice;~~ Propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article and any applicable federal guidelines;

(2) Receive and consider applications for ~~the development of shelters~~ licensure of domestic violence programs, batterer intervention and prevention programs and monitored parenting and exchange programs;

(3) ~~Facilitate the formation and operation of shelters;~~ Assess the need for domestic violence programs, batterer intervention and prevention programs and monitored parenting and exchange programs, including licensure preapplication and application processes;

(4) ~~Promulgate rules to implement the provisions of this article and any applicable federal guidelines;~~ Conduct licensure renewal reviews of domestic violence programs, batterer intervention and prevention programs and monitored parenting and exchange programs, that will ensure the safety, well-being and health of the programs' participants and staff;

(5) ~~Advise the secretary on matters of concern relative to his or her responsibilities under this article~~ For each fiscal year, expend from the Family Protection Fund a sum not to exceed fifteen percent for the costs of administering the provisions of this article, and direct the Department of Health and Human Resources to distribute one half of the remaining funds equally and the other half of the remaining funds in accordance with a formula determined by the board, to licensed domestic violence programs;

(6) ~~Study issues pertinent to family protection shelters, programs for domestic violence victims, and report the results~~ Submit an annual report on the status of programs licensed under the provisions of this article to the Governor and the ~~Legislature~~ Joint Committee on Government and Finance;

(7) Conduct hearings as necessary under this article; and

(8) ~~Delegate to the secretary such powers and duties of the board as the board may deem appropriate to delegate, including, but not limited to, the authority to approve, disapprove, revoke or suspend licenses;~~ Collect data about licensed programs for use in the annual report of the board.

~~(9) Deliver funds to shelters within forty-five days of the approval of a proposal for such shelters;~~

~~(10) Establish a system of peer review which will ensure the safety, well-being and health of the clients of all shelters operating in the state;~~

~~(11) Evaluate annually each funded shelter to determine its compliance with the goals and objectives set out in its original application for funding or subsequent revisions;~~

~~(12) To award to shelters, for each fiscal year, ninety-five percent of the total funds collected and paid over during the fiscal year to the special revenue account established pursuant to section 2-604 of this chapter and to expend, during said period a sum not in excess of five percent of said funds for cost of administering provisions of this article;~~

~~(13) Establish and enforce system of standards for annual licensure for all shelters and programs in the state;~~

~~(14) Enforce standards; and~~

~~(15) Review its rules biannually.~~

(b) The board may:

(1) Advise the Secretary of the Department of Health and Human Resources and the Chair of the Governor's Committee on Crime, Delinquency and Correction on matters of concern relative to their responsibilities under this article;

(2) Delegate to the Secretary of the Department of Health and Human Resources such powers and duties of the board as the board considers appropriate to delegate, including, but not limited to, the authority to approve, disapprove, revoke or suspend licenses;

(3) Advise administrators of state or federal funds of licensure violations and closures of programs; and

(4) Exercise all other powers necessary to implement the provisions of this article.

§48-26-402. Requirements, qualifications and terms of licensure; collaboration to assist programs.

(a) No domestic violence program, batterer intervention and prevention program or monitored parenting and exchange program may represent that it is licensed unless it is licensed by the board

pursuant to the provisions of this article and the legislative rules promulgated pursuant to this article.

~~(a)~~ (b) The board shall establish ~~an~~ preliminary application and full application forms for the initial licensing ~~all shelters and programs~~ of domestic violence programs, batterer intervention and prevention programs and monitored parenting and exchange programs.

(1) To meet basic eligibility requirements an applicant for licensure must complete a preliminary application form to demonstrate local need for the proposed service, method of governance and accountability, administrative and programmatic design, and fiscal efficiency. The board shall respond in writing within sixty days of receipt of the preliminary application;

(2) If the board approves the preliminary application, the applicant may complete a full application form;

(3) The board shall determine whether all documentation set forth on the licensure checklist has been submitted, and may request supplemental or clarifying information or documentation; and

(4) The board shall grant or deny a license within sixty days of the receipt of the completed full application form and all supplemental or clarifying information or documentation requested by the board.

~~(b)~~ (c) Licenses may be granted or renewed ~~on an annual basis with all such licenses having a term of one year~~ for periods not to exceed three years: ~~commencing on the first day of July and terminating on the thirtieth day of June of the next year~~ *Provided*, That the board may conduct licensure reviews at any time during the licensure period, and may downgrade, suspend or revoke a license in accordance with the provisions of this article.

~~(c) The board shall grant or deny any license within forty-five days of the receipt of the application.~~

(d) The license granted by the board shall be ~~conspicuously~~ prominently displayed by the licensees.

(e) The board may grant a provisional license ~~or grant a waiver of licensure if the board deems such waiver or provisional license necessary for the shelter or program. All such waivers or provisional licenses shall be reviewed semi-annually.~~ for up to one hundred and eighty days, to a program that is not in compliance with non-life threatening safety, programmatic, facility or administrative standards. A provisional license may be extended for up to an additional one hundred and eighty days, if the board, in its sole discretion, determines that the program is making active progress toward compliance.

(f) The board may grant a conditional license for up to ninety days to a program that has violations of safety or accountability standards that may threaten the health, well-being or safety of its participants or staff, or the responsible operation of the program, or that have a history or pattern of noncompliance with established standards. If a program does not correct the violations within the conditional license period, the board may institute closure proceedings.

(g) The Department of Health and Human Resources, the Division of Justice and Community Services, the Family Protection Services Board, the WV Coalition Against Domestic Violence, the West Virginia Supreme Court of Appeals and the Division of Corrections may, collectively or in any combination as appropriate to the program, collaborate to provide technical assistance to prevent and resolve deficiencies in a program's ability to meet the standards to operate and maintain licensure.

(h) If the board obtains information that a person or persons has engaged in, is engaging in or is about to engage in an act that constitutes or will constitute a violation of the provisions of this article or the legislative rules promulgated pursuant to this article, it may issue a notice to the person or persons to cease and desist the act, or apply to the circuit court for an order enjoining the act. Upon a showing that

the person has engaged, is engaging or is about to engage in such an act, the court may order an injunction, restraining order or other order as the court considers appropriate.

§48-26-403. Legislative rules.

(a) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this article.

(b) The rules shall include, at a minimum:

(1) Operating procedures of the board;

(2) Minimum standards, including, but not limited to, governance, administration, safety, referral process, intake, services, financial accountability, staffing, personnel policies, communication, program participant records, service plans, confidentiality, program evaluation, facility requirements, reports, restrictions, and other requirements in this article, for licensure of:

(A) Domestic violence programs, including requirements for both shelter and outreach components;

(B) Community-based, local government and Division of Corrections batterer intervention and prevention programs; and

(C) Monitored parenting and exchange programs; and

(3) A licensure checklist to determine the ability of applicants and licensees to meet licensure standards, to determine eligibility for a full license, provisional license, conditional license or no license.

(c) The rules in effect as of the effective date of the reenactment of this section will remain in effect until modified, amended or repealed provided that they are not inconsistent with this article.

§48-26-406. Closure of programs.

(a) The board may close any ~~shelter which~~ program that violates the standards established under this article ~~and which~~ or that threatens the health, well-being ~~and~~ or safety of its ~~clients~~ participants or staff: *Provided,* That if a shelter is closed, the governing body of the program, in conjunction with the board, shall establish a plan to place ~~such clients~~ the participants in other shelters or alternative housing. ~~and to develop a method to continue serving the areas served by the shelter to be closed.~~

~~(b) The board may place a shelter, which violates standards established under this article and which threatens the health, well being and safety of its clients, under receivership and operate said shelter. The board shall have access and may use all assets of the shelter.~~

~~(c)~~ (b) In order to close ~~or place~~ a ~~shelter in receivership~~ domestic violence program or one of its components, a batterer intervention and prevention program or a monitored parenting and exchange program, the board ~~shall hold a public hearing within the confines of municipality or county in which the shelter is located. The board, by September 1, 1989, shall establish rules and regulations to govern the conduct of such hearings: *Provided,* That four members of the board~~ must vote unanimously in the affirmative. ~~before a shelter is closed or placed in receivership.~~

~~(d)~~ (c) If ~~a~~ either the shelter ~~disagrees with the findings of the board, the shelter may appeal such ruling to the circuit court of Kanawha County or the circuit court of the county where the shelter is located pursuant to the provisions of section four, article five, chapter twenty-nine-a of this code~~ component or the outreach component of a domestic violence program is closed, the remaining component of the program may continue to be licensed and to receive funds.

§48-26-408. Hearing procedures; judicial review.

(a) When a license for a program is downgraded or discontinued through permanent or temporary closure, the program's governing body is entitled to a hearing before the board.

(b) Hearings shall be held in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(c) The board may conduct the hearing or elect to have a hearing examiner or an administrative law judge conduct the hearing. If the hearing is conducted by a hearing examiner or an administrative law judge:

(1) The hearing examiner or administrative law judge shall be licensed to practice law in this state and shall conform to the Code of Conduct for Administrative Law Judges as set forth by the Ethics Commission in legislative rule;

(2) At the conclusion of a hearing, the hearing examiner or administrative law judge shall prepare a proposed written order containing recommended findings of fact and conclusions of law and may include recommended sanctions, including closure, if the board so directs;

(3) The board may accept, reject, modify or amend the recommendations of the hearing examiner or administrative law judge; and

(4) If the board rejects, modifies or amends the recommendations, the board shall state in the order a reasoned, articulate justification based on the record for the rejection, modification or amendment.

(d) Pursuant to the provisions of section one, article five, chapter twenty-nine-a of this code, informal disposition may also be made by the board by stipulation, agreed settlement, consent order or default. Further, the board may suspend its decision and place a license on conditional or provisional status.

(e) A licensee adversely affected by a decision of the board entered after a hearing may seek an appeal to the Circuit Court, in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code, and may appeal a decision of the Circuit Court to the West

Virginia Supreme Court of Appeals, in accordance with the provisions of article six, chapter twenty-nine-a of this code.

PART VI. FUNDING.

§48-26-603. Domestic Violence Legal Services Fund.

(a) There is ~~hereby established~~ continued in the State Treasury a special revenue account, designated as the 'Domestic Violence Legal Services Fund,' ~~which~~ that shall be an appropriated fund for receipt of grants, gifts, fees, or federal or state funds designated for legal services for domestic violence victims. Expenditures from the fund shall be limited to attorneys employed or contracted by licensed domestic violence ~~shelters~~ programs, or employed or contracted by ~~nonprofit agencies~~ West Virginia's federally designated legal services program, its successor organization or other nonprofit organization as determined by the department, ~~which~~ that establish a collaborative relationship with a licensed domestic violence ~~shelter~~ program, ~~that~~ to provide civil legal services to victims of domestic violence.

(b) Any court of this state may order a nonprevailing party to pay an amount equivalent to the reasonable attorney's fee to which the prevailing litigant would be entitled into the Domestic Violence Legal Services Fund, established in subsection (a) of this section, if the following circumstances occur:

(1) A prevailing litigant is entitled by statute or common law to a reasonable attorney's fee, and

(2) The prevailing litigant's legal counsel informs the court that no fee will be requested.

§48-26-604. Annual reports of licensed programs.

(a) All programs licensed pursuant to this article shall report specific information annually as required by the board.

(b) No information contained in a report may identify any person served by the program or enable any person to determine the identity of any such person.

PART VII. CONFIDENTIALITY.

§48-26-701. Confidentiality.

(a) No program ~~or shelter receiving funds~~ licensed pursuant to this article ~~shall~~ may disclose, reveal or release or be compelled to disclose, reveal or release, any written records or personal or personally identifying information about a program participant created or maintained in providing services, regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected, pursuant to this article except:

(1) Upon written consent, or upon oral consent in emergency situations defined by legislative rule, of the person seeking or who has sought services from the program; ~~or the shelter~~

(2) In any proceeding brought under sections four and five, article six, chapter nine of this code or article six, chapter forty-nine of this code;

(3) As mandated by article six-a, chapter forty-nine and article six, chapter nine of this code;

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

(5) To protect against a clear and substantial danger of imminent injury by a ~~client~~ person receiving services to himself or herself or another; or

(6) ~~For treatment or internal review purposes to the staff of any program or shelter if the client is also being cared for by other health~~

~~professionals in the program or shelter.~~ As authorized by the releases signed by batterer intervention and prevention program participants pursuant to the provisions of subsection (b) of this section.

(b) Batterer intervention and prevention program participants shall authorize the release of information by signing the following releases:

(1) Allowing the provider to inform the victim or alleged victim and the victim's advocates that the batterer is participating in a batterer intervention and prevention program with the provider and to provide information to the victim or alleged victim and her or his advocates, if necessary, for the victim's or alleged victim's safety;

(2) Allowing prior and current service providers to provide information about the batterer to the provider;

(3) Allowing the provider, for good cause, to provide information about the batterer to relevant legal entities, including courts, parole officers, probation officers, child protective services, adult protective services, law enforcement, licensed domestic violence programs, or other referral agencies;

(4) Allowing the provider to report to the court, if the participation was court ordered, and to the victim or alleged victim, if she or he requests and provides a method of notification, and to his or her advocate, any assault, failure to comply with program requirements, failure to attend the program, threat of harm by the batterer, reason for termination and recommendations for changes in the court order; and

(5) Allowing the provider to report to the victim or alleged victim, or his or her advocate, without the participant's authorization, all perceived threats of harm, the participant's failure to attend and reason for termination.

(c) Monitored parenting and exchange programs may disclose to one parent or guardian, without the permission of the other parent or

guardian, any perceived threat of harm or violation of the court order or violation of the monitored parenting and exchange program rules by the other parent or guardian.

(d) No monitored parenting and exchange program may release information about the child without consent of the parent with custodial responsibility or guardian.

(e) In addition to the provisions set forth in this section, the release of a victim's personally identifying information is subject to the provisions of 42 U.S.C. § 13925(b)(2).

~~(b)~~ (f) No consent or authorization for the transmission or disclosure of confidential information ~~shall be~~ is effective unless it is ~~in writing and~~ signed by the ~~client~~ program participant whose information is being disclosed. Every person signing an authorization shall be given a copy.

(g) A victim of domestic violence, dating violence, sexual assault, or stalking shall not be required to provide consent to release his or her personally identifying information as a condition of eligibility for the services, nor may any personally-identifying information be shared in order to comply with federal or state reporting, evaluation, or data collection requirements: *Provided,* That nothing in this section prohibits a program from reporting suspected abuse or neglect, as defined by law, when the program is mandated by law to report suspected abuse or neglect.

PART X. MONITORED PARENTING AND EXCHANGE PROGRAMS.

§48-26-1001. Court orders; use of monitored parenting and exchange programs without court order.

(a) Judges and magistrates may order persons to apply to a licensed monitored parenting and exchange program for monitored parenting or monitored exchange of children: *Provided,* That a licensed monitored

parenting and exchange program may not be required to perform duties that are beyond the program's capacity or scope of services.

(b) Judges and magistrates may require a person to pay a reasonable amount based on ability to pay and other relevant criteria for any fee charged by a monitored parenting and exchange program.

(c) Licensed monitored parenting and exchange programs may receive referrals from judges, magistrates, child protective services, attorneys and other agencies, for services under the terms and conditions of those services as set forth in rules promulgated by the board.

(d) Licensed monitored parenting and exchange programs may serve self-referrals when the adult parties agree to the use of the program.

§48-26-1002. Exclusions.

The provisions of this part do not apply to therapeutic or supervised visitation or exchanges or any activity conducted by the state or others in abuse and neglect proceedings pursuant to articles six and six-a, chapter forty-nine of this code in which assessment, evaluation, formulation of a treatment plan, case management, counseling, therapy or similar activities occur.

§48-26-1004. Contract by persons using program.

Every ~~center~~ program shall require that the ~~parents~~ parent, guardian or other ~~caretakers~~ adult sign a written contract prior to using the ~~center~~ program and that the use of the services provided by the ~~center~~ program can be terminated by the ~~center~~ program for violation of the contract."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2603 - "A Bill to repeal §48-26-404, §48-26-405, §48-26-601, §48-26-602, §48-26-901, §48-26-902, §48-26-1003, §48-26-1005, §48-26-1006 and §48-26-1007 of the Code of West Virginia, 1931, as amended; to amend and reenact §48-26-202, §48-26-203, §48-26-204, §48-26-205, §48-26-206, §48-26-301, §48-26-401, §48-26-402, §48-26-403, §48-26-406, §48-26-603, §48-26-604, §48-26-701, §48-26-1001, §48-26-1002 and §48-26-1004 of said code; and to amend said code by adding thereto nine new sections, designated §48-26-207, §48-26-208, §48-26-209, §48-26-210, §48-26-211, §48-26-212, §48-26-213, §48-26-214 and §48-26-408, all relating to the Family Protection Services Board; revising definitions; adding definitions; revising qualifications for membership on the board; adding two new members to the board; clarifying that the two ex officio members have voting privileges; prohibiting certain persons from serving on the board at the same time as certain other persons; providing for appointments for unexpired terms of board members; providing appointments for members who become disqualified; clarifying and expanding the board's powers and duties; requiring board to submit annual report to Governor and Joint Committee on Government and Finance; authorizing legislative rules; increasing the percentage of board funds that may be used for administrative functions; authorizing the board to develop formulas to direct funds to certain programs; prohibiting programs from falsely representing that they are licensed; authorizing the board to develop preliminary and full application forms; requiring board to respond in writing within certain time after receiving preliminary and full applications; providing for conditional, provisional and full licenses; allowing certain entities to provide support to programs in certain situations; authorizing the board to issue licenses for up to three years; updating provisions related to the closure of programs; authorizing the board to issue notices to cease and desist and seek injunctive relief in certain situations; setting forth procedures for hearings and appeals; clarifying the uses of the Domestic Violence Legal Services Fund; requiring programs to report annually to the board; updating confidentiality protections for programs participants; updating provisions related to monitored

parenting and exchange programs; providing that judges and magistrates may order persons to participate in a monitored parenting and exchange program; and allowing monitored parenting and exchange programs to receive referrals."

On motion of Delegate Boggs, the House of Delegates concurred in the Senate amendments.

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken **(Roll No. 330)**, and there were—yeas 94, nays 4, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Butler, Cadle, Gearheart, and Householder.

ABSENT AND NOT VOTING: Moore and J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2603) passed.

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

On this question, the yeas and nays were taken **(Roll No. 331)**, and there were—yeas 94, nays 5, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Butler, Cadle, Gearheart, Householder and Kump.

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2603) takes effect from its passage.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2819, Relating to the financial oversight of entities regulated by the Insurance Commissioner.

A message from the Senate, by

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

Com. Sub. for H. B. 2866, Providing an exception to allow a resident of a dwelling house to discharge a firearm in a lawful manner within five hundred feet.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2913, Specifying procedures for adjusting payments to correct for an erroneous distribution of moneys dedicated, distributed or directed to a state or local governmental subdivision.

On motion of Delegate Boggs, the bill was taken up for immediate consideration.

The following Senate amendments were reported by the Clerk:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

"That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-10-26, to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-26. Adjustment for correction of erroneous distribution of funds, limitation period, immunity of agencies, subdivisions, and instrumentalities of this state.

(a)(1) An erroneous distribution, transfer, allocation, overpayment or underpayment dedicated, distributed or directed by the state or an instrumentality of the state to a state or local governmental subdivision or a fund, entity, agency or instrumentality of the state or a political subdivision of the state, under the provisions of this code administered under this article, or under the provisions of article twenty-two, twenty-two-a, twenty-two-b, twenty-two-c or twenty-five, chapter twenty-nine of this code, or any other provision of this code, or any combination thereof, caused by clerical error or mistake, or a computational, informational or other mistake or error, may be corrected by an adjustment to a distribution, transfer, allocation or payment to the subdivision, entity, agency, instrumentality or fund and by transfer of moneys from the subdivision, entity, agency, instrumentality or fund until the amount of the erroneous distribution, transfer, allocation, overpayment or underpayment has been corrected: *Provided,* That no correction or adjustment may be made for an erroneous distribution, transfer, allocation, overpayment or underpayment of moneys that is first discovered by the distributor or the distributee more than three years after the date on which the erroneous distribution, transfer, allocation, overpayment or underpayment of moneys was made, and no action lies for collection, correction or remediation of the late discovered erroneous distribution, transfer, allocation, overpayment or underpayment of the moneys.

(2) A distribution, transfer, allocation, overpayment or underpayment of moneys is deemed to have been made on the date when the moneys related thereto are under the actual, substantive control of the transferee, and subject to expenditure, disbursement, consumption or disposition by the transferee.

(3) An erroneous distribution, transfer, allocation, overpayment or underpayment of moneys is deemed to have been discovered on the date when the distributor or the distributee or any employee, officer, agent or representative of the distributor or distributee has actual substantive knowledge of the erroneous distribution, transfer, allocation, overpayment or underpayment of moneys.

(b) An agency, governmental subdivision or instrumentality of this state is not subject to a fine, penalty, assessment or imposition as a result of, or attributable to, an erroneous distribution, transfer, allocation, overpayment or underpayment of moneys.

(c) The provisions of subsection (a) of this section shall not be applied to alter, abrogate or terminate any current and ongoing agreement or arrangement which was in operation on the effective date of this section, to correct or adjust an erroneous distribution, transfer, allocation, overpayment or underpayment, between (1) this state or an instrumentality of this state and (2) a state or local governmental subdivision or a fund, entity, agency or instrumentality of the state or a political subdivision of this state."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2913 - "A Bill to amend the Code of West Virginia, 1931, as amended by adding thereto a new section, designated §11-10-26, relating to correction of certain erroneous distributions, transfers, allocations, overpayments or underpayments; specifying immunity of agencies, subdivisions and instrumentalities of this state from any fine, penalty, assessment or imposition as a result of, or attributable to the erroneous distribution, transfer, allocation, overpayment or underpayment of moneys; and specifying when discovery and distribution have occurred; specifying that provisions shall not be applied to alter, abrogate or terminate any current and ongoing agreement or arrangement in operation on the effective date."

On motion of Delegate Boggs, the House of Delegates concurred in the Senate amendments.

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken **(Roll No. 332)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2913) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, and had changed the effective date, to take effect July 1, 2013, a bill of the House of Delegates as follows:

H. B. 2968, Authorizing the use of an additional medium for use in archiving the records.

Delegate Boggs moved that the bill take effect July 1, 2013.

On this question, the yeas and nays were taken **(Roll No. 333)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2968) takes effect July 1, 2013.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 50, Requesting the Joint Committee on Government and Finance to schedule the June 2013 Legislative Interim Committee meetings in Wheeling during the week of June 20.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 105, Requesting a study on the necessity of hiring additional fraud investigators for the Department of Health and Human Resources and the Medicaid Fraud Control Unit.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had refused to concur in the amendment of the House of Delegates and requested the House to recede from its amendment to

S. B. 108, Creating Unintentional Pharmaceutical Drug Overdose Fatality Review Team.

On motion of Delegate Boggs, the House of Delegates refused to recede from its amendment and requested the Senate to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates Perdue, Perry and Ellington.

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, to take effect July 1, 2013, of

S. B. 214, Eliminating interview requirement for certain medical licensee applicants.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had refused to concur in the amendment of the House of Delegates and requested the House to recede from its amendment to

Com. Sub. for S. B. 435, Continuing Municipal Home Rule Pilot Program.

On motion of Delegate Boggs, the House of Delegates refused to recede from its amendment and requested the Senate to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates Morgan, Swartzmiller and Azinger.

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

A message from the Senate, by

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

S. B. 446, Conforming motor fuel taxes with International Fuel Tax Agreement.

A message from the Senate, by

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

Com. Sub. for S. B. 478, Redefining "video lottery games"; permitting wagering by historic resort hotel employees.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had refused to concur in the amendment of the House of Delegates and requested the House to recede from its amendment to

Com. Sub. for S. B. 580, Updating requirements for dental intern, resident and teaching permits.

On motion of Delegate Boggs, the House of Delegates refused to recede from its amendment and requested the Senate to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates Staggers, Poore and Sobonya.

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

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

S. B. 665 - "A Bill expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2013, in the amount of $6,500,000 from the Attorney General, Consumer Protection Recovery Fund, fund 1509, fiscal year 2013, organization 1500, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Attorney General, fund 0150, fiscal year 2013, organization 1500, and to the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2013, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2013."

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

S. C. R. 42 - "Requesting the Joint Committee on Government and Finance study the state's purchasing process and procedures, including the possible adoption of the Model Procurement Act."

WHEREAS, It has been brought to the attention of the Legislature that the purchasing and procurement processes of the state are unclear; and

WHEREAS, There is some discrepancy in the best purchasing process for the state, and a study may produce a procedure or refine an existing procedure conducive to efficient spending; and

WHEREAS, Other states employ and advocate procurement methods that differ from that of West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the state's purchasing process and procedures, including the possible adoption of the Model Procurement Act; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

S. C. R. 50 - "Requesting the Joint Committee on Government and Finance study abuse deterrent formulations for opioid medications."

WHEREAS, Over one hundred million adults in the United States suffer from chronic pain, including millions with debilitating conditions like arthritis, fibromyalgia and lower back pain; and

WHEREAS, Chronic pain likely costs West Virginia millions of dollars each year in lost productivity, added health costs and increased expenditures for Medicaid; and

WHEREAS, The significant and justified concentration of attention on limiting substance abuse in our state has placed health care providers and patients in a difficult position as barriers to pain treatment have been considered; and

WHEREAS, New technologies are available that can protect the integrity of pain medications so they may not be altered in form for the ease of substance abusers to use illegally; and

WHEREAS, The federal Food and Drug Administration is currently studying the application of abuse deterrent formulation (ADF) technologies for use in opioid medications; and

WHEREAS, The introduction of ADF technologies into the pain medication arena is of great potential significance to West Virginia as a method to ensure the continued access of patients to these important medicines and to the general interests of the state as a strategy to limit substance abuse problems; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby requests the Joint Committee on Government and Finance study abuse deterrent formulations for opioid medications; and, be it

Further Resolved, That the Joint Committee on Government and Finance is requested to conduct a study on the issues of West Virginians' access to effective pain management medications and the need for the Bureau for Medical Services and the Public Employee Insurance Agency to require the adoption of abuse deterrent formulation technologies for pain medicines in order to assist in the state's continuing efforts to eliminate substance abuse; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on it findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

S. C. R. 52 - "Requesting the Joint Committee on Government and Finance study tobacco use in West Virginia, with emphasis on cigarette smoking prevalence, smoking-related deaths, smoking-related economic costs and tobacco prevention policies focused on smoke-free workplaces."

WHEREAS, West Virginia continues to have one of the highest rates of cigarette smoking in the country and despite successes in reducing smoking among West Virginia youth there have yet to be any declines in smoking among West Virginia adults; and

WHEREAS, According to the Centers for Disease Control and Prevention, cigarette smoking harms nearly every organ in the body and causes 443,000 deaths each year in the U. S. In West Virginia, on average, 3,770 WV adults age thirty-five and older die each year from diseases related to cigarette smoking and about nineteen percent of all deaths of WV adults age thirty-five and older are caused by cigarette smoking; and

WHEREAS, Smoking-related economic costs can be separated into: (1) Direct health care costs related to cigarette smoking; and 2) productivity losses due to smoking-related deaths; and

WHEREAS, It is estimated that the annual direct health care costs resulting from tobacco use is over $700 million, and the estimated annual lost productivity (lost wages and other economic contributions of those who died early) amount to over $1 billion; and

WHEREAS, Tobacco prevention policies and smoke-free workplaces go hand-in-hand to help combat the costs associated with

tobacco use, including in those organizations such as health care facilities and related institutions dedicated to health and the discouragement of tobacco use by the general public. According to the CDC in a 2011 report, it was found that between 11.8 and 23.7 percent of health care workers in the United States, varying according to their role within the industry, are smokers; and

WHEREAS, The prevalence of smoking among health care workers has been perceived to undermine the public health message of these health care institutions with regards to smoking; and

WHEREAS, This Legislature shares these public health concerns surrounding tobacco use, and further discussion on how best to address the issue is needed; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study tobacco use in West Virginia, with emphasis on cigarette smoking prevalence, smoking-related deaths, smoking-related economic costs and tobacco prevention policies focused on smoke-free workplaces; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

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

the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

S. C. R. 69 - "Requesting the Joint Committee on Government and Finance study the West Virginia Project Launchpad Act; the feasibility of comprehensive tax credits to encourage development of advanced technologies; and the fiscal impact of enacting such comprehensive tax incentive legislation."

WHEREAS, Vision Shared plays an important role in helping to create a vibrant and diverse economy in West Virginia; and

WHEREAS, The Legislature has previously set forth its intent that Vision Shared is to help in working toward developing a comprehensive statewide economic development strategy, effectively coordinate economic development programs statewide and develop meaningful agency and program benchmarks and performance-based evaluations; and

WHEREAS, Vision Shared, working with a combination of business and labor leaders, has determined that the West Virginia Project Launchpad Act will help West Virginia retain its highly skilled and educated workforce, encourage further business development and assist the Legislature in fulfilling the aforementioned goals; and

WHEREAS, Despite our highly skilled and educated workforce, West Virginia suffers from a lack of advanced technology businesses, many of which offer good-paying jobs that provide good benefits to their employees; and

WHEREAS, Encouraging development of such businesses is a key in growing West Virginia's economy, providing more good-paying jobs to its citizens and retaining our high school graduates, college graduates and professionals; and

WHEREAS, Tax credits are an important element in encouraging business development and relocation in West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the West Virginia Project Launchpad Act; the feasibility of comprehensive tax credits to encourage development of advanced technologies; and the fiscal impact of enacting such comprehensive tax incentive legislation; and, be it

Further Resolved, That Vision Shared and the West Virginia State Tax Department are requested to assist the Joint Committee on Government and Finance in its study of the West Virginia Project Launchpad Act; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2014, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

SPECIAL CALENDAR

THIRD READING

-CONTINUED-

Com. Sub. for S. B. 437, Regulating commercial dog-breeding operations; 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. 334)**, and there were—yeas 66, nays 33, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Ambler, Anderson, Andes, Arvon, Ashley, Azinger, Border, Butler, Cadle, Cooper, Cowles, Ellem, Ellington, A. Evans, D. Evans, Faircloth, Folk, Frich, Hamilton, Householder, Howell, Ireland, Kump, Miller, Morgan, E. Nelson, Reynolds, Romine, Rowan, Shott, Sobonya, Walters and Westfall.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 437) passed.

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

S. B. 441, Relating to withdrawal of erroneous state tax liens; 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. 335)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 441) passed.

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

Com. Sub. for S. B. 454, Relating to taxation of alternative motor fuels; 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. 336)**, and there were—yeas 89, nays 10, absent

and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Armstead, Cadle, D. Evans, Folk, Gearheart, Householder, Howell, Kump, Lane and McCuskey.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 454) passed.

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

On this question, the yeas and nays were taken **(Roll No. 337)**, and there were—yeas 89, nays 10, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Armstead, Cadle, Folk, Gearheart, Householder, Howell, Kump, Lane, McCuskey and Sobonya.

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 454) 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 S. B. 464, Regulating tanning facilities; 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. 338)**, and there were—yeas 92, nays 7, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Border, D. Evans, Fragale, Gearheart, Howell, Overington and Sobonya.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 464) passed.

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

Com. Sub. for S. B. 469, Clarifying service credit for certain PERS members; 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. 339)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 469) passed.

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

Com. Sub. for S. B. 469 - "A Bill to amend and reenact §5-10-14 and §5-10-18 of the Code of West Virginia, 1931, as amended, all relating to service credit; providing for the purchasing of retroactive service credit by certain employees; requiring payment of reinstatement interest in the Public Employees Retirement System in certain circumstances."

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

Com. Sub. for S. B. 477, Relating to electronic registration of voters; 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. 340)**, and there were—yeas 79, nays 20, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Arvon, Border, Butler, Cadle, Cooper, Faircloth, Folk, Frich, Gearheart, Hamrick, Householder, Kump, McCuskey, Miller, O'Neal, Overington, Raines, Sobonya, Sumner and Westfall.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 477) passed.

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

Com. Sub. for S. B. 481, Relating to juvenile mental health treatment; 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. 341)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 481) passed.

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

Com. Sub. for S. B. 482, Relating to sale of voter registration lists; 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. 342)**, and there were—yeas 92, nays 7, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Cadle, D. Evans, Folk, Householder, Kump, Miller and Sobonya.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 482) passed.

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

S. B. 515, Relating to use of television receivers and other devices in vehicles; 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. 343)**, and there were—yeas 95, nays 4, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: D. Evans, Folk, Howell and Kump.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 515) passed.

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

S. B. 515 – "A Bill to amend and reenact §17C-15-42 of the Code of West Virginia, 1931, as amended, relating to equipment installed in motor vehicles; prohibiting video screens, video monitors, televisions and television receivers in view of the driver while a motor vehicle is in motion; exceptions; restrictions; conditions for use; and inapplicability of prohibition to specific devices."

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

S. B. 523, Making supplementary appropriation of unappropriated moneys to various accounts; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken **(Roll No. 344)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B.523) 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:

S. B. 523 - "A Bill making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2013, to the Governor's Office, Minority Affairs Fund, fund 1058, fiscal year 2013, organization 0100, to the Department of Education and the Arts, State Board of Rehabilitation - Division of

Rehabilitation Services - West Virginia Rehabilitation Center - Special Account, fund 8664, fiscal year 2013, organization 0932, to the Department of Health and Human Resources, Division of Health - Hospital Services Revenue Account, Special Fund, Capital Improvements, Renovation and Operations, fund 5156, fiscal year 2013, organization 0506, to the Department of Military Affairs and Public Safety, West Virginia State Police, fund 6501, fiscal year 2013, organization 0612, to the Department of Health and Human Resources, Division of Health - Lead Abatement Account, fund 5204, fiscal year 2013, organization 0506, to the Department of Revenue, Municipal Bond Commission, fund 7253, fiscal year 2013, organization 0706, to the Department of Transportation, Public Port Authority - Special Railroad and Intermodal Enhancement Fund, fund 8254, fiscal year 2013, organization 0806, to the Miscellaneous Boards and Commissions, WV Board of Examiners for Registered Professional Nurses, fund 8520, fiscal year 2013, organization 0907, and to the Miscellaneous Boards and Commissions, WV Board of Licensed Dietitians, fund 8680, fiscal year 2013, organization 0936, by supplementing and amending the appropriations for the fiscal year ending June 30, 2013."

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

On this question, the yeas and nays were taken **(Roll No. 345)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 523) 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.

S. B. 525, Making supplementary appropriation of federal funds to various accounts; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken **(Roll No. 346)**, and there were—yeas 91, nays 8, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Cowles, Espinosa, Folk, Frich, Hamrick, Householder, Howell and Lane.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B.525) passed.

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

On this question, the yeas and nays were taken **(Roll No. 347)**, and there were—yeas 90, nays 9, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Armstead, Cowles, Espinosa, Folk, Frich, Hamrick, Householder, Howell and Lane.

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 525) 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 S. B. 535, Relating to process for maintaining voter registration lists; 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. 348)**, and there were—yeas 79, nays 20, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Ambler, Armstead, Arvon, Ashley, Border, Cadle, Cowles, Espinosa, D. Evans, Faircloth, Folk, Householder, Howell, Lane, McCuskey, Miller, O'Neal, Sobonya, Storch and Walters.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 535) 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:

Com. Sub. for S. B. 535 - "A Bill to repeal §3-2-24 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-1-3 of said code; and to amend and reenact §3-2-2, §3-2-4a, §3-2-18, §3-2-19, §3-2-21, §3-2-23, §3-2-25 and §3-2-29 of said code, all relating to the maintenance of voter registration lists and related records generally; repealing provisions governing superseded voter list purging procedures; updating specific constitutional provisions relating to voting; modifying when a person under the age of eighteen may vote in a primary election; updating the processes and responsibilities for statewide voter registration and establishing county and state roles in the voter registration process; modifying the processes of maintaining voter registration records; specifying county roles in maintaining voter registration files for municipal elections; modifying processes for the maintenance of records in the statewide voter registration database; permitting registration records to be shared across state lines pursuant to certain programs; modifying processes for cancellation of deceased or ineligible voters' registrations; providing county and state roles in the systematic purging program for removal of ineligible voters from

active voter registration records; and providing for the custody of paper and electronic voter registration records."

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

Com. Sub. for S. B. 538, Eliminating requirement law enforcement maintain files of domestic violence orders; 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. 349)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 538) passed.

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

Com. Sub. for S. B. 538 - "A Bill to amend and reenact §48-27-601 of the Code of West Virginia, 1931, as amended, relating generally to disposition of domestic violence orders; requiring the filing of domestic violence orders with the domestic violence database; and modifying law enforcement's record keeping requirement for domestic violence orders."

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

Com. Sub. for S. B. 586, Transferring authority to license cosmetology, barber and massage schools to Council for Community

and Technical College Education; 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. 350)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 586) passed.

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

On this question, the yeas and nays were taken **(Roll No. 351)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 586) 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.

At 4:15 P.M., on motion of Delegate Boggs, the House of Delegates recessed until 4:45 P.M., and reconvened at that time.

CONFERENCE COMMITTEE REPORT AVAILABILITY

At 4:48 P.M., the Clerk announced availability in his office of the report of the Committee of Conference on Com. Sub. for H. B. 2585, Increasing the time to file a petition in response to notice of an increased assessment.

SPECIAL CALENDAR

THIRD READING

-CONTINUED-

S. B. 596, Determining grant awards for Chesapeake Bay and Greenbrier River watershed compliance projects; on third reading, coming up in regular order, was reported by the Clerk.

At the request of Delegate Boggs, and by unanimous consent, the bill was postponed.

Com. Sub. for S. B. 604, Expanding definition of "electioneering communication"; 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. 352)**, and there were—yeas 52, nays 47, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Ambler, Anderson, Andes, Armstead, Arvon, Ashley, Azinger, Border, Butler, Cadle, Canterbury, Cooper, Cowles, Eldridge, Ellington, Espinosa, A. Evans, D. Evans, Faircloth, Folk, Frich, Gearheart, Hamrick, Householder, Howell, Ireland, Kump, Lane, McCuskey, Miller, Moye, E. Nelson, O'Neal, Overington, Pasdon, Perry, Raines, Romine, Rowan, Shott, P. Smith, R. Smith, Sobonya, Storch, Sumner, Walters and Westfall.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 604) passed.

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

S. B. 596, Determining grant awards for Chesapeake Bay and Greenbrier River watershed compliance projects; on third reading, having been postponed in earlier proceedings, was reported by the Clerk.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 353)**, and there were—yeas 97, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Butler and Walters.

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 596) 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:

S. B. 596 - "A Bill to amend and reenact §31-15A-17b of the Code of West Virginia, 1931, as amended, relating to requiring the West Virginia Infrastructure and Jobs Development Council to direct the Water Development Authority to make grants to certain eligible certified Chesapeake Bay and Greenbrier River watershed compliance projects."

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

On this question, the yeas and nays were taken **(Roll No. 354)**, and there were—yeas 97, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

NAYS: Butler and Walters.

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 596) 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.

S. B. 623, Relating to funding for probation officers to address truancy; 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. 355)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 623) passed.

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

S. B. 623 - "A Bill to amend and reenact §18-5B-11 of the Code of West Virginia, 1931, as amended, relating to dropout prevention and recovery innovation zone grants for truancy probation; providing eligibility and purpose of grant; exempting applications from other requirements of section; providing for coordination of deadlines and approvals; and requiring prorata reduction of awards if funds insufficient."

Delegate Boggs moved that the bill take effect July 1, 2013.

On this question, the yeas and nays were taken **(Roll No. 356)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 623) takes effect July 1, 2013.

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

S. B. 663, Creating WV Feed to Achieve Act; on third reading, coming up in regular order, was read a third time.

Extended debate ensued.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 357)**, and there were—yeas 89, nays 9, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Canterbury, Cowles, Ellem, Folk, Gearheart, Householder, Howell, Kump and Overington.

ABSENT AND NOT VOTING: Hunt and J. Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 663) passed.

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

S. B. 663 - "A Bill to repeal §18-5-37 the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §18-5D-1, §18-5D-2, §18-5D-3 and §18-5D-4, all

relating to improving the nutrition, physical activity and health of West Virginia's children; creating the West Virginia Feed to Achieve Act; providing legislative findings and intent; encouraging adoption of comprehensive policies and programs; phasing in implementation of the West Virginia Feed to Achieve Act; making nutritious breakfast and lunch be made available to all students; promoting delivery systems, strategies and methods to maximize participation by students; providing for record keeping and reporting; authorizing continuation or termination of nutrition programs under certain conditions; providing that classroom teachers may not be required to operate a breakfast program as part of their regular duties; establishing restricted use funds or nonprofit foundations to provide moneys for school nutrition programs; providing for acceptance of private contributions; authorizing expenditures of private funds to draw down maximum federal funds for child nutrition; authorizing certain expenditures; prohibiting use of private funds for administrative or personnel expenses; authorizing partnerships with federal and state agencies and public and private organizations to expand options for providing healthy, nutritious food to children; encouraging healthy food initiatives such as community gardens and farm to school programs; and requiring an annual audit of the private funds."

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

On this question, the yeas and nays were taken **(Roll No. 358)**, and there were—yeas 94, nays 4, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Cowles, Folk, Howell and Kump.

ABSENT AND NOT VOTING: Hunt and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 663) 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.

Delegate Folk addressed the House regarding the passage of S. B. 663, and at the conclusion thereof, Delegate Kump asked and obtained unanimous consent that said remarks be printed in the Appendix to the Journal.

Delegate Hamrick then asked and obtained unanimous consent that all remarks regarding S. B. 663 be printed in the Appendix to the Journal.

[**CLERK'S NOTE**: The remarks of the individuals will be included following a review of proceedings by the Clerk.]

S. B. 664, Decreasing appropriations of public moneys in State Fund, General Revenue; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 359**), 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: Hunt and J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 664) passed.

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

On this question, the yeas and nays were taken (**Roll No. 360**), and there were—yeas 98, nays none, absent and not voting 2, with absent and not voting being as follows:

ABSENT AND NOT VOTING: Hunt and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 664) 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. 2014, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 361**), and there were—yeas 85, nays 13, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Armstead, Border, Cowles, Espinosa, Faircloth, Folk, Hamrick, Householder, Howell, Kump, Lane, McCuskey and Overington.

ABSENT AND NOT VOTING: Hunt and J. Nelson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2014) passed.

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

On this question, the yeas and nays were taken (**Roll No. 362**), and there were—yeas 88, nays 9, absent and not voting 3, with the nays and absent and not voting being as follows:

NAYS: Armstead, Border, Cowles, Espinosa, Faircloth, Hamrick, Householder, Howell and Overington.

ABSENT AND NOT VOTING: Hunt, J. Nelson and O'Neal.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2014) 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 S. B. 401, Relating to Board of Registration for Professional Engineers; still being in possession of the Clerk, was taken up for further consideration.

On motion of Delegate Boggs, the House of Delegates then reconsidered the vote on the effective date of the bill.

Delegate Boggs moved that the bill take effect July 1, 2013.

On this question, the yeas and nays were taken **(Roll No. 363)**, and there were—yeas 97, nays 1, absent and not voting 2, with the nays and absent and not voting being as follows:

NAYS: Howell.

ABSENT AND NOT VOTING: Hunt and J. Nelson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 401) takes effect July 1, 2013.

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

SECOND READING

Com. Sub. for S. B. 21, Creating Health Care Provider Transparency Act; on second reading, coming up in regular order, was read a second time.

An amendment to the bill, recommended by the Committee on the Judiciary, was reported by the Clerk.

Whereupon,

Delegate Manchin asked and obtained unanimous consent that the amendment be withdrawn.

Delegate Miley then asked and obtained unanimous consent to offer a substitute amendment recommended by the Committee on the Judiciary in its stead.

The Clerk then reported the amendment, on page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

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

"ARTICLE 1C. HEALTH CARE PROVIDER TRANSPARENCY ACT.

§16-1C-1. Definitions.

(a) 'Direct patient care' means health care that provides for the physical, diagnostic, emotional or rehabilitation needs of a patient or health care that involves examination, treatment or preparation for diagnostic tests or procedures.

(b) 'Employee' means an employee or contractor of a health care provider or a person who is granted privileges by a health care provider who delivers direct patient care.

(c) 'Health care provider' means an individual, partnership, corporation, facility, hospital or institution licensed or certified or authorized by law to provide professional health care service in this state to a patient during that patient's medical, remedial or behavioral health care, treatment or confinement.

(d) 'Secretary' means the Secretary of the West Virginia Department of Health and Human Resources. The secretary may

define in rules any term or phrase used in this article which is not expressly defined.

§16-1C-2. Identification badge requirements.

Notwithstanding any other provision of this code, an employee shall wear an identification badge when providing direct patient care. The identification badge shall be worn in a conspicuous manner so as to be visible and apparent.

§16-1C-3. Exceptions.

(a) Notwithstanding section three of this article, the following shall apply:

(1) An employee shall not be required to wear an identification badge while delivering direct patient care if it is not clinically feasible.

(2) The last name of the employee may be omitted or concealed from an identification badge when delivering direct patient care if the employee is concerned for his or her safety.

(b) An employee may petition the secretary for an exemption from the requirements of this article for reasons that are not set forth in this section.

(c) An employee providing direct patient care in a behavioral health care setting may not be required to wear an identification badge.

§16-1C-4. Rules.

The Secretary of the Department of Health and Human Resources, in consultation with appropriate health care provider professional licensing boards, shall propose rules for legislative approval in accordance with the provisions of chapter twenty-nine-a of this code to implement the provisions of this article. These rules shall include, at a minimum:

(1) The contents of the identification badge, which shall at least include the name of the employee and title of the employee;

(2) The title to be used to identify employee licensure information;

(3) The appearance of the identification badge, which shall have the title of the employee as large as possible in block type: *Provided,* That health care facilities providing identification badges prior to enactment of this article shall not be required to issue new badges;

(4) The process and procedure for seeking an exemption from the requirements of this article; and

(5) Such other rules as may be deemed necessary to effectuate the purposes of this article.

§16-1C-5. Applicability.

Section three of this article applies to employees of health care providers, as of July 1, 2015."

On motion of Delegate Ellington, the amendment was amended on page three, line twenty-two, following the word "providers", by inserting the words "who employ at least three licensed practitioners or employ more than ten employees".

The Judiciary amendment, as amended, was then adopted.

The bill was then ordered to third reading.

Com. Sub. for S. B. 22, Requiring maternity services coverage for all health insurance plan dependents in certain circumstances; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page two,

following the enacting section, by striking out the remainder of the bill and inserting in lieu thereof the following language:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

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

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

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

medically appropriate and consistent with current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists, when performed for cancer screening or diagnostic services on a woman age eighteen or over;

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

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

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

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

(6) Coverage for treatment of serious mental illness:

(A) The coverage does not include custodial care, residential care or schooling. For purposes of this section, 'serious mental illness' means an illness included in the American Psychiatric Association's

diagnostic and statistical manual of mental disorders, as periodically revised, under the diagnostic categories or subclassifications of: (I) Schizophrenia and other psychotic disorders; (ii) bipolar disorders; (iii) depressive disorders; (iv) substance-related disorders with the exception of caffeine-related disorders and nicotine-related disorders; (v) anxiety disorders; and (vi) anorexia and bulimia. With regard to ~~any~~ a covered individual who has not yet attained the age of nineteen years, 'serious mental illness' also includes attention deficit hyperactivity disorder, separation anxiety disorder and conduct disorder.

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

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

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

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

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

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

(B) The coverage shall include, but not be limited to, applied behavior analysis ~~Applied behavior analysis~~ which shall be provided

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

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

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

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

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

(D) On or before January 1 each year, the agency shall file an annual report with the Joint Committee on Government and Finance describing its implementation of the coverage provided pursuant to this subdivision. The report shall include, but ~~shall~~ not be limited to, the number of individuals in the plan utilizing the coverage required by

this subdivision, the fiscal and administrative impact of the implementation and any recommendations the agency may have as to changes in law or policy related to the coverage provided under this subdivision. In addition, the agency shall provide such other information as ~~may be~~ required by the Joint Committee on Government and Finance as it may ~~from time to time~~ request.

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

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

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

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

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

(F) To the extent that the application of this subdivision for autism spectrum disorder causes an increase of at least one percent of actual

total costs of coverage for the plan year, the agency may apply additional cost containment measures.

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

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

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

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

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

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

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

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

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

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE

§33-15-4k. Maternity coverage.

Notwithstanding any provision of any policy, provision, contract, plan or agreement applicable to this article, any health insurance policy subject to this article, issued or renewed on or after January 1, 2014, which provides health insurance coverage for maternity services, shall provide coverage for maternity services for all persons participating in or receiving coverage under the policy. To the extent that the provisions of this section require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits are not required of a health benefit plan when the plan is offered by a health care insurer in this state. Coverage required under this section may not be subject to exclusions or limitations which are not applied to other maternity coverage under the policy.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3w. Maternity coverage.

Notwithstanding any provision of any policy, provision, contract, plan or agreement applicable to this article, any health insurance policy subject to this article, issued or renewed on or after January 1, 2014, which provides health insurance coverage for maternity services, shall provide coverage for maternity services for all persons participating in, or receiving coverage under the policy. To the extent that the provisions of this section require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits are not required of a health benefit plan when the plan is offered by a health care insurer in this state. Coverage required under this section may not be subject to exclusions or limitations which are not applied to other maternity coverage under the policy.

ARTICLE 24. HOSPITAL MEDICAL AND DENTAL CORPORATIONS.

§33-24-7l. Maternity coverage.

Notwithstanding any provision of any policy, provision, contract, plan or agreement applicable to this article, a health insurance policy subject to this article, issued or renewed on or after January 1, 2014, which provides health insurance coverage for maternity services, shall provide coverage for maternity services for all persons participating in, or receiving coverage under the policy. To the extent that the provisions of this section require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits are not required of a health benefit plan when the plan is offered by a

health care insurer in this state. Coverage required under this section may not be subject to exclusions or limitations which are not applied to other maternity coverage under the policy.

ARTICLE 25. HEALTH CARE CORPORATION.

§33-25-8i. Maternity coverage.

Notwithstanding any provision of any policy, provision, contract, plan or agreement applicable to this article, a health insurance policy subject to this article, issued or renewed on or after January 1, 2014, which provides health insurance coverage for maternity services, shall provide coverage for maternity services for all persons participating in, or receiving coverage under the policy. To the extent that the provisions of this section require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits are not required of a health benefit plan when the plan is offered by a health care insurer in this state. Coverage required under this section may not be subject to exclusions or limitations which are not applied to other maternity coverage under the policy.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8k. Maternity coverage.

Notwithstanding any provision of any policy, provision, contract, plan or agreement applicable to this article, a health insurance policy subject to this article, issued or renewed on or after January 1, 2014, which provides health insurance coverage for maternity services, shall provide coverage for maternity services for all persons participating in, or receiving coverage under the policy. To the extent that the provisions of this section require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient

Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits are not required of a health benefit plan when the plan is offered by a health care insurer in this state. Coverage required under this section may not be subject to exclusions or limitations which are not applied to other maternity coverage under the policy."

The bill was then ordered to third reading.

Com. Sub. for S. B. 74, Relating to jury service qualification; on second reading, coming up in regular order, was read a second time.

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

"That §52-1-2, §52-1-5a and §52-1-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. PETIT JURIES.

§52-1-2. Prohibition of discrimination.

A citizen may not be excluded from jury service on account of race, color, religion, sex, sexual orientation, national origin, economic status or being a qualified individual with a disability.

§52-1-5a. Jury qualification form; contents; procedure for use; penalties.

(a) Not less than twenty days before the date for which persons are to report for jury duty, the clerk may, if directed by the court, serve by first-class mail, upon each person listed on the master list, a juror qualification form accompanied by instructions necessary for its completion: *Provided,* That the clerk may, if directed by the court, mail the juror qualification form to only those prospective jurors drawn

for jury service under the provisions of section seven of this article. Each prospective juror shall be directed to complete the form and return it by mail to the clerk within ten days after its receipt. The juror qualification form is subject to approval by the circuit court as to matters of form and shall elicit the following information concerning the prospective juror:

(1) The juror's name, sex, race, age and marital status;

(2) The juror's level of educational attainment, occupation and place of employment;

(3) If married, the name of the juror's spouse and the occupation and place of employment of the spouse;

(4) The juror's residence address and the juror's mailing address if different from the residence address;

(5) The number of children which the juror has and their ages;

(6) Whether the juror is a citizen of the United States and a resident of the county;

(7) Whether the juror is able to read, speak and understand the English language;

(8) Whether the juror has any physical or mental disability substantially impairing the capacity to render satisfactory jury service: *Provided,* That a juror with a physical disability, who can with reasonable accommodation render competent service, is eligible for service;

(9) Whether the juror has, within the preceding two years, been summoned to serve as a petit juror, grand juror or magistrate court juror, and has actually attended sessions of the magistrate or circuit court and been reimbursed for his or her expenses as a juror;

(10) Whether the juror has lost the right to vote because of a criminal conviction; and

(11) Whether the juror has been convicted of perjury, false swearing or ~~other infamous offense~~ any crime punishable by imprisonment in excess of one year under the applicable law of this state, another state or the United States.

The juror qualification form may also request information concerning the prospective juror's religious preferences and organizational affiliations, except that the form and the accompanying instructions shall clearly inform the juror that this information need not be provided if the juror declines to answer such inquiries.

(b) The juror qualification form shall contain the prospective juror's declaration that the responses are true to the best of the prospective juror's knowledge and an acknowledgment that a willful misrepresentation of a material fact may be punished by a fine of not more than $500 or imprisonment for not more than thirty days, or both fine and imprisonment. Notarization of the juror qualification form shall not be required. If the prospective juror is unable to fill out the form, another person may assist the prospective juror in the preparation of the form and indicate that such person has done so and the reason therefor. If an omission, ambiguity or error appear in a returned form, the clerk shall again send the form with instructions to the prospective juror to make the necessary addition, clarification or correction and to return the form to the clerk within ten days after its second receipt.

(c) Any prospective juror who fails to return a completed juror qualification form as instructed shall be directed by the clerk to appear forthwith before the clerk to fill out the juror qualification form. At the time of the prospective juror's appearance for jury service, or at the time of any interview before the court or clerk, any prospective juror may be required to fill out another juror qualification form in the presence of the court or clerk. At that time the prospective juror may be questioned with regard to the responses to questions contained on

the form and the grounds for the prospective juror's excuse or disqualification. Any information thus acquired by the court or clerk shall be noted on the juror qualification form.

(d) Any person who willfully misrepresents a material fact on a juror qualification form or during any interview described in subsection (c) of this section, for the purpose of avoiding or securing service as a juror, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500 or imprisoned not more than thirty days, or both fined and imprisoned.

(e) Upon the clerks's receipt of the juror qualification questionnaires of persons selected as prospective petit jurors, he or she shall make the questionnaires of the persons so selected available, upon request, to counsel of record in the trial or trials for which the persons have been selected as prospective jurors.

§52-1-8. Disqualification from jury service.

(a) The court ~~upon request of a prospective juror or on its own initiative~~, shall determine ~~on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence~~ whether ~~the~~ any prospective juror is disqualified for jury service on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence. The clerk shall enter this determination in the space provided on the juror qualification form and on the alphabetical lists of names drawn from the jury wheel or jury box.

(b) A prospective juror is disqualified to serve on a jury if the prospective juror:

(1) Is not a citizen of the United States, at least eighteen years old and a resident of the county;

(2) Is unable to read, speak and understand the English language. For the purposes of this section, the requirement of speaking and

understanding the English language is met by the ability to communicate in American Sign Language or Signed English;

(3) Is incapable, by reason of substantial physical or mental disability, of rendering satisfactory jury service. ~~but~~ A person claiming this disqualification may be required to submit a physician's certificate as to the disability and the certifying physician is subject to inquiry by the court at its discretion;

(4) Has, within the preceding two years, been summoned to serve as a petit juror, grand juror or magistrate court juror and has ~~actually~~ attended sessions of the magistrate or circuit court and been reimbursed for his or her expenses as a juror pursuant to the provisions of section twenty-one of this article, section thirteen, article two of this chapter, or pursuant to an applicable rule or regulation of the Supreme Court of Appeals promulgated pursuant to the provisions of section eight, article five, chapter fifty of this code;

(5) Has lost the right to vote because of a criminal conviction; or

(6) Has been convicted of perjury, false swearing or ~~other infamous offense~~ any crime punishable by imprisonment in excess of one year under the applicable law of this state, another state or the United States.

(c) A prospective juror seventy years of age or older is not disqualified from serving but shall be excused from service by the court upon ~~the juror's~~ his or her request.

(d) A prospective grand juror is disqualified to serve on a grand jury if ~~the prospective grand juror~~ he or she is an officeholder under the laws of the United States or of this state except that the term 'officeholder' does not include notaries public.

(e) A person who is physically disabled and can render competent service with reasonable accommodation ~~shall not be~~ is not ineligible

to act as juror ~~or~~ and may not be dismissed from a jury panel on the basis of disability alone. ~~*Provided,* That~~ The circuit judge shall, upon motion by either party or upon his or her own motion, disqualify a disabled juror if the circuit judge finds that the nature of potential evidence in the case including, but not limited to, the type or volume of exhibits or the disabled juror's ability to evaluate a witness or witnesses, unduly inhibits the disabled juror's ability to evaluate the potential evidence. For purposes of this section:

(1) Reasonable accommodation includes, but is not limited to, certified interpreters for the hearing impaired, spokespersons for the speech impaired, real-time court reporting and readers for the visually impaired.

(2) The court shall administer an oath or affirmation to any person present to facilitate communication for a disabled juror. The substance of ~~such~~ the oath or affirmation shall be that any person present as an accommodation to a disabled juror will not deliberate on his or her own behalf, although present throughout the proceedings, but act only to accurately communicate for and to the disabled juror.

(f) Nothing in this article ~~shall be construed so as to limit in any way~~ limits a party's right to preemptory strikes in civil or criminal actions."

Extended debate then followed on the amendment, and at the conclusion thereof, the Speaker put the question.

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

The yeas and nays having been ordered, they were taken **(Roll No. 364)**, and there were—yeas 38, nays 59, absent and not voting 3, with the yeas and absent and not voting being as follows:

YEAS: Speaker Thompson, Barill, Barrett, Caputo, Craig, Diserio, Ferns, Ferro, Fleischauer, Fragale, Guthrie, Iaquinta, Jones, Lawrence,

Longstreth, Manchin, Manypenny, Marshall, McCuskey, Miley, Moore, Morgan, Pasdon, Perdue, L. Phillips, M. Poling, Poore, Raines, Reynolds, Skaff, Skinner, Sponaugle, Staggers, Stephens, Storch, Swartzmiller, Wells and White.

ABSENT AND NOT VOTING: Howell, Hunt and J. Nelson.

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

The bill was then ordered to third reading.

Com. Sub. for S. B. 101, Clarifying Medical Professional Liability Act applies to nursing homes and their health care providers; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page seven, section fifteen, line one hundred three, following the words "July 1, 2013" and the period, by inserting the words "The amendments to this section in 2013 are not in any way intended to modify, change, expand or contract the Medical Professional Liability Act."

The bill was then ordered to third reading.

Com. Sub. for S. B. 103, Creating WV Commuter Rail Access Act; on second reading, coming up in regular order, was read a second time.

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

"That §29-18-3 and §29-18-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended

by adding thereto a new section, designated §29-18-24, all to read as follows:

§29-18-3. Definitions.

As used in this article unless the context clearly requires a different meaning:

(1) 'Authority' means the West Virginia ~~railroad maintenance authority~~ State Rail Authority created by this article, the duties, powers, responsibilities and functions of which are specified in this article.

(2) 'Bond' or '~~railroad maintenance~~ state rail authority bond' means a revenue bond or rate issued by the ~~railroad maintenance~~ state rail authority to effectuate the intents and purposes of this article.

(3) 'Commuter rail' means a transit mode that is an electric or diesel propelled railway for urban passenger train service consisting of local short distance travel operating between a central city and adjacent suburbs. Service must be operated on a regular basis by or under contract with a transit operator for the purpose of transporting passengers within urbanized areas or between urbanized areas and outlying areas. The rail service, using either locomotive hauled or self-propelled railroad passenger cars, is generally characterized by multitrip tickets, specific station to station fares or railroad employment practices and usually has only one or two stations in the central business district. It does not include heavy rail rapid transit or light rail/streetcar transit service. Intercity rail service is excluded except for that portion of service operated by or under contract with a public transit agency for predominantly commuter services. Only the predominantly commuter service portion of an intercity route is eligible for inclusion when determining commuter rail route miles.

(4) 'Heavy rail' means a transit mode that is an electric railway with the capacity for a heavy volume of traffic. It is characterized by

high speed and rapid acceleration passenger rail cars operating singly or in multicar trains on fixed rails, separate rights-of-way from which all other vehicular and foot traffic are excluded, sophisticated signaling and high platform loading.

(5) 'Income' means and includes all money accruing to the authority from any source.

(6) 'Light rail' means a transit mode that typically is an electric railway with a light volume traffic capacity compared to heavy rail. It is characterized by passenger rail cars operating singly or in short, usually two-car, trains, on fixed rails in shared or exclusive rights-of-way, low or high platform loading and vehicle power drawn from an overhead electric line via a trolley or a pantograph.

(7) 'Owner' means and includes all individuals, copartnerships, associations, corporations, companies, transportation companies, public service corporations, the United States or any agency or instrumentality thereof, common carriers by rail and railroad companies having any title or interest in any rail properties authorized to be acquired, leased or used by this article.

(8) 'Person' means individuals, corporations, partnerships or foreign and domestic associations, including railroads.

(9) 'Predominantly commuter services' means that for any given trip segment (i.e., distance between two stations), more than fifty percent of the average daily ridership travels on the train at least three times a week.

~~(3) 'Railroad' means a common carrier by railroad as defined in section 1(3) of Part I of the Interstate Commerce Act (49 U.S.C. (1) 3).~~

~~(4) 'Owner' means and includes all individuals, copartnerships, associations, corporations, companies, transportation companies, public service corporations, the United States or any agency or~~

~~instrumentality thereof, common carriers by rail and railroad companies having any title or interest in any rail properties authorized to be acquired, leased or used by this article.~~

~~(5) 'Income' means and includes all money accruing to the authority from any source.~~

~~(6) 'Person' means individuals, corporations, partnerships or foreign and domestic associations, including railroads.~~

~~(7)~~ (10) 'Rail properties' means assets or rights owned, leased, or otherwise controlled by a railroad or other person which are used, or useful, in rail transportation service: *Provided,* That rail properties does not include any properties owned, leased, or otherwise controlled by a railroad not in reorganization, unless it consents to such properties' inclusion in the particular transaction.

~~(8)~~ (11) 'Rail service' means both freight and passenger service.

(12) 'Railroad' means a common carrier by railroad as defined in section 1(3) of Part I of the Interstate Commerce Act (49 U.S.C. (1) 3).

~~(9)~~ (13) 'Railroad project' means the initiation, acquisition, construction, maintenance, repair, equipping or operation of rail properties or rail service, or the provisions of loans or grants to or with government agencies, or to persons for such purposes, by the authority.

§29-18-6. Powers, duties and responsibilities of authority generally.

The West Virginia State Rail Authority is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose.

(a) The authority may:

(1) Adopt and, from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of

its business and propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement and make effective its powers and duties.

(2) Adopt an official seal.

(3) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided.

(4) Sue and be sued in its own name and plead and be impleaded in its own name and particularly to enforce the obligations and covenants made under sections ten, eleven and sixteen of this article. Any actions against the authority shall be brought in the circuit court of Kanawha County. The location of the principal office of the authority shall be determined by the Governor.

(5) Make loans and grants to governmental agencies and persons for carrying out railroad projects by any governmental agency or person and, in accordance with chapter twenty-nine-a of this code, propose rules for legislative approval and procedures for making such loans and grants.

(6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to or contract for operation by a governmental agency or person, railroad projects and, in accordance with chapter twenty-nine-a of this code, propose legislative rules for the use of these projects.

(7) Make available the use or services of any railroad project to one or more persons, one or more governmental agencies or any combination thereof.

(8) Issue ~~Railroad Maintenance~~ State Rail Authority bonds and notes and refunding bonds of the state, payable solely from revenues as provided in section ten of this article unless the bonds are refunded by refunding bonds for the purpose of paying any part of the cost of one or more railroad projects or parts thereof.

(9) Acquire, by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.

(10) Acquire in the name of the state, by purchase or otherwise, on terms and in the manner it considers proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, rail properties and appurtenant rights and interests necessary for carrying out railroad projects.

(11) (A) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers including, but not limited to, the power to make contracts and agreements in accordance with the provisions set forth in paragraph (B) of this subdivision.

(B) Make and enter into contracts and agreements to acquire rolling stock or equipment with a value of $500,000 or less exempt from the provisions of article three, chapter five-a of this code.

The authority shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which set forth the methods for determining value of rolling stock or equipment to be purchased in accordance with the provisions of paragraph (B) of this subdivision.

(C) Where rolling stock, equipment or trackage of the authority is in need of immediate maintenance, repair or reconstruction in order to avoid a cessation of its operations, economic loss, the inability to provide essential service to customers or danger to authority personnel or the public, the following requirements and procedures for entering into the contract or agreement to remedy the condition shall be in lieu of those provided in article three, chapter five-a of this code or any legislative rule promulgated pursuant thereto:

(i) If the cost under the contract or agreement involves an expenditure of more than $1,000, but $10,000 or less, the authority

shall award the contract to or enter into the agreement with the lowest responsible bidder based upon at least three oral bids made pursuant to the requirements of the contract or agreement.

(ii) If the cost under the contract or agreement, other than one for compensation for personal services, involves an expenditure of more than $10,000, but $100,000 or less, the authority shall award the contract to or enter into the agreement with the lowest responsible bidder based upon at least three bids, submitted to the authority in writing on letterhead stationery, made pursuant to the requirements of the contract or agreement.

(D) Notwithstanding any other provision of this code to the contrary, a contract or lease for the operation of a railroad project constructed and owned by the authority or an agreement for cooperation in the acquisition or construction of a railroad project pursuant to section sixteen of this article is not subject to the provisions of article three, chapter five-a of this code or any legislative rule promulgated pursuant thereto and the authority may enter into the contract or lease or the agreement pursuant to negotiation and upon such terms and conditions and for a period of time as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or of efficient acquisition or construction of the railroad project.

(E) The authority may reject any and all bids. A bond with good and sufficient surety, approved by the authority, is required of all contractors in an amount equal to at least fifty percent of the contract price, conditioned upon the faithful performance of the contract.

(12) Appoint a director and employ managers, superintendents and other employees and retain or contract with consulting engineers, financial consultants, accountants, attorneys and other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article and fix the compensation or fees thereof. All expenses thereof are payable from the proceeds of ~~Railroad~~

~~Maintenance~~ State Rail Authority revenue bonds or notes issued by the authority, from revenues and funds appropriated for this purpose by the Legislature or from grants from the federal government which may be used for such purpose.

(13) Receive and accept from any state or federal agency grants for or in aid of the construction of any railroad project or for research and development with respect to railroads and receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which the grants and contributions are made.

(14) Engage in research and development with respect to railroads.

(15) Purchase fire and extended coverage and liability insurance for any railroad project and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and be a member of, and to participate in, the state workers' compensation program.

(16) Charge, alter and collect rates, rentals and other charges for the use or services of any railroad project as provided in this article.

(17) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

(b) In addition, the authority has the power to:

(1) Acquire rail properties both within and not within the jurisdiction of the Interstate Commerce Commission and rail properties within the purview of the federal Regional Rail Reorganization Act of 1973, any amendments to it and any other relevant federal legislation.

(2) Enter into agreements with owners of rail properties for the acquisition of rail properties or use, or both, of rail properties upon the terms, conditions, rates or rentals that can best effectuate the purposes of this article.

(3) Acquire rail properties and other property of a railroad in concert with another state or states as is necessary to ensure continued rail service in this state.

(4) Administer and coordinate the state plan.

(5) Provide in the state plan for the equitable distribution of federal rail service continuation subsidies among state, local and regional transportation authorities.

(6) Promote, supervise and support safe, adequate and efficient rail services.

(7) Employ sufficiently trained and qualified personnel for these purposes.

(8) Maintain adequate programs of investigation, research, promotion and development in connection with the purposes and to provide for public participation therein.

(9) Provide satisfactory assurances on behalf of the state that fiscal control and fund accounting procedures will be adopted by the state necessary to assure proper disbursement of and accounting for federal funds paid to the state as rail service continuation subsidies.

(10) Comply with the regulations of the Secretary of Transportation of the United States Department of Transportation affecting federal rail service continuation programs.

(11) Do all things otherwise necessary to maximize federal assistance to the state under Title IV of the federal Regional Rail Reorganization Act of 1973 and to qualify for rail service continuation subsidies pursuant to the federal Regional Rail Reorganization Act of 1973.

(c) Additional authority in regard to the Maryland Area Regional Commuter.

(1) The Rail Authority is hereby granted, has and may exercise all aforementioned powers necessary or appropriate to coordinate all activities with the Maryland Transit Administration to assure the continued operation of the Maryland Area Regional Commuter into the eastern panhandle of the state.

(2) In addition to the authority provided in subdivision (1) of this subsection, the Rail Authority shall negotiate agreements with the State of Maryland or the Maryland Transit Administration for the continued operation of the commuter rail operation between Maryland and the Washington D.C. metropolitan area and West Virginia. A commuter rail operation agreement shall provide for quantity and quality of commuter rail service, including certain minimum daily service at least equivalent to the level service on the effective date of the amendments to this subsection enacted in the Regular Session of the Legislature 2013, unless daily ridership diminishes significantly from said date. The agreement may provide for the payment of track access fees attributed to commuter rail operation within the boundaries of the State. Any payments of track access fees pursuant to the agreement shall be paid from the special fund created in section twenty-four of this article as provided by appropriation of the Legislature.

§29-18-24. Creation of the West Virginia Commuter Rail Access Fund.

There is hereby established a special fund in the State Treasury known as the 'West Virginia Commuter Rail Access Fund.' The fund shall be administered by the Director and shall consist of appropriations by the Legislature. Subject to Legislative appropriation, the Director shall administer the fund to pay track access fees pursuant to the agreement required by section six of this article. Balances in the fund at the end of any fiscal year shall not expire, but shall be expended for those purposes in ensuing fiscal years."

The bill was then ordered to third reading.

S. B. 125, Permitting Monongalia County Commission to levy special district excise tax; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page four, section nine, line sixty, following the word "Town", by striking out the word "Center" and inserting in lieu thereof the word "Centre".

The bill was then ordered to third reading.

Com. Sub. for S. B. 146, Collecting unpaid magistrate court charges through income tax refund withholding; on second reading, coming up in regular order, was read a second time.

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

"ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2c. Withholding from personal income tax refunds for unpaid fines and costs in magistrate criminal actions, in magistrate criminal appeals to circuit court and for failure to appear in court.

(a) If costs, fines, fees, forfeitures, restitution or penalties imposed by the magistrate court upon conviction of a person for a criminal offense as defined by this code, imposed by the circuit court upon judgment on an appeal to circuit court of that conviction, or imposed by either court for failure to appear are not paid in full within one year of the judgment, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Tax Commissioner that the defendant has failed to pay the costs, fines, forfeitures or penalties assessed by the court. The notice provided by the magistrate clerk or the circuit clerk to the Tax Commissioner must include the

defendant's Social Security number. The Tax Commissioner, or his or her designee, shall withhold from any personal income tax refund due and owing to a defendant the costs, fines, fees, forfeitures, restitution or penalties due, the Tax Commissioner's administration fee for the withholding and any and all fees or other amounts that the magistrate court and the circuit court would have collected had the defendant appeared: *Provided*, That no withholding shall be made under this section if there is an unsatisfied withholding request made pursuant to section two-b, article ten, chapter eight of this code. The Tax Commissioner's administration fee shall not exceed $25, unless this maximum amount is increased by legislative rule promulgated in accordance with article three, chapter twenty-nine-a of this code. The administrative fees deducted shall be deposited in the special revolving fund hereby created in the State Treasury, which shall be designated as the Magistrate Fines and Fees Collection Fund, and the Tax Commissioner shall make such expenditures from the fund as he or she deems appropriate for the administration of this subsection.

(b)(1) After deduction of the Tax Commissioner's administration fee, the Tax Commissioner shall remit all remaining amounts withheld pursuant to this section to the clerk of the court that notified the Tax Commissioner of the failure to pay under subsection (a) of this section.

(2) From the amounts received from the Tax Commissioner, the circuit clerk shall distribute the portion thereof that is attributable to costs, fines, fees, forfeitures, restitution or penalties owed to magistrate court to the magistrate clerk and distribute the remainder that is attributable to costs, fines, fees, forfeitures, restitution or penalties owed to circuit court to the appropriate fund or payee, as applicable and listed in section twenty-eight-a, article one, chapter fifty-nine of this code and as otherwise required by law.

(3) From the amounts received from the Tax Commissioner, or from the circuit clerk under subdivision (2) of this subsection, the magistrate clerk shall distribute applicable costs, fines, fees, forfeitures, restitution or penalties owed to the appropriate fund or

payee, as applicable and listed in subsection (g), section two-a of this article and as otherwise required by law.

(4) After the costs, fines, fees, forfeitures, restitution or penalties are withheld, the Tax Commissioner shall refund any remaining balance due the defendant.

(5) If the refund is not sufficient to cover all the costs, fines, fees, forfeitures, restitution or penalties to be withheld pursuant to this section, the Tax Commissioner's administration fee shall be retained by the Tax Commissioner and the remaining money withheld shall be remitted by the Tax Commissioner to the appropriate clerk. The clerk shall then allocate the money so remitted on a pro rata basis as provided in the applicable provisions of subdivisions (2) or (3) of this subsection.

(c) In the event the costs, fines, fees, forfeitures, restitution or penalties exceed the defendant's income tax refund, the Tax Commissioner shall withhold the remaining balance in subsequent years until such time as the costs, fines, fees, forfeitures, restitution or penalties owed are paid in full. The Tax Commissioner shall remit the moneys that he or she collects to the appropriate clerk no later than July 1 of each year. If the circuit court or the magistrate court subsequently determines that any costs, fines, fees, forfeitures, restitution or penalties were erroneously imposed, the clerk of the court shall promptly notify the Tax Commissioner. If the amounts due are paid in full to the court from a source other than the Tax Commissioner after the clerk of the court has provided notice of the failure to pay to the tax commissioner, the clerk of the court shall promptly notify the Tax Commissioner of the payment. If the refunds have not been withheld and remitted, the Tax Commissioner may not withhold and remit payment to the appropriate court and shall so inform the clerk of the court. If the refunds have already been withheld and remitted to the court, the Tax Commissioner shall so inform the clerk of the court. In either event, all refunds for erroneously imposed costs, fines,

forfeitures or penalties shall be made by the appropriate court and not by the Tax Commissioner.

(d) *Rules.* – The Tax Commissioner may propose for legislative approval such rules as may be useful or necessary to carry out the purpose of this section and to implement the intent of the Legislature. Rules shall be promulgated in accordance with article three, chapter twenty-nine-a of this code."

The bill was then ordered to third reading.

Com. Sub. for S. B. 172, Relating to nonintoxicating beer distributor licensees; on second reading, coming up in regular order, was read a second time.

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

"ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

For the purpose of this article, except where the context clearly requires differently:

(1) 'Brewer' or 'manufacturer' means any person, firm, association, partnership or corporation manufacturing, brewing, mixing, concocting, blending, bottling or otherwise producing or importing or transshipping from a foreign country nonintoxicating beer or nonintoxicating craft beer for sale at wholesale to any licensed distributor.

(2) 'Brewpub' means a place of manufacture of nonintoxicating beer owned by a resident brewer, subject to federal and state regulations and guidelines, a portion of which premises are designated

for retail sales of nonintoxicating beer or nonintoxicating craft beer by the resident brewer owning the brewpub.

(3) 'Class A retail license' means a retail license permitting the retail sale of liquor at a freestanding liquor retail outlet licensed pursuant to chapter sixty of this code.

(4) 'Commissioner' means the West Virginia Alcohol Beverage Control Commissioner.

(5) 'Distributor' means and includes any person jobbing or distributing nonintoxicating beer or nonintoxicating craft beer to retailers at wholesale and whose warehouse and chief place of business shall be within this state. For purposes of a distributor only, the term 'person' means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of article eleven of this chapter notwithstanding the liability of trustees in article ten, chapter forty-four-d of this code.

(6) 'Freestanding liquor retail outlet' means a retail outlet that sells only liquor, beer, nonintoxicating beer and other alcohol-related products, as defined pursuant to section four, article three-a, chapter sixty of this code.

(7) 'Growler' means a glass container or jug, capable of being securely sealed, utilized by a brewpub for purposes of off-premise sales of nonintoxicating beer or nonintoxicating craft beer for personal consumption not on a licensed premise and not for resale.

~~(7)~~ (8) 'Nonintoxicating beer' means all natural cereal malt beverages or products of the brewing industry commonly referred to as

beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers with no caffeine infusion or any additives masking or altering the alcohol effect containing at least one half of one percent alcohol by volume, but not more than nine and six-tenths of alcohol by weight, or twelve percent by volume, whichever is greater. ~~all of which are hereby declared to be nonintoxicating and~~ The word 'liquor' as used in chapter sixty of this code ~~shall not be construed to~~ does not include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.

~~(8)~~ (9) 'Nonintoxicating beer sampling event' means an event approved by the commissioner for a Class A retail Licensee to hold a nonintoxicating beer sampling authorized pursuant to section eleven-a of this article.

~~(9)~~ (10) 'Nonintoxicating beer sampling day' means any days and hours of the week where Class A retail licensees may sell nonintoxicating beer pursuant to sub-section (a)(1), section eighteen of this article, and is approved, in writing, by the commissioner to conduct a nonintoxicating beer sampling event.

~~(10)~~ (11) 'Nonintoxicating craft beer' means any beverage obtained by the natural fermentation of barley, malt, hops or any other similar product or substitute and containing not less than one half of one percent by volume and not more than twelve percent alcohol by volume or nine and six-tenths percent alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol effect.

~~(11)~~ (12) 'Original container' means the container used by the brewer at the place of manufacturing, bottling or otherwise producing nonintoxicating beer for sale at wholesale.

~~(12)~~ (13) 'Person' means and includes an individual, firm, partnership, limited partnership, limited liability company, association or corporation.

~~(13)~~ (14) 'Resident brewer' means any ~~person, firm, association, partnership, or corporation~~ brewer or manufacturer of not more than 10,000 gallons annually per year of nonintoxicating beer or nonintoxicating craft beer whose principal place of business and manufacture is located within the State of West Virginia.

~~(14)~~ (15) 'Retailer' means any person selling, serving, or otherwise dispensing nonintoxicating beer and all products regulated by this article, including, but not limited to, ~~any malt cooler,~~ malt coolers at his or her established and licensed place of business.

~~(15)~~ (16) 'Tax Commissioner' means the Tax Commissioner of the State of West Virginia or the commissioner's designee.

§11-16-8. Form of application for license; fee and bond; refusal of license.

(a) A license may be issued by the commissioner to any person who submits an application, ~~therefore,~~ accompanied by a license fee and, where required, a bond, ~~stating~~ and states under oath:

(1) The name and residence of the applicant, the duration of such residency, that the applicant has been a resident of the state for a period of two years ~~next~~ preceding the date of the application and that the applicant is twenty-one years of age. If the applicant is a firm, association, partnership, limited partnership, limited liability company or corporation, the application shall include the residence of the members or officers for a period of two years ~~next~~ preceding the date of such application. ~~*Provided,* That if any~~ If a person, firm, partnership, limited partnership, ~~association or corporation~~ limited liability company, association, corporation or trust applies for a license as a distributor, such person, or in the case of a firm, partnership, limited partnership, ~~or association, the members or officers thereof~~ limited liability company, association or trust, the members, officers, trustees or other persons in active control of the activities of the limited liability company, association or trust relating to the license, shall state

under oath that each has been a bona fide resident of the state for four years preceding the date of such application. If the applicant is a trust or has a trust as an owner, the trustees or other persons in active control of the activities of the trust relating to the license shall provide a certification of trust as described in section one-thousand-thirteen, article ten, chapter forty-four-d of this code. This certification of trust shall include the excerpts described in subsection (e), section one-thousand-thirteen, article ten, chapter forty-four-d of this code and shall further state, under oath, the names, addresses, Social Security numbers and birth dates of the beneficiaries of the trust and certify that the trustee and beneficiaries are twenty-one years of age or older. If a beneficiary is not twenty-one years of age, the certification of trust must state that such beneficiary's interest in the trust is represented by a trustee, parent or legal guardian who is twenty-one years of age and who will direct all actions on behalf of such beneficiary related to the trust with respect to the distributor until the beneficiary is twenty-one years of age. Any beneficiary who is not twenty-one years of age or older shall have his or her trustee, parent or legal guardian include in the certification of trust and state under oath his or her name, address, Social Security number and birth date.

(2) The place of birth of applicant, that he or she is a citizen of the United States and of good moral character and, if a naturalized citizen, when and where naturalized. ~~and,~~ If the applicant is a corporation organized or authorized to do business under the laws of the state, the application must state when and where incorporated, ~~with~~ the name and address of each officer and that each officer is a citizen of the United States and a person of good moral character. ~~and if a firm, association, partnership or limited partnership,~~ If the applicant is a firm, association, limited liability company, partnership, limited partnership, trust or has a trust as an owner, the application shall provide the place of birth of each member of the firm, association, ~~partnership or limited partnership and that each member~~ limited liability company, partnership or limited partnership and of the trustees, beneficiaries or other persons in active control of the activities of the trust relating to

the license and that each member or trustee, beneficiary or other persons in active control of the activities of the trust relating to the license is a citizen of the United States and if a naturalized citizen, when and where naturalized, each of whom must qualify and sign the application. ~~*Provided,* That~~ The requirements as to residence ~~shall~~ do not apply to the officers of a corporation ~~which shall apply~~ applying for a retailer's license but the officers, agent or employee who ~~shall manage and be in charge~~ manages and is in charge of the licensed premises shall possess all of the qualifications required of an individual applicant for a retailer's license including the requirement as to residence;

(3) The particular place for which the license is desired and a detailed description thereof;

(4) The name of the owner of the building and, if the owner is not the applicant, that ~~such~~ the applicant is the actual and bona fide lessee of the premises;

(5) That the place or building in which is proposed to do business conforms to all applicable laws of health, fire and zoning regulations ~~applicable thereto,~~ and is a safe and proper place or building ~~and is~~ not within three hundred feet of ~~any~~ a school or church measured from front door to front door, along the street or streets. ~~*Provided,* That~~ This requirement ~~shall~~ does not apply to a Class B license or to ~~any~~ a place ~~now~~ occupied by a beer licensee so long as it is continuously so occupied. ~~*Provided, however,* That~~ The prohibition against locating ~~any such~~ a proposed business in a place or building within three hundred feet of ~~any~~ a school ~~shall~~ does not apply to ~~any~~ a college or university that has notified the commissioner, in writing, that it has no objection to the location of ~~any such~~ a proposed business in a place or building within three hundred feet of ~~such~~ the college or university;

(6) That the applicant is not incarcerated and has not during the five years ~~immediately~~ preceding the date of said application been convicted of a felony;

(7) That the applicant is the only person in any manner pecuniarily interested in the business so asked to be licensed and that no other person ~~shall be~~ is in any manner pecuniarily interested ~~therein~~ during the continuance of the license; and

(8) That the applicant has not during five years ~~next immediately~~ preceding the date of ~~said~~ the application had a nonintoxicating beer license revoked.

(b) In the case of an applicant that is trust or has a trust as an owner, a distributor license may be issued only upon submission by the trustees or other persons in active control of the activities of the trust relating to the distributor license of a true and correct copy of the written trust instrument to the commissioner for his or her review. Notwithstanding any provision of law to the contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this section is confidential and is not a public record and is not available for release pursuant to the West Virginia Freedom of Information Act codified in chapter twenty-nine-b, article one of this code.

(c) The provisions and requirements of subsection (a) of this section are mandatory prerequisites for the issuance, and ~~in the event~~ if any applicant fails to qualify ~~under the same~~, the license shall be refused. In addition to the information furnished in any application, the commissioner may make such additional and independent investigation of each applicant and of the place to be occupied as ~~deemed~~ necessary or advisable and, for this reason, ~~each and~~ all applications, with license fee and bond, must be filed thirty days prior to the beginning of any fiscal year. ~~and~~ If the application is for an unexpired portion of ~~any~~ a fiscal year, the issuance of license may be withheld for such reasonable time as necessary for investigation.

~~(c)~~ (d) The commissioner may refuse a license to any applicant under the provisions of this article if the commissioner ~~shall be~~ is of the opinion:

(1) That the applicant is not a suitable person to be licensed;

(2) That the place to be occupied by the applicant is not a suitable place or is within three hundred feet of any school or church measured from front door to front door along the street or streets. ~~*Provided, That*~~ This requirement ~~shall~~ does not apply to a Class B licensee or to ~~any~~ a place now occupied by a beer licensee so long as it is continuously so occupied. ~~*Provided, however, That*~~ The prohibition against locating any such place ~~to be occupied by an applicant~~ within three hundred feet of ~~any~~ a school ~~shall~~ does not apply to ~~any~~ a college or university that has notified the commissioner, in writing, that it has no objection to the location of any such place within three hundred feet; ~~of such college or university;~~ or

(3) That the license should not be issued for reason of conduct declared to be unlawful by this article."

At the request of Delegate Boggs, and by unanimous consent, the bill was advanced to third reading with restricted right to amend by Delegate Miley, and the rule was suspended to permit the consideration of the amendment on that reading.

Com. Sub. for S. B. 185, Relating to alternative-fuel motor vehicles and qualified refueling infrastructure tax credits; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 190, Relating to public-private transportation projects funding; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 335, Permitting certain hospitals exemption from certificate of need; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Government Organization, was reported by the Clerk, on page ten, section 4(c)

subdivision (1), line one hundred sixty-nine, by striking out subdivision "(1)" in its entirety and inserting in lieu thereof the following:

"(1) (A) The ambulatory health care facility is located in the same county as the hospital; or

(B) The ambulatory health care facility is located in the same zip code as the hospital, and the hospital is the only hospital in the county, the hospital is located less than one-half mile from the county line in which it is located and the hospital is located less than one mile from a state bordering West Virginia" and a semicolon.

On motion of Delegate Morgan the amendment was amended in subparagraph (B) after the words "zip code as the hospital, and", by inserting the words "the hospital is located in a zip code that crosses a county line" and a comma.

The Government Organization Committee amendment, as amended, was then adopted.

The bill was then ordered to third reading.

Com. Sub. for S. B. 336, Relating to interscholastic athletics concussions and head injuries; on second reading, coming up in regular order, was read a second time.

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

"That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2-25a, to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-25a. Management of concussions and head injuries in athletics at West Virginia Secondary School Activities Commission member high school or middle school.

(a) The Legislature makes the following findings:

(1) Concussions are one of the most commonly reported injuries in children and adolescents who participate in sports and recreational activities. The Centers for Disease Control and Prevention estimates that as many as 3.9 million sports-related and recreation-related concussions occur in the United States each year;

(2) A concussion is caused by a blow or motion to the head or body that causes the brain to move rapidly inside the skull. The risk of catastrophic injuries or death is significant when a concussion or head injury is not properly evaluated and managed;

(3) Concussions are a type of brain injury that can range from mild to severe and can disrupt the way the brain normally functions;

(4) Concussions can occur in any organized or unorganized sport or recreational activity and can result from a fall or from players colliding with each other or with obstacles;

(5) Concussions occur with or without loss of consciousness, but the vast majority occur without loss of consciousness;

(6) The interscholastic athlete who continues to play or practice with a concussion or symptoms of head injury is especially vulnerable to greater injury and even death; and

(7) Even with generally recognized return-to-play-and-practice standards for concussion and head injury, some affected interscholastic

athletes are prematurely returned to play or practice resulting in increased risk of physical injury or death to the athletes in the State of West Virginia.

(b) For the purposes of this section, 'interscholastic athlete' means any athlete who is participating in interscholastic athletics at a high school or middle school that is a member of the West Virginia Secondary School Activities Commission. 'Licensed health care professional' means a health care provider whose licensed scope of practice includes the ability to diagnose and treat an injury or disease.

(c) The West Virginia Secondary School Activities Commission shall promulgate rules pursuant to section twenty-five of this article that address concussions and head injuries in interscholastic athletes: *Provided,* That prior to state board approval and notwithstanding the exemption provided in section three, article one, chapter twenty-nine-a of this code, the state board shall submit the rule to the Legislative Oversight Commission on Education Accountability pursuant to section nine, article three-b, chapter twenty-nine-a of this code.

(d) The rules required by this section shall include, but are not limited to, the following:

(1) Guidelines and other pertinent information to inform and educate appropriate school administrators, coaches, interscholastic athletes and their parents or guardians of the nature and risk of concussion and head injury including the risks of continuing to play or practice after a concussion or head injury;

(2) A concussion and head injury information sheet that shall be signed and returned by the interscholastic athlete and the athlete's parent or guardian on an annual basis before the interscholastic athlete begins practice or competition;

(3) A requirement that each head coach of an interscholastic sport at a high school or middle school who is a member of the West

Virginia Secondary School Activities Commission complete a commission-approved concussion and head injury recognition and return-to-play protocol course annually;

(4) A requirement that an interscholastic athlete who is suspected by a licensed health care professional or by his or her head coach or athletic trainer of having sustained a concussion or head injury in a practice or game shall be removed from competition at that time;

(5) A requirement that an interscholastic athlete who has been removed from play or practice may not return to play or practice until the athlete is evaluated by a licensed health care professional trained in the evaluation and management of concussions and receives written clearance to return to play and practice from the licensed health care professional;

(6) A list of the respective categories of licensed health care professionals who, if properly trained in the evaluation and management of concussions, are authorized to provide written clearance for the interscholastic athlete to return to play; and

(7) A requirement that all member schools must submit a report to the West Virginia Secondary School Activities Commission within thirty days of an interscholastic athlete suffering or being suspected of suffering a concussion or head injury in a practice or game. The report must state whether an evaluation by a licensed health care professional verified that a concussion or head injury was actually suffered, whether the athlete received written clearance to return to play or practice and, if written clearance was given, the number of days between the incident and the actual return to play or practice. If written clearance to return to play is given after thirty days of the incident, a report update shall be submitted. The West Virginia Secondary School Activities Commission shall compile and submit the reports to the appropriate state and national organization or agencies to analyze and make determinations on whether the rule required by this section needs to be amended or if equipment worn by interscholastic athlete needs to be changed accordingly."

The bill was then ordered to third reading.

S. B. 394, Relating to scholarships for dependent children of state troopers who die in performance of duty; on second reading, coming up in regular order, was read a second time.

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

"That §5-10-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §7-14D-20 of said code be amended and reenacted; that §8-22A-22 of said code be amended and reenacted; that §15-2-33 of said code be amended and reenacted; and that §15-2A-12 of said code be amended and reenacted, all to read as follows:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-27. Preretirement death annuities.

(a) (1) Except as otherwise provided in this section, in the event any member who has ten or more years of credited service or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article, may at any time prior to the effective date of his or her retirement, by written declaration duly executed and filed with the board of trustees, in the same manner as if he or she were then retiring from the employ of a participating public employer, elect option A provided in section twenty-four of this article and nominate a

beneficiary whom the board finds to have had an insurable interest in the life of the member. Prior to the effective date of his or her retirement, a member may revoke his or her election of option A and nomination of beneficiary and he or she may again prior to his or her retirement elect option A and nominate a beneficiary as provided in this subsection. Upon the death of a member who has an option A election in force, his or her beneficiary, if living, shall immediately receive an annuity computed in the same manner in all respects as if the same member had retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty years, and elected the said option A. If at the time of his or her retirement a member has an option A election in force, his or her election of option A and nomination of beneficiary shall thereafter continue in force. As an alternative to annuity option A, a member or former member may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses.

(2) In the event any member or former member, who first became a member of the Public Employees Retirement System after the effective date of amendments made to this section during the 2006 regular legislative session and who has ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: Dies without leaving a surviving spouse; but leaves surviving him or her a child who is financially dependent on the member by virtue of a permanent mental or physical disability upon evidence satisfactory to the board; and has named the disabled child as sole beneficiary, the disabled child shall immediately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her disabled child as beneficiary. A member or former member with ten or more years of credited service, who does not leave surviving him or her a spouse or a disabled child, may elect to have the preretirement

death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses.

(b)(1) In the event any member who has ten or more years of credited service, or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: Dies; and leaves a surviving spouse, the surviving spouse shall immediately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her surviving spouse as beneficiary. However, the surviving spouse shall have the right to waive the annuity provided in this section: *Provided,* That he or she executes a valid and notarized waiver on a form provided by the board and that the member or former member attests to the waiver. If the waiver is presented to and accepted by the board, the member or former member, may nominate a beneficiary who has an insurable interest in the member's or former member's life. As an alternative to annuity option A, the member or former member may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses in the event a waiver, as provided in this section, has been presented to and accepted by the board.

(2) Whenever any member or former member who first became a member of the retirement system after the effective date of the amendments to this section made during the 2006 regular legislative session and who has ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: Dies; and leaves a surviving spouse, the surviving spouse shall immediately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (B) elected option A provided in section twenty-four of this article; and (C)

nominated his or her surviving spouse as beneficiary. However, the surviving spouse shall have the right to waive the annuity provided in this section: *Provided,* That he or she executes a valid and notarized waiver on a form provided by the board and that the member or former member attests to the waiver. If the waiver is presented to and accepted by the board, the member or former member may: (1) Elect to have the preretirement death benefit paid in a lump sum amount, rather than annuity option A provided in section twenty-four of this article, as a return of accumulated contributions to any beneficiary or beneficiaries he or she chooses; or (2) may name his or her surviving child, who is financially dependent on the member by virtue of a permanent mental or physical disability, as his or her sole beneficiary to receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained the age of sixty or sixty-two as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her disabled child as beneficiary.

(c) In the event any member who has ten or more years of credited service or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: (1) Dies without leaving surviving him or her a spouse; but (2) leaves surviving him or her an infant child or children; and (3) does not have a beneficiary nominated as provided in subsection (a) of this section, the infant child or children are entitled to an annuity to be calculated as follows: The annuity reserve shall be calculated as though the member had retired as of the date of his or her decease and elected a straight life annuity and the amount of the annuity reserve shall be paid in equal monthly installments to the member's infant child or children until the child or children attain age twenty-one or sooner marry or become emancipated; however, in no event shall any child or children receive more than $250 per month each. The annuity payments shall be computed as of the date of the death of the member and the amount of the annuity shall remain constant during the period of payment. The annual amount of the

annuities payable by this section shall not exceed sixty percent of the deceased member's final average salary.

(d) In the event any member or former member does not have ten or more years of credited service, no preretirement death annuity may be authorized, owed or awarded under this section, except as provided in subdivision (4), subsection (a), section fifteen of this article as amended during the 2005 regular session of the Legislature.

(e) Any person qualified as a surviving dependent child under this section, who is the surviving dependent child of a law enforcement officer who loses his or her life in the performance of duty, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $7,500 per year, shall be paid from the fund to any higher education institution in this state, career-technical education provider in this state, or other entity in this state approved by the board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of those institutions so long as the recipient makes application to the board on an approved form and under rules as provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may by appropriate rules define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-20. Additional death benefits and scholarships — dependent children.

(a) In addition to the spouse death benefits in sections eighteen and nineteen of this article, the surviving spouse is entitled to receive and

there shall be paid to the spouse $100 monthly for each dependent child.

(b) If the surviving spouse dies or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to one fourth of the surviving spouse's entitlement under either section nineteen or twenty of this article. If there is neither a surviving spouse nor a dependent child, the fund shall pay in equal monthly installments to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: *Provided,* That when there is only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive: *Provided, however,* That if there is no surviving spouse, dependent child, nor dependent parent of the deceased member the accumulated contributions shall be paid to a named beneficiary or beneficiaries: *Provided further,* That if there is no surviving spouse, dependent child, nor dependent parent of the deceased member, nor any named beneficiary or beneficiaries then the accumulated contributions shall be paid to the estate of the deceased member.

(c) Any person qualifying as a dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding ~~$6,000~~ $7,500 per year, shall be paid from the fund to any ~~university or college in this state or to any trade or vocational school~~ higher education institution in this state, career-technical education provider in this state, or other entity in this state approved by the board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the board on an approved form and under such rules as the board may provide, and maintains scholastic eligibility as defined by the institution or the board. The board may propose legislative rules for promulgation in accordance

with article three, chapter twenty-nine-a of this code which define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.

CHAPTER 8. MUNICIPAL CORPORATIONS.

§8-22A-22. Additional death benefits and scholarships — dependent children.

(a) Except as provided in subsection (a), section nine of this article, in addition to the spouse death benefits in this article, the surviving spouse is entitled to receive and there shall be paid to the spouse $100 monthly for each dependent child.

(b) If the surviving spouse dies or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to one hundred percent of the spouse's entitlement under this article divided by the number of dependent children. If there is neither a surviving spouse nor a dependent child, the fund shall pay in equal monthly installments to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: *Provided,* That when there is only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive: *Provided, however,* That if there is no surviving spouse, dependent child or dependent parent of the deceased member, the accumulated contributions shall be paid to a named beneficiary or beneficiaries: *Provided further,* That if there is no surviving spouse, dependent child or dependent parent of the deceased member, or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

(c) Any person qualifying as a dependent child under this section, in addition to any other benefits due under this or other sections of this

article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding ~~$6,000~~ $7,500 per year, shall be paid from the fund to any ~~university or college in this state or to any trade or vocational school~~ higher education institution in this state, career-technical education provider in this state, or other entity in this state approved by the board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the board on an approved form and under rules provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code which define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-33. Awards and benefits to dependents of member when the member dies in performance of duty; to dependents of a duty disability retirant; dependent child scholarship and amount.

(a) The surviving spouse or the dependent child or children or dependent parent or parents of any member who has lost or loses his or her life by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of employees while the member was or is engaged in the performance of his or her duties as an employee of the agency, or if a retirant dies from any cause after having been retired pursuant to the provisions of section twenty-nine of this article, the surviving spouse or other dependent is entitled to receive and shall be paid from the fund benefits as follows: To the surviving spouse annually, in equal

monthly installments during his or her lifetime the greater of one or the other of two amounts:

(1) An amount equal to five and one-half percent of the total salary which was or would have been earned by the deceased member or duty disability retirant during twenty-five years of service based on the average earnings of the member or duty disability retirant while employed by the agency; or

(2) The sum of $6,000.

(b) In addition, the surviving spouse is entitled to receive and shall be paid $100 monthly for each dependent child or children. If the surviving spouse dies or if there is no surviving spouse, there shall be paid monthly to each dependent child or children from the fund a sum equal to twenty-five percent of the surviving spouse's entitlement. If there is no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the fund to the dependent parents of the deceased member or retirant during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: *Provided,* That when there is one dependent parent surviving, that parent is entitled to receive during his or her lifetime one half the amount which both parents, if living, would have been entitled to receive.

(c) Any person qualified as a surviving dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $7,500 per year, shall be paid from the fund to any ~~university or college in this state or to any trade or vocational school~~ higher education institution in this state, career-technical education provider in this state, or other entity in this state approved by the board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of those institutions so long as the recipient makes application to the board on an approved form

and under rules as provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may by appropriate rules define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.

(d) A surviving spouse or dependent of an employee meeting the requirements of this section is entitled to receive beneficiary payments on the first day following the date the deceased employee is removed from payroll by the agency. A surviving spouse or dependent of a member who is not currently an employee meeting the requirements of this section is entitled to receive beneficiary payments on the first day following the date of the deceased member's death. A surviving spouse or dependent of a retirant meeting the requirements of this section is entitled to receive beneficiary payments on the first day of the month following the date of the deceased retirant's death. Upon receipt of properly executed forms from the agency and the surviving spouse or dependent, the board shall process the surviving spouse or dependent benefit as soon as administratively feasible.

(e) For the purposes of this section, the term 'salary' does not include any compensation paid for overtime service.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-12. Awards and benefits to dependents of employees or retirants - When employee dies in performance of duty, etc.; dependent child scholarship and amount.

The surviving spouse, the dependent child or children or dependent parent or parents of any employee who has lost or shall lose his or her life by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of employees while the employee was engaged in the

performance of his or her duties as an employee of the agency, or the survivor of a retirant who dies from any cause after having been retired pursuant to the provisions of section nine of this article, is entitled to receive and shall be paid from the fund benefits as follows: To the surviving spouse annually, in equal monthly installments during his or her lifetime, one or the other of two amounts, which shall become payable the first day of the month following the employee's or retirant's death and which shall be the greater of:

(1) An amount equal to nine-tenths of the base salary received in the preceding full twelve-month employment period by the deceased employee: *Provided,* That if the employee had not been employed with the agency for twelve full months prior to his or her death, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or

(2) The sum of $10,000.

In addition, the surviving spouse is entitled to receive and shall be paid $150 monthly for each dependent child. If the surviving spouse dies or if there is no surviving spouse, there shall be paid monthly to each dependent child or children from the fund a sum equal to one third of the surviving spouse's entitlement. If there is no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the fund to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: *Provided,* That when there is one dependent parent surviving, that parent is entitled to receive during his or her lifetime one half the amount which both parents, if living, would have been entitled to receive: *Provided, however,* That if there is no surviving spouse, dependent child or dependent parent of the deceased member, the accumulated contributions shall be paid to a named beneficiary or beneficiaries: *Provided further,* That if there is no surviving spouse, dependent child, dependent parent of the deceased member or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

Any person qualifying as a surviving dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $7,500 per year, shall be paid from the fund to any ~~university or college in this state or to any trade or vocational school~~ higher education institution in this state, career-technical education provider in this state, or other entity in this state approved by the board to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions as long as the recipient makes application to the board on an approved form and under rules provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may by appropriate rules define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.

A surviving spouse or dependent of an employee meeting the requirements of this section is entitled to receive beneficiary payments on the first day of the month following the date the deceased member is removed from payroll by the agency. A surviving spouse or dependent of a member who is not currently an employee meeting the requirements of this section is entitled to receive beneficiary payments on the first day of the month following the date of the deceased member's death. A surviving spouse or dependent of a retirant meeting the requirements of this section is entitled to receive beneficiary payments on the first day of the month following the date of the deceased retirant's death. Upon receipt of properly executed forms from the agency and surviving spouse or dependent, the board shall process the surviving spouse or dependent benefit as soon as administratively feasible.

It is the intent of the Legislature that the levels of benefits provided by operation of this section from the effective date of the enactment of this section during the regular session of the Legislature, 2005, be the

same levels of benefits as provided by this section as amended and reenacted during the fourth extraordinary session of the Legislature, 2005. Accordingly, the effective date of the operation of this section as amended and reenacted during the fourth extraordinary session of the Legislature, 2005, is expressly made retrospective to April 9, 2005."

The bill was then ordered to third reading.

S. B. 403, Relating to judicial retirement system contribution rates; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 414, Clarifying hunting and fishing license-issuing authorities; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Natural Resources, was reported by the Clerk and adopted, amending the bill on page one, by striking out everything after the enacting section and inserting in lieu thereof the following:

"ARTICLE 2. WILDLIFE RESOURCES

§20-2-32. Issuance of licenses; duplicate licenses.

(a) The clerk of the county commission in each county requesting designation, and other persons, designated by the director pursuant to section thirty-three of this article, are ~~shall be~~ license-issuing authorities ~~Each license-issuing authority shall issue~~ authorized to issue a license to ~~a license~~ an applicant if ~~in the opinion of the authority,~~ the ~~license~~ applicant is legally entitled to obtain the license ~~applied for~~ and pays the proper fee.

(b) ~~All~~ Materials and supplies ~~necessary~~ for the issuance of licenses shall be furnished by the director to each ~~person authorized to issue licenses~~ license-issuing authority as needed.

(c) Each license shall bear a serial number and shall be signed by the licensee. The ~~issuing~~ license-issuing authority shall keep an accurate record ~~in the form and manner prescribed by the director,~~ of ~~all~~ licenses issued and ~~of all money~~ fees collected ~~as license fees~~ as prescribed by the director.

(d) Any license-issuing authority may issue a duplicate license to replace a lost, destroyed or damaged license upon receipt of a verified application ~~duly~~ executed by the original ~~license holder~~ licensee and ~~the~~ payment ~~to the issuing authority~~ of a duplicate license fee of $1."

The bill was then ordered to third reading.

S. B. 423, Providing certain convicted persons reduction in sentence; on second reading, coming up in regular order, was read a second time.

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

"ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-5d. Good-time credit.

(a) Any person convicted of a criminal offense and sentenced to confinement in a regional jail is to be granted reduction of his or her sentence for good conduct in accordance with this section.

(b) The reduction of sentence or good time is to be deducted from the fixed term of determinate sentences. An inmate under two or more consecutive sentences is allowed good time as if the several sentences, when the maximum terms thereof are added together, were all one sentence.

(c) Every inmate sentenced to a regional jail for a term of confinement exceeding six months who, in the judgment of the administrator of the regional jail facility, faithfully complies with all rules of the regional jail during his or her term of confinement is entitled to a deduction of five days from each month of his or her sentence. No inmate may be granted any good time under the provisions of this section for time spent on bond or for time served on parole or in any other status in which he or she is not physically incarcerated.

(d) Each inmate sentenced to a term of confinement in a regional jail facility who participates in a general equivalency diploma program is to be granted three days of good time for the completion of each educational literacy level, as demonstrated by achieving a passing score on standardized tests required by the Department of Education, and ten days of good time for completion of the requirements for a general equivalency diploma or high school diploma.

(e) ~~Each~~ An inmate sentenced to a term of confinement in a regional jail ~~in excess~~ for a period of six months or more, shall be granted five days of good time for the successful completion ~~for each~~ of any of the following rehabilitation programs: Domestic violence, parenting, substance abuse, life skills, alcohol abuse, ~~and~~ anger management or any special rehabilitation or educational program designated by the executive director. Good time credit pursuant to this subsection is cumulative, however an inmate is eligible for a maximum of thirty days good time ~~shall be granted~~ credit for the successful completion of ~~all six~~ rehabilitation programs authorized by this subsection. The fee for each class is $25 which is due upon enrollment. If an inmate is unable to pay a fee or fees in full at the time of enrollment, it may be paid by deductions from his or her inmate trust account, subject to the provisions of subsection (f), section thirty-one of this article. No more than one half of the amount in the inmate trust account during any one-week period may be so deducted.

(f) The administrator of a regional jail facility may, with the approval of the Governor, allow extra good time for inmates who perform exceptional work or service.

(g) The Regional Jail and Correctional Facility Authority shall promulgate disciplinary rules for the regional jail facilities. The rules are to describe prohibited acts, procedures for charging individual inmates for violations of the rules and for determining the guilt or innocence of inmates charged with the violations and sanctions that may be imposed for the violations. For each violation by an inmate, any part or all of the good time that has been granted to the inmate may be forfeited and revoked by the administrator of the regional jail facility. The administrator, when appropriate and with approval of the executive director, may restore any good time forfeited for a violation of the rules promulgated or adopted pursuant to this subsection.

(h) Each inmate sentenced to a term of confinement in a regional jail in excess of six months shall, within seventy-two hours of being received into a regional jail, be given a copy of the disciplinary rules, a statement setting forth the term or length of his or her sentence or sentences and the time of his or her minimum discharge."

The bill was then ordered to third reading.

Com. Sub. for S. B. 438, Authorizing reorganization of certain community and technical colleges; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page five, section two, line eighteen, following the words "joining together", by striking out the word "one" and inserting in lieu thereof the word "two".

On page six, section two, line thirty, following the period, by inserting "In the case of the consolidation of Bridgemont Community

and Technical College and Kanawha Valley Community and Technical College, 'multicampus institution' means the consolidated institution comprised of existing campuses in Montgomery and South Charleston and any other campuses that may be established in the future, in accordance with the Higher Learning Commission standards of accreditation."

On page seven, section three, line seven, preceding the period, by inserting a comma, followed by the words "and to continued fulfillment of institutional accreditation requirements".

On page eight, section three, line thirty-three, by striking out the words "apportion the appointments as equally as possible among the lay citizen members" and inserting in lieu thereof the words "appoint an equal number of lay citizen members from each".

On page eight, section three, line thirty-five, following the period, by inserting "One such member serves a one-year term only, after which that membership position is not reappointed."

On page nine, section three, line thirty-six, following the subdivision designation "(2)", by inserting the words "One of the initial appointments is for a term of one year" followed by a comma.

On page nine, section three, line thirty-eight, following the period, by inserting the following: "(3) Until June 30, 2014, all of the constituent members of the boards of governors of the affected institutions representing faculty, classified employees and students serve as members on the board of governors of the reorganized institution. Beginning July 1, 2014, the constituent members of the reorganized institution are appointed according to the provisions of section one, article two-a of this chapter."

On page nine, section three, by striking out lines forty-four through fifty-one, and by redesignating the remaining subsection.

On page thirteen, section six, by striking out lines one and two in their entirety and inserting in lieu thereof the following:

"When a consolidated institution is formed:

(1) The operating budget of each affected institution is integrated", and by redesignating the remaining paragraphs of the section as numbered subdivisions.

On page nineteen, section nine, beginning on line one, by inserting a new subsection (a) to read as follows: "(a) When a consolidated institution is formed, the faculty, classified employees and nonclassified employees of the affected institutions become the faculty, classified employees and nonclassified employees of the consolidated institution, subject to the provisions of this article.", and by redesignating the remaining subsections.

On page twenty-one, following line thirty-eight, by adding a new section to read as follows:

"§18B-3F-10. Transfer of students.

(a) When a consolidated institution is formed, the students of the affected institutions become the students of the consolidated institution, subject to the provisions of section eight, article one of this chapter."

And,

On page two, by striking out the enacting section and inserting in lieu thereof the following:

"That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18B-3F-1, §18B-3F-2, §18B-3F-3, §18B-3F-4, §18B-3F-5, §18B-3F-6, §18B-3F-7, §18B-3F-8, §18B-3F-9 and §18B-3F-10, all to read as follows" and a colon.

The bill was then ordered to third reading.

Com. Sub. for S. B. 444, Relating to higher education generally; on second reading, coming up in regular order, was read a second time.

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

"That §12-1-12d of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18B-2A-1 and §18B-2A-3 of said code be amended and reenacted; that §18B-7-11 of said code be amended and reenacted; and that §18B-19-6 of said code be amended and reenacted, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-12d. Investments by Marshall University and West Virginia University.

(a) Notwithstanding any provision of this article to the contrary, the governing boards of Marshall University and West Virginia University each may invest certain funds with its respective nonprofit foundation that has been established to receive contributions exclusively for that university and which exists on January 1, 2005. ~~Any such~~ The investment is subject to the limitations of this section.

(b) A governing board, through its chief financial officer may enter into agreements, approved as to form by the State Treasurer, for the investment by its foundation of certain funds subject to their administration. Any interest or earnings on the moneys invested is retained by the investing university.

(c) Moneys of a university that may be invested with its foundation pursuant to this section are those subject to the administrative control of the university that are collected under an act of the Legislature for specific purposes and do not include any funds made available to the

university from the State General Revenue Fund or the funds established in sections eighteen or eighteen-a, article twenty-two, chapter twenty-nine of this code. Moneys permitted to be invested under this section may be aggregated in an investment fund for investment purposes.

(d) Of the moneys authorized for investment by this section, Marshall University and West Virginia University each, respectively, may have invested with its foundation at any time not more than the greater of:

(1) $18 million for Marshall University and $25 million for West Virginia University; or

(2) Sixty-five percent of its unrestricted net assets as presented in the statement of net assets for the fiscal year end audited financial reports.

(3) Notwithstanding subdivisions (1) and (2) of this subsection, with the approval of the Higher Education Policy Commission, Marshall University may increase the amount invested to ~~$30~~ $60 million and West Virginia University may increase the amount invested to ~~$40~~ $70 million.

(e) Investments by foundations that are authorized under this section shall be made in accordance with and subject to the provisions of the Uniform Prudent Investor Act codified as article six-c, chapter forty-four of this code. As part of its fiduciary responsibilities, each governing board shall establish investment policies in accordance with the Uniform Prudent Investor Act for those moneys invested with its foundation. The governing board shall review, establish and modify, if necessary, the investment objectives as incorporated in its investment policies so as to provide for the financial security of the moneys invested with its foundation. The governing boards shall give consideration to the following:

(1) Preservation of capital;

(2) Diversification;

(3) Risk tolerance;

(4) Rate of return;

(5) Stability;

(6) Turnover;

(7) Liquidity; and

(8) Reasonable cost of fees.

(f) A governing board shall report annually by December 31 to the Governor and to the Joint Committee on Government and Finance on the performance of investments managed by its foundation pursuant to this section.

(g) The amendments to this section in the second extraordinary session of the Legislature in 2010 ~~shall~~ apply retroactively so that the authority granted by this section shall be construed as if that authority did not expire on July 1, 2010.

CHAPTER 18B. HIGHER EDUCATION

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Findings; composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

(a) *Findings.* –

The Legislature finds that the State of West Virginia is served best when the membership of each governing board includes the following:

(1) The academic expertise and institutional experience of faculty members and a student of the institution governed by the board;

(2) The technical or professional expertise and institutional experience of a classified employee of the institution governed by the board;

(3) An awareness and understanding of the issues facing the institution governed by the board; and

(4) The diverse perspectives that arise from a membership that is balanced in terms of gender and varied in terms of race and ethnic heritage.

(b) *Boards of governors established.* –

A board of governors is continued at each of the following institutions: Bluefield State College, Blue Ridge Community and Technical College, Bridgemont Community and Technical College, Concord University, Eastern West Virginia Community and Technical College, Fairmont State University, Glenville State College, Kanawha Valley Community and Technical College, Mountwest Community and Technical College, Marshall University, New River Community and Technical College, Pierpont Community and Technical College, Shepherd University, Southern West Virginia Community and Technical College, West Liberty University, West Virginia Northern Community and Technical College, the West Virginia School of Osteopathic Medicine, West Virginia State University, West Virginia University and West Virginia University at Parkersburg.

(c) *Board membership.* –

(1) An appointment to fill a vacancy on the board or reappointment of a member who is eligible to serve an additional term is made in accordance with the provisions of this section.

(2) The Board of Governors for Marshall University consists of sixteen persons. The Board of Governors for West Virginia University consists of seventeen persons. The boards of governors of the other state institutions of higher education consist of twelve persons.

(3) Each board of governors includes the following members:

(A) A full-time member of the faculty with the rank of instructor or above duly elected by the faculty of the respective institution;

(B) A member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body of the respective institution; and

(C) A member from the institutional classified employees duly elected by the classified employees of the respective institution;

(4) For the Board of Governors at Marshall University, thirteen lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section;

(5) For the Board of Governors at West Virginia University, twelve lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section, and additionally:

(A) The Chairperson of the Board of Visitors of West Virginia University Institute of Technology;

(B) A full-time faculty member representing the extension service at the institution or a full-time faculty member representing the health sciences, selected by the faculty senate. (6) For each board of governors of the other state institutions of higher education, nine lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section.

(A) Of the nine members appointed by the Governor, no more than five may be of the same political party. Of the thirteen members appointed by the Governor to the governing board of Marshall University, no more than eight may be of the same political party. Of the twelve members appointed by the Governor to the governing board of West Virginia University, no more than seven may be of the same political party.

(B) Of the nine members appointed by the Governor, at least five shall be residents of the state. Of the thirteen members appointed by the Governor to the governing board of Marshall University, at least eight shall be residents of the state. Of the twelve members appointed by the Governor to the governing board of West Virginia University, at least seven shall be residents of the state.

(7) In making lay appointments, the Governor shall consider the institutional mission and membership characteristics including the following:

(A) The need for individual skills, knowledge and experience relevant to governing the institution;

(B) The need for awareness and understanding of institutional problems and priorities, including those related to research, teaching and outreach;

(C) The value of gender, racial and ethnic diversity; and

(D) The value of achieving balance in gender and diversity in the racial and ethnic characteristics of the lay membership of each board.

(d) *Board member terms.* –

(1) The student member serves for a term of one year. Each term begins on July 1.

(2) The faculty member serves for a term of two years. Each term begins on July 1. Faculty members are eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.

(3) The member representing classified employees serves for a term of two years. Each term begins on July 1. Members representing classified employees are eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.

(4) The appointed lay citizen members serve terms of ~~up to~~ four years each and are eligible to succeed themselves for no more than one additional term, except that citizen members who are appointed to fill unexpired terms are eligible to succeed themselves for two full terms after completing an unexpired term.

(5) A vacancy in an unexpired term of a member shall be filled for the unexpired term within thirty days of the occurrence of the vacancy in the same manner as the original appointment or election. Except in the case of a vacancy, all elections are held and all appointments are made no later than June 30 preceding the commencement of the term. Each board of governors shall elect one of its appointed lay members to be chairperson in June of each year. A member may not serve as chairperson for more than four consecutive years.

(6) The appointed members of the boards of governors serve staggered terms of up to four years except that four of the initial appointments to the governing boards of community and technical colleges that became independent July 1, 2008, are for terms of two years and five of the initial appointments are for terms of four years.

(e) *Board member eligibility, expenses.* –

(1) A person is ineligible for appointment to membership on a board of governors of a state institution of higher education under the following conditions:

(A) For a baccalaureate institution or university, a person is ineligible for appointment who is an officer, employee or member of any other board of governors; an employee of any institution of higher education; an officer or member of any political party executive committee; the holder of any other public office or public employment under the government of this state or any of its political subdivisions; an employee of any affiliated research corporation created pursuant to article twelve of this chapter; an employee of any affiliated foundation organized and operated in support of one or more state institutions of higher education; or a member of the council or commission. This

subsection does not prevent the representative from the faculty, classified employees, students or the superintendent of a county board of education from being members of the governing boards.

(B) For a community and technical college, a person is ineligible for appointment who is an officer, employee or member of any other board of governors; a member of a board of visitors of any public institution of higher education; an employee of any institution of higher education; an officer or member of any political party executive committee; the holder of any other public office, other than an elected county office, or public employment, other than employment by the county board of education, under the government of this state or any of its political subdivisions; an employee of any affiliated research corporation created pursuant to article twelve of this chapter; an employee of any affiliated foundation organized and operated in support of one or more state institutions of higher education; or a member of the council or commission. This subsection does not prevent the representative from the faculty, classified employees or students from being members of the governing boards.

(2) Before exercising any authority or performing any duties as a member of a governing board, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the Constitution of West Virginia and the certificate thereof shall be filed with the Secretary of State.

(3) A member of a governing board appointed by the Governor may not 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 of the state elective officers by the Governor.

(4) The members of the board of governors serve without compensation, but are reimbursed for all reasonable and necessary expenses actually incurred in the performance of official duties under this article upon presentation of an itemized sworn statement of expenses.

(5) The president of the institution shall make available resources of the institution for conducting the business of its board of governors. All expenses incurred by the board of governors and the institution under this section are paid from funds allocated to the institution for that purpose.

§18B-2A-3. Supervision of governing boards; promulgation of rules; data collection and dissemination.

(a) The governing boards are subject to the supervision of the commission or the council, as appropriate, except in those instances where specific statutory exceptions are granted by law to the governing boards of Marshall University and West Virginia University.

(b) The governing boards of all state institutions of higher education are subject to the provisions of law that relate to the administration of personnel matters including, specifically, articles seven, eight, nine and nine-a of this chapter and to rules promulgated and adopted in accordance with these provisions.

(c) The Chancellor for Higher Education and the Chancellor for Community and Technical College Education, under the supervision of their respective boards, are responsible for the coordination of policies, purposes and rules of the governing boards and shall provide for and facilitate sufficient interaction among the governing boards and between the governing boards and the State Board of Education to meet the goals and objectives provided in the compacts and in section one-a, article one and article one-d of this chapter.

(d) The governing boards and the State Board of Education shall provide all information requested by the commission and the council, whether the request is made separately or jointly, in an appropriate format and in a timely manner.

(1) Each governing board shall cooperate with the West Virginia Network for Educational Telecomputing (WVNET) in designing

appropriate interfaces with the databases of institutions under its jurisdiction and shall grant WVNET direct access to these databases.

(2) WVNET, on behalf of the commission or council or both, shall generate reports from the data accessed for the purposes set forth in section five, article one-a and sections eight and ten, article one-d of this chapter.

(3) All data accessed or received from an institution shall be treated in a manner consistent with the privacy protections outlined in section ten, article one-d of this chapter.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-11. Employees designated as nonclassified; limits; exceptions; reports required.

(a) Notwithstanding any provision of this code to the contrary, by July 1, 2015, the percentage of personnel placed in the category of nonclassified at a higher education organization may not exceed twenty percent of the total number of classified and nonclassified employees of that organization as those terms are defined in section two, article nine-a of this chapter and who are eligible for membership in a state retirement system of the State of West Virginia or other retirement plan authorized by the state. A higher education organization which has more than twenty percent of its employees placed in the nonclassified category as defined by this subsection on July 1, 2011, shall reduce the number of nonclassified employees to no more than twenty-five percent by July 1, 2013, and to no more than twenty percent by July 1, 2015, except as set forth in subsections (b) and (c) of this section.

(b) For the purpose of determining the ratio of nonclassified employees pursuant to this section, the following conditions apply:

(1) ~~Employees of the commission and the chancellor for higher education and employees of the council and the chancellor for~~

~~community and technical college education are considered as one organization~~;

~~(2)~~ Organizations ~~may~~ shall count ~~as~~ faculty or classified employees, respectively, ~~administrators~~ who retain the right to return to faculty or classified employee positions, ~~and~~ in the employee category they are serving in at the time of reporting as required by subsections (a) and (b), section eight of this article. Such employees will be counted in their original category at such time as they exercise their return rights.

~~(3)~~ (2) Athletic coaches are excluded from calculation of the ratio. The commission and the council shall include consideration of this employee category in each review required by section nine of this article and shall monitor organizations' use of this category and include this information in the reports required by subsections (a) and (b), section eight of this article.

(c) An organization may place up to twenty-five percent of the total number of classified and nonclassified employees of that organization as defined by this section in the nonclassified category under the following conditions:

(1) The governing board of an institution votes to approve any percentage or fraction of a percentage number above twenty percent and seeks and receives the approval of the commission or council, as appropriate, before increasing the total above twenty percent.

~~(2) In the case of personnel employed by the commission and the council, the chancellors jointly shall agree to increase the percentage number or fraction of a number of nonclassified employees beyond twenty percent and shall recommend this action to their respective boards for approval.~~

(A) The commission and council each shall approve or disapprove the increase and shall include the vote, as well as details of the position

and justification for placing the position in the nonclassified category, in its minute record.

(B) The number of nonclassified personnel may not be increased above twenty percent unless the increase is approved by both the commission and the council.

~~(3)~~ (2) *Powers and duties of commission and council regarding nonclassified staff ratios.* –

(A) It is the duty of the commission and council jointly to establish criteria for the purpose of making decisions on approving or disapproving requests by organizations to exceed the twenty percent limit for personnel placed in the nonclassified category;

(B) The commission and council shall provide technical assistance to organizations under their respective jurisdictions in collecting and interpreting data to ensure that they fulfill the requirements established by this section. Consideration of these issues shall be made part of each review required by section nine of this article and information from the review included in the reports required by subsections (a) and (b), section eight of this article;

(C) The chancellors shall monitor the progress of the organizations in meeting the deadlines established in this section and shall report periodically to the council and commission. The commission and council shall make a preliminary compliance report to the Legislative Oversight Commission on Education Accountability by September 1, 2013, and a final report on organization compliance to that body by September 1, 2015.

(D) Subject to a joint recommendation by the commission and the council and subsequent affirmative action by the Legislature to extend the authority beyond the specified date of termination, the authority of an organization to place more than twenty percent of its personnel in the nonclassified category pursuant to this section expires on July 1, 2016.

(d) The current annual salary of a nonclassified employee may not be reduced if his or her position is redefined as a classified position solely to meet the requirements of this section. If such a nonclassified employee is reclassified, his or her salary does not constitute evidence of inequitable compensation in comparison to other employees in the same paygrade.

(e) For the purposes of this section only the commission and council are not considered higher education organizations.

ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.

§18B-19-6. Capital project financing.

(a) The commission and governing boards, jointly or singly, may issue revenue bonds for capital project financing in accordance with section eight, article ten of this chapter.

(b) A governing board may seek funding for and initiate construction or renovation work only for projects contained in an approved campus development plan.

(c) A governing board may fund capital improvements on a cash basis, through bonding or through another financing method that is approved by the commission and by the council, if appropriate.

(1) ~~If the~~ Any time the cumulative total cost of an improvement project for any institution, except Marshall University or West Virginia University, exceeds ~~$1~~ $2 million, the governing board first shall obtain the approval of the commission or council, as appropriate. ~~If the~~ Any time the cumulative total cost of an improvement project for Marshall University or West Virginia University exceeds ~~$15~~ $50 million, the governing board first shall obtain the approval of the commission.

(2) Prior to approving bonding or any alternative financing method, the commission, and council if appropriate, shall evaluate the following issues:

(A) The institution's debt capacity and ability to meet the debt service payments for the full term of the financing;

(B) The institution's capacity to generate revenue sufficient to complete the project;

(C) The institution's ability to fund ongoing operations and maintenance;

(D) The impact of the financing arrangement on students; and

(E) Any other factor considered appropriate.

(d) A governing board shall notify the Joint Committee on Government and Finance at least thirty days before beginning construction or renovation work on any capital project in excess of $1 million.

(e) The commission may pledge all or part of the fees of any or all state institutions of higher education as part of a system bond issue.

(f) Any fee or revenue source pledged prior to the effective date of this section for payment of any outstanding debt remains in effect until the debt is fully repaid or refunded."

On motion of Delegate White the amendment was amended on page fifteen, following line twenty-two, by striking out the remainder of the amendment in its entirety and by amending the enacting section of the bill to read as follows:

"That §12-1-12d of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18B-2A-1 and §18B-2A-3 of said code be amended and reenacted; and that §18B-7-11 of said code be amended and reenacted, all to read as follows" and a colon.

The Finance Committee amendment, as amended, was then adopted.

The bill was then ordered to third reading.

S. B. 460, Exempting certain residents' active duty military pay from state income tax; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 461, Relating to procedures and protections for child witnesses in domestic relations proceedings; on second reading, coming up in regular order, was read a second time.

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

"That §62-6B-2, §62-6B-3 and §62-6B-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6B. PROTECTION AND PRESERVATION OF STATEMENTS AND TESTIMONY OF CHILD WITNESS.

§62-6B-2. Definitions.

For the purposes of this article, the words or terms defined in this section, and any variation of those words or terms required by the context, have the meanings ascribed to them in this section. These definitions are applicable unless a different meaning clearly appears from the context.

(1) 'Child witness' means a person ~~thirteen years of age or less~~ under the age of sixteen years of age who is or will be called to testify in a criminal matter concerning an alleged violation of the provisions of sections three, four, five and seven, article eight-b, chapter sixty-one of this code in which the child is the alleged victim.

(2) 'Live, ~~two-way~~ closed-circuit television' means a simultaneous transmission, by closed-circuit television or other electronic means, between the courtroom and the testimonial room.

(3) 'Operator' means the individual authorized by the court to operate the ~~two-way~~ closed-circuit television equipment used in accordance with the provisions of this article.

(4) 'Testimonial room' means a room within the courthouse other than the courtroom from which the testimony of a child witness or the defendant is transmitted to the courtroom by means of live, ~~two-way~~ closed-circuit television.

§62-6B-3. Findings of fact required for taking testimony of child witness by closed-circuit television; considerations for court.

(a) Upon a written motion filed by the prosecuting attorney, the child's attorney or the child's guardian ad litem, and upon findings of fact determined pursuant to subsection (b) of this section, a circuit court may order that the testimony of a child witness may be taken at a pretrial proceeding or at trial through the use of live, ~~two-way~~ closed-circuit television.

(b) Prior to ordering that the testimony of a child witness may be taken through the use of live, ~~two-way~~ closed-circuit television, the circuit court must find by clear and convincing evidence, after conducting an evidentiary hearing on this issue, that:

(1) The child is an otherwise competent witness;

(2) That, absent the use of live, ~~two-way~~ closed-circuit television the child witness will be unable to testify due solely to being required to be in the physical presence of the defendant while testifying;

(3) The child witness can only testify if live, two-way closed-circuit television is used in the trial; and

(4) That the state's ability to proceed against the defendant without the child witness' live testimony would be substantially impaired or precluded.

(c) The court shall consider the following factors in determining the necessity of allowing a child witness to testify by the use of live, ~~two-way~~ closed-circuit television:

(1) The age and maturity of the child witness;

(2) The facts and circumstances of the alleged offense;

(3) The necessity of the child's live testimony to the prosecution's ability to proceed as well as any prejudice to the Defendant by allowing testimony through closed circuit television;

(4) Whether or not the facts of the case involve the alleged infliction of bodily injury to the child witness or the threat of bodily injury to the child or another; and

(5) Any mental or physical handicap of the child witness.

(d) In determining whether to allow a child witness to testify through live, ~~two-way~~ closed-circuit television the court shall appoint a psychiatrist or a licensed psychologist with at least five years clinical experience ~~or a licensed clinical social worker with at least five years of significant clinical experience in the treatment and evaluation of children~~ who shall serve as an advisor or friend of the court to provide the court with an expert opinion as to whether, to a reasonable degree of professional certainty, the child witness will suffer severe emotional harm, be unable to testify based solely on being in the physical presence of the defendant while testifying and that the child witness does not evidence signs of being subjected to undue influence or coercion. The opinion of the psychiatrist or licensed psychologist ~~or licensed clinical social worker~~ shall be filed with the circuit court at least thirty days prior to the final hearing on the use of live, ~~two-way~~

closed-circuit television and the defendant shall be allowed to review the opinion and present evidence on the issue by the use of an expert or experts or otherwise.

§62-6B-4. Procedures required for taking testimony of child witness by closed-circuit television; election of defendant; jury instruction; sanction for failure to follow procedures; additional accommodation options; recordings and confidentiality.

(a) If the court determines that the use of live, two-way closed-circuit testimony is necessary and orders its use the defendant may, at any time prior to the child witness being called, elect to absent himself from the courtroom during the child witness' testimony. If the defendant so elects the child shall be required to testify in the courtroom.

(b)(1) If live, ~~two-way~~ closed-circuit television is used in the testimony of the child witness, he or she shall be taken into the testimonial room and be televised live, by ~~two-way~~ closed-circuit equipment to the view of the defendant, counsel, the court and, if applicable, the jury. The projected image of the defendant shall be visible for child witness to view if he or she chooses to do so and the view of the child witness available to those persons in the courtroom shall include a full body view. Only the prosecuting attorney, the attorney for the defendant, and the operator of the equipment may be present in the room with the child witness during testimony. Only the court, the prosecuting attorney and the attorney for the defendant may question the child. In pro se proceedings, the court may modify the provisions of this subdivision relating to the role of the attorney for the defendant to allow the pro se defendant to question the child witness in such a manner as to cause as little psychological trauma as possible under the circumstances. The court shall permit the defendant to observe and hear the testimony of the child witness contemporaneous with the taking of the testimony. The court shall provide electronic

means for the defendant and the attorney for the defendant to confer confidentially during the taking of the testimony.

(2) If the defendant elects to not be physically present in the courtroom during the testimony of the child witness, the defendant shall be taken into the testimonial room and be televised live, by two-way closed-circuit equipment to the view of the finder of fact, and others present in the courtroom. The defendant shall be taken to the testimonial room prior to the appearance of the child witness in the courtroom. There shall be made and maintained a recording of the images and sounds of all proceedings which were televised pursuant to this article. While the defendant is in the testimonial room, the defendant shall be permitted to view the live, televised image of the child witness and the image of those other persons in the courtroom whom the court determines the defendant is entitled to view. Only the court, the prosecuting attorney and the attorney for the defendant may question the child. In pro se proceedings, the court may modify the provisions of this subdivision relating to the role of the attorney for the defendant to allow the pro se defendant to question the child witness in such a manner as to cause as little emotional distress as possible under the circumstances. The transmission from the courtroom to the testimonial room shall be sufficient to permit the defendant to observe and hear the testimony of the child witness contemporaneous with the taking of the testimony. No proceedings other than the taking of the testimony of the child witness shall occur while the defendant is outside the courtroom. In the event that the defendant elects that the attorney for the defendant remain in the courtroom while the defendant is in the testimonial room, the court shall provide electronic means for the defendant and the attorney for the defendant to confer confidentially during the taking of the testimony.

(c) In every case where the provisions of the article are used, the jury, at a minimum, shall be instructed, unless such instruction is waived by the defendant, that the use of live, ~~two-way~~ closed-circuit television is being used solely for the child's convenience, that the use of the medium cannot as a matter of law and fact be considered as

anything other than being for the convenience of the child witness and that to infer anything else would constitute a violation of the oath taken by the jurors."

The bill was then ordered to third reading.

S. B. 470, Permitting wine sale on Sunday mornings at fairs and festivals; on second reading, coming up in regular order, was read a second time.

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

"That §11-16-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60-4-3 of said code be amended and reenacted; that §60-6-2 of said code by amended and reenacted; that §60-7-11 of said code be amended and reenacted; and that §60-8-3 and §60-8-34 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-18. Unlawful acts of licensees; criminal penalties.

(a) It shall be unlawful:

(1) For any licensee, his, her, its or their servants, agents or employees to sell, give or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected therewith, nonintoxicating beer or cooler on weekdays between the hours of two o'clock a.m. and seven o'clock a.m., or between the hours of two o'clock a.m. and ~~one o'clock p.m.~~ ten o'clock a.m. on any Sunday, except in private clubs licensed under the provisions of article seven, chapter sixty of this code, where the hours shall conform with the hours of sale of alcoholic liquors;

(2) For any licensee, his, her, its or their servants, agents or employees to sell, furnish or give any nonintoxicating beer as defined in this article to any person visibly or noticeably intoxicated or to any person known to be insane or known to be a habitual drunkard;

(3) For any licensee, his, her, its or their servants, agents or employees to sell, furnish or give any nonintoxicating beer as defined in this article to any person who is less than twenty-one years of age;

(4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for the containers when title is retained by the vendor: *Provided,* That a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor must initiate the transfer no later than noon of one business day after the delivery;

(5) For any brewer or distributor or brewpub or his, her, its or their agents to transport or deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;

(6) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: *Provided,* That a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein contained shall prohibit a brewer from sponsoring any professional or amateur

athletic event or from providing prizes or awards for participants and winners in any events: *Provided, however,* That no event shall be sponsored which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the commissioner;

(7) For any licensee to permit in his or her premises any lewd, immoral or improper entertainment, conduct or practice;

(8) For any licensee except the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of this code or a holder of a license or a private wine restaurant issued under the provisions of article eight of said chapter to possess a federal license, tax receipt or other permit entitling, authorizing or allowing the licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;

(9) For any licensee to obstruct the view of the interior of his or her premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying the premises. The interior of all licensed premises shall be adequately lighted at all times: *Provided,* That provisions of this subdivision do not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of article seven, chapter sixty of this code or the premises of a private wine restaurant licensed under the provisions of article eight of said chapter;

(10) For any licensee to manufacture, import, sell, trade, barter, possess or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by a license or on premises directly or indirectly used in connection therewith: *Provided,* That the prohibition contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors is not applicable with respect to the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of this code nor shall the prohibition be

applicable to a private wine restaurant licensed under the provisions of article eight of said chapter insofar as the private wine restaurant is authorized to serve wine;

(11) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this article, purchased or acquired from any source other than a distributor, brewer or manufacturer licensed under the laws of this state;

(12) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon his or her premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community wherein the business is located: *Provided,* That no licensee may have in connection with his or her place of business any loudspeaker located on the outside of the licensed premises that broadcasts or carries music of any kind;

(13) For any person whose license has been revoked, as provided in this article, to obtain employment with any retailer within the period of one year from the date of the revocation, or for any retailer to knowingly employ that person within the specified time;

(14) For any distributor to sell, possess for sale, transport or distribute nonintoxicating beer except in the original container;

(15) For any licensee to knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this state;

(16) For any Class B retailer to permit the consumption of nonintoxicating beer upon his or her licensed premises;

(17) For any Class A licensee, his, her, its or their servants, agents or employees, or for any licensee by or through any servants, agents or employees, to allow, suffer or permit any person less than eighteen years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision do not apply where a

person under the age of eighteen years is in or upon the premises in the immediate company of his or her parent or parents, or where and while a person under the age of eighteen years is in or upon the premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on the premises;

(18) For any distributor to sell, offer for sale, distribute or deliver any nonintoxicating beer outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating beer or to sell, offer for sale, distribute or deliver nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of such nonintoxicating beer: *Provided,* That nothing herein is considered to prohibit sales of convenience between distributors licensed in this state wherein one distributor sells, transfers or delivers to another distributor a particular brand or brands for sale at wholesale; and

(19) For any licensee or any agent, servant or employee of any licensee to knowingly violate any rule lawfully promulgated by the commissioner in accordance with the provisions of chapter twenty-nine-a of this code.

(b) Any person who violates any provision of this article including, but not limited to, any provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of the acts herein declared to be unlawful is guilty of a misdemeanor and, upon conviction thereof, shall be punished for each offense by a fine of not less than twenty-five nor more than five hundred dollars, or confined in the county or regional jail for not less than thirty days nor more than six months, or by both fine and confinement. Magistrates shall have concurrent

jurisdiction with the circuit court and any other courts having criminal jurisdiction in their county for the trial of all misdemeanors arising under this article.

(c) (1) A Class B licensee that:

(A) Has installed a transaction scan device on its licensed premises; and

(B) Can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is sold, furnished or given away by the use of the transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner; or (iii) any civil liability whatsoever for the improper sale, furnishing or giving away of nonintoxicating beer to an individual who is less than twenty-one years of age by one of his or her employees, servants or agents. Any agent, servant or employee who has improperly sold, furnished or given away nonintoxicating beer to an individual less than twenty-one years of age is subject to the criminal penalties of subsection (b) of this section. Any agent, servant or employee who has improperly sold, furnished or given away nonintoxicating beer to an individual less than twenty-one years of age is subject to termination from employment, and the employer shall have no civil liability for the termination.

(2) For purposes of this section, a Class B licensee can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is sold by providing evidence: (A) That it has developed a written policy which requires each employee, servant or agent to verify the age of each individual to whom nonintoxicating beer will be sold, furnished or given away; (B) that it has communicated this policy to each employee, servant or agent; and (C) that it monitors the actions of its employees, servants or agents regarding the sale, furnishing or giving away of nonintoxicating beer and that it has taken corrective action for any discovered noncompliance with this policy.

(3) 'Transaction scan' means the process by which a person checks, by means of a transaction scan device, the age and identity of the cardholder, and 'transaction scan device' means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver's license or other governmental identity card.

(d) Nothing in this article nor any rule or regulation of the commissioner shall prevent or be considered to prohibit any licensee from employing any person who is at least eighteen years of age to serve in the licensee's lawful employ, including the sale or delivery of nonintoxicating beer as defined in this article. With the prior approval of the commissioner, a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores, may employ persons who are less than eighteen years of age but at least sixteen years of age: *Provided,* That the person's duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors: *Provided, however,* That the authorization to employ persons under the age of eighteen years shall be clearly indicated on the licensee's license.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 4. LICENSES.

§60-4-3. To whom licensed manufacturer may sell.

A person who is licensed to manufacture alcoholic liquors in this state may sell liquors in this state only to the West Virginia Alcohol Beverage Control Commissioner and to wholesalers and retailers licensed as provided in this chapter: *Provided,* That a holder of a winery or a farm winery license may sell wines and a holder of a distillery or a mini-distillery license may sell alcoholic liquors

manufactured by it in this state in accordance with the provisions of section two, article six of this chapter. Hours of retail sale by a winery or a farm winery or distillery or a mini-distillery are subject to regulation by the commissioner: *Provided,* That the hours of a private club operating on the premises of a distillery or mini-distillery shall be the same as any private club licensed under article seven, chapter sixty of this code. A winery, distillery, farm winery or mini-distillery may sell and ship alcoholic liquors outside of the state subject to provisions of this chapter.

§60-4-3a. Distillery and mini-distillery license to manufacture and sell.

(a) *Sales of liquor.* — An operator of a distillery or a mini-distillery may offer liquor for retail sale to customers from the distillery or the mini-distillery for consumption off premises only. Except for free complimentary samples offered pursuant to section one, article six of this chapter, or sales for consumption offered under a valid private club license pursuant to article seven, chapter sixty of this code, customers are prohibited from consuming any liquor on the premises of the distillery or the mini-distillery. Distilleries that produce 50,000 or more gallons of alcoholic liquor per year may not hold a private club license.

(b) *Retail sales.* — Every licensed distillery or mini-distillery shall comply with the provisions of sections nine, eleven, thirteen, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-three, twenty-four, twenty-five and twenty-six, article three-a of this chapter and the provisions of articles three and four of this chapter applicable to liquor retailers and distillers.

(c) *Payment of taxes and fees.* — The distillery or mini-distillery shall pay all taxes and fees required of licensed retailers and meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(d) *Payments to market zone retailers.* — Each distillery or mini-distillery shall submit to the commissioner ten percent of the gross sales price or each retail liquor sale for the value of all sales at the distillery or the mini-distillery each month. This collection shall be distributed by the commissioner, at least quarterly, to each market zone retailer located in the distillery or mini-distillery's market zone, proportionate to each market zone retailer's annual gross prior years pretax value sales.

(e) *Limitations on licensees.* — No distillery or mini-distillery may sell more than three thousand gallons of product at the distillery or mini-distillery location the initial two years of licensure. The distillery or mini-distillery may increase sales at the distillery or mini-distillery location by two thousand gallons following the initial twenty-four month period of licensure and may increase sales at the distillery or mini-distillery location each subsequent twenty-four month period by two thousand gallons, not to exceed ten thousand gallons a year of total sales at the distillery or mini-distillery location. No licensed mini-distillery may produce more than twenty thousand gallons per calendar year at the mini-distillery location. No more than one distillery or mini-distillery license may be issued to a single person or entity and no person may hold both a distillery and a mini-distillery license.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-2. When lawful to manufacture and sell wine and cider.

The provisions of this chapter may not prevent:

(1) A person from manufacturing wine at his or her residence for consumption at his or her residence as permitted by section one of this article;

(2) A person from manufacturing and selling unfermented cider;

(3) A person from manufacturing and selling cider made from apples produced by him or her within this state to persons holding

distillery licenses, if the manufacture and sale is under the supervision and regulation of the commissioner;

(4) A person from manufacturing and selling wine made from fruit produced by him or her within this state to persons holding winery licenses, if the manufacture and sale is under the supervision and regulation of the commissioner;

(5) The holder of a winery or a farm winery license from selling wine for off-premises consumption sold at retail at the winery or the farm winery, as provided in section four, article three-b of this chapter, or for any other person who is licensed under this chapter to sell wine as a wine supplier or distributor; and

(6) The holder of a distillery or a mini-distillery license from selling alcoholic liquor for off-premises consumption sold at retail at the distillery or the mini-distillery, as provided in section four, article three-a of this chapter; and

(7) The holder of a distillery or mini-distillery license from selling alcoholic liquor, other than in sealed packages, for consumption at the private club on the distillery or the mini-distillery premises, if the holder of the distillery or mini-distillery license produces less than 50,000 gallons of alcoholic liquor per year and also holds a valid private club license for the premises under article seven, chapter sixty of this code.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-11. Licensee must purchase alcoholic liquors from or through commissioner or retail licensee; exceptions.

(a) (1) All licensees shall purchase all alcoholic liquors sold by them from the West Virginia Alcohol Beverage Control Commissioner at prices established by the commissioner for sales of the alcoholic liquors to the public generally or from any retail licensee licensed

under the provisions of article three-a of this chapter, except that the licensees may purchase those wines permitted to be sold at retail pursuant to article eight of this chapter from those distributors licensed pursuant to said article at the same prices the distributors sell the wines to retailers licensed pursuant to said article, and distilleries or mini-distilleries licensed under article four, chapter sixty of this code and under this article may sell, if otherwise authorized, alcoholic liquor, other than in sealed packages, for consumption at the private club on the distillery or the mini-distillery premises, if the alcoholic liquor was manufactured on those premises.

(2) A licensee may by contract approved by the commissioner receive deliveries of alcoholic liquor from a retail liquor store, and the provisions of sections twelve and thirteen, article six of this chapter shall not apply to the transportation of that alcoholic liquor.

(b) In all reports filed under section sixteen, article fifteen, chapter eleven of this code, retail licensees licensed under the provisions of article three-a of this chapter shall separately identify the amount of sales tax on sales of liquor to licensees in the manner required by the Tax Commissioner.

(c) Notwithstanding the provisions of section thirty, article fifteen, chapter eleven of this code to the contrary, the amount of the sales taxes collected by the Tax Commissioner shall be deposited in a revolving fund account in the State Treasurer's office, designated the 'Drunk Driving Prevention Fund', and administered by the commission on drunk driving prevention, subject to appropriations by the Legislature.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

(a) It is unlawful for any licensee, or agent, employee or member thereof, on such licensee's premises to:

(1) Sell or offer for sale any alcoholic liquors other than from the original package or container;

(2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper entertainment, conduct or practice, gambling or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine.

(3) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine or alcoholic liquors on the licensee's premises, by any person less than twenty-one years of age;

(4) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors, for or to any person known to be deemed legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;

(5) Sell, give or dispense nonintoxicating beer, wine or alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of three o'clock a.m. and ~~one o'clock p.m.~~ ten o'clock a.m. on any Sunday, or between the hours of three o'clock a.m. and seven o'clock a.m. on any weekday or Saturday;

(6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine or alcoholic liquors, covered by this article, to any person who is less than twenty-one years of age;

(7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;

(8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues paying member in good standing of said private club or a guest of ~~such~~ a member;

(9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide, cyclopropane, ethylene, helium or nitrous oxide

for purposes of human consumption except as authorized by the commissioner;

(10) (A) Employ any person who is less than eighteen years of age in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person;

(B) Employ any person who is between the ages of eighteen and twenty-one who is not directly supervised by a person aged twenty-one or over in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person; or

(11) Violate any reasonable rule of the commissioner.

(b) It is unlawful for any licensee to advertise in any news media or other means, outside of the licensee's premises, the fact that alcoholic liquors may be purchased ~~thereat~~ there.

(c) Any person who violates any of the foregoing provisions is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000, or ~~imprisoned~~ confined in ~~the county~~ jail ~~for a period~~ not ~~to exceed~~ more than one year, or both fined and ~~imprisoned~~ confined.

ARTICLE 8. SALE OF WINES.

§60-8-3. Licenses; fees; general restrictions.

(a) No person may engage in business in the capacity of a winery, farm winery, supplier, distributor, retailer, private wine bed and breakfast, private wine restaurant, private wine spa or wine specialty shop without first obtaining a license from the commissioner, nor shall a person continue to engage in any ~~such~~ activity after his or her license has expired, been suspended or revoked. No person may be licensed simultaneously as a distributor and a retailer. No person, except for a

winery or farm winery, may be licensed simultaneously as a supplier and a retailer. No person may be licensed simultaneously as a supplier and a private wine bed and breakfast, private wine restaurant or a private wine spa. No person may be licensed simultaneously as a distributor and a private wine bed and breakfast, a private wine restaurant or a private wine spa. No person may be licensed simultaneously as a retailer and a private wine bed and breakfast, a private wine restaurant or a private wine spa.

(b) The commissioner shall collect an annual fee for licenses issued under this article, as follows:

(1) One hundred fifty dollars per year for a supplier's license;

(2) Twenty-five hundred dollars per year for a distributor's license and each separate warehouse or other facility from which a distributor sells, transfers or delivers wine shall be separately licensed and there shall be collected with respect to each ~~such~~ location the annual license fee of $2,500 as herein provided;

(3) One hundred fifty dollars per year for a retailer's license;

(4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any other licensing fees paid by a winery or retailer holding ~~such~~ a license, except for the amount of the license fee and the restriction to sales of winery or farm winery wines, a winery or farm winery acting as a wine specialty shop retailer is subject to all other provisions of this article which are applicable to a wine specialty shop retailer as defined in section two of this article;

(5) One hundred fifty dollars per year for a wine tasting license;

(6) One hundred fifty dollars per year for a private wine bed and breakfast license, and each separate bed and breakfast from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each ~~such~~ location the annual license fee of $150 as herein provided;

(7) Two hundred fifty dollars per year for a private wine restaurant license, and each separate restaurant from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each ~~such~~ location the annual license fee of $250 as herein provided;

(8) One hundred fifty dollars per year for a private wine spa license and each separate private wine spa from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each ~~such~~ location the annual license fee of $150 as herein provided;

(9) One hundred fifty dollars per year for a wine sampling license issued for a wine specialty shop under subsection (n) of this section;

(10) No fee shall be charged for a special one-day license under subsection (p) of this section or for a heritage fair and festival license under subsection (q) of this section; and

(11) One hundred fifty dollars per year for a direct shipper's license for a licensee who sells and ships only wine and $250 per for a direct shipper's license who ships and sells wine, nonfortified dessert wine, port, sherry or Madeira wines.

(12) Three hundred dollars per year for a multicapacity winery or farm winery license which shall enable the holder to operate as a retailer, wine specialty shop, supplier and direct shipper without obtaining an individual license for each capacity.

(c) The license period shall begin on July 1 of each year and end on June 30 of the following year and if granted for a less period, the same shall be computed semiannually in proportion to the remainder of the fiscal year.

(d) No retailer may be licensed as a private club as provided by article seven of this chapter, except as provided by subsection (k) of this section.

(e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen, chapter eleven of

this code: *Provided,* That a delicatessen, a caterer or party supply store which is a grocery store as defined in section two of this article and which is licensed as a Class A retail dealer in nonintoxicating beer may be a retailer under this article: *Provided, however,* That any delicatessen, caterer or party supply store licensed in both ~~such~~ capacities must maintain average monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average monthly sales of nonintoxicating beer.

(f) A wine specialty shop under this article may also hold a wine tasting license authorizing ~~such~~ the retailer to serve complimentary samples of wine in moderate quantities for tasting. Such wine specialty shop shall organize a wine taster's club, which has at least fifty duly elected or approved dues-paying members in good standing. Such club shall meet on the wine specialty shop's premises not more than one time per week and shall either meet at a time when the premises are closed to the general public, or shall meet in a separate segregated facility on the premises to which the general public is not admitted. Attendance at tastings shall be limited to duly elected or approved dues-paying members and their guests.

(g) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.

(h) The commissioner may issue a special license for the retail sale of wine at any festival or fair which is endorsed or sponsored by the governing body of a municipality or a county commission. Such special license shall be issued for a term of no longer than ten consecutive days and the fee therefor shall be $250 regardless of the term of the license unless the applicant is the manufacturer of said wine on a winery or a farm winery as defined in section five-a, article one of this chapter, in which event the fee shall be $50 if the event is held on the premises of the winery or farm winery. The application for ~~such~~ the license shall contain ~~such~~ information as the commissioner may

reasonably require and shall be submitted to the commissioner at least thirty days prior to the first day when wine is to be sold at ~~such~~ the festival or fair. A winery or a farm winery licensed under this subsection may exhibit, conduct tastings or sell samples, not to exceed a reasonable serving of three ounces, and may sell wine ~~only~~ samples for consumption ~~off~~ on the premises during the operation of ~~such~~ a festival or fair, and sell wine for consumption off premises consumption at that same festival or fair: *Provided*, That for licensed wineries or farm wineries at a licensed festival or fair the tastings, samples and off-premises sales shall occur under the hours of operation as required in this article, except that on Sunday tastings, samples and off-premises sales are unlawful between the hours of 2:00 A. M. and 10:00 A. M. A special license issued other than to a winery or a farm winery may be issued to a 'wine club' as defined herein below. The festival or fair committee or the governing body shall designate a person to organize a club under a name which includes the name of the festival or fair and the words 'wine club'. The license shall be issued in the name of the wine club. A licensee may not commence the sale of wine as provided in this subsection until the wine club has at least fifty dues-paying members who have been enrolled and to whom membership cards have been issued. Thereafter, new members may be enrolled and issued membership cards at any time during the period for which the license is issued. A wine club licensed under the provisions of this subsection may sell wine only to its members, and in portions not to exceed eight ounces per serving. ~~Such~~ The sales shall take place on premises or in an area cordoned or segregated so as to be closed to the general public, and the general public shall not be admitted to ~~such~~ the premises or area. A wine club licensee under the provisions of this subsection shall be authorized to serve complimentary samples of wine in moderate quantities for tasting.

A license issued under the provisions of this subsection and the licensee holding ~~such~~ the license shall be subject to all other provisions of this article and the rules and orders of the commissioner relating to ~~such~~ the special license: *Provided,* That the commissioner may by

rule, regulation or order provide for certain waivers or exceptions with respect to ~~such~~ the provisions, rules, regulations or orders as the circumstances of each ~~such~~ festival or fair may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions of section twenty-seven and twenty-eight of this article: *Provided, however,* That under no circumstances shall the provisions of subsection (c) or (d), section twenty of this article be waived nor shall any exception be granted with respect thereto.

A license issued under the provisions of this subsection and the licensee holding ~~such~~ the license ~~shall not be~~ is not subject to the provisions of subsection (g) of this section.

(i) (A) The commissioner may issue a special license for the retail sale of wine in a professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine, for consumption in a professional baseball stadium. For the purpose of this subsection, 'professional baseball stadium' means a facility constructed primarily for the use of a major or minor league baseball franchisee affiliated with the National Association of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league baseball park. Any special license issued pursuant to this subsection shall be for a term beginning on the date of issuance and ending on the next following June 30, and its fee is $250 regardless of the length of the term of the license. The application for the special license shall contain information as the commissioner may reasonably require and must be submitted to the commissioner at least thirty days prior to the first day when wine is to be sold at the professional baseball stadium. The special license may be issued in the name of the baseball franchisee or the name of the primary food and beverage vendor under contract with the baseball franchisee. These sales must take place within the confines of the professional baseball stadium, provided that the exterior of the area where wine sales may occur are surrounded by a fence or other barrier prohibiting entry except upon the franchisee's express permission, and under the

conditions and restrictions established by the franchisee, so that the wine sales area is closed to free and unrestricted entry by the general public.

(B) A license issued under this subsection and the licensee holding the license is subject to all other provisions of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders as the circumstances of each ~~such~~ professional baseball stadium may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding sections twenty-seven and twenty-eight of this article: *Provided, however,* That under no circumstances may subsection (c) or (d), section twenty of this article be waived nor shall any exception be granted concerning those subsections.

(C) The commissioner has the authority to propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement this subsection.

(j) A license to sell wine granted to a private wine bed and breakfast, private wine restaurant, private wine spa or a private club under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when ~~such~~ the sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article: *Provided,* That a licensed private wine bed and breakfast, private wine restaurant, private wine spa or a private club may permit a person over twenty-one years of age to purchase wine, consume wine and recork or reseal, using a tamper resistant cork or seal, up to two separate bottles of unconsumed wine in conjunction with serving of food or a meal to its members and their guests in accordance with the provisions of this article and in accordance with regulations promulgated by the commissioner for the purpose of consumption of said wine off premises: *Provided, however,* That for this article, food or a meal

provided by the private licensee means that the total food purchase, excluding beverage purchases, taxes, gratuity or other fees is at least $15: *Provided further,* That a licensed private wine restaurant or a private club may offer for sale for consumption off the premises, sealed bottles of wine to its customers provided that no more than one bottle is sold per each person over twenty-one years of age, as verified by the private wine restaurant or private club, for consumption off the premises. Such licensees are authorized to keep and maintain on their premises a supply of wine in ~~such~~ quantities as may be appropriate for the conduct of operations thereof. Any sale of wine so made shall be subject to all restrictions set forth in section twenty of this article. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen, chapter eleven of this code.

(k) With respect to subsections (h), (i), (j), (o) and (p) of this section, the commissioner shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code with regard to the form of the applications, the suitability of both the applicant and location of the licensed premises and ~~such~~ other legislative rules deemed necessary to carry the provisions of ~~such~~ the subsections into effect.

(l) The commissioner shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to allow restaurants to serve wine with meals, and to sell wine by the bottle for off-premises consumption as provided in subsection (j) of this section. Each restaurant so licensed shall be charged an additional $100 per year fee.

(m) The commissioner shall establish guidelines to permit wines to be sold in all stores licensed for retail sales.

(n) Wineries and farm wineries may advertise off premises as provided in section seven, article twenty-two, chapter seventeen of this code.

(o) A wine specialty shop under this article may also hold a wine sampling license authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine specialty shop location during regular hours of business. The wine specialty shop may serve up to three complimentary samples of wine, consisting of no more than one ounce each, to any one consumer in one day. Persons serving the complimentary samples must be twenty-one years of age and an authorized representative of the licensed wine specialty shop, winery, farm winery or a representative of a distributor or registered supplier. Distributor and supplier representatives attending wine sampling events must be registered with the commissioner. No licensee, employee or representative may furnish, give or serve complimentary samples of wine to any person less than twenty-one years of age or to a person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and secure permission from the commissioner for all wine sampling events one month prior to the event. Wine sampling events may not exceed six hours per calendar day. Licensees must purchase all wines used during these events from a licensed farm winery or a licensed distributor.

(p) The commissioner may issue special one-day licenses to duly organized, nonprofit corporations and associations allowing the sale and serving of wine when raising money for athletic, charitable, educational or religious purposes. The license application shall contain information as the commissioner may reasonably require and shall be submitted to the commissioner at least thirty days prior to the event. Wines used during these events may be donated by or purchased from a licensed retailer, a distributor or a farm winery. Under no circumstances may the provision of subsection (c), section twenty of this article be waived nor may any exception be granted with respect thereto.

(q) The commissioner may issue special licenses to heritage fairs and festivals allowing the sale, serving and sampling of wine from a licensed farm winery. The license application shall contain information

required by the commissioner and shall be submitted to the commissioner at least thirty days prior to the event. Wines used during these events may be donated by or purchased from a licensed farm winery. Under no circumstances may the provision of subsection (c), section twenty of this article be waived nor may any exception be granted with respect thereto. The commissioner shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement the provisions of this subsection.

§60-8-34. When retail sales prohibited.

It ~~shall be~~ is unlawful for a retailer, farm winery, wine specialty shop retailer, private wine bed and breakfast, private wine restaurant or private wine spa licensee, his or her servants, agents or employees to sell or deliver wine between the hours of two o'clock a.m. and ~~one o'clock p.m.~~ ten o'clock a.m. on Sundays, or between the hours of two o'clock a.m. and seven o'clock a.m. on weekdays and Saturdays."

The bill was then ordered to third reading.

S. B. 489, Permitting community enhancement districts to decrease annual property assessments; on second reading, coming up in regular order, was read a second time.

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

"That §16-13E-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

§16-13E-8. Notice to property owners of assessments; correcting and laying assessments; report on project completion; credits.

(a) Prior to the issuance of assessment bonds or pledging any amounts to payment of tax increment financing obligation debt service,

the board shall cause a report to be prepared describing each lot or parcel of land located within the community enhancement district and setting forth the total cost of the project based on the contract with the governmental agency, the accepted bid or bids, or a cost estimate certified by a professional engineer, and all other costs incurred prior to the commencement of construction and the future administrative costs, and the respective amounts chargeable upon each lot or parcel of land and the proper amount to be assessed against the respective lots or parcels of land with a description of the lots and parcels of land as to ownership and location. If two or more different kinds of projects are involved, the report shall set forth the portion of the assessment attributable to each respective project. The board shall thereupon give notice to the owners of real property to be assessed that on or after a date specified in the notice an assessment will be deemed granted against the property. The notice shall state that the owner of assessed property, or other interested party, may on said date appear before the board to move the revision or correction of the proposed assessment and shall show the total cost of the project, whether the assessments will pay for all or part of the total cost of the project and the lots or parcels of property to be assessed and the respective amounts to be assessed against such lots or parcels, with a description of the respective lots and parcels of land as to ownership and location. The notice shall also be published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of the code, and the publication area for such publication is the assessment district. On or after the date so advertised, the board may revise, amend, correct and verify the report and proceed by resolution to establish the assessments as corrected and verified and shall certify the same to the governing body which created the district.

(b) During the pendency of the project, the board may decrease the amount of the assessments certified to the county sheriff for collection following the June 7 certification of those assessments by the community enhancement district to the sheriff as provided by subdivision (6), subsection (b), section six of this article, upon a

finding or determination by the community enhancement board that the decrease is necessary or appropriate as the total cost of the project is less than projected or that the need for the assessment amount has decreased under the circumstances, and so certify to the sheriff of the county where the property is located. The modified assessment shall be granted against all property in the district for inclusion in the tax ticket or the preparation of modified tax tickets by that sheriff for the affected parcels.

~~(b)~~ (c) Upon completion of a project, the board shall prepare a final report certifying the completion of the project and showing the total cost of the project and whether the cost is greater or less than the cost originally estimated. If the total cost of the project is less or greater than the cost shown in the report prepared prior to construction, the board may revise the assessment charged on each lot or parcel of land pursuant to subsection (a) of this section to reflect the total cost of the project as completed, and in so doing shall, in the case of an assessment increase only, follow the same procedure with regard to notice and providing each owner of assessed property the right to appear before the board to move for the revision or correction of such proposed reassessment as required for the original assessment. If an assessment is decreased, the board shall, by resolution and written notice to the sheriff of the county in which the community enhancement district is located, cause the next installment or installments of assessments then due and payable by each affected property owner to be reduced pro rata, and shall provide written notice to such property owners of the amount of such decrease by the deposit of such notice in the United States mail, postage prepaid.

~~(c)~~ (d) The value of the projects financed with the assessments shall be treated as a credit toward any impact fees related to the service or services provided levied under article twenty, chapter seven of this code."

The bill was then ordered to third reading.

Com. Sub. for S. B. 498, Relating to hearing location for Alcohol Beverage Control Administration's appeal hearings; on second reading, coming up in regular order, was read a second time.

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

"CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-24. Hearing on sanctioning of license; notice; review of action of commissioner; clerk of court to furnish commissioner copy of order or judgment of conviction of licensee; assessment of costs; procedure for appealing any final order of the commissioner which revokes, suspends, sanctions or denies the issuance or renewal of any license issued under this article.

(a) The commissioner ~~shall~~ may not revoke ~~nor~~ or suspend ~~any~~ a license issued pursuant to this article or impose ~~any civil penalties~~ a civil penalty authorized ~~thereby~~ under this article unless and until a hearing ~~shall be~~ is held after at least ten days' notice to the licensee of the time and place of ~~such~~ the hearing, which notice shall contain a statement or specification of the charges, grounds or reasons for ~~such~~ the proposed contemplated action, and which ~~shall be~~ is served upon the licensee as notices under the West Virginia Rules of Civil Procedure or by certified mail, return receipt requested, to the address for which license was issued; at which time and place, so designated in the notice, the licensee ~~shall have~~ has the right to appear and produce evidence in his or her behalf, and to be represented by counsel.

(b) The commissioner ~~shall have authority to~~ may summon witnesses in the hearings before him or her, and fees of witnesses

summoned on behalf of the state in proceedings to sanction licenses shall be treated as a part of the expenses of administration and enforcement. ~~Such~~ The fees shall be the same as those in similar hearings in the circuit courts of this state. The commissioner may, upon a finding of violation, assess a licensee a sum not to exceed $150 per violation to reimburse the commissioner for expenditures for witness fees, court reporter fees and travel costs incurred in holding the hearing. ~~Any~~ Moneys so assessed shall be transferred to the Nonintoxicating Beer Fund created by section twenty-three of this article.

(c) If, at the request of the licensee or on his or her motion, the hearing ~~shall be~~ is continued and ~~shall~~ does not take place on the day fixed by the commissioner in the notice ~~above provided for~~ of hearing, then ~~such~~ the licensee's license may be suspended until the hearing and decision of the commissioner, and in the event of revocation or suspension of ~~such~~ the license, upon hearing before the commissioner, the licensee ~~shall not be~~ is not permitted to sell beer pending an appeal as provided by this article. Any person continuing to sell beer after his or her license has been suspended or revoked, as hereinbefore provided, is guilty of a misdemeanor and, shall be punished as provided in section nineteen of this article.

(d) Notwithstanding the provisions of subsection (b), section four, article five, chapter twenty-nine-a of this code, the action of the commissioner in revoking, ~~or~~ suspending, sanctioning or refusing a license ~~shall be~~ is subject to review by the circuit court of Kanawha County ~~West Virginia,~~ or the circuit court in the county where the proposed or licensed premises is located and will or does conduct sales: *Provided*, That in all other respects, such review shall be conducted in the manner provided in chapter twenty-nine-a of this code. ~~when such licensee may be aggrieved by such revocation, or suspension~~ The petition for ~~such~~ review must be filed with ~~said~~ the circuit court within ~~a period of~~ thirty days ~~from and after the date of~~ following entry of the final order of revocation, ~~or~~ suspension, sanction

or refusal issued by the commissioner. ~~and any~~ An applicant or licensee obtaining an order for ~~such~~ review ~~shall be~~ is required to pay the costs and fees incident to transcribing, certifying and transmitting the records pertaining to ~~such~~ the matter to the circuit court. An application to the Supreme Court of Appeals of West Virginia for a writ of error from any final order of the circuit court in ~~any such~~ the matter shall be made within thirty days from and after the entry of ~~such~~ the final circuit court order.

(e) All ~~such~~ hearings, upon notice to show cause why license should be revoked, ~~or~~ suspended, sanctioned or refused, before the commissioner shall be held in the offices of the commissioner in Charleston, Kanawha County, ~~West Virginia,~~ unless otherwise provided by the commissioner in ~~such~~ the notice ~~or agreed upon between the licensee and the commissioner; and~~ of hearing. When ~~such~~ the hearing is held elsewhere than in the commissioner's office, the licensee may be required to make deposits of the estimated costs of ~~such~~ the hearing.

(f) Whenever ~~any~~ a licensee has been convicted of ~~any~~ an offense constituting a violation of the laws of this state or of the United States relating to nonintoxicating beer, or alcoholic liquor, and ~~such~~ the conviction has become final, the clerk of the court in which ~~such~~ the licensee has been convicted shall forward to the commissioner a certified copy of the order or judgment of conviction if ~~such~~ the clerk has knowledge that the person so convicted is a licensee, together with the certification of ~~such~~ the clerk that the conviction is final.

(g) In the case of a Class B licensee with multiple licensed locations, the commissioner may, in his or her discretion, revoke, suspend or otherwise sanction, per the provisions of section twenty-three of this article, only the license for the location or locations involved in the unlawful conduct for which licensure is sanctioned, as opposed to all separately licensed locations of ~~such~~ the licensee.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-28. Notice of and hearing on revocation; right of appeal; appeal procedures.

(a) Before a retail license issued under the authority of this article ~~may be~~ is suspended for a period of more than twenty days, or revoked, the commissioner shall give at least ten days' notice to the retail licensee. Notice shall be in writing, shall state the reason for suspension or revocation, and shall designate a time and place for a hearing where the retail licensee may show cause why the retail license should not be suspended or revoked. Notice shall be sent by certified mail to the address for which the retail license was issued. The retail licensee may, at the time designated for the hearing, produce evidence in his or her behalf and be represented by counsel.

(b) ~~Such~~ The hearing and the administrative procedures prior to, during and following the ~~same shall be~~ hearing are governed by and shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code in like manner as if the provisions of article five were fully set forth in this section.

(c) Notwithstanding the provisions of subsection (b), section four, article five, chapter twenty-nine-a of this code, any person adversely affected by ~~an~~ a final order entered following ~~such~~ the hearing ~~shall have~~ has the right of judicial review ~~thereof in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code with like effect as if the provisions of said section four were fully set forth in this section.~~ by the circuit court of Kanawha County or the circuit court in the county where the proposed or licensed premises is located and will or does conduct sales: *Provided*, That in all other respects, such review shall be conducted in the manner provided in chapter twenty-nine-a of this code. The petition for the review must be

filed with the circuit court within thirty days following entry of the final order issued by the commissioner. An applicant or licensee obtaining the review is required to pay the costs and fees incident to transcribing, certifying and transmitting the records pertaining to the matter to circuit court.

(d) The judgment of ~~a~~ the circuit court reviewing ~~such~~ the order of the commissioner ~~shall be~~ is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

(e) Legal counsel and services for the commissioner in all ~~such~~ the proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his or her assistants and in any proceedings in any circuit court by the prosecuting attorney of that county as well, all without additional compensation.

(f) Upon final revocation, the commissioner shall proceed to reissue the retail license by following the procedures set forth herein for the initial issuance of a retail license.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-13a. Hearing on sanctioning of license; notice; review of action of commissioner; clerk of court to furnish commissioner copy of order or judgment of conviction of licensee; assessment of costs; procedure for appealing any final order of the commissioner which revokes, suspends, sanctions or denies the issuance or renewal of any license issued under this article.

(a) The commissioner ~~shall~~ may not revoke or suspend ~~any~~ a license issued pursuant to this article or impose ~~any~~ civil penalties authorized ~~thereby~~ under this article unless and until a hearing ~~shall be~~ is held after at least ten days' notice to the licensee of the time and

place of ~~such~~ the hearing, which notice shall contain a statement or specification of the charges, grounds or reasons for ~~such~~ the proposed contemplated action, and which ~~shall be~~ is served upon the licensee as notices under the West Virginia Rules of Civil Procedure or by certified mail, return receipt requested, to the address for which license was issued. At ~~which~~ the time and place, ~~so~~ designated in the notice, the licensee ~~shall have~~ has the right to appear and produce evidence in his or her behalf, and to be represented by counsel: *Provided,* That the commissioner may forthwith suspend ~~any such~~ the license when the commissioner believes the public safety will be adversely affected by the licensee's continued operation.

(b) The commissioner ~~shall have authority to~~ may summon witnesses in the hearing before him or her, and fees of witnesses summoned on behalf of the state in proceedings to sanction licenses shall be treated as a part of the expenses of administration and enforcement. ~~Such~~ The fees shall be the same as those in similar hearings in the circuit courts of this state. The commissioner may, upon a finding of violation, assess a licensee a sum, not to exceed $150 per violation, to reimburse the commissioner for expenditures of witness fees, court reporter fees and travel costs incurred in holding the hearing. ~~Any~~ Moneys so assessed shall be transferred to the Alcohol Beverage Control Enforcement Fund created by section thirteen of this article.

(c) If, at the request of the licensee or on his or her motion, the hearing ~~shall be~~ is continued and ~~shall~~ does not take place on the day fixed by the commissioner in the notice ~~above provided for~~ of hearing, then ~~such~~ the licensee's license may be suspended until the hearing and decision of the commissioner, and in the event of revocation or suspension of ~~such~~ the license, upon hearing before the commissioner, the licensee ~~shall not be~~ is not permitted to sell alcoholic liquor or nonintoxicating beer pending an appeal as provided by this article. Any person continuing to sell alcoholic liquor or nonintoxicating beer after his or her license has been suspended or revoked, as ~~hereinbefore~~

provided in this section, is guilty of a misdemeanor and, shall be punished as provided in section twelve of this article.

(d) Notwithstanding the provisions of subsection (b), section four, article five, chapter twenty-nine-a of this code, the action of the commissioner in revoking, ~~or~~ suspending, sanctioning or refusing a license ~~shall be~~ is subject to review by the circuit court of Kanawha County ~~West Virginia,~~ or the circuit court in the county where the proposed or licensed premises is located and will or does conduct sales: *Provided*, That in all other respects, such review shall be conducted in the manner provided in chapter twenty-nine-a of this code. ~~when such licensee may be aggrieved by such revocation, or suspension~~ The petition for ~~such~~ review must be filed with ~~said~~ the circuit court within ~~a period of~~ thirty days ~~from and after the date of~~ following entry of the final order of revocation, ~~or~~ suspension, sanction or refusal issued by the commissioner. ~~and any~~ A licensee obtaining an order for ~~such~~ the review ~~shall be~~ is required to pay the costs and fees incident to transcribing, certifying and transmitting the records pertaining to ~~such~~ the matter to the circuit court. An application to the Supreme Court of Appeals of West Virginia for a writ of error from any final order of the circuit court in ~~any such~~ the matter shall be made within thirty days from and after the entry of ~~such~~ the final circuit court order.

(e) All such hearings, upon notice to show cause why license should be revoked, ~~or~~ suspended, sanctioned or refused, before the commissioner shall be held in the offices of the commissioner in Charleston, Kanawha County, ~~West Virginia,~~ unless otherwise provided by the commissioner in ~~such~~ the notice ~~or agreed upon between the licensee and the commissioner and~~ of hearing. When ~~such~~ the hearing is held elsewhere than in the commissioner's office, the licensee may be required to make deposits of the estimated costs of ~~such~~ the hearing.

(f) Whenever any licensee has been convicted of ~~any~~ an offense constituting a violation of the laws of this state or of the United States

relating to alcoholic liquor, or nonintoxicating beer, and ~~such~~ the conviction has become final, the clerk of the court in which ~~such~~ the licensee has been convicted shall forward to the commissioner a certified copy of the order or judgment of conviction if ~~such~~ the clerk has knowledge that the person ~~so~~ convicted is a licensee, together with the certification of ~~such~~ the clerk that the conviction is final. The commissioner shall report violations of any of the provisions of section twelve or twelve-a of this article to the prosecuting attorney of the county in which the licensed premises is located.

ARTICLE 8. SALE OF WINES.

§60-8-18. Revocation, suspension and other sanctions which may be imposed by the commissioner upon the licensee; procedure for appealing any final order of the commissioner which revokes, suspends, sanctions or denies the issuance or renewal of any license issued under this article.

(a) The commissioner may on his or her own motion, or shall on the sworn complaint of any person, conduct an investigation to determine if any provisions of this article or any rule promulgated or any order issued by the commissioner has been violated by any licensee. After investigation, the commissioner may impose penalties and sanctions as set forth below.

(1) If the commissioner finds that the licensee has violated any provision of this article or any rule promulgated or order issued by the commissioner, or if the commissioner finds the existence of any ground on which a license could have been refused, if the licensee were then applying for a license, the commissioner may:

(A) Revoke the licensee's license;

(B) Suspend the licensee's license for a period determined by the commissioner not to exceed twelve months; or

(C) Place the licensee on probation for a period not to exceed twelve months; and

(D) Impose a monetary penalty not to exceed $1,000 for each violation where revocation is not imposed.

(2) If the commissioner finds that a licensee has willfully violated any provision of this article or any rule promulgated or any order issued by the commissioner, the commissioner shall revoke the licensee's license.

(b) If a supplier or distributor fails or refuses to keep in effect the bond required by section twenty-nine of this article, the commissioner shall automatically suspend the supplier or distributor's license until the bond required by section twenty of this article is furnished to the commissioner, at which time the commissioner shall vacate the suspension.

(c) Whenever the commissioner refuses to issue a license, or suspends or revokes a license, places a licensee on probation or imposes a monetary penalty, he or she shall enter an order to that effect and cause a copy of the order to be served in person or by certified mail, return receipt requested, on the licensee or applicant.

(d) ~~Any~~ An applicant or licensee, as the case may be, adversely affected by the order has a right to a hearing before the commissioner if a written demand for hearing is served upon the commissioner within ten days following the receipt of the commissioner's order by the applicant or licensee. Timely service of a demand for a hearing upon the commissioner operates to suspend the execution of the order with respect to which a hearing has been demanded, except an order suspending a license under the provisions of subsection (b) of this section. The person demanding a hearing shall give security for the cost of the hearing in a form and amount as the commissioner may reasonably require. If the person demanding the hearing does not substantially prevail in ~~such~~ the hearing or upon judicial review thereof

as provided in subsections (g) and (h) of this section, then the costs of the hearing shall be assessed against him or her by the commissioner and may be collected by an action at law or other proper remedy.

(e) Upon receipt of a timely served written demand for a hearing, the commissioner shall immediately set a date for the hearing and notify the person demanding the hearing of the date, time and place of the hearing, which shall be held within thirty days after receipt of the demand. At the hearing the commissioner shall hear evidence and thereafter enter an order supporting by findings of facts, affirming, modifying or vacating the order. Any such order is final unless vacated or modified upon judicial review thereof.

(f) The hearing and the administrative procedure prior to, during and following the hearing shall be governed by and in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(g) ~~Any~~ Notwithstanding the provisions of subsection (b), section four, article five, chapter twenty-nine-a of this code, an applicant or licensee adversely affected by ~~an~~ a final order entered following a hearing has the right of judicial review of the order ~~in accordance with the provisions of section four, article five, chapter twenty-nine-a of this~~ code in the circuit court of Kanawha County ~~West Virginia.~~ or the circuit court in the county where the proposed or licensed premises is located and will or does conduct sales: *Provided*, That in all other respects, such review shall be conducted in the manner provided in chapter twenty-nine-a of this code. The petition for the review must be filed with the circuit court within thirty days following entry of the final order issued by the commissioner. An applicant or licensee obtaining judicial review is required to pay the costs and fees incident to transcribing, certifying and transmitting the records pertaining to the matter to circuit court.

(h) The judgment of the ~~Kanawha County~~ circuit court reviewing the order of the commissioner is final unless reversed, vacated or

modified on appeal to the Supreme Court of Appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

(i) Legal counsel and services for the commissioner in all proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his or her assistants and in any proceedings in any circuit court by the prosecuting attorney of that county as well, all without additional compensation."

The bill was then ordered to third reading.

S. B. 507, Relating to PERS and State Police Retirement System contribution rates; on second reading, coming up in regular order, was reported by the Clerk.

At the request of Delegate Boggs, and by unanimous consent, the bill was advanced to third reading with restricted right to amend by Delegates Hunt and White, and the rule was suspended to permit the consideration of the amendment on that reading.

Com. Sub. for S. B. 527, Relating to process of filling vacancies in certain elected offices; on second reading, coming up in regular order, was read a second time.

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

"That §3-10-4a of the Code of West Virginia, 1931, as amended, be repealed; and that §3-10-1, §3-10-2, §3-10-3, §3-10-3a, §3-10-4, §3-10-5, §3-10-6, §3-10-7 and §3-10-8 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §3-10-9, all to read as follows:

ARTICLE 10. FILLING VACANCIES.

§3-10-1. Elections to fill vacancies.

~~Except as provided in sections three and four of this article, elections to fill vacancies shall be conducted to fill any unexpired term when more than one year of the term of office remains at the time of such election. When less than one year of the term of office remains at the time of the election, the person appointed to fill the vacancy shall continue in office until the completion of the term.~~

(a) When a vacancy occurs in an elected office of the state or county, it shall be filled according to the processes set forth in this article. As used in this article, unless otherwise indicated by the context:

(1) 'General cutoff date' means the eighty-fourth day before the general election that immediately precedes the general election where the office would be on the ballot for election if there were not a vacancy; and

(2) 'Primary cutoff date' means the eighty-fourth day before the primary election that immediately precedes the general cutoff date.

(b) When this article requires an appointment to fill a vacancy in an elected office, the appointment shall be made within thirty days of the vacancy, unless this code specifically states a different time period for the specific office. The term that the appointee holds the office shall depend on when the vacancy occurs, as follows:

(1) If the vacancy occurs after the primary cutoff date, then that appointee shall hold the office until the end of the term of office: *Provided*, That if the vacancy for any county office or United States Senate occurs during the window after the primary cutoff date, but before the general cutoff date, the process contained in sections four, six, seven and eight of this article, depending on the specific office vacated, shall be followed; or

(2) If the vacancy occurs on or before the primary cutoff date, then the office shall be filled at the following regular primary and subsequent general election pursuant to this article and the appointee shall hold the office until a qualified replacement is elected and certified at that general election. The elected replacement shall hold the office until the end of the original term of office.

(c) If an election is required to fill the vacancy by subsection (b) of this section and the other provisions of this article, the election shall proceed depending on when the vacancy occurs and in which office it occurs. Elections to fill vacancies shall be held at the same places, and superintended, conducted and returned, and the result ascertained, certified and declared, in the same manner, and by the same officers, as in general elections, unless otherwise stated in this article.

(1) For a vacancy in the Office of Governor, the times for the special elections contained in section two of this article shall control. The proclamation entered pursuant to section two of this article by the person acting as Governor, shall include the dates for the special candidate filing period, if necessary, and shall follow the requirements set forth in this section. All aspects of this section, where not in conflict with section two of this article, shall also be followed. If a regularly scheduled primary or general election fits within the times for the special elections contained in section two of this article, the special elections shall be conducted in conjunction with the regularly scheduled election or elections. If an special election is required by section two of this article and it cannot be held in conjunction with the regular election dates, then the compensation of election officers shall be reimbursed pursuant to section nine of this article.

(2) For a vacancy in the offices of United States House of Representatives or United States Senate, the times for the special election, if necessary, contained in section four of this article shall control. All aspects of this section, where not in conflict with section four of this article, shall also be followed.

(A) With regard to United States House of Representatives, the proclamation entered pursuant to section four of this article by the Governor, shall include the dates for the special candidate filing period, if necessary, and shall follow the requirements set forth in this section. If a regularly scheduled primary or general election fits within the times for the special elections contained in section four of this article, the special elections shall be conducted in conjunction with the regularly scheduled election or elections. If an special election is required by section two of this article and it cannot be held in conjunction with the regular election dates, then the compensation of election officers shall be reimbursed pursuant to section nine of this article.

(B) With regard to United States Senate, if a special general election following the regular general election is required by section four of this article, and it cannot be held in conjunction with the regular election dates, then the compensation of election officers shall be reimbursed pursuant to section nine of this article.

(3) For all other offices, the Governor, or other person granted authority by this article, shall issue a proclamation stating that the office will appear on the next regular primary election and subsequent general election, in order to fill the vacancy: *Provided*, That if the vacancy for any county office occurs during the window after the primary cutoff date, but before the general cutoff date, the process contained in sections six, seven and eight of this article shall be followed. If the candidate filing period for the next regular primary election has closed or has less than one week remaining, the proclamation shall provide for a special primary candidate filing period. If there are less than eighty-four days between the vacancy and the next regular primary election, then the proclamation shall state that the office will appear on the subsequent regular primary election and corresponding general election following the next regular primary election.

(d) (1) If a special candidate filing period is necessary, it shall begin no sooner than the day after the proclamation and shall close no

earlier than close of business on the fourteenth day following the proclamation. A notarized declaration of candidacy and filing fee provided by section seven, article five of this chapter, shall be filed either in person, by United States mail, electronic means or any other means authorized by the Secretary of State and received by the appropriate office before the close of the filing period. For petition in lieu of payment of filing fees, a candidate seeking nomination for the vacancy may utilize the process set forth in section eight-a, article five of this chapter: *Provided*, That the minimum number of signatures required is equivalent to one qualified signature per one whole dollar of the filing fee for that office.

(2) If a primary election is required by the provisions of this article:

(A) For all statewide, multicounty and legislative elections, drawing for the primary election ballot position will take place at the Secretary of State's office twenty-four hours after the end of the filing period. For each major political party on the ballot, a single drawing by lot shall determine the candidate ballot position for ballots statewide. This drawing shall be witnessed by four clerks of the county commission chosen by the West Virginia Association of County Clerks, with no more than two clerks representing a single political party.

(B) For county elections, drawing for the primary election ballot position will take place at the county clerk's office twenty-four hours after the end of the filing period. For each major political party on the ballot, a single drawing by lot shall determine the candidate ballot position for ballots statewide. This drawing shall be witnessed by the chairperson of the county democratic and republican executive committees or their designee, and the president of the county commission or his or her designee.

(3) Ballot position for a general election required by this article shall be determined pursuant to subdivision (3), subsection (c), section

two, article six of this chapter. If a general election required by this article occurs in conjunction with a regularly scheduled primary election, the general election shall be listed along with the nonpartisan portion of each ballot in the order of offices provided for regular ballots in this chapter.

(e) When an election is required to fill a vacancy, the date of the election and offices to be elected, as well as any other information required in the proclamation, shall be published prior to such election as a Class I-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county of the state that is eligible to vote in the election for those offices.

(f) If an election is required by this article, the Secretary of State may issue emergency administrative orders to undertake other ministerial actions that are otherwise authorized pursuant to this code when necessary to assure the preservation of the voting rights of the citizens of this state and avoid fraudulent voting and election activities and otherwise assure the orderly and efficient conduct of the new election provided in this subsection: *Provided*, That emergency administrative orders may not contravene the provisions of this article.

(g) If an election is required by this article, citizens having no party organization or affiliation may nominate candidates as provided by sections twenty-three and twenty-four of article five of this chapter: *Provided*, That when an election is required by the provisions of this article to be held at some time other than with a regularly scheduled election, all certificates nominating candidates shall be filed with the appropriate official no later than 90 days before the election.

(h) The persons elected, having first duly qualified, shall enter upon the duties of their respective offices. The elected replacement shall hold the office until the end of the original term of office.

§3-10-2. Vacancy in Office of Governor.

(a) In case of the death, conviction on impeachment, failure to qualify, resignation or other disability of the Governor, the President of the Senate shall act as Governor until the vacancy is filled or the disability removed; and if the President of the Senate, for any of the above-named causes, shall be or become incapable of performing the duties of Governor, the same shall devolve upon the Speaker of the House of Delegates; and in all other cases where there is no one to act as Governor, one shall be chosen by the joint vote of the Legislature. Whenever a vacancy shall occur in the Office of Governor before the first three years of the term shall have expired, a new election for Governor shall take place to fill the vacancy.

(b) The new election shall consist of a special primary election and a special general election, and shall occur at such time as will permit the person elected as Governor in the new election to assume office within one year of the date the vacancy occurred: *Provided,* That the special general election provided in this section may not apply to section eight, article one of this chapter. Within thirty days from the date the vacancy occurs, the person acting as Governor pursuant to the State Constitution shall issue a proclamation fixing the time for a ~~new~~ statewide election to fill the vacancy in the Office of Governor. ~~which shall be published prior to such election as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county of the state. The proclamation issued by the person acting as Governor pursuant to the state Constitution shall provide for a special primary election to nominate candidates for the special general election.~~ The special primary election to fill a vacancy in the Office of Governor shall take place no less than ninety days after the proclamation and no later than one hundred forty days from the date that the vacancy in the office occurs. The proclamation issued by the person acting as Governor pursuant to the State Constitution shall also provide for a special general election to take place no sooner than ninety days after the special primary election and

no later than two hundred eighty days from the date that the vacancy in the office occurs.

~~(b) The compensation of election officers, cost of printing ballots and all other reasonable and necessary expenses in holding and making the return of the new election provided in this section to fill a vacancy in the office of Governor are obligations of the state incurred by the ballot commissioners, clerks of the county commissions and county commissions of the various counties as agents of the state. All expenses of the new election are to be audited by the Secretary of State. The Secretary of State shall prepare and transmit to the county commissions forms on which the county commissions shall certify all expenses of the new election provided in this section to the Secretary of State. If satisfied that the expenses as certified by the county commissions are reasonable and were necessarily incurred, the Secretary of State shall requisition the necessary warrants from the Auditor of the state to be drawn on the State Treasurer and shall mail the warrants directly to the vendors of the new election services, supplies and facilities.~~

~~(c) Notwithstanding the provisions of subsection (a) of this section to the contrary, for purposes of filling the vacancy that occurred in the office of Governor on November 15, 2010, a new election shall occur as follows:~~

~~(1) Upon the effective date of this subsection, the person acting as Governor pursuant to the state Constitution shall immediately issue a proclamation calling for a special primary and general election as provided for in this subsection. For purposes of this subsection, the new elections so provided in the proclamation mean the special primary and general elections as set forth in this subsection.~~

~~(2) The special primary election shall be held on May 14, 2011 and the special general election shall be held on October 4, 2011.~~

~~(3) The proclamation for the special primary election and special general election shall be published prior to the special primary election~~

~~and special general elections, respectively, as a Class II-0 legal advertisement in accordance with article three, chapter fifty-nine of this code and the publication area for the publication is each county of the state. The notice shall be filed with the Secretary of State who shall cause the document to be published within each county in accordance with this section.~~

~~(4) The provisions of this chapter apply to the special primary election and special general election to the extent that those provisions are consistent with the provisions of this section. Statutory time deadlines for the purpose of the new election provided in this subsection are modified as follows:~~

~~(A) A notarized declaration of candidacy and filing fee shall be filed and received in hand by the Secretary of State by 5:00 p.m. on the fifth calendar day following the proclamation of the special primary election. The declaration of candidacy may be filed in person, by United States mail, electronic means or any other means authorized by the Secretary of State;~~

~~(B) The Secretary of State may issue emergency administrative orders to undertake other ministerial actions that are otherwise authorized pursuant to this code when necessary to assure the preservation of the voting rights of the citizens of this state and avoid fraudulent voting and election activities and otherwise assure the orderly and efficient conduct of the new election provided in this subsection: *Provided,* That emergency administrative orders may not contravene the provisions of this section;~~

~~(C) For petition in lieu of payment of filing fees, a candidate seeking nomination for the vacancy in the office of Governor may utilize the process set forth in section eight-a, article five of this chapter: *Provided,* That the minimum number of signatures required is one thousand five hundred;~~

~~(D) Drawing for special primary election ballot position will take place at the Secretary of State's office twenty-four hours after the end~~

~~of the filing period. For each major political party on the ballot, a single drawing by lot shall determine the candidate ballot position for ballots statewide. This drawing shall be witnessed by four clerks of the county commission chosen by the West Virginia Association of County Clerks, with no more than two clerks representing a single political party. Ballot position for the special general election shall be determined pursuant to subdivision (3), subsection (c), section two, article six of this chapter;~~

~~(E) A registered voter who has not reached eighteen years of age may vote in the May 14, 2011 special primary election: *Provided,* That the voter will attain eighteen years of age at the time of the special general election provided in this subsection;~~

~~(F) When paper or optical scan ballots are the primary voting method used at any county, the total number of regular official ballots printed shall equal at a minimum fifty percent of the number of registered voters eligible to vote that ballot;~~

~~(G) When paper ballots are used in conjunction with a direct recording electronic voting system, the total number of regular official ballots printed shall equal at a minimum thirty percent of the registered voters eligible to vote that ballot;~~

~~(H) Regularly scheduled locations of polling places may not be changed, except for situations as provided in sections seven-e and seven-f, article one of this chapter: *Provided,* That if multiple precincts voted in one polling location for the November 2, 2010, regularly scheduled general election, these precincts may be consolidated into a single precinct. Locations for consolidated precincts shall provide Internet access, insofar as possible, for the sole purpose of utilizing the statewide Voter Registration System (SVRS) as an electronic poll book. However, Constitutionally mandated redistricting may not take effect until the special primary election and special general election provided in this subsection are complete; and~~

~~(I) Citizens having no party organization or affiliation may nominate candidates as provided by sections twenty-three and twenty-four of article five of this chapter: *Provided, That* the number of signatures required to be submitted shall be equal to not less than one-quarter of one percent of the entire vote cast at the last preceding general election for Governor. Notwithstanding the provisions of sections twenty three and twenty four of article five of this chapter, the signatures, notarized declaration of candidacy, and filing fee must be submitted no later than seven calendar days following the special primary election provided in this subsection.~~

~~(J) For the special primary election to be held pursuant to this subsection, early voting will also be conducted from 9 a.m. to 5 p.m. on the Saturday immediately prior to the end of early voting.~~

~~(5) The provisions of this subsection shall expire upon the election and qualification of the Governor following the October 4, 2011 special general election.~~

~~(d) The Secretary of State shall by January 10, 2012 report to the Joint Committee on Government and Finance findings regarding of the operation of the new election undertaken pursuant to subsection (c) of this section. This report shall provide analysis of the direct and indirect costs to the state associated with the conduct of the new election.~~

(c) The election shall follow the requirements of section one of this article that are not in conflict with this section.

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

Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, ~~United States Senator, judge~~ justice of the Supreme Court of Appeals or in any office created or made elective to be filled by the voters of

the entire state, judge of a circuit court or judge of a family court is filled by the Governor of the state by appointment ~~If the unexpired term of a judge of the Supreme Court of Appeals, a judge of the circuit court or judge of a family court is for less than two years or if the unexpired term of any other office named in this section is for a period of less than two years and six months, the appointment to fill the vacancy is for the unexpired term. If the unexpired term of any office is for a longer period than above specified, the appointment is until a successor to the office has timely filed a certificate of candidacy, has been nominated at the primary election next following such timely filing and has thereafter been elected and qualified to fill the unexpired term. Proclamation of any election to fill an unexpired term is made by the Governor of the state and, in the case of an office to be filled by the voters of the entire state, must be published prior to the election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication is each county of the state. If the election is to fill a vacancy in the office of judge of a circuit court or judge of a family court, the proclamation must be published prior to the election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication is each county in the judicial or family court circuit.~~ and subsequent election to fill the remainder of the term, if required by section one of this article.

§3-10-3a. Judicial Vacancy Advisory Commission.

(a) The Judicial Vacancy Advisory Commission ~~is hereby established to~~ shall assist the Governor in filling judicial vacancies. The commission shall meet and submit a list of no more than five nor less than two best qualified persons to the Governor within ninety days of the occurrence of a vacancy, or the formal announcement of the justice or judge by letter to the Governor of an upcoming resignation or retirement that will result in the occurrence of a vacancy, in the office of justice of the Supreme Court of Appeals, ~~judge of an intermediate appellate court,~~ judge of a circuit court, or judge of a

family court. The Governor shall make the appointment to fill the vacancy, as required by this article, within thirty days following the receipt of the list of qualified candidates or within thirty days following the vacancy, whichever occurs later.

(b) The commission shall consist of eight appointed members. Four public members shall be appointed by the Governor for six-year terms, except for the initial appointments which shall be staggered in accordance with subsection (c) of this section. Four attorney members shall be appointed by the Governor for six-year terms, except as provided in subsection (c) of this section, from a list of nominees provided by the Board of Governors of the West Virginia State Bar. The Board of Governors of the West Virginia State Bar shall nominate no more than twenty nor less than ten best qualified attorneys for appointment to the commission whenever there is a vacancy in the membership of the commission reserved for attorney members. The commission shall choose one of its appointed members to serve as chair for a three-year term. No more than four appointed members of the commission shall belong to the same political party. No more than three appointed members of the commission shall be residents of the same congressional district. All members of the commission shall be citizens of this state. Public members of the commission may not be licensed to practice law in West Virginia or any other jurisdiction.

(c) Of the initial appointments made to the commission, two public members and two attorney members shall be appointed for a term ending two years after the effective date of this section, one public member and one attorney member shall be appointed for a term ending four years after the effective date of this section, and one public member and one attorney member shall be appointed for a term ending six years after the effective date of this section.

(d) The Governor, or his or her designee, the President of the West Virginia State Bar and the Dean of the West Virginia University College of Law shall serve as *ex officio* members of the commission.

(e) Members of the commission shall serve without compensation, except that commission members are entitled to reimbursement of travel and other necessary expenses actually incurred while engaged in official commission activities in accordance with the guidelines of the Travel Management Office of the Department of Administration, or its successor entity. The Governor's Office shall cooperate with the commission to ensure that all resources necessary to carrying out the official duties of the commission are provided, including staff assistance, equipment and materials.

(f) The commission shall adopt written policies that formalize and standardize all operating procedures and ethical practices of its members including, but not limited to, procedures for training commission members, publishing notice of judicial vacancies, recruiting qualified individuals for consideration by the commission, receiving applications from qualified individuals, notifying the public of judicial vacancies, notifying state or local groups and organizations of judicial vacancies and soliciting public comment on judicial vacancies. The written policies of the commission are not subject to the provisions of chapter twenty-nine-a of this code, but shall be filed with the Secretary of State.

(g) A majority of the commission plus one shall constitute a quorum to do business.

(h) All organizational meetings of the commission shall be open to the public and subject to the requirements of article nine-a, chapter six of this code. An 'organizational meeting' means an initial meeting to discuss the commission's procedures and requirements for a judicial vacancy. The commission shall hold at least one organizational meeting upon the occurrence of a judicial vacancy. All other meetings of the commission are exempt from article nine-a, chapter six of this code.

(i) The commission shall make available to the public copies of any applications and any letters of recommendation written on behalf

of any applicants. All other documents or materials created or received by the commission shall be confidential and exempt from the provisions of chapter twenty-nine-b of this code, except for the list of best-qualified persons or accompanying memoranda submitted to the Governor in accordance with the provisions of subsection (j) of this section, which shall be available for public inspection, and the written policies required to be filed with the Secretary of State in accordance with subsection (f) of this section.

(j) The commission shall submit its list of best qualified persons to the Governor in alphabetical order. A memorandum may accompany the list of best-qualified persons and state facts concerning each of the persons listed. The commission shall make copies of any list of best-qualified persons and accompanying memoranda it submits to the Governor available for public inspection.

§3-10-4. Vacancies in representation in United States Congress.

(a) If there ~~be~~ is a vacancy in the representation from this state in the House of Representatives in the Congress of the United States, the Governor shall, within ~~ten~~ five days after the fact comes to his or her knowledge, ~~of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in the congressional district. In such proclamation he~~ the Governor shall ~~appoint some day,~~ issue a proclamation ~~give notice thereof by proclamation, to be published prior to such election as a Class II-O legal advertisement in compliance with the provisions~~ setting dates for a special primary election that is not less than ~~thirty~~ eighty-four nor more than ~~seventy-five~~ one hundred twenty days from the date ~~thereof, for holding the election to fill such vacancy. Nominations to fill such vacancy shall be made in the manner prescribed for nominating a candidate to fill a vacancy in the office of Governor, to be voted for at a special election. The congressional district executive committee of a party shall perform the duties devolving upon the state executive committee in filling a state office:~~ of the vacancy and a special general election that is not less than eighty-four nor more than one hundred

twenty days following the date of the special primary election: *Provided*, That no such proclamation may be made nor may a special election be held if the vacancy occurs after the eighty-fourth day prior to the regularly scheduled primary election for a new full term of the office. The election shall follow the requirements of section one of this article that are not in conflict with this section.

(b) If there is a vacancy in the representation from this state in the Senate of the United States Congress, the vacancy shall be filled by the Governor of the state by appointment and:

(1) If the vacancy occurs on or before the primary cutoff date, then an election shall be held pursuant to section one of this article; or

(2) If the vacancy occurs after the primary cutoff date, but on or before the general cutoff date, then the Governor shall issue a proclamation providing for (A) a special filing period, (B) a special primary election to be held in conjunction with the upcoming general election and (C) a special general election to be held not less than eighty-four nor more than one hundred twenty days following the date of the special primary election. Each election shall follow the requirements of section one of this article that are not in conflict with this section.

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

(a) Any vacancy in the office of State Senator or member of the House of Delegates shall be filled by appointment by the Governor, from a list of three legally qualified persons submitted by the party executive committee of the party with which the person holding the office immediately preceding the vacancy was affiliated. ~~Such~~ The list of qualified persons to fill the vacancy shall be submitted to the Governor within fifteen days after the vacancy occurs and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified ~~person~~ persons within five days after the list is received. If the list is not submitted to the Governor within

the fifteen day period, the Governor shall appoint within five days thereafter a legally qualified person of the same political party as the person vacating the office.

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

(c) In the case of a State Senator, the list shall be submitted by the party executive committee of the state senatorial district in which the vacating senator resided at the time of his or her election or appointment. ~~If the unexpired term in the office of the state Senator will be for less than two years and two months, the appointment is for the unexpired term. If the unexpired term will be for a period equal to or longer than two years and two months, the appointment is until the next general election and until the election and qualification of a successor to the person appointed, at which general election the vacancy shall be filled by election for the unexpired term. Notice of an election to fill a vacancy in the office of State Senator shall be given by the Governor by proclamation and shall be published before the election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be each county in the senatorial district. Nominations for candidates to fill a vacancy shall be made in the manner prescribed for nominating a candidate to fill a vacancy in the office of Governor to be voted for at a general election. The state senatorial district executive committee of the political party shall discharge the duties incident to State Senator nominations devolving upon the party state executive committee in nominating a candidate for a state office.~~ The appointment to fill a vacancy in the State Senate is for the unexpired term, unless section one of this article requires a subsequent election to fill the remainder of the term, which shall follow the procedure set forth in section one of this article.

§3-10-6. Vacancy in office of circuit court clerk.

(a) When a vacancy occurs in the office of clerk of the circuit court, the circuit court by a majority vote of the judges ~~or the chief judge thereof in vacation,~~ shall fill the same within thirty days of the vacancy by appointment of a person of the same political party as the officeholder vacating the office ~~until the next general election, or until the completion of the term if the term ends on December 31, following the next general election. The person so appointed shall hold office until his or her successor is elected and qualified. At the general election, a clerk shall be elected for the unexpired term if the unexpired term is greater than one year~~ for the period required by section one of this article.

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

~~The~~ (c) If an election is necessary, the circuit court, or the chief judge thereof in vacation, ~~shall cause a notice of the election to be published prior to the election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for the publication shall be the county~~ is responsible for the proper proclamation, by order and notice required by section one of this article.

~~candidates to fill the vacancy shall be nominated at the primary election in accordance with the time requirements and the provisions and procedures prescribed in section eleven, article five of this chapter. If~~ (d) Section one of this article shall be followed with respect to any election needed to fill a vacancy, except that if ~~If the vacancy occurs no later than the eighty-fourth day before the primary election held to nominate candidates to be voted for at the general election, at which any vacancy is to be filled,~~ the vacancy occurs after ~~the eighty-fourth~~

~~day before~~ the primary cutoff date but not later than the ~~eighty-fourth day before the general election, they~~ general cutoff date, candidates to fill the vacancy shall be nominated by the county executive committee in the manner provided in section nineteen, article five of this chapter, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission of the county, shall be placed upon the ballot to be voted at the next general election.

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

(a) Any vacancy in the office of county commissioner or clerk of county commission shall be filled by the county commission of the county, unless the number of vacancies in a county commission deprive that body of a quorum, in which case the Governor of the state shall fill any vacancy in the county commission necessary to create a quorum thereof. Persons appointed shall be of the same political party as the officeholder vacating the office ~~and shall continue in office until the next general election is certified, or until the completion of the term if the term ends on December 31, following the next general election: *Provided,* That in the event~~ for the period stated by section one of this article. If a quorum of the county commission cannot agree upon a person to fill a vacancy in the office of county commissioner within thirty days of the date the vacancy first occurred, the county executive committee of the vacating county commissioner's political party shall select and name a person to fill the vacancy from the membership of the vacating county commissioner's political party. The clerk shall be appointed within 30 days of the vacancy.

~~Notice of the election shall be given by order of the county commission and published as prescribed in section six of this article.~~

(b) Notwithstanding any code provision to the contrary, a county commission may appoint a temporary successor to the office of clerk of the county commission until the requirements of this section have

been met. The temporary successor may serve no more than thirty days from the date of the vacancy.

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

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

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

§3-10-8. Vacancies in offices of prosecuting attorney, sheriff, assessor and surveyor.

(a) Any vacancy occurring in the office of prosecuting attorney, sheriff, assessor or county surveyor shall be filled by the county

commission within thirty days of the vacancy by appointment of a person of the same political party as the officeholder vacating the office. The appointed person shall hold the office ~~until the next general election is certified, or until the completion of the term if the term ends on December 31, following the next general election Notice of an election to fill a vacancy in any of the offices named in this section shall be given by the county commission, or by the president thereof in vacation, and published or posted in the manner prescribed in section six of this article. Nomination of candidates to fill any vacancy shall be made in the manner prescribed in section six of this article for nominating candidates to fill a vacancy in the office of the clerk of the circuit court.~~ for the period stated by section one of this article.

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

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

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

§3-10-9. Costs of special elections paid by state.

If an election as required by sections two or four of this article cannot be held in conjunction with the regular election dates, then the cost of printing ballots and all other reasonable and necessary expenses in holding and making the return of the new election to fill a vacancy are obligations of the state incurred by the ballot commissioners, clerks of the county commissions and county commissions of the various counties as agents of the state. All expenses of the new election are to be audited by the Secretary of State. The Secretary of State shall prepare and transmit to the county commissions forms on which the county commissions shall certify all expenses of the new election to the Secretary of State. If satisfied that the expenses as certified by the county commissions are reasonable and were necessarily incurred, the Secretary of State shall requisition the necessary warrants from the Auditor of the state to be drawn on the State Treasurer and shall mail the warrants directly to the vendors of the new election services, supplies and facilities."

The bill was then ordered to third reading.

Com. Sub. for S. B. 564, Increasing minimum construction cost of municipal public works project before competitive bidding is required; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page three, section five, line twenty-five, by striking out the words "purchase of materials", and on lines thirty-one through thirty-four, by striking out the underscored language.

The bill was then ordered to third reading.

S. B. 601, Removing requirement certain juvenile proceedings be sealed; on second reading, coming up in regular order, was read a second time.

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

"That §49-5-2 and §49-5-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-2. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; constitutional guarantees; hearings; evidence and transcripts.

(a) The circuit court has original jurisdiction of proceedings brought under this article.

(b) If during a criminal proceeding in any court it is ascertained or appears that the defendant is under the age of nineteen years and was under the age of eighteen years at the time of the alleged offense, the matter shall be immediately certified to the juvenile jurisdiction of the circuit court. The circuit court shall assume jurisdiction of the case in the same manner as cases which are originally instituted in the circuit court by petition.

(c) Notwithstanding any other provision of this article, magistrate courts have concurrent juvenile jurisdiction with the circuit court for a violation of a traffic law of West Virginia, for a violation of section nine, article six, chapter sixty, section three or section four, article nine-a, chapter sixteen, or section nineteen, article sixteen, chapter eleven of this code, or for any violation of chapter twenty of this code. Juveniles are liable for punishment for violations of these laws in the same manner as adults except that magistrate courts have no jurisdiction to impose a sentence of incarceration for the violation of these laws.

(d) Notwithstanding any other provision of this article, municipal courts have concurrent juvenile jurisdiction with the circuit court for a violation of any municipal ordinance regulating traffic, for any municipal curfew ordinance which is enforceable or for any municipal ordinance regulating or prohibiting public intoxication, drinking or possessing alcoholic liquor or nonintoxicating beer in public places, any other act prohibited by section nine, article six, chapter sixty or section nineteen, article sixteen, chapter eleven of this code or underage possession or use of tobacco or tobacco products, as provided in article nine-a, chapter sixteen of this code. Municipal courts may impose the same punishment for these violations as a circuit court exercising its juvenile jurisdiction could properly impose, except that municipal courts have no jurisdiction to impose a sentence of incarceration for the violation of these laws.

(e) A juvenile may be brought before the circuit court for proceedings under this article only by the following means:

(1) By a juvenile petition requesting that the juvenile be adjudicated as a status offender or a juvenile delinquent; or

(2) By certification or transfer to the juvenile jurisdiction of the circuit court from the criminal jurisdiction of the circuit court, from any foreign court, or from any magistrate court or municipal court in West Virginia.

(f) (1) If a juvenile commits an act which would be a crime if committed by an adult, and the juvenile is adjudicated delinquent for that act, the jurisdiction of the court which adjudged the juvenile delinquent continues until the juvenile becomes twenty-one years of age. The court has the same power over that person that it had before he or she became an adult, and has the further power to sentence that person to a term of incarceration: *Provided,* That any such term of incarceration may not exceed six months. This authority does not preclude the court from exercising criminal jurisdiction over that person if he or she violates the law after becoming an adult or if the

proceedings have been transferred to the court's criminal jurisdiction pursuant to section ten of this article.

(2) If a juvenile is adjudicated as a status offender because he or she is habitually absent from school without good cause, the jurisdiction of the court which adjudged the juvenile a status offender continues until either the juvenile becomes twenty-one years of age, completes high school, completes a high school equivalent or other education plan approved by the court, or the court otherwise voluntarily relinquishes jurisdiction, whichever occurs first. If the jurisdiction of the court is extended pursuant to this subdivision, the court has the same power over that person that it had before he or she became an adult: *Provided*, That no person so adjudicated who has attained the age of nineteen may be ordered to attend school in a regular, non-altenative setting.

(g) A juvenile is entitled to be admitted to bail or recognizance in the same manner as an adult and shall be afforded the protection guaranteed by Article III of the West Virginia Constitution.

(h) A juvenile has the right to be effectively represented by counsel at all stages of proceedings under the provisions of this article. If the juvenile or the juvenile's parent or custodian executes an affidavit showing that the juvenile cannot afford an attorney, the court shall appoint an attorney, who shall be paid in accordance with article twenty-one, chapter twenty-nine of this code.

(i) In all proceedings under this article, the juvenile shall be afforded a meaningful opportunity to be heard. This includes the opportunity to testify and to present and cross-examine witnesses. The general public shall be excluded from all proceedings under this article except that persons whose presence is requested by the parties and other persons whom the circuit court determines have a legitimate interest in the proceedings may attend: *Provided,* That in cases in which a juvenile is accused of committing what would be a felony if the juvenile were an adult, an alleged victim or his or her

representative may attend any related juvenile proceedings, at the discretion of the presiding judicial officer: *Provided, however,* That in any case in which the alleged victim is a juvenile, he or she may be accompanied by his or her parents or representative, at the discretion of the presiding judicial officer.

(j) At all adjudicatory hearings held under this article, all procedural rights afforded to adults in criminal proceedings shall be afforded the juvenile unless specifically provided otherwise in this chapter.

(k) At all adjudicatory hearings held under this article, the rules of evidence applicable in criminal cases apply, including the rule against written reports based upon hearsay.

(l) Except for res gestae, extrajudicial statements made by a juvenile who has not attained fourteen years of age to law-enforcement officials or while in custody are not admissible unless those statements were made in the presence of the juvenile's counsel. Except for res gestae, extrajudicial statements made by a juvenile who has not attained sixteen years of age but who is at least fourteen years of age to law-enforcement officers or while in custody, are not admissible unless made in the presence of the juvenile's counsel or made in the presence of, and with the consent of, the juvenile's parent or custodian, and the parent or custodian has been fully informed regarding the juvenile's right to a prompt detention hearing, the juvenile's right to counsel, including appointed counsel if the juvenile cannot afford counsel, and the juvenile's privilege against self-incrimination.

(m) A transcript or recording shall be made of all transfer, adjudicatory and dispositional hearings held in circuit court. At the conclusion of each of these hearings, the circuit court shall make findings of fact and conclusions of law, both of which shall appear on the record. The court reporter shall furnish a transcript of the proceedings at no charge to any indigent juvenile who seeks review of any proceeding under this article if an affidavit is filed stating that

neither the juvenile nor the juvenile's parents or custodian have the ability to pay for the transcript.

§49-5-18. Confidentiality of juvenile records.

(a) One year after the juvenile's eighteenth birthday, or one year after personal or juvenile jurisdiction has terminated, whichever is later, the records of a juvenile proceeding conducted under this chapter, including, but not limited to, law-enforcement files and records, ~~shall be~~ may be ~~sealed by operation of law~~ kept in a separate secure confidential place and the records may not be inspected except by order of the circuit court.

(b) The records of a juvenile proceeding in which a juvenile was transferred to criminal jurisdiction pursuant to the provisions of section ten of this article shall be ~~sealed by operation of law~~ kept in a separate secure confidential place and the records may not be inspected except by order of the circuit court if the juvenile is subsequently acquitted or found guilty only of an offense other than an offense upon which the waiver or order of transfer was based, or if the offense upon which the waiver or order of transfer was based is subsequently dismissed.

(c) To ~~seal~~ keep the confidentiality of juvenile records, they shall be returned to the circuit court in which the case was pending and be kept in a separate confidential file. The records shall be physically marked to show that they ~~have been sealed~~ are to remain confidential and shall be securely ~~sealed~~ kept and filed in ~~such~~ a manner so that no one can have access to determine the identity of the juvenile, except upon order of the circuit court.

~~(d) Sealed records may not be opened except upon order of the circuit court.~~

~~(e) Sealing of juvenile records~~

(d) Marking the juvenile records to show they are to remain confidential has the legal effect of extinguishing the offense as if it never occurred.

~~(f)~~ (e) The records of a juvenile convicted under the criminal jurisdiction of the circuit court pursuant to subdivision (1), subsection (d), section ten of this article may not be ~~sealed~~ marked and kept as confidential.

~~(g)~~ (f) Any person who willfully violates this section ~~shall be~~ is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or confined in ~~the county or regional~~ jail for not more than six months, or both so fined and confined, and ~~shall be~~ is liable for damages in the amount of $300 or actual damages, whichever is greater."

The bill was then ordered to third reading.

Com. Sub. for S. B. 630, Relating to Chief Technology Officer's duties with regard to security of government information; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 652, Requiring criminal background checks for home inspector applicants; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page four, section five-b, line forty-two, by striking out the word "may" and inserting in lieu thereof the word "shall" and on line forty-six after the word "section", by inserting "and may deny licensing, registration, or certification based upon the results of the criminal history record check" and a period.

The bill was then ordered to third reading.

FIRST READING

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

Com. Sub. for S. B. 521, Creating amnesty program for certain drivers with suspended or revoked licenses,

Com. Sub. for S. B. 533, Modifying definitions of "domestic battery" and "domestic assault",

And,

Com. Sub. for S. B. 565, Creating reverse auction pilot program for purchasing office supplies.

MISCELLANEOUS BUSINESS

Delegate Howell noted to the Clerk that he was absent when the votes were taken on S. B. 65, S. B. 82, S. B. 194, Com. Sub. for S. B. 195, Com. Sub. for S. B. 200, Com. Sub. for S. B. 202, S. B. 331, Com. Sub. for S. B. 369, Com. Sub. for S. B. 386, Com. Sub. for S. B. 401 and S. B. 407, and that had he been present, he would have voted "YEA" thereon. The Delegate also noted to the Clerk that he was absent when the votes were taken on Com. Sub. for S. B. 243, Com. Sub. for S. B. 250, Com. Sub. for S. B. 265, Com. Sub. for S. B. 270, Com. Sub. for S. B. 281, Com. Sub. for S. B. 355, Com. Sub. for S. B. 371 and Com. Sub. for S. B. 426 and had he been present he would have voted "NAY" thereon.

Delegate Walters noted to the Clerk that he was absent when the votes were taken on Roll Nos. 284, 285, 286, 287 and 290, and that had he been present, he would have voted "NAY" thereon. He also noted to the Clerk that he was absent when the votes were taken on Roll Nos. 281, 282, 283, 288 and 289, and had he been present he would have voted "YEA" thereon.

LEAVES OF ABSENCE

At the request of Delegate Boggs, and by unanimous consent, leave of absence for the day was granted Delegate J. Nelson.

At 8:24 P.M., the House of Delegates adjourned until 11:00 A.M., Saturday, April 13, 2013.